Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-165609-001 DT 06/13/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

ANDREA L KEVER

v.

BENJAMIN J DOLINKY (001)

RICHARD D COFFINGER

REMAND DESK-LCA-CCC
UNIVERSITY LAKES JUSTICE COURT

HIGHER COURT RULING / REMAND

Lower Court Case Number TR 2011–165609.

Defendant-Appellant Benjamin J. Dolinky (Defendant) was convicted in the University Lakes Justice Court of driving under the influence. Defendant contends the trial court erred (1) in not going through the proper colloquy for a submission on the record, (2) in denying his Motion To Suppress, which alleged the officer did not follow the proper procedure for obtaining the blood sample, (3) in not imposing discovery sanctions, and (4) in not following the proper procedure in imposing sentence. For the following reasons, this Court affirms the judgment, but remands for resentencing.

I. FACTUAL BACKGROUND.

On December 23, 2011, Defendant was cited for driving under the influence, A.R.S. § 28–1381(A)(1); driving with drugs or metabolite in system, A.R.S. § 28–1381(A)(3); and speed greater than reasonable and prudent, A.R.S. § 28–701(A). Prior to trial, Defendant filed a Motion To Suppress alleging the officer did not arrest Defendant for DUI and thus the officer improperly invoked the Implied Consent law.

At the hearing on Defendant's motion, Deputy James Cope testified he was on duty on December 23, 2011, in the area of McClintock and Southern Avenue in Tempe. (R.T. of Mar. 29, 2012, at 3–4.) At about 10:27 p.m., he saw a vehicle going 50 miles per hour in a 35 miles per hour zone, so he stopped the vehicle for speeding. (*Id*. at 4.) He identified Defendant as the driver of that vehicle. (*Id*.) Upon questioning Defendant, Deputy Cope smelled the odor of marijuana and saw Defendant had bloodshot eyes. (*Id*. at 5.) He asked Defendant if he had any marijuana; Defendant said he did and pulled the drugs out of his pants. (*Id*.) Defendant admitted smoking marijuana that night and said he had just left the place where he had been smoking. (*Id*.)

Deputy Cope then placed Defendant under arrest for possession of marijuana. (*Id*. at 6.) Because Deputy Cope was not a drug recognition expert, he did not want to place Defendant under arrest for driving with drugs in his system, and instead wanted to wait until a drug recognition expert had the opportunity to examine Defendant. (*Id*. at 6–7.)

At the DUI Command Post, Phoenix Police Detective Kemp Layden conducted a DRE investigation. (R.T. of Mar. 29, 2012, at 6–7.) After conducting that investigation, Detective Layden concluded Defendant was impaired by marijuana and so advised Deputy Cope. (*Id*. at 7.) Deputy Cope testified as follows:

> DEPUTY COPE: At which time, I advised Benjamin Dolinky of this that we now have him as being impaired. I advised him of the admin per se.

(R.T. of Mar. 29, 2012, at 7.) Defendant then agreed to a blood draw. (*Id*.) Deputy Cope clarified that he advised Defendant he was under arrest for driving under the influence of drugs:

> DEPUTY COPE: At that point in time, Benjamin Dolinky was advised that he had been arrested for DUI/marijuana.
>
> DEFENSE COUNSEL: Who did that?
>
> DEPUTY COPE: I did.
>
> DEFENSE COUNSEL: What time?
>
> DEPUTY COPE: It was during the time when I explained that the Phoenix PD officer came over to me and explained. I may not have said it very clear to you. I'm sorry. I explained to him that they found that he was in possession, or he was under the influence of marijuana. Therefore he—
>
> DEFENSE COUNSEL: But you said—
>
> DEPUTY COPE: —was being charged with driving under the influence of marijuana.

(R.T. of Mar. 29, 2012, at 10.)

> STATE: So, Deputy Cope, to clarify. Did you advise Mr. Dolinky that he was under arrest for driving under the influence of drugs?
>
> DEPUTY COPE: I told him, as I was saying, that once the Phoenix Police officer advised me that he was impaired under marijuana, as I was advising him of admin per se, I told him . . . from the time he was placed in handcuffs to the time I read him admin per se as to why he was placed in handcuffs. He was placed in handcuffs because of—and he was told—the possession of marijuana, and because of the suspicion of him being impaired by marijuana. . . . Once the Phoenix officer told me he was indeed impaired by marijuana, I advised him that he was going to be charged with driving under the influence of marijuana.

(R.T. of Mar. 29, 2012, at 11–12.)

> DEPUTY COPE: He's doing an investigation for a DUI. He was placed under arrest for the possession of marijuana and for the suspicion of driving under the influence of marijuana.

(R.T. of Mar. 29, 2012, at 16.)

After hearing arguments of counsel, the trial court took the matter under advisement. (R.T. of Mar. 29, 2012, at 30.) The trial court later granted Defendant's Motion To Suppress. (R.T. of May 3, 2012, at 1; M.E. of May 3, 2012.) On May 16, the State filed a Motion To Reconsider, and on May 24, Defendant's attorney filed a Response. The trial court then issued a minute entry that granted the State's Motion To Reconsider and denied Defendant's Motion To Suppress. (M.E. of May 31, 2012.) On June 6, Defendant's attorney filed a Motion for Reconsideration of Court's Denial of His Motion To Suppress, and on July 19, the trial court issued a minute entry denying that Motion for Reconsideration. (M.E. of Jul. 19, 2012.)

On April 27, 2012, Defendant's attorney file a Motion for Discovery Sanctions contending Phoenix Police Detective Kemp Layden was listed on the Maricopa County Attorney's Office officer integrity list. Defendant's attorney attached to that motion discovery about Detective Layden the State had provided to him in other cases, and contended the State was required to provide that same discovery to him in the present case. On May 3, the prosecutor filed a Response and acknowledged she had failed to make the required disclosure in the present case, but contended Defendant had not been prejudiced because Defendant's attorney already had the exact same disclosure the prosecutor would have made in this case.

Defendant's attorney later advised the trial court Defendant was going to waive a jury trial. (R.T. of Aug. 16, 2012, at 3–4.) Defendant's attorney then asked the trial court about Defendant's pending Motion for Discovery Sanctions. (*Id*. at 4–5.) The prosecutor acknowledged she had not made the requested disclosure to Defendant's attorney, but contended Defendant's attorney had the requested information in his possession since 2008. (*Id*. at 6.) Defendant's attorney acknowledged he had the information in his possession, but contended the trial court should impose preclusion as a sanction. (*Id*. at 6–7.) The trial court denied Defendant's motion, and issued a minute entry to that effect. (*Id*. at 7; M.E. of Aug. 16, 2012.)

Defendant's attorney then advised the trial court Defendant was going to submit the matter on the record, which would include the testimony at the hearing on Defendant's Motion To Suppress and the police reports. (R.T. of Aug. 16, 2012, at 7.) The trial court also considered the report showing the results of the testing of Defendant's blood. (*Id*. at 8.) After taking a recess, the trial court stated it was finding Defendant guilty, but it did not specify of what it was finding Defendant guilty. (*Id*. at 9.) The prosecutor recommended the trial court impose the minimum sentences on both the (A)(1) and the (A)(3) charges and make them concurrent, and Defendant's attorney agreed. (*Id*. at 9.) Defendant's attorney told the trial court Defendant was going to appeal, so there was no reason to set a confinement date, and the trial court agreed. (*Id*. at 9–10.)

The Clerk of the Court then advised the trial court on what form Defendant was to put his fingerprint and where the charges were to be listed. (R.T. of Aug. 16, 2012, at 10.) The Clerk then advised the trial court it would have to address the civil traffic charge. (*Id*. at 11.) The trial court said it would suspend the fine on that charge. (*Id*. at 12.) On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. *Has Defendant established he was prejudiced by the trial court's failure to advise him of the rights he was waiving by submitting the matter on a stipulated record.*

Defendant contends the trial court erred in failing to advise him of certain constitutional rights before it proceeded to determine his guilt solely on the basis of a submitted record. In *State v. Avila,* 127 Ariz. 21, 617 P.2d 1137 (1980), the Arizona Supreme Court held as follows:

> [W]e are next called upon to determine the warnings which must be afforded the submitting defendant. For purposes of clarity, we list as follows those rights which are waived by submission of the case to the court or of which defendant must be informed:
>
> 1. The right to a trial by jury where he may have representation of counsel;
>
> 2. The right to have the issue of guilt or innocence decided by the judge based solely upon the record submitted;
>
> 3. The right to testify in his own behalf;
>
> 4. The right to be confronted with the witnesses against him;
>
> 5. The right to compulsory process for obtaining witnesses in his favor;
>
> 6. The right to know the range of sentence and special conditions of sentencing.
>
> In addition, as in any proceeding involving the surrender of Constitutional rights, it must appear from the record that the waiver was knowingly, intelligently and voluntarily made. Such condition of mind, moreover, will not be presumed from a silent record.

Avila, 127 Ariz. at 24–25, 617 P.2d at 1140–41. The record shows the trial court failed to advise Defendant of these right, thus the trial court erred in failing to follow the requirements of *Avila.*

Defendant, however, failed to raise this issue before the trial court and therefore has forfeited appellate review, absent fundamental error. *See State v. Henderson,* 2120 Ariz. 561, 115 P.3d 601, ¶ 19 (2005). Fundamental error is limited to those rare cases that involve error going to the foundation of the defendant's case, error that takes from the defendant a right essential to the defendant's defense, and error of such magnitude that the defendant could not possibly have received a fair trial, and places the burden on the defendant to show both that error existed and that the defendant was prejudiced by the error. *State v. Soliz,* 223 Ariz. 116, 219 P.3d 1045, ¶ 11 (2009). It is particularly inappropriate to consider an issue for the first time on appeal when the

issue is a fact intensive one. *State v. Rogers*, 186 Ariz. 508, 511, 924 P.2d 1027, 1030 (1996); *State v. West*, 176 Ariz. 432, 440–41, 862 P.2d 192, 200–01 (1993); *State v. Brita*, 158 Ariz. 121, 124, 761 P.2d 1025, 1028 (1988).

As noted above, the trial court erred in not going through the required colloquy before accepting Defendant's waiver of rights and submission on the stipulated record. *State v. Bunting*, 226 Ariz. 572, 250 P.3d 1201, ¶ 11 (Ct. App. 2011); *see State v. Morales*, 215 Ariz. 59, 157 P.3d 479, ¶ 10 (2007). An inadequate colloquy does not, however, automatically entitle a defendant to relief under a fundamental error analysis; in order to obtain relief, a defendant must show both error and prejudice. *State v. Young*, 230 Ariz. 265, 282 P.3d 1285, ¶ 11 (Ct. App. 2012). In order to show prejudice, a defendant must show (1) the defendant did not know of the rights being waived, and (2) if the defendant had known of the rights being waived, the defendant would not have proceeded with the submission:

> We conclude, however, that the defendant must, at the very least, assert on appeal that he would not have admitted the prior felony conviction had a different colloquy taken place.

Young at ¶ 11. In the present case, Defendant's attorney filed a document entitled Waiver of Trial by Jury wherein he stated he had advised Defendant of the rights he was waiving by waving a jury trial. (Waiver of Trial by Jury, dated Aug. 16, 2012.) It is entirely possible Defendant's attorney, in addition to advising Defendant of the rights he was waiving by waiving a jury trial, also advised Defendant of the other rights he was waiving by submitting the matter. Further, it is possible, even if Defendant did not know exactly all the rights he was waiving by submitting the matter on the record, he still would have submitted the matter even if he had known of those rights. Defendant makes no claim he did not know of the rights he was waving, and makes no claim he would not have submitted the matter on the stipulated record had a different colloquy taken place. Defendant thus has failed to allege prejudice.

Defendant notes the Arizona Court of Appeals held in *Bunting* that failure to engage in the "*Avila* colloquy" was fundamental error. *Bunting* at ¶ 11. The court therefore remanded the matter to the trial court to provide Bunting with the opportunity to establish prejudice. *Bunting* at ¶ 11. As such, the court of appeals was conflating fundamental error with structural error, as is discussed by the Arizona Supreme Court in *State v. Valverde*, 220 Ariz. 582, 208 P.3d 233, ¶ 14 (2009) (*Valverde II*).

In the court of appeals, Valverde had contended it was fundamental error for the trial court not to instruct the jurors that self-defense is an affirmative defense requiring proof by a preponderance of the evidence. *State v. Valverde*, 220 Ariz. 171, 204 P.3d 429, ¶ 7 (Ct. App. 2008) (*Valverde I*). The State argued that, because Valverde was not prejudiced by the omission, he failed to establish fundamental error as defined by the Arizona Supreme Court. *Valverde I*, at ¶ 7. The court of appeals held the jurors should have been instructed that the burden of proof for self-defense is a preponderance of the evidence and failure to do so was error. *Valverde I*, at 11. It therefore granted relief without addressing the issue of prejudice and remanded the matter.

The Arizona Supreme Court granted review. It noted that, if an appellate court finds ***structural error,*** reversal is mandated regardless of whether an objection is made below or prejudice is found because, if error is structural, prejudice is presumed. *Valverde II*, at ¶ 10. In contrast with that, in order to obtain relief on a claim of ***fundamental error,*** the defendant bears the burden of proving on appeal ***both*** that the error was fundamental ***and*** that the error caused prejudice. *Valverde II*, at ¶ 12. It therefore stated that, to the extent the Arizona Court of Appeals granted relief to Valverde without requiring a showing of prejudice, that court was conflating fundamental error with structural error:

> To the extent the *Valverde* court interpreted either *Henderson* or *Hunter* as establishing a per se rule, the court of appeals erred by conflating fundamental error with structural error.

Valverde II, at ¶ 14. It then held, because Valverde failed to establish prejudice on the record, he was not entitled to relief on appeal under a fundamental error analysis. *Valverde II*, at ¶¶ 15–18.

The same problem occurred in *Bunting*. As discussed above, to obtain relief on appeal under a fundamental error analysis, the defendant has the burden of proving (1) error occurred, ***and*** (2) that error was extreme to the point of being fundamental, ***and*** (3) the defendant was prejudiced by that error. *State v. Soliz*, 223 Ariz. 116, 219 P.3d 1045, ¶ 11 (2009). Thus, as stated above, the defendant bears the burden of proving ***both*** that the error was fundamental ***and*** that the error caused prejudice. *Valverde II*, at ¶ 12. In *Bunting*, the court found the trial court committed error and that the error was fundamental, but then granted relief without requiring Bunting to establish prejudice on that appellate record. *Bunting* at ¶ 11. Instead, it remanded the matter to the trial court to provide Bunting with the opportunity to establish that he was prejudiced. *Bunting* at ¶ 11. This Court believes that procedure is at odds with the requirement imposed by the Arizona Supreme Court that a defendant had the burden of proving on appeal ***both*** that the error was fundamental ***and*** that the error caused prejudice. If the defendant is not able to prove both of these on the record, the defendant is not entitled to relief on appeal.

For prejudice, the Arizona Supreme Court has said the following:

> The absence of a Rule 17.6 colloquy, however, does not automatically entitle a defendant to a resentencing. Morales must also establish prejudice . . . . [W]e conclude that prejudice generally must be established by showing that the defendant would not have admitted the fact of the prior conviction had the colloquy been given.

State v. Morales, 215 Ariz. 59, 157 P.3d 479, ¶ 11 (2007); *accord*, *Young* at ¶ 11; *Bunting* at ¶ 11. In the present case, Defendant has not made any assertion on appeal that he would not have submitted the matter on the record had a different colloquy taken place. Thus, under *Young*, Defendant is not entitled to relief on appeal.

This Court believes the proper procedure is to require Defendant to file a petition for post-conviction relief and allege prejudice, if that is in fact the case. It is entirely possible Defendant's attorney discussed the rights he was waiving by submitting the matter, and it is further possible,

even if Defendant did not know exactly the rights he was waiving, he still would have submitted the matter even if he had known of those rights. If such is the case, Defendant would have no claim of prejudice and thus there would be no reason to hold further hearings. If, on the other hand, Defendant had no idea of the rights he was waiving by submitting the matter on the record and would not have submitted the matter on the record if he had known of those rights, Defendant can make those allegations in a petition for post-conviction relief, and if the trial court finds those allegations true, can grant appropriate relief.

B. *Did the trial court abuse its discretion in determining Deputy Cope placed Defendant under arrest for driving under the influence of drugs before advising him of the obligation to take a BAC test.*

Defendant contends Deputy Cope did not comply with Arizona's implied consent law because Deputy Cope had not placed him under arrest for driving under the influence before advising him of the obligation to take a BAC test. The applicable statute provides as follows:

> A person who operates a motor vehicle in this state gives consent . . . to a [BAC test] if the person is arrested for any offense arising out of acts alleged to have been committed in violation of this chapter . . . while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs. . . .

A.R.S. § 28–1321(A). The record here shows the following took place: (1) Deputy Cope arrested Defendant for possession of marijuana; (2) Deputy Cope had Defendant examined by Detective Layden, who was a drug recognition expert; (3) Detective Layden advised Deputy Cope Defendant was under the influence of marijuana; (4) Deputy Cope arrested Defendant for driving under the influence of marijuana; (5) Deputy Cope advised Defendant of the Admin Per Se/Implied Consent; and (6) Defendant agreed to submit to a BAC test. The record therefore shows Deputy Cope advised Defendant of the obligation to take a BAC test only after he had placed Defendant under arrest for DUI, thus the trial court properly denied Defendant's Motion To Suppress.

C. *Did the trial court properly refuse to impose discovery sanctions.*

Defendant contends the trial court abused its discretion in refusing to impose discovery sanctions under Rule 15.7(a) of the Arizona Rules of Criminal Procedure. An appellate court is obligated to affirm the trial court when any reasonable view of the facts and law might support the judgment of the trial court, even when the trial court has reached the right result for a different reason. *State v. Canez,* 202 Ariz. 133, 42 P.3d 564, ¶ 51 (2002); *State v. LaGrand,* 153 Ariz. 21, 29, 734 P.2d 563, 571 (1987); *City of Phoenix v. Geyler,* 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985); *State v. Perez,* 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984); *State v. Chavez,* 225 Ariz. 442, 239 P.3d 761, ¶ 5 (Ct. App. 2010); *State v. Rumsey,* 225 Ariz. 374, 238 P.3d 642, ¶ 4 (Ct. App. 2010); *State v. Childress,* 222 Ariz. 334, 214 P.3d 422, ¶ 9 (Ct. App. 2009); *State v. Waicelunas,* 138 Ariz. 16, 20, 672 P.2d 968, 972 (Ct. App. 1983). The Arizona Rules of Criminal Procedure provide as follows:

> **b. Motion for sanctions.** No motion brought under Rule 15.7(a) will be ***considered*** or ***scheduled*** unless a separate statement of moving counsel is attached certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

Rule 15.7(b), ARIZ. R. CRIM. P. (Emphasis added.) In the present matter, Defendant's attorney did not file a separate statement certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the discovery dispute. Thus, the trial court should not have even considered the imposition of sanctions on the State. *State ex rel. Thomas v. Newell (Milegro)*, 221 Ariz. 112, 210 P.3d 1283, ¶ 9 n.1 (Ct. App. 2009). The trial court therefore did not err in not imposing sanctions.

Moreover, even it Defendant's attorney had properly presented to the trial court the claim for sanctions, the trial court did not abuse its discretion in refusing to impose preclusion as a sanction. Preclusion is a sanction of last resort, thus a trial court may not impose preclusion as a sanction unless it determines that no lesser sanction will remedy the discovery violation. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 112–16 (2004) (state disclosed expert witness's notes 5 days before expert witness was to testify; because defendant gave no explanation how late disclosure of notes prejudiced him, and gave no indication whether notes revealed information different from what his attorney obtained during two interviews of this witness, trial court did not abuse discretion in not precluding this witness). In the present case, Defendant's attorney acknowledged he had the information about Detective Layden since 2008. Because Defendant's attorney gave no explanation how the late disclosure prejudiced him, and gave no indication whether he received information different from what he had already obtained from the state in other matters, the trial court did not abuse its discretion in not imposing preclusion as a sanction.

D. *Did the trial court follow the proper procedure when imposing judgment and sentence*.

Defendant notes the trial court did not pronounce sentence orally in open court, and further contends the Clerk of the Court added the fines, surcharges, and assessments to the trial court's written Judgment and Sentence Order after the trial court had signed that order. The Arizona Rules of Criminal Procedure provide as follows:

> **a. Pronouncement of Judgment.** In pronouncing judgment on non-capital counts, the court shall set forth the defendant's plea, the offense of which the defendant was convicted or found guilty, and a determination of whether the offense falls in the categories of dangerous, nondangerous, and repetitive or non-repetitive.
>
> **b. Pronouncement of Sentence.** The Court shall:
>
> (1) Give the defendant an opportunity to speak on his or her own behalf;
>
> (2) State that it has considered the time the defendant has spent in custody on the present charge;

(3) Explain to the defendant the terms of the sentence or probation;

(4) Specify the commencement date for the term of imprisonment and a computation of time to be credited against the sentence as required by law; and

(5) [Applies to felony offenses.]

(6) [Applies to felony offenses.]

Rule 26.10, ARIZ. R. CRIM. P.

After trial, the court shall, in pronouncing judgment and sentence:

a. Inform the defendant of his or her right to appeal from the judgment, sentence or both and advise the defendant that failure to file a timely appeal will result in the loss of the right to appeal.

b. If he or she is entitled thereto, advise the defendant that:

(1) If the defendant is indigent, as defined in Rule 6.4(a), the court will appoint counsel to represent him or her on appeal; and

(2) If the defendant is unable to pay for a certified copy of the record on appeal and the certified transcript, they will be provided by the county.

c. Hand the defendant a written notice of these rights and the procedures the defendant must follow to exercise them, receipt of which shall be shown affirmatively in the record.

Rule 26.11, ARIZ. R. CRIM. P. A review of the record shows the trial court did not comply with either of these procedural requirements, most notably Rule 26.10(b)(3), which requires the trial court to explain to the defendant the terms of the sentence or probation; and Rule 26.11(c), which requires the trial court to see the record affirmatively shows the defendant received notice of the rights and the procedures the defendant must follow for an appeal. The only thing the trial court stated on the record was it was going to suspend the fine for the civil traffic violation. (R.T. of Aug. 16, 2012, at 12, ll. 18–19.) This matter must therefore be remanded so the trial court can comply with the mandatory requirements of Rule 26.10 and Rule 26.11.

Defendant contends the Clerk of the Court added the fines, surcharges, and assessments to the trial court's written Judgment and Sentence Order after the trial court had signed that order. A review of the record does not support that contention. The University Lakes Justice Court has provided this Court with the original of the file in this matter. On the Judgment and Sentence Order, the name of the defendant, the case number, and the violation codes are in one color ink, most likely done by the Court Clerk. The fines and assessments ($493.00; $500.00; and $500.00) are in a different color of ink, which is the same color of ink as the trial court's signature. On the next page are the conditions of probation, again in the same color ink as the trial court's signature. The Judgment and Sentence Order has Defendant's signature, again in a different color ink. It thus appears the trial court wrote the fines, assessments, and conditions of probation on those pages and then signed the Judgment and Sentence Order. Moreover, a review of the video in this

matter shows Defendant and his attorney were standing right in front of the trial court's bench from approximately 3:15:28 until the conclusion of the proceedings at 3:22:23, which is from page 10, line 8, until page 13, line 3, in the transcript prepared by this Court's Certified Court Reporter. The record thus does not support Defendant's contention that the trial court did not impose the fines and assessments.

III. CONCLUSION.

Based on the foregoing, this Court concludes (1) the trial court erred in failing to give the colloquy required for a submittal on the record, but Defendant fail to establish prejudice, (2) the trial court properly denied Defendant's Motion To Suppress, (3) the trial court did not err in refusing to impose discovery sanctions, and (4) the trial court erred in not following the proper procedure for the sentencing.

IT IS THEREFORE ORDERED affirming the judgment of the University Lakes Justice Court.

IT IS FURTHER ORDERED vacating the sentence of the University Lakes Justice Court.

IT IS FURTHER ORDERED remanding this matter to the University Lakes Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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