

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 08/07/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0273  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) Maricopa County  
) Superior Court  
CHRISTI CAY CARTER, ) No. CR-2010-132574-003 DT  
)  
Appellant. ) **DECISION ORDER**  
)  
)

---

The court, Judge Ann A. Scott Timmer and Presiding Judge Maurice Portley and Judge Andrew W. Gould participating, has received Christi Cay Carter's motion for reconsideration of the memorandum decision filed March 6, 2012 affirming her convictions and resulting sentences for one count of possession of dangerous drugs, one count of misconduct involving weapons, and two counts of possession of drug paraphernalia. Carter asks us to reconsider the decision because she never received notice of her opportunity to file a supplemental brief after her counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). For the reasons that follow, we deny the motion because the issues raised by Carter lack merit.

## **I. Denial of motion to suppress**

Carter primarily argues the court erred by denying her motion to suppress evidence. On review, we consider only the evidence presented at the suppression hearing and view those facts in the light most favorable to upholding the court's ruling. *State v. Box*, 205 Ariz. 492, 493, ¶ 2, 73 P.3d 623, 624 (App. 2003). We defer to the court's factual findings but review de novo its legal conclusions. *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996).

### **A. Traffic stop and automobile search**

Carter first argues the traffic stop and subsequent search of co-defendant Gerald Wilson's car violated the Fourth Amendment's prohibition of unreasonable searches and seizures. To raise a Fourth Amendment challenge to police conduct, however, the defendant must herself have a legitimate expectation of privacy in the area searched or the item seized. *Rakas v. Illinois*, 439 U.S. 128, 143 (1978); *Rawlings v. Kentucky*, 448 U.S. 98, 104-06 (1980); *State v. Tarkington*, 218 Ariz. 369, 370-71, ¶ 7, 187 P.3d 94, 95-96 (App. 2008). Carter claims no such expectation of privacy in the car owned and driven by Wilson, and therefore she cannot challenge the stop or search. We note, however, that this court upheld that search as a valid search incident to arrest in Wilson's appeal. *State v.*

*Wilson*, 1 CA-CR 11-0292, 2012 WL 1255151, at \*4, ¶ 19 (Ariz. App. Apr. 12, 2012) (mem. decision).

**B. Securing the residence**

Carter argues the police violated the Fourth Amendment by unlawfully securing her residence and detaining her before obtaining a search warrant for the house. Specifically, Carter claims the police lacked exigent circumstances (or created any exigency that did exist) to justify securing the residence in anticipation of a warrant, lacked probable cause to support a search warrant at the time they secured the residence, and lacked grounds to detain her at the residence.

The Fourth Amendment generally prohibits warrantless entry by police into a home absent exigent circumstances. *State v. Bolt*, 142 Ariz. 260, 265, 689 P.2d 519, 524 (1984). The probable destruction of evidence is one recognized exigent circumstance. *State v. Ault*, 150 Ariz. 459, 463, 724 P.2d 545, 549 (1986). This exigency exists if, at the time of warrantless entry, the circumstances indicated evidence was in danger of imminent destruction and would likely be destroyed before a warrant could be issued. *State v. Hendrix*, 165 Ariz. 580, 582, 799 P.2d 1354, 1356 (App. 1990).

Here, the totality of the circumstances supports the trial court's conclusion that the risk of destruction of evidence justified a warrantless entry to secure Carter's residence

pending a warrant. Glendale Police had received an anonymous tip that drugs were being sold out of the house, and Detective Galen Davis recognized the house as the subject of a previous drug complaint. Of the three individuals who left the house in Wilson's car, two of them - including Wilson, who lived at the house - possessed methamphetamine. These circumstances gave police reason to believe there would be evidence of illegal drug activity at the house.

Additionally, the fact that Henry Ricketts walked away from the scene of the automobile stop indicated a risk the evidence at the house might be destroyed. Ricketts had just witnessed Wilson and Sherry Johnston being arrested for possession of methamphetamine and informed the detective that Carter remained at the residence. He could readily have informed Carter of the arrests and warned her to destroy any additional drugs, paraphernalia, or weapons at the residence.

Although Carter argues the police created this exigency by allowing Ricketts to walk away from the scene, the officers' decision to release Ricketts in the absence of grounds to arrest him was reasonable. See *Kentucky v. King*, 131 S. Ct. 1849, 1858 (2011) ("[T]he exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable [within the meaning of the Fourth Amendment]. Where, as here, the police did not create the

exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed." ). Carter similarly argues that Detective Davis created the exigency by asking her for consent to search the house before obtaining a warrant. But police may seek consent to search without first seeking a warrant. *Schneckloth v Bustamonte*, 412 U.S. 218, 219 (1973).

Next, Carter argues the police lacked probable cause to justify securing the residence to await issuance of a search warrant. See *Segura v. United States*, 468 U.S. 796, 798 (1984). Both an anonymous tip and Detective Davis's investigative experience in the area suggested the residence might be a drug house. Less than an hour into his surveillance of the residence, Detective Davis witnessed Johnston drive up, enter the house, then leave the residence in Wilson's car with Wilson and Ricketts. After pulling the car over for a traffic violation, police discovered methamphetamines in Johnston's purse and next to Wilson's driver seat. Although, as Carter points out, Johnston was a visitor to the house, she had entered the residence before being found with methamphetamine in her purse. Wilson, who possessed an additional 900 milligrams of methamphetamine concealed in a false battery, was a resident of the house. Detective Davis also discovered several weapons -- a

knife, baton, and stun gun -- in Wilson's car; although not themselves illegal for Wilson to possess, the detective testified weapons are commonly associated with drug sales. Although Carter suggests the police were acting on nothing more than Wilson and Johnston's drug possession coupled with police experience that users often have additional drugs at home, see *People v. Pressey*, 126 Cal. Rptr. 2d 162, 165 (App. 2002), the circumstances here were much more robust. Considering the totality of these circumstances, the trial court did not err by concluding police had probable cause to search the house.

Finally, Carter argues the officers lacked grounds to detain her at the house. She contends that, because Detective Davis had not yet begun to prepare the warrant at the time she was detained, the police lacked authority to temporarily detain her pending issuance of a search warrant. Police may, with probable cause, "secure [a] premises from within to preserve the status quo, while others, in good faith, are in the process of obtaining a warrant, [without] violat[ing] the Fourth Amendment's proscription against unreasonable seizures." *Segura*, 468 U.S. at 798; see also *Bolt*, 142 Ariz. at 263, 689 P.2d at 522. As described above, the police here had probable cause to support a search warrant and exigent circumstances justifying a warrantless entry, and thus did not violate the Fourth Amendment by detaining Carter to preserve the status quo

in anticipation of the warrant. Because we conclude the detention was proper on this ground, we need not address Carter's alternate argument that the detention was impermissible under *Terry v. Ohio*, 392 U.S. 1 (1968).

**C. Interrogation and incriminating statements**

Carter next argues the court erred by failing to suppress the statements she made to officers while detained at the house. First, she denies ever disclosing incriminating information to officers, arguing instead that Detective Davis searched the house before obtaining a warrant and confronted her with the presence of drugs in the bedroom. Although Carter presented similar testimony at the suppression hearing, the officers testified Carter had admitted to using methamphetamine and to having weapons, paraphernalia, and illegal drugs in the house. We defer to the court's factual findings, *Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778, and the officers' testimony is a sufficient basis for the court's finding that Carter made these incriminating statements.

Carter also argues the statements were involuntary as tainted by her impermissible detention. Because we have concluded the police did not violate the Fourth Amendment by securing the house and detaining Carter, Carter's statements are not tainted by a prior constitutional violation. See *Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963). Even absent an

unreasonable search or seizure, confessions are admissible at trial if made voluntarily. *State v. Ellison*, 213 Ariz. 116, 127, ¶ 30, 140 P.3d 899, 910 (2006). Confessions are presumed to be involuntary, and the State has the burden of establishing by a preponderance of the evidence "that the confession was freely and voluntarily given." *State v. Thomas*, 148 Ariz. 225, 227, 714 P.2d 395, 397 (1986). To assess voluntariness of a confession, we consider the totality of the circumstances to determine whether the defendant's will was overborne. *State v. Newell*, 212 Ariz. 389, 399, ¶ 39, 132 P.3d 833, 843 (2006).

Here, Carter was detained in her own home. Although initially handcuffed, the police soon removed the restraints. Although at least two officers remained in the residence, they neither intimidated nor threatened Carter. Although armed, they kept their weapons holstered and conversed calmly rather than pressing her for information about drug possession. Under the circumstances, we cannot say the court erred by concluding Carter made these statements voluntarily after receiving *Miranda* warnings.

## **II. Prosecutorial misconduct**

Carter argues the prosecutor misled the jury about how she and Wilson stored their weapons in the house by publishing a photograph that purports to show their knives and swords kept off the wall and "at the ready." Carter contends the photograph



and the prosecutor's argument erroneously suggested the weapons were readily available for use defending the drugs whereas they were in fact kept secured to the wall as decorations. We will reverse for prosecutorial misconduct only if "(1) misconduct is indeed present[,] and (2) a reasonable likelihood exists that the misconduct could have affected the jury's verdict, thereby denying defendant a fair trial." *State v. Moody*, 208 Ariz. 424, 459, ¶ 145, 94 P.3d 1119, 1154 (2004). Reversal is required only if misconduct is "so pronounced and persistent that it permeates the entire atmosphere of the trial," "affect[ing] the jury's ability to fairly assess the evidence." *State v. Rosas-Hernandez*, 202 Ariz. 212, 218-19, ¶ 23, 42 P.3d 1177, 1183-84 (App. 2002) (citations omitted).

We do not discern misconduct. Carter testified at trial that the knives "were pretty much secured" and that the photograph "[was] not how we kept them." In contrast, Detective Davis testified the knives and swords were "readily accessible," not locked to the wall, and in position to be easily taken from the wall to be used. Thus, the jury was informed the weapons were on the wall, and it was for the jury to decide whether the weapons were readily accessible for use or merely displayed for decoration.

