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See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 01/03/2012
RUTH A. WILLINGHAM,
CLERK
BY: GH

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,

Appellee,

v.

EDWARD JOHN HARVEY,

Appellant.

1 CA-CR 11-0224

DEPARTMENT E

MEMORANDUM DECISION

(Not for Publication -
Rule 111, Rules of the
Arizona Supreme Court)

Appeal from the Superior Court in Navajo County

Cause No. S0900CR20090429

The Honorable John N. Lamb, Judge

AFFIRMED

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I R V I N E, Judge

¶1 Edward John Harvey appeals from his convictions and sentences for misconduct with a weapon and reckless child abuse.

Specifically, Harvey challenges the trial court's denial of his motion to suppress evidence obtained during an investigatory stop and the subsequent search of his home. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In May 2009, Harvey's ex-wife contacted the Navajo County Sheriff's Office about enforcing emergency court orders for the protection and custody of their daughter. The daughter told Deputy C. that Harvey kept forty-three guns in the house and drew a detailed diagram of their specific locations. The daughter also informed the deputy that Harvey always carried a .357 caliber gun in his front pocket and kept a .22 caliber gun in a yellow tool box in the front seat of his truck.

¶3 Deputy C. then informed Deputy A. that Harvey had a loaded weapon in his front pocket, and that there were probably more firearms in the vehicle. Deputy A. had dispatch check whether Harvey had been issued any type of concealed weapons permit. A search of the relevant database revealed that Harvey had not.

¶4 Deputy A. located Harvey's vehicle near the daughter's high school. Having been informed by the principal that Harvey was not allowed on school property due to a threat Harvey had made to a bus driver while armed with a gun, Deputy A. felt concerned for the safety of the school children. He also was

concerned for the daughter's safety because the daughter told police that Harvey threatened to hurt her if she ever left, and Deputy A. knew that the civil papers removed the daughter from Harvey's custody. Although the daughter was no longer at the school, Harvey did not know this and appeared to be on his way to pick her up.

¶15 Based on this information, Deputy A. believed that Harvey was illegally carrying a concealed weapon without a permit and driving to the school, where he was not allowed to go. After Harvey was stopped, Deputy A. observed "a bulge in the shape of a gun handle in [Harvey]'s front right pocket." Harvey told him that it was a gun. Harvey was arrested.

¶16 A subsequent search of Harvey's home revealed extremely filthy conditions, resulting in criminal charges of child abuse and endangerment. Because police found an illegal sawed-off shotgun in the home, Harvey was charged in a separate indictment with misconduct involving weapons. Harvey was also charged with a second misconduct involving weapons charge for the concealed handgun in the vehicle. The charges were consolidated for trial.

¶17 Prior to trial, Harvey filed a motion to suppress the evidence, arguing the traffic stop was unconstitutional, and the subsequent search of his home was tainted as a result. The State objected on grounds there was reasonable suspicion of criminal

activity based on information from Harvey's daughter that he always carried a ".357 magnum in his front pocket and always kept a .22 in his truck," and did so that day.

¶8 The trial court denied Harvey's motion to suppress. After a jury trial, he was convicted on the weapons charges, and a lesser-included charge of reckless child abuse. Harvey timely appealed.

DISCUSSION

¶9 Harvey argues that the trial court erred in denying his motion to suppress because Deputy A. did not have reasonable suspicion for the traffic stop. Therefore, Harvey argues that all evidence subsequently obtained should be precluded by the exclusionary rule. We disagree.

¶10 A ruling on a motion to suppress evidence will not be set aside absent a clear abuse of discretion. *State v. Sharp*, 193 Ariz. 414, 419, ¶ 12, 973 P.2d 1171, 1176 (1999). This Court reviews de novo whether there was reasonable suspicion to conduct an investigatory stop, *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996), but will defer to the trial court's factual findings as well as the reasonableness of the inferences drawn by law enforcement officers. *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996). "We view the evidence presented at the suppression hearing in the light most favorable to upholding the trial court's ruling."

State v. Organ, 225 Ariz. 43, 46, ¶ 10, 234 P.3d 611, 614 (App. 2010).

¶11 A stop to investigate possible criminal activity is justified if a law enforcement officer possesses "reasonable suspicion" of criminal activity. *Rogers*, 186 Ariz. at 510, 924 P.2d at 1029. A reviewing court does "not view the relevant facts in isolation, but instead must determine whether the officer's conclusions were reasonable after 'evaluat[ing] the totality of the circumstances.'" *State v. Johnson*, 220 Ariz. 551, 555, ¶ 6, 207 P.2d 804, 808 (App. 2009).

¶12 The community caretaker doctrine "allows admission of evidence discovered without a warrant when law enforcement engages in 'community caretaking functions' intended to promote public safety. . . . The standard for evaluating the appropriateness of its exercise is reasonableness; the question is whether a 'prudent and reasonable officer [would] have perceived a need to act in the proper discharge of his or her community caretaking functions[.]'" *State v. Mendoza-Ruiz*, 225 Ariz. 473, 475, ¶ 8, 240 P.3d 1235, 1237 (App. 2010) (citations omitted).

¶13 In this case, Harvey was stopped by the deputy near the school where he expected to pick up his daughter. The deputy knew he would not find his daughter at the school because custody of the girl had already been transferred to her mother.

Nevertheless, the deputy had been informed that Harvey was always armed and that he had previously had problems at the school.

¶14 Under these circumstances, we conclude that the community caretaker doctrine allowed the stop. The State argues the deputy was duty-bound to stop Harvey, while Harvey argues the deputy should have taken other actions such as blocking the school entrance or waiting for Harvey to arrive on the school grounds before stopping him. We need not address either of these positions, because we find the deputy's actions to be reasonable. Stopping Harvey outside school grounds to inform him that his daughter had been taken from the school was reasonable in light of the information available to the deputies that he was armed and potentially confrontational. The trial court did not err in finding the community caretaker doctrine applied.

¶15 Alternatively, we also find the stop was justified by reasonable suspicion of criminal activity. The deputies knew from Harvey's daughter that he usually carried a gun in his front pocket. A check of official records showed no authorization for Harvey to carry a concealed weapon. Under these circumstances, we cannot find that the trial court erred in denying the motion to suppress.

¶16 Harvey argues that, even though he did not have a concealed-weapons permit, he may have been lawfully carrying the

