IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

DEMEATRIUS FLOYD HILL,
Appellant.

No. 2 CA-CR 2015-0292
Filed August 11, 2016

Appeal from the Superior Court in Pima County
No. CR20144273001
The Honorable Deborah Bernini, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Robert A. Kerry, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial, Demeatrius Hill was convicted of possession of a narcotic drug, possession of a dangerous drug, and possession of drug paraphernalia. The trial court sentenced him to mitigated, concurrent terms of imprisonment, the longest of which are six years. On appeal, he argues the court erred by denying his motion to suppress evidence seized after his arrest. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding Hill's convictions. *See State v. Allen*, 235 Ariz. 72, ¶ 2, 326 P.3d 339, 341 (App. 2014). In October 2014, Tucson Police officers conducted a sting operation directed at street sales of narcotics. Officer Bethany Linaman, working undercover and driving an unmarked vehicle, pulled up to a bus station and told people there she was looking for "[s]ome G," the street name for methamphetamine. A man named Jamie got into Linaman's vehicle and said he could "help [her] out." Meanwhile, other officers monitored Linaman's activity through an audio device transmitting her conversations from the vehicle.

¶3 After Jaime's first attempt to find methamphetamine failed, Linaman drove Jaime to a motel where he made contact with Hill. Jaime told Linaman that Hill "could help [her] out." Hill got into the unmarked vehicle and had Linaman drive him to two separate locations, each time without success. At the third location, Hill exited the vehicle, but after he returned, he did not directly respond when Linaman asked if he had purchased any drugs. Hill became "very nervous" and asked Linaman, "[A]re you police?" Shortly thereafter, a sergeant monitoring the operation decided

uniformed officers driving marked units should stop Linaman's car and detain Hill. Officers searched Hill and found a small black pouch and baggies containing cocaine base and methamphetamine, as well as a digital scale.

¶4 A grand jury indicted Hill for possession of a narcotic drug for sale, possession of a dangerous drug for sale, and possession of drug paraphernalia. Hill filed a motion to suppress the evidence seized after his arrest, arguing the officers had "lacked probable cause to arrest [him] and the subsequent search of . . . [his] person was without authority or a warrant." The trial court conducted a suppression hearing, at which an audio recording of Linaman's conversations during the sting operation was admitted into evidence. Linaman, Hill, and one of the officers who searched him also testified. The court denied the motion.

¶5 At trial, the court granted Hill's motion for a judgment of acquittal "as to the possession of the narcotic drug for sale," but ruled the jury could consider the lesser-included offense of possession of a narcotic drug. The jury found Hill guilty of possession of drug paraphernalia and the lesser-included offenses of possession of a narcotic drug (cocaine base) and possession of a dangerous drug (methamphetamine). The court sentenced Hill as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶6 Hill argues the trial court erred in denying his motion to suppress because "[t]he State did not meet its burden of proof that the evidence . . . was lawfully seized under some exception to the warrant requirement." We review the denial of a motion to suppress evidence for an abuse of discretion, *State v. Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d 228, 230 (App. 2007), considering only the evidence presented at the suppression hearing, *State v. Nelson*, 208 Ariz. 5, ¶ 4, 90 P.3d 206, 207 (App. 2004). However, we review mixed questions of law and fact, as well as the court's ultimate legal conclusions, de novo. *State v. Wyman*, 197 Ariz. 10, ¶ 5, 3 P.3d 392, 395 (App. 2000).

¶7 The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984); *State v. Weekley*, 200 Ariz. 421, ¶ 16, 27 P.3d 325, 328 (App. 2001). "Warrantless searches are 'per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" *Mazen v. Seidel*, 189 Ariz. 195, 202, 940 P.2d 923, 930 (1997), *quoting Katz v. United States*, 389 U.S. 347, 357 (1967). The state has the burden of proving the validity of a warrantless search. *State v. Ontiveros-Loya*, 237 Ariz. 472, ¶ 10, 352 P.3d 941, 945 (App. 2015).

¶8 In this case, the state argued the officers had probable cause to arrest Hill and conduct a search incident to arrest.[1] *See State v. Gant*, 216 Ariz. 1, ¶ 9, 162 P.3d 640, 642 (2007). Under this exception, if an officer makes a lawful arrest,

> it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. . . . In addition, it is entirely reasonable for the arresting officer to search

[1] The trial court questioned the parties about the search-incident-to-arrest exception to the warrant requirement during the suppression hearing, but in its order denying the motion, the court based its ruling on a different exception, the *Terry* stop-and-frisk. *See Terry v. Ohio*, 392 U.S. 1, 30-31 (1968); *State v. Ramsey*, 223 Ariz. 480, ¶ 17, 224 P.3d 977, 981 (App. 2010). But the evidence indicates that the officers searched Hill for incriminating evidence; they did not conduct a pat down for weapons. *See Ramsey*, 223 Ariz. 480, ¶ 17, 224 P.3d at 981 ("[A]n officer may conduct a weapons frisk if, based on specific, articulable facts, the officer has any reasonable fear for his safety."). Nevertheless, we need not determine the propriety of the court's reliance on the *Terry* exception because the search-incident-to-arrest exception applies. *See State v. Boteo-Flores*, 230 Ariz. 551, ¶ 7, 288 P.3d 111, 113 (App. 2012) (this court is "required to affirm a trial court's ruling if legally correct for any reason").

> for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

State v. Dean, 206 Ariz. 158, ¶ 12, 76 P.3d 429, 433 (2003), *quoting Chimel v. California*, 395 U.S. 752, 762-63 (1969), *abrogated on other grounds by Arizona v. Gant*, 556 U.S. 332, 342-44, 351 (2009).

¶9 Before either the arrest or search can occur, however, officers must have probable cause. *State v. Sardo*, 112 Ariz. 509, 515, 543 P.2d 1138, 1144 (1975). An officer has probable cause to arrest "when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense." *State v. Jackson*, 208 Ariz. 56, ¶ 31, 90 P.3d 793, 802 (App. 2004), *quoting State v. Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d 997, 1007-08 (2000); *see also* A.R.S. § 13-3883(A)(1). "When assessing whether probable cause exists, 'we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *State v. Dixon*, 153 Ariz. 151, 153, 735 P.2d 761, 763 (1987), *quoting Brinegar v. United States*, 338 U.S. 160, 175 (1949).

¶10 Linaman told Jamie she was looking for "a little G." And when Linaman met Hill, Jamie said, "[H]e's giving it to me," and, "We're not gonna . . . rip you off." Linaman also testified that, when Hill had gotten into her vehicle, he said he "could help [her] out." Moreover, Linaman saw Hill place a small digital scale on the center console when he entered the vehicle, then adjust in his seat, and place the scale in his pocket. *See* A.R.S. § 13-3415(A), (F)(2)(e) (drug paraphernalia includes "[s]cales . . . used, intended for use or designed for use in weighing or measuring drugs"). Thus, the officers had probable cause to arrest Hill for possession of drug paraphernalia soon after Hill entered Linaman's vehicle. *See Wyman*, 197 Ariz. 10, ¶ 5, 3 P.3d at 395.

¶11 Hill argues we should disregard Linaman's testimony—that Hill said he "could help [her] out"—because that statement

cannot be heard on the audio recording.[2] Linaman concealed the recording device in one of her pockets, and perhaps because of this, her statements are clear and understandable on the recording, while Hill's are often inaudible. Thus, the fact that the recording device did not capture Hill's incriminating statements neither supports nor contradicts Linaman's testimony on this point.

¶12 Next, Hill suggests we should consider only what the sergeant in charge of the operation actually heard and observed when he ordered the arrest. Hill asserts that the sergeant "did not have knowledge of . . . Hill's possession of the digital scale" and that we can assume—because many of Hill's statements were inaudible—the sergeant could draw "no reasonable conclusion . . . that . . . Hill was talking about drugs." His argument is legally and factually unsupported. First, "probable cause may be based upon the collective knowledge of law enforcement . . . when the officer who takes action correctly believes or has reason to believe that other officers have knowledge which justifies the action." *State v. Ochoa*, 131 Ariz. 175, 177, 639 P.2d 365, 367 (App. 1981). "It is . . . not essential that the arresting officer personally be in possession of all the facts . . . ." *State v. Lawson*, 144 Ariz. 547, 553, 698 P.2d 1266, 1272 (1985); *see also State v. Peterson*, 171 Ariz. 333, 335-36, 830 P.2d 854, 856-57 (App. 1991). Second, the sergeant could hear Hill and Linaman's conversations, and when Hill got out of the car at one of the stops, Linaman told the other officers through the audio device that "[Hill] does have a scale." Accordingly, the officers had probable cause to conduct a search incident to an arrest for drug paraphernalia, *see Jackson*, 208 Ariz. 56, ¶ 31, 90 P.3d at 802, and the trial court did not err by denying Hill's motion to suppress, *see Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d at 230; *Wyman*, 197 Ariz. 10, ¶ 5, 3 P.3d at 395.

[2]Hill asserts Linaman testified that Hill repeatedly had said he could help her. However, the transcript from the suppression hearing shows that Linaman testified about only one instance in which Hill made the statement.

Disposition

¶13 For the foregoing reasons, we affirm Hill's convictions and sentences.