IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

XAVIER LUIS LOPEZ,
Appellant.

No. 2 CA-CR 2015-0432
Filed October 6, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20135274001
The Honorable Javier Chon-Lopez, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Mariette S. Ambri, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Brammer[1] concurred.

E C K E R S T R O M, Chief Judge:

¶1 Xavier Lopez was convicted after a bench trial of three counts of possession of a narcotic drug for sale, one count of money laundering, and two counts of weapons misconduct. The trial court sentenced him to concurrent prison terms, the longest of which are 15.75 years. Lopez's sole argument on appeal is that the court erred by denying his motion to dismiss, in which he argued the investigatory stop leading to his arrest and convictions was improper. Finding no error, we affirm.

¶2 "In reviewing the denial of a motion to suppress evidence, we consider only the evidence presented at the suppression hearing, and view that evidence in the light most favorable to upholding the trial court's ruling." *State v. Evans*, 235 Ariz. 314, ¶ 2, 332 P.3d 61, 62 (App. 2014), *quoting State v. Olm*, 223 Ariz. 429, ¶ 2, 224 P.3d 245, 247 (App. 2010). At about 1:00 p.m. on December 9, 2013, Lopez drove a vehicle into a parking lot and parked near a law enforcement officer who was sitting in an unmarked vehicle. A man approached Lopez's car and entered the back seat; he then handed something to Lopez and Lopez removed a plastic baggie from the car's center console and handed something from the baggie to the man in the back seat, who then exited Lopez's car. "[A] few moments" later, Lopez conducted an identical transaction with a woman. After that transaction ended, Lopez drove out of the parking lot. The officer stopped him shortly thereafter.

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[1]The Hon. J. William Brammer Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

¶3 The officer testified that he had experience with narcotics investigations and that the transactions he had seen that day were consistent with "how we would commonly purchase narcotics from other people," explaining that "[w]e [would] meet in a parking lot and enter their vehicle and conduct a transaction." He also affirmed that it was "not unusual" for "somebody to conduct drug transactions during the daylight with people around," or for them to do so without the participants "acting suspicious and looking over their shoulders and acting strange when they walk away from a drug deal."

¶4 Lopez sought to suppress the evidence and to dismiss the charges against him, arguing the officer lacked reasonable suspicion to stop him as required by *Terry v. Ohio*, 392 U.S. 1 (1968). The trial court denied the motion, citing the officer's training and his experience "being involved in drug deals in Tucson, Arizona."

¶5 The officer's stop of Lopez was proper only if it was "justified by some objective manifestation" that Lopez was "engaged in criminal activity." *Evans*, 235 Ariz. 314, ¶ 7, 332 P.3d at 63, *quoting State v. Richcreek*, 187 Ariz. 501, 504, 930 P.2d 1304, 1307 (1997). "'[R]easonable suspicion' is a 'commonsense, nontechnical concept[ ] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Id.*, *quoting Ornelas v. United States*, 517 U.S. 690, 695 (1996) (alterations in *Evans*). "In reviewing a claim that law enforcement officers lacked the reasonable suspicion required for an investigatory stop, we 'apply a peculiar sort of de novo review, slightly more circumscribed than usual, because we defer to the inferences drawn by the [trial] court and the officers on the scene, not just the [trial] court's factual findings.'" *Id.* ¶ 8, *quoting United States v. Valdes-Vega*, 738 F.3d 1074, 1077 (9th Cir. 2013) (alterations in *Evans*). We will affirm the court's ruling if the officer had "a 'particularized and objective basis' for suspecting legal wrongdoing." *Id.* ¶ 9, *quoting United States v. Arvizu*, 534 U.S. 266, 273 (2002). Relevant factors include "the suspect's conduct and appearance, location, and surrounding circumstances, such as the time of day, and taking into account the officer's relevant

experience, training, and knowledge." *State v. Fornof*, 218 Ariz. 74, ¶ 6, 179 P.3d 954, 956 (App. 2008).

¶6 On appeal, Lopez relies primarily on *Fornof*, asserting the officer "had far less justification for conducting a stop than was present" there and that "several factors present in that case are absent here." He characterizes Lopez's stop as based on the officer's "mere hunch" and notes that, in *Fornof*, we observed, "[T]his is a close case, and absent any single factor in the totality of the circumstances giving rise to reasonable suspicion in this case, we cannot say our decision would be same." *Id.* ¶ 18.

¶7 In *Fornof*, we concluded reasonable suspicion existed in support of an investigatory stop after a law enforcement officer had seen activity "he observed was 'indicative of . . . a possible drug exchange.'" *Id.* ¶¶ 9, 17 (alteration in *Fornof*). In support of our conclusion, we emphasized that the officer had seen "items changing hands" and that the activity occurred at night "in a specific location known for drug-related activity." *Id.* ¶ 17. We also relied on the fact that one of the participants, upon seeing the uniformed officer in a marked patrol car, "walked quickly away." *Id.* ¶¶ 2, 17, 19.

¶8 Lopez is correct that several factors present in that case are not present here: the transactions occurred during the day, there was no testimony that the location of the transactions was known for drug activity, and the participants did not quickly depart upon seeing a law enforcement officer. But we disagree the absence of those facts renders the stop improper.

¶9 Lopez ignores facts supporting the stop that were not present in *Fornof*. Most importantly, in *Fornof*, we "assign[ed] less weight" to the officer's experience because "the state failed to introduce any evidence or elicit specific testimony relating to [the officer]'s considerable years of experience." *Id.* n.5. Here, in contrast, the officer testified not only about his general law enforcement experience but about his particularized knowledge and experience with drug transactions. That testimony provided the court more than enough evidence to conclude the events the officer

saw were entirely consistent with a drug transaction. *See Evans*, 235 Ariz. 314, ¶ 8, 332 P.3d at 64. Moreover, the officer testified that daytime drug transactions were not unusual. Finally, nothing in the record suggests the participants knew they were being observed, much less by a uniformed officer. The officer here was neither in uniform nor in a marked law enforcement vehicle, thereby providing no reason for anyone to be wary of him under these circumstances. Consequently, we place little weight on the fact the participants did not act suspiciously during the transactions.

¶10 The trial court did not err in concluding the officer had reasonable suspicion to stop Lopez's car to further investigate. Accordingly, we affirm his convictions and sentences.