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MAY 20 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. GILBERT REY LEMON, Appellant.	2 CA-CR 2010-0345 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20091483001

Honorable John S. Leonardo, Judge
Honorable Richard D. Nichols, Judge

AFFIRMED

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H O W A R D, Chief Judge.

¶1 Following a bench trial,[1] appellant Gilbert Lemon was convicted of possession of a deadly weapon by a prohibited possessor. He was sentenced to a mitigated prison term of 2.25 years. On appeal, Lemon argues the trial court should have suppressed the evidence against him because the sheriff's deputy who detained him lacked a reasonable, articulable suspicion to stop and frisk him. Because we find no error or abuse of discretion in the court's denial of Lemon's motion to suppress, we affirm.

Factual and Procedural Background

¶2 "In reviewing the denial of a motion to suppress evidence, we consider only the evidence that was presented at the suppression hearing, which we view in the light most favorable to sustaining the trial court's ruling." *State v. Kinney*, 225 Ariz. 550, ¶ 2, 241 P.3d 914, 917 (App. 2010). A sheriff's deputy with his gun drawn stopped Lemon in a wash near the scene where shots recently had been fired. The deputy frisked him and found a weapon.

¶3 Lemon was charged with possession of a deadly weapon by a prohibited possessor. He moved to suppress the evidence against him, arguing the deputy lacked the required reasonable suspicion to stop and search him, but the trial court denied the motion, finding the stop and search justified under *Terry v. Ohio*, 392 U.S. 1 (1968), and drawing the weapon reasonable under the circumstances. Lemon was convicted and sentenced, and this appeal followed.

[1]The sentencing minute entry notes that Lemon was convicted following a jury trial. But, as both parties acknowledge, Lemon waived his right to a jury trial in favor of a bench trial.

Discussion

¶4 Lemon argues the trial court erred by denying his motion to suppress because the deputy lacked reasonable suspicion to stop and frisk him. "[W]e review a trial court's decision whether to grant a motion to suppress for an abuse of discretion." *Kinney*, 225 Ariz. 550, ¶ 13, 241 P.3d at 919. We defer to the court's findings of fact, *State v. Lopez*, 198 Ariz. 420, ¶ 7, 10 P.3d 1207, 1208 (App. 2000), including its findings relating to an officer's credibility and the reasonableness of the officer's inferences, *State v. Mendoza–Ruiz*, 225 Ariz. 473, ¶ 6, 240 P.3d 1235, 1237 (App. 2010). But we review de novo the ultimate legal issue. *State v. Navarro*, 201 Ariz. 292, ¶ 12, 34 P.3d 971, 974 (App. 2001).

¶5 An officer may detain a person in order to conduct a limited investigation if the officer has "a reasonable and articulable suspicion that a person is involved in criminal activity." *State v. Blackmore*, 186 Ariz. 630, 632-33, 925 P.2d 1347, 1349-50 (1996). Reasonable suspicion means an officer has more than a hunch of criminal activity, but requires only "some minimal, objective justification" for the stop. *State v. Teagle*, 217 Ariz. 17, ¶ 25, 170 P.3d 266, 272 (App. 2007). The officer may rely on past experience and training to form inferences about the situation. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). "In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people." *Illinois v. Wardlow*, 528 U.S. 119, 126 (2000). However, the factors supporting reasonable suspicion must be sufficiently narrow that

they do not implicate a large number of innocent people. *See State v. Graciano*, 134 Ariz. 35, 38, 653 P.2d 683, 686 (1982).

¶6 Here, the deputy knew shots reportedly had been fired about fifteen minutes earlier. The only issue, therefore, is whether he had a reasonable and articulable suspicion that Lemon was connected to the criminal activity. Two suspects were being sought, "one with a shotgun and one with a handgun." One of the suspects was said to be wearing a gray sweater, and one of them had been seen running toward a bar which backed up to a wash. The deputy began searching the wash and saw Lemon walking into the wash from a road not far from the bar, wearing a blue sweater with a gray hood. It was dark, and the deputy had seen no one else in the wash or the surrounding area. Another suspect had not been found. The deputy drew his weapon and then frisked Lemon. The deputy testified he had drawn his weapon because he was concerned for his safety.

¶7 Lemon matched the available description of one of the shooting suspects and was found walking in the area where a suspect reportedly had been heading. *See Kinney*, 225 Ariz. 550, ¶ 15, 241 P.3d at 920 (reasonable suspicion when defendant at location described by tip and "somewhat matched" description). Additionally, the deputy encountered him only fifteen minutes after the shots had been fired in an isolated area, both increasing Lemon's possible connection to the criminal activity and limiting the likelihood of stopping an innocent person. *See Graciano*, 134 Ariz. at 38, 653 P.2d at

686. The trial court did not err in concluding the deputy had a reasonable and articulable suspicion that Lemon was involved in the criminal activity.

¶8 Lemon asserts the facts more closely resembled circumstances that failed to support a reasonable suspicion in *In re Ilono H.*, 210 Ariz. 473, 113 P.3d 696 (App. 2005), *State v. Rogers*, 186 Ariz. 508, 924 P.2d 1027 (1996), and *State v. Master*, 127 Ariz. 210, 619 P.2d 482 (1980). But, in each of the cases Lemon relies upon, the officers were not aware of any criminal activity having occurred when they began their investigative stops. *Rogers*, 186 Ariz. at 511, 924 P.2d at 1030; *Master*, 127 Ariz. at 211, 619 P.2d at 483; *In re Ilono H.*, 210 Ariz. 473, ¶¶ 2, 5, 113 P.3d at 697-98. Here, the deputy knew that shots had been fired and was looking for suspects reportedly seen in the immediate area.

¶9 Lemon additionally contends that article II, § 8 of the Arizona Constitution "provides greater protection" against warrantless searches than the Fourth Amendment. However, this court has found "no authority holding Arizona's right to privacy outside the context of home searches to be broader in scope than the corresponding right to privacy in the United States Constitution." *State v. Johnson*, 220 Ariz. 551, ¶ 13, 207 P.3d 804, 810 (App. 2009). Lemon has given us no reason to depart from Arizona precedent and we continue to apply Fourth Amendment jurisprudence to article II, § 8 in warrantless searches. Thus, we cannot find the trial court abused its discretion in denying Lemon's motion to suppress.

Conclusion

¶10 For the foregoing reasons, we affirm Lemon's conviction and sentence.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge