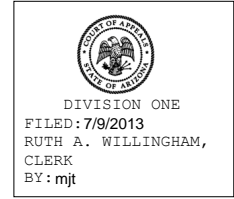


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



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

STATE OF ARIZONA,) 1 CA-CR 12-0326
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
DAVID LEE LAMB,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-006230-001

The Honorable Peter C. Reinstein, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Joseph T. Maziarz, Chief Counsel
Criminal Appeals/Capital Litigation Division
and Robert A. Walsh, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Mikel Steinfeld, Deputy Public Defender
Attorneys for Appellant

H O W E, Judge

¶1 David Lee Lamb ("Lamb") appeals his convictions for possession of narcotics and marijuana, arguing the trial court

erred in denying his motion to suppress and abused its discretion in admitting newly-disclosed evidence at the suppression hearing. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 On May 4, 2012, the trial court held a hearing on Lamb's motion to suppress after this Court remanded the case for an evidentiary hearing on the motion. The evidence at the hearing¹ revealed that Lamb was one of fifty individuals that police targeted in a roundup of alleged members of the Westside City Crips street gang suspected of drug trafficking. Police sought to arrest the suspects on arrest warrants based on a wiretap and accompanying surveillance.

¶13 Police suspected Lamb based on two phone calls made on March 10, 2008. In the first call, Lamb's girlfriend phoned one of the targets of the wiretap investigation to make arrangements to obtain PCP. In the second call, Lamb phoned forty-five minutes later to the same drug dealer stating that he wanted to pick up some PCP. The dealer explained to Lamb that his girlfriend had already picked up the drugs, and she should be

¹ In reviewing a trial court's denial of a motion to suppress, we consider only the facts the court heard at the suppression hearing, *State v. Blackmore*, 186 Ariz. 630, 631, 925 P.2d 1347, 1348 (1996), viewed in the light most favorable to sustaining the court's ruling. *State v. Hyde*, 186 Ariz. 252, 265, 921 P.2d 655, 668 (1996).

returning to Lamb's location. The police, however, had stopped Lamb's girlfriend and found the PCP and marijuana.

¶14 On March 19, 2008, law enforcement officers were briefed on the drug trafficking investigation, dubbed "Operation Sidewinder." The material in the briefing included a thumbnail photo of Lamb and a probable cause packet with a larger photo and other identifying information.

¶15 Officers drove to the Westside City Crips' neighborhood in south Phoenix, between Grant Street and I-17, and 7th and 19th Avenues. The officers considered the neighborhood violent and dangerous, "very anti-police," occupied by people "known to carry guns and use them." Both officers had been the victim of one or more aggravated assaults in the neighborhood.

¶16 When the officers saw Lamb sitting on a bicycle in a dirt lot, both officers believed he was one of the alleged suspects. When they asked him for his name and identification and told him to stop, Lamb "got back on his bike and began pedaling away." Lamb eventually stopped after officers caught up with him and again ordered him to stop. As the officers approached, they smelled a strong odor of marijuana. At that point, one of the officers "definitely recognized him as one of the individuals that we were looking for," although the officer did not know which one. Because they did not know "if he was

running because he was a suspect in a homicide, or what, or if he was armed," the officers ordered him to the ground, cuffed him, and patted him down for weapons.

¶17 The officers learned Lamb's name when one of them felt a hard object during the frisk and, with Lamb's consent, pulled a prescription bottle from his pocket, and Lamb acknowledged that his name was on the bottle. The officers walked him over to the police cruiser and placed him, still handcuffed, in the back seat while they consulted the photographs distributed during the briefing. Another officer, who knew Lamb, arrived and personally confirmed his identity. In all, the officers' identification of Lamb as one of the alleged suspects took less than ten minutes. The entire encounter, from the time Lamb was ordered on the ground and handcuffed until he left in the police car, was videotaped by a person in the neighborhood and lasted about fourteen minutes.

¶18 While Lamb was in the cruiser, both officers observed him pulling marijuana out of his jacket and dropping it on the back seat. When the officers reached a safer location, they searched him incident to his arrest and found crack cocaine and marijuana. The officers booked him on charges of possession for the drugs. Several weeks later, based on the March 10, 2008 phone calls, a Grand Jury indicted Lamb, his girlfriend, and others on charges of conspiracy, solicitation of an offer to sell or

transfer dangerous drugs, use of a wire in a drug-related transaction, assisting a criminal street gang, and related charges.²

¶9 The trial court conducted an evidentiary hearing on May 4, 2012 and May 10, 2012. During the first day, the State presented summaries of two phone calls made during the 2008 wiretap investigation. The State used the summaries to refresh the recollection of the detective supervising the wiretap investigation about when the calls were made and what the speakers were discussing. The State then moved to admit the call summaries into evidence for the purposes of the evidentiary hearing. Lamb objected for lack of disclosure. Lamb's counsel, who had been appointed after this Court had remanded the matter for an evidentiary hearing, told the court that, although she knew that the State would rely on the calls at the suppression hearing, she had not seen the call summaries before the hearing. The State had disclosed the call summaries to Lamb's original counsel at trial, before this Court had remanded the matter, and the State had notified Lamb's new counsel of its intent to use the call summaries the day before the hearing.

¶10 The court overruled Lamb's objection, reasoning that the exhibits were "simply a synopsis of the officer's

² After a jury convicted Lamb on the drug charges in this case, the trial court dismissed the charges in the wiretap case without prejudice on the State's motion.

testimony," and went "to the weight[] [t]he Court gives these synopses . . . and the testimony of the witness." Lamb then cross-examined the detective on his interpretation of the calls, and the relationship between Lamb and the caller whom the detective identified as Lamb's girlfriend. Before the second day of the hearing, Lamb's counsel filed a supplemental motion to suppress the drug evidence, but did not argue that the summaries were not timely disclosed.

¶11 After considering the evidence, the court denied the motion to suppress, finding that the detectives had reasonable suspicion to detain Lamb and probable cause to arrest him because they recognized him as one of the suspects in the operation. The court found the odor of marijuana provided additional probable cause to arrest Lamb.

¶12 Lamb timely appeals. We have jurisdiction under Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and 13-4033(A) (West 2013).³

DISCUSSION

¶13 Lamb argues that the trial court erred by denying his motion to suppress and by allowing the State to introduce

³ We cite the current version of the applicable statutes because no revisions material to this decision have since occurred.

evidence that had been disclosed to Lamb on the day of the evidentiary hearing. We find no error and affirm.

I. Motion to Suppress

¶14 Lamb's first argument is that the court erred in denying the motion to suppress because the officers lacked probable cause to arrest Lamb. Whether the police have reasonable suspicion to conduct an investigatory detention, or probable cause to arrest, is a mixed question of law and fact that we review de novo. See *State v. Rogers*, 186 Ariz. 508, 510-11, 924 P.2d 1027, 1029-30 (1996); *Blackmore*, 186 Ariz. at 632, 925 P.2d at 1349. We give deference to the trial court's factual findings. See *Rogers*, 186 Ariz. at 510-11, 924 P.2d at 1029-30.

¶15 The Fourth Amendment guarantees the right to be secure against unreasonable searches and seizures. U.S. Const. Amend. IV. "This guarantee requires arrests to be based on probable cause and permits limited investigatory stops based only on an articulable reasonable suspicion of criminal activity." *State v. Superior Court (Blake)*, 149 Ariz. 269, 273, 718 P.2d 171, 175 (1986). A brief investigatory detention may also be justified by a reasonable suspicion that a person is wanted in connection with a completed felony. *State v. Kinney*, 225 Ariz. 550, 555, ¶ 14, 241 P.3d 914, 919 (App. 2010).

¶16 The officers testified that they stopped Lamb because they both believed he was one of the alleged suspects in the

drug trafficking investigation. First, we must determine whether they had probable cause to arrest Lamb on drug trafficking. For a review of probable cause, we look to the totality of the facts and circumstances known to police collectively at the time of the arrest. *State v. Lawson*, 144 Ariz. 547, 553, 698 P.2d 1266, 1272 (1985) (internal citations and punctuation omitted). Lamb's suspected involvement in the drug trafficking arose from two phone calls in March of 2008 that police intercepted. The first was between a drug dealer and Lamb's girlfriend, while the second was between a drug dealer and Lamb. In the calls, Lamb and his girlfriend discuss picking up PCP. Based on these phone calls, a grand jury found probable cause to indict Lamb on various charges related to drug trafficking. Lamb has given us no reason to find that indictment illegal. *Cf. State v. Peterson*, 171 Ariz. 333, 335-36, 830 P.2d 854, 856-57 (App. 1991) (reversing court's denial of motion to suppress on grounds the arrest was illegal, having been based on a warrant quashed five years earlier). Thus, the officers had probable cause to arrest Lamb on drug trafficking.

¶17 Second, we must determine whether the officers had reasonable suspicion to stop Lamb to determine if he was the suspect they had probable cause to arrest. We evaluate reasonable suspicion based on the totality of the circumstances, examining factors that might individually appear innocent, from

the standpoint of "an objectively reasonable police officer." *State v. O'Meara*, 198 Ariz. 294, 296, ¶ 10, 9 P.3d 325, 327 (2000) (citation omitted). We judge the reasonableness of the detention on whether the facts warranted the intrusion on the person's Fourth Amendment rights, and "whether the scope of the intrusion was reasonably related to the circumstances which justified the interference in the first place." *State v. Boteo-Flores*, 230 Ariz. 105, 107, ¶ 11, 280 P.3d 1239, 1241 (2012). The officers recognized Lamb as one of the fifty individuals targeted in the operation when they first saw him. Their suspicions of his involvement in some criminal activity increased when Lamb fled. Furthermore, they smelled marijuana on Lamb when he finally stopped at their command. Under these circumstances, they had sufficient reasonable suspicion to briefly detain him to determine whether he was one of the suspects in the roundup. *See Lawson*, 144 Ariz. at 553, 698 P.2d at 1232 (police entitled to rely on collective knowledge of law enforcement).

¶18 We also find that the officers acted reasonably as part of this investigatory detention in ordering Lamb down on the ground, handcuffing him, and keeping him handcuffed in the back seat of the police car while they confirmed that he was one of the suspects. The officers reasonably did so to ensure their safety and prevent his escape because he had initially fled them

and had repeatedly refused to identify himself. Moreover, he was a suspected member of a criminal street gang in a dangerous neighborhood in which both officers had previously been assaulted.

¶19 We do not believe under these circumstances that the continued handcuffing of Lamb for the ten minutes it took to ascertain he was among one of the suspects in the roundup transformed this investigatory detention into a *de facto* arrest. See *Boteo-Flores*, 230 Ariz. at 109, ¶ 20, 280 P.3d at 1243 (noting that the use of handcuffs does not automatically transform a brief detention into an arrest). Nor do we find the ten-minute duration unreasonable. Whether an investigative detention rises to the level of a *de facto* arrest turns on the totality of the circumstances and the reasonableness of the officer's actions. *Id.* at 108, ¶ 14, n.2, 280 P.3d at 1242, n.2. "[T]he appropriate query is 'whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.'" *Id.* at ¶ 15 (quoting *United States v. Sharpe*, 470 U.S. 675, 686 (1985)).

¶20 During his initial pat down, Lamb acknowledged he was the person named on the prescription drug bottle, and one of the officers testified he knew at that point he was one of the targeted individuals. On this record, the officers acted

reasonably and expeditiously to confirm their suspicions, at the same time ensuring their continued safety and the security of a volatile suspect in a dangerous neighborhood. Thus, the court did not abuse its discretion in denying Lamb's motion to suppress.

II. Discovery Violation

¶21 Lamb's second argument is the trial court erred in admitting summaries of the two calls made during the 2008 wiretap investigation because the State failed to disclose the summaries before the day of the evidentiary hearing.⁴ We review a trial court's ruling on a discovery violation for abuse of discretion. *State v. Lee*, 185 Ariz. 549, 555-56, 917 P.2d 692, 698-99 (1996). "[F]or a reviewing court to find an abuse of discretion, appellant must demonstrate that he suffered prejudice by nondisclosure." *State v. Martinez-Villareal*, 145 Ariz. 441, 448, 702 P.2d 670, 677 (1985).

¶22 We find no abuse of discretion in the court's decision to allow the call summaries into evidence. The State had disclosed the calls to the original attorney before remand.

⁴ Lamb also argues for the first time on appeal that the late disclosure violated his due process right to a fair hearing. We find that he has abandoned and waived this issue because he has failed to cite pertinent legal authority or make significant legal argument to support his claim. See *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147, n.9 (2004) (failure to present "significant arguments, supported by authority" in the opening brief waives the issue).

However, even if the State violated Ariz. R. Crim. P. 15.1 by failing to disclose these summaries to Lamb's new attorney before the day of the hearing, we find Lamb has suffered no prejudice. As the court ruled, the summaries were cumulative to the detective's testimony, and the State properly used the summaries to refresh the detective's recollection. See Ariz. R. Evid. 612. Moreover, although Lamb's counsel had not seen the summaries before the evidentiary hearing, she knew that the State would use the wiretapped calls at the hearing. Lamb's counsel did not ask for a continuance to interview the detective or to examine this wiretap evidence, seek to recall the detective after further investigation of the call summaries, or request any other measure that would allow more time to review the summaries. The trial court thus did not abuse its discretion in allowing the State to use the call summaries. See *Martinez-Villareal*, 145 Ariz. at 448, 702 P.2d at 677.

CONCLUSION

¶23 For the foregoing reasons, we affirm the convictions.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

_____/s/_____
PETER B. SWANN, Presiding Judge

_____/s/_____
DIANE M. JOHNSEN, Judge