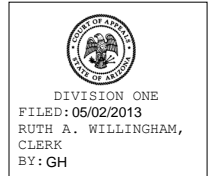


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



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

STATE OF ARIZONA,) 1 CA-CR 12-0347
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JOHN ANDREW RANDALL,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-006559-001 DT

The Honorable Jeanne M. Garcia, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Division
and Barbara Bailey, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Peg Green, Deputy Public Defender
Attorneys for Appellant

H O W E, Judge

¶1 John Andrew Randall ("Randall") appeals his conviction for hindering prosecution in the first degree, a class five

felony based on the trial court's denial of his motion to suppress. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On March 27, 2009, Peoria police officers went to a home to execute a felony arrest warrant for M.S. for possession of dangerous drugs. The home belonged to M.S.'s grandmother. Officer J.N. was familiar with the home because he responded two years earlier to an emergency call from the grandmother that M.S. was suicidal. At that time, he became aware of the grandmother's concerns about M.S.'s drug use and associations.

¶3 The officers knocked on the front door and rang the doorbell for "at least ten minutes." Although no one answered the door, officers observed a vehicle in the garage, a woman's purse on the couch, and a shadow pass by one of the windows. The officers determined that the vehicle belonged to the grandmother. The officers also observed dogs on leashes on the back patio. Before leaving the residence, one of the officers spoke with a neighbor, who told the officer that if the dogs were out on the patio then the grandmother was probably home. The officer also learned that the neighbor had observed an individual of an unknown gender out on the patio before the officers had arrived. The officers left the residence.

¶4 The officers returned later that evening. As the officers approached, they noticed a white pickup truck, which

the officers compared to a "twecker car,"¹ parked in the driveway. The truck was full of junk, filthy, and had no license plate. The officers thought this truck was out of place for the neighborhood, which had strict rules about parking on the driveway and street. The officers knocked on the door and rang the doorbell. Again, nobody answered. This time, the blinds were closed and the dogs were inside. Once again, the officers left the home.

¶15 The officers returned the following evening, on March 28, 2009. After knocking, Randall, whom none of the officers recognized as being affiliated with the home, answered the door. He stated that neither M.S. nor the grandmother was home. He referred to the grandmother by her nickname, but could not recall her first or last name. He stated that the grandmother was on vacation and that he was "house sitting." He also stated that he had spoken with the grandmother earlier that day, although he could not recall her phone number. Randall complied with the officers' request to see the cordless phone so that they could check the caller ID.

¶16 While the officers could not find the grandmother's phone number, they found a number of calls from inmates at the jail, and a few other numbers, one of which belonged to a good

¹ Officers use "twecker car" to refer to the type of vehicle that a methamphetamine user or a burglar drives.

friend of the grandmother. When they called the good friend, he told the officers that he was concerned for the grandmother's safety because she and her daughters were supposed to be with him, but they had never shown up and he could not get a hold of her. He stated that he usually spoke with M.S. or the grandmother several times a week, but he had not heard from either for several days and could not reach them. When the officers told the friend about the man answering the door, he became even more concerned stating that the grandmother would not allow someone to "house sit that she did [not] really know."

¶17 With all of this information, the officers quickly became concerned that either the grandmother or M.S. was inside the house hurt or in danger. They informed Randall that they intended to enter the home to ensure that neither individual was injured. As the officers began searching, Randall informed them that M.S. was in fact in the house. The officers subsequently found her in the bathroom. The officers took her into custody, and after searching the remainder of the house for the grandmother, M.S. confirmed that she was not at home. The officers told Randall that they would not arrest him at this time, but that they would refer charges to the county attorney's office.

¶18 On November 28, 2011, the Maricopa County Grand Jury indicted Randall with one count of hindering prosecution. At

trial, Randall moved to suppress "any and all evidence obtained" from the search of the home because the warrantless search was not excused by the officers' baseless reasoning as an emergency aid exception. During the hearing on the motion, Officer J.N. testified that the circumstances during their investigation led them to change their focus from locating someone with an outstanding warrant "into a, is there someone that [has] been abducted or while I'm here did we just kind of stumble upon." The trial court found that based on the evidence presented and the officer's testimony, the officers had "reasonable grounds to believe that . . . there was some emergency at hand." The court also found the officer's testimony credible because the search "was not primarily motivated by intent to arrest or seize evidence." Finally, the court stated that the officers had "a reasonable basis to associate the emergency with the house." Thus, the court denied the motion.

¶9 The jury convicted Randall of hindering prosecution. The court then sentenced Randall to one year of unsupervised probation.

¶10 Randall 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).²

DISCUSSION

¶11 Randall argues that the trial court abused its discretion by denying his motion to suppress because the emergency aid exception to the warrant requirement did not justify the search. "We review a trial court's ruling on a motion to suppress for a clear abuse of discretion." *State v. Rodriguez*, 205 Ariz. 392, 401-02, ¶ 34, 71 P.3d 919, 928-29 (App. 2003). We view "the evidence presented at the suppression hearing and reasonable inferences therefrom in the light most favorable to upholding the ruling." *Id.*

¶12 The trial court did not abuse its discretion in denying suppression. The emergency aid exception to the warrant requirement "provides that officers of the state may enter a dwelling without the benefit of a warrant where they reasonably believe there is someone within in need of immediate aid or assistance." *State v. Fisher*, 141 Ariz. 227, 237, 686 P.2d 750,

² Absent material revisions to this decision, we cite the current version of applicable statutes.

760 (1984).³ The *Fisher* court set out three factors that justify a warrantless search under the emergency aid exception:

1. The police must have reasonable grounds to believe an emergency is at hand and their assistance is immediately needed to protect life or property.
2. The primary motivation for the search must be to protect life or property and not to arrest or seize evidence.
3. The police must have some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

Id. at 237-38, 686 P.2d at 760-61. "The reasonableness of a police officer's response in a given situation is a question of fact for the trial court." *Id.* Here, the court found that all three factors were met. Randall argues that the court erred in applying these three factors. We disagree and find that all three factors are met.

¶13 First, the officers had reasonable grounds to believe an emergency was at hand and their assistance was immediately needed to protect life or property. Even before they visited the

³ Randall argues that the Arizona Constitution provides greater rights to homeowners than the Fourth Amendment. Randall does not cite to any authority, however, that Arizona courts apply the emergency aid exception under the Arizona Constitution any differently than under the United States Constitution. In fact, the emergency aid exception applies under both the Arizona and United States Constitution. See *State v. Jones*, 188 Ariz. 388, 395, 937 P.2d 310, 617 (1997).

house, the officers were on alert because of Officer J.N.'s history with the residence and the current arrest warrant, which indicated M.S. had associations with dangerous drug-related individuals. Their repeated visits to the home, where they observed numerous signs that indicated the presence of someone inside the home, bolstered this concern. Yet, even with this obvious presence, no one answered the door. Adding to this concern, the officers observed on the second visit a white pick-up truck in the driveway that looked "out-of-place" in the community and reminded the officers of a drug user's "tweaker car." Then, on their third visit, an unidentified male answered the door. This male claimed to be house sitting, but he could not identify the first or last name of the grandmother who owned the home. He stated that he had recently spoken with the grandmother, but he could not remember her phone number, and the officers found no evidence of her phone number on the phone's caller ID. Instead, the officers found numerous calls from jail inmates, and a call from a close friend of the grandmother who was concerned for both women's well-being when they called him.

¶14 Second, the officers' primary motivation for the search was to protect life or property and not to arrest or seize evidence. We defer to the trial court's "determinations of the credibility of the officers and the reasonableness of the inferences they drew." *State v. Mendoza-Ruiz*, 225 Ariz. 473,

475, ¶ 6, 240 P.3d 1235, 1237 (App. 2010). At the hearing, the officer testified that all of the facts that occurred during the investigation led to a change in focus from executing the warrant, to ensuring that the residents of the house were safe. The trial court found the officer's testimony credible and agreed that the search was not primarily motivated by an intent to seize M.S. Randall has not shown any abuse of discretion and we find none.

¶15 Third, the officers had some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. Randall conceded this third factor at the hearing, and he does not dispute this factor on appeal. Accordingly, we find that the trial court did not abuse its discretion in denying Randall's motion to suppress.

CONCLUSION

¶16 For the foregoing reasons, we affirm the convictions and sentences.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

_____/s/_____
ANDREW W. GOULD, Judge