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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/29/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0645
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
KENT LEE MANNING,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-132864-001

The Honorable Glenn M. Davis, Judge (Retired)

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Joseph T. Maziarz, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Adele Ponce, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Thomas Baird, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 Kent Lee Manning appeals his conviction and sentence for misconduct involving weapons. He argues that the trial

court erred by denying his motion to suppress evidence. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 While Manning was on probation and living in his mother's house, two probation officers accompanied by police officers went to her house to arrest her on a felony warrant for a probation violation. Once inside the home, the police officers conducted a protective sweep and found Manning's mother hiding in one of the back bedrooms. During the protective sweep, a police officer observed .40 caliber ammunition on a table just outside of Manning's bedroom. He then notified one of the probation officers. Knowing that Manning was on probation, the probation officer searched Manning's bedroom and found a .40 caliber handgun in a holster under a table next to the bed. Manning was subsequently charged with misconduct involving weapons (prohibited possessor), a class 4 felony.

¶3 Before trial, Manning moved to suppress evidence seized from his bedroom, including the handgun, arguing that the search was unlawful. The trial court held an evidentiary hearing and later denied the motion, ruling the search was constitutional. The court determined that the warrantless search was authorized because the probation officer had reasonable suspicion that Manning was engaged in criminal activity and/or had violated the terms of his probation.

¶4 The case went to trial and the jury found Manning guilty as charged. He was subsequently sentenced as a repetitive offender to a presumptive ten-year prison term.

DISCUSSION

¶5 We review a trial court's ruling on a motion to suppress "for abuse of discretion if it involves a discretionary issue, but we review constitutional and purely legal issues de novo." *State v. Gay*, 214 Ariz. 214, 217, ¶ 4, 150 P.3d 787, 790 (App. 2007) (citation and internal quotation marks omitted). We restrict our review to the evidence presented at the suppression hearing and consider it in the light most favorable to upholding the ruling. *State v. Blackmore*, 186 Ariz. 630, 631, 925 P.2d 1347, 1349 (1996); *State v. Walker*, 215 Ariz. 91, 94, ¶ 16, 158 P.3d 220, 223 (App. 2007).

¶6 The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures and provides that warrants may be issued only upon probable cause. U.S. Const. amend. IV. Although the Fourth Amendment demonstrates a "strong preference for searches conducted pursuant to a warrant" backed by probable cause, *Illinois v. Gates*, 462 U.S. 213, 236 (1983) (citation and internal quotation marks omitted), a reasonableness standard is applied in reviewing warrantless searches and seizures in a variety of circumstances. *State v. Allen*, 216 Ariz. 320, 326, ¶ 24, 166 P.3d 111, 117 (App. 2007);

see also *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (noting that "the ultimate touchstone of the Fourth Amendment is 'reasonableness'").

¶7 The United States Supreme Court has held that a warrantless search of a probationer is valid if it is "supported by reasonable suspicion and authorized by a condition of probation." *United States v. Knights*, 534 U.S. 112, 122 (2001); see also *State v. Montgomery*, 115 Ariz. 583, 584, 566 P.2d 1329, 1330 (1977) (recognizing that "[w]hile defendant is on probation his expectations of privacy are less than those of other citizens not so categorized").

¶8 Here, the terms of Manning's probation specifically authorized a warrantless search, and the presence of ammunition on a table just outside his bedroom was sufficient to provide reasonable suspicion that Manning had violated the terms of his probation and was engaged in criminal activity by possessing a firearm. The search was not invalid, as Manning claims, because the probation officer testified that he would have gone into Manning's bedroom "regardless [of whether] they had found ammunition or not because he was on probation." Although Manning argues that the testimony shows the search was not "motivated" by the ammunition found outside his bedroom, his argument ignores that the probation officer further testified that he searched Manning's bedroom because of the ammunition.

Moreover, a Fourth Amendment analysis of the reasonableness of a search or seizure turns on "an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time, and not on the officer's actual state of mind at the time the challenged action was taken." *Maryland v. Macon*, 472 U.S. 463, 470 (1985) (citation and internal quotation marks omitted); see also *State v. Jeney*, 163 Ariz. 293, 296, 787 P.2d 1089, 1092 (App. 1989) (adopting objective rather than subjective test for determining reasonableness of search). Thus, the officer's speculation as to what he would have done under different circumstances is irrelevant to the determination of whether reasonable suspicion existed for the search.

¶19 Manning also argues that the presence of the ammunition did not provide reasonable suspicion for the search of his bedroom because it was insufficient to establish "individualized suspicion" of criminal conduct on his part. He asserts that there was nothing indicating that he, as opposed to other occupants of the home, possessed the ammunition. We disagree. The ammunition was located on a table just outside of Manning's bedroom. The spatial proximity of the ammunition to Manning's bedroom was more than sufficient to provide reasonable suspicion that he might have a firearm in his bedroom. See *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (noting that

although "reasonable suspicion" must be more than an inchoate "hunch," the Fourth Amendment only requires that the officer articulate some minimal, objective justification for the search or seizure).

CONCLUSION

¶10 The trial court did not err in ruling that there was reasonable suspicion to search Manning's bedroom and thereby denying the motion to suppress evidence found during the search. We therefore affirm Manning's conviction and sentence.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Judge

/s/

KENT E. CATTANI, Judge