IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ELIZABETH HALEY BROWN, *Appellant*.

No. 1 CA-CR 12-0692

FILED 12-12-2013

Appeal from the Superior Court in Maricopa County
No. CR2011-162716-001
The Honorable Christine E. Mulleneaux, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By W. Scott Simon

Counsel for Appellee

Marc J. Victor, P.C., Chandler
By Marc J. Victor

Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Lawrence F. Winthrop delivered the decision of the Court, in which Judge Margaret H. Downie and Judge Jon W. Thompson joined.

W I N T H R O P, Presiding Judge**:**

¶1 Elizabeth Haley Brown[1] appeals her convictions and sentences for possession or use of dangerous drugs, a class four felony, and possession of drug paraphernalia, a class six felony. We have jurisdiction over Brown's timely appeal pursuant to Arizona Revised Statutes sections 12-120.21(A)(1), 13-4031, and 13-4033(A).[2]

¶2 Brown argues that the superior court erred in refusing to suppress the drugs discovered in a search incident to her arrest for failure to wear the required corrective lenses while operating a motor vehicle. In reviewing the denial of a motion to suppress, we restrict our review to consideration of the facts presented to the superior court 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). We give deference to the superior court's factual findings, but review *de novo* whether the Fourth Amendment was violated. *See State v. Gonzalez–Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996).

¶3 Brown maintains the superior court abused its discretion by giving "extra probative value" to the testimony of two law enforcement officers that she admitted not wearing contact lenses, in light of her contrary testimony that they never asked her about contact lenses and that she was wearing them at the time. We leave credibility determinations to the superior court, because it is in the best position "to assess the credibility of the witnesses, to observe their demeanor and to determine

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[1] The record reflects Brown's middle name as, alternately, "Haley" or "Halley."

[2] Absent material revisions after the relevant dates, the statutes cited refer to the current version unless otherwise indicated.

possible bias or interests." *State v. Gerlaugh*, 134 Ariz. 164, 167, 654 P.2d 800, 803 (1982), *supplemented by* 135 Ariz. 89, 659 P.2d 642 (1983); *accord Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778. Nothing in the record suggests the court gave improper weight to the officers' testimony. We accordingly defer to the court's ruling, which clearly relied on a credibility finding.

¶4 Brown next argues that the superior court violated her constitutional right to present a complete defense when, on the first day of trial, the court refused to allow five newly disclosed witnesses to testify that she had been wearing contact lenses at the time of the traffic stop. Although we ordinarily review evidentiary rulings for an abuse of discretion, we review evidentiary rulings that implicate a defendant's constitutional rights *de novo*. *See State v. Ellison*, 213 Ariz. 116, 129, ¶ 42, 140 P.3d 899, 912 (2006).

¶5 We find neither evidentiary nor constitutional error. "[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citations and internal punctuation omitted). A defendant's right to present evidence is subject to restriction, however, by the application of reasonable evidentiary rules. *See United States v. Scheffer*, 523 U.S. 303, 308 (1998). As defense counsel acknowledged at the time, the testimony of these witnesses was not relevant to the material issues at trial - that is, whether she possessed methamphetamine and drug paraphernalia. The superior court accordingly did not err in refusing to allow these witnesses to testify at trial. *See id*.

¶6 Brown argues for the first time on appeal that her disclosure of these witnesses was in the nature of a motion to reopen the suppression hearing, and the superior court erred in denying her the opportunity to present them as relevant to the existence of probable cause to arrest her. Because Brown did not ask the court to reopen the suppression hearing, she bears the burden of demonstrating that any error in failing to do so was fundamental and prejudicial. *See State v. Henderson*, 210 Ariz. 561, 567-68, ¶ 20, 115 P.3d 601, 607-08 (2005). Brown has not met her burden. The testimony of these witnesses, who were not at the scene, was of little, if any, relevance to the officers' determination of probable cause to arrest Brown. *See State v. Hoskins,* 199 Ariz. 127, 137-38, ¶ 30, 14 P.3d 997, 1007-08 (2000) ("A police officer has probable cause when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense." (citation omitted)). Under these circumstances, the failure to *sua sponte*

reopen the hearing to admit the testimony and reconsider the motion to suppress did not constitute fundamental, prejudicial error.

¶7 For the foregoing reasons, we affirm Brown's convictions and sentences.

Ruth A. Willingham · Clerk of the Court
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