IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

DANIEL ALEXANDER RODRIQUEZ, *Appellant*.

No. 1 CA-CR 15-0070
FILED 3-15-2016

Appeal from the Superior Court in Maricopa County
No. CR-2014-107713-001 DT
The Honorable Dean M. Fink, Judge
The Honorable Warren J. Granville, Judge

AFFIRMED

COUNSEL

Attorney General's Office, Phoenix
By Jana Zinman
Counsel for Appellee

The Heath Law Firm, Mesa
By Mark Heath
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Jon W. Thompson delivered the decision of the Court, in which Judge Maurice Portley and Judge Patricia K. Norris joined.

T H O M P S O N, Presiding Judge:

¶1 Daniel Alexander Rodriquez (defendant) appeals from his fourteen convictions and sentences on the basis the trial court improperly denied his motion to suppress evidence found in his vehicle. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 A grand jury indicted defendant on a fourteen felony counts stemming from his behavior in several 2014 incidents. The first incident occurred during a fight between defendant and his then 16 year-old former girlfriend (A.G.). The two were riding in defendant's burgundy Mercury Montego when victim fled the vehicle. Defendant screamed at her repeatedly to get back in the car. Eventually defendant pulled a 9mm weapon out and shot multiple times in her general direction to get her "attention." Witnesses heard A.G. crying hysterically "let me just go home," heard the defendant yelling at her, heard the gun shots and heard his car speeding off. A.G. testified she was scared and had gotten back in the car. One of the witnesses found three bullet holes in and around his house. Two 9mm shell casings were found at the scene. This event is the factual basis for Counts 1-7.

¶3 Counts 8 and 9 involve defendant using the identification of his brother N.R. Count 8 results from defendant presenting the false identification to an officer when that officer came into contact with defendant and A.G. during a loud fight in a parking lot days after the first shooting event. Count 9 results from defendant presenting N.R.'s identification to purchase the 9mm gun from a pawnshop.[1] The false

[1] Evidence showed that defendant used his brother's identification to buy both the 9mm gun and the burgundy Montego, as well as 9mm ammunition.

identification was found in defendant's vehicle and A.G. was present both times it was used.

¶4 A couple of weeks after the first shooting, victim attempted to break up with defendant. Defendant texted her numerous threatening messages over two days. Those texts, as testified to and as recovered in defendant's phone, included: "tell your momma not to sleep on the couch cuz a bullet might hit her" and "Be ready . . . I got 83 rounds" and "we both gonna die."[2] A terrified A.G. called the police. Defendant then called A.G. and asked her to come outside, she refused; ten minutes later defendant fired multiple gunshots at her house. Approximately eight bullets travelled into the interior of A.G.'s house. A.G. provided police with a detailed description of defendant's car, including his license plate number, and advised them that defendant had a gun he'd recently purchased under a driver's license in N.R.'s name. This second shooting event is the basis for Counts 11-14.

¶5 After an active search for defendant, which included him driving from location to location, he was arrested later that same day while getting into his vehicle. He was taken into custody from the driver's seat. A protective sweep of the car was done at that time; officers knew that defendant was the suspect in a crime involving a gun and was potentially armed. The vehicle was then towed to the police substation while officers waited for a search warrant to issue. Police searched the vehicle pursuant to a search warrant in the early morning hours at the police substation. Inside the car officers found a 9mm bullet, two bullet shell casings, the sales receipt for the 9mm gun, and a cell phone containing the threatening texts. One shell casing and one live round were on the floor of the vehicle; another shell casing was in the trunk. Police testified that the shell in the interior of the vehicle was lodged under the carpet and took some rooting around to find.

¶6 Defendant filed a motion to suppress. At the evidentiary hearing on the motion to suppress, defendant representing himself, presented testimony from N.R. that the police searched the Mercury Montego before the car was towed away to the police substation to be searched pursuant to a warrant. N.R. testified that while he was being detained in front of their apartment building, he observed an officer enter the vehicle, look under the seat, in the glove compartment, and around the passenger compartment. N.R. testified that "at one point, the sound system

[2] Defendant did not challenge the search warrants police used for GPS data or for his text messages.

went off in the car, which made the detective go into the trunk of the vehicle before the car was towed." N.R. stated he believed the officer searched the trunk, although he couldn't see it directly from where he was seated.

¶7 Police testified at the suppression hearing that no search was done on the vehicle prior to the search at the substation, however at trial police testified that a protective sweep of the vehicle had been done on site because they were investigating a gun crime and defendant was potentially armed. Defendant argued that none of the warrantless search exceptions applied and all of the evidence from the car should be suppressed. The state argued that the evidence was found pursuant to a valid search warrant, but even if there had been an earlier search the car would have had to have been inventoried at the substation and the resulting discovery of the evidence was inevitable.

¶8 The trial court determined that a search warrant issued around 4:30 in the morning with a search conducted after that time pursuant to probable cause. The court denied the motion to suppress, finding even if

> an officer had done a search of the vehicle before 4:30, nothing in the search warrant affidavit indicates any information derived from that. Looking at the affidavit that supported the search of a drive-by shooting and the information provided by witnesses at the shooting site, the Court finds that [there was] probable cause to believe that a search of the vehicle of Mr. David Rodriquez was appropriate to find evidence of weapons or shell casings, and that search, based on Exhibit 2 [the evidence log] was conducted after the issuance of the warrant.

¶9 After a trial, defendant was convicted and sentenced on the fourteen counts to presumptive terms of imprisonment. This appeal followed.

DISCUSSION

¶10 On appeal defendant asserts the trial court erred in denying his motion to suppress the items found in his vehicle prior to the issuance of the search warrant. He argues, variously, that no valid exceptions exist to the rule against warrantless searches. To this end, defendant argues

a. the automobile exception to the Fourth Amendment warrant requirement did not apply because no evidence was

presented at the suppression hearing which would constitute probable cause to think the car contained evidence of a crime;

b. there was no exigency or need for a protective sweep because he was in custody, and, therefore, harmless with the evidence secured in an unoccupied car and falls under the ruling in *State v. Gant*, 216 Ariz. 1, 162 P.3d 640 (2007);

c. the inventory search exception does not apply and all evidence actually seized after the search warrant issued should be suppressed under the fruit of the poisonous tree doctrine; and

d. the court improperly shifted the burden to him because he had asserted the evidence was seized prior to there being a valid warrant.

Defendant seeks a new suppression hearing.

¶11 In response the state continues to assert the car was searched lawfully after the issuance of a search warrant. In the alternative, it argues if there was a prior search those officers had probable cause to believe the vehicle may have contained evidence of a crime, there was a proper inventory search, and the inevitable discovery and independent-source doctrines apply.

¶12 "The Fourth Amendment generally requires police to secure a warrant before conducting a search." *Maryland v. Dyson*, 527 U.S. 465, 466 (1999). "Under the 'automobile exception' to the Fourth Amendment warrant requirement," however, "law enforcement officers can search a vehicle lawfully in their custody if probable cause exists to believe that the vehicle contains contraband, even in the absence of exigent circumstances." *State v. Reyna*, 205 Ariz. 374, 374, ¶ 1, 71 P.3d 366, 366 (App. 2003). The automobile exception also applies if police have probable cause to believe the search will uncover evidence of a crime. *E.g., United States v. Pittman*, 411 F.3d 813, 817 (7th Cir. 2005). The warrantless search of a vehicle is permitted "if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained." *United States v. Ross*, 456 U.S. 798, 809 (1982). We view the evidence introduced in the suppression hearing in the light most favorable to sustaining the trial court's denial of defendant's motion to suppress. *See State v. Spears*, 184 Ariz. 277, 284, 908 P.2d 1062, 1069 (1996).

¶13 At the suppression hearing two officers testified and the search warrant, the affidavit thereto, and the property and evidence log for items seized were introduced into evidence and reviewed by the trial court. We agree with the state that there was evidence to support a finding that, to the extent there was a warrantless search, the automobile exception applied. The evidence the officers had prior to the search warrant issuing was there had been a drive-by shooting at an occupied residence and the family who lived in the house identified defendant as the shooter because defendant had been sending threatening texts to A.G., who was trying to break up with him. Defendant had stated he was going to kill A.G. and then kill himself. A.G. told officers that moments before the shooting happened defendant was on the phone threatening her. A.G. advised officers that she had seen him use his brother's identification to buy a vehicle and she knew he had a 9mm firearm. She stated that defendant had become very possessive and on two other occasions he had fired the weapon around her when he was angry. She identified his vehicle to officers, including the license plate. Officers observed bullet holes in and around the residence. These circumstances were sufficient to support the trial court's finding that probable cause existed to believe that defendant's vehicle contained evidence of a crime - weapons or shell casings - related to a recent crime, the drive- by shooting. For this reason, the trial court is affirmed and we need not explore defendant's other theories supporting his request for a new suppression hearing.

CONCLUSION

¶14 Defendant's convictions and sentences are affirmed.