

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RAFAEL RAY WILLIAMS, *Appellant*.

No. 1 CA-CR 17-0532
FILED 8-14-2018

Appeal from the Superior Court in Maricopa County
No. CR2016-132355-001
The Honorable Justin Beresky, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Jesse Finn Turner
Counsel for Appellant

STATE v. WILLIAMS
Decision of the Court

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Lawrence F. Winthrop joined.

P E R K I N S, Judge:

¶1 Rafael Ray Williams appeals his conviction and sentence for forgery, arguing that because his confession resulted from an illegal arrest it should have been suppressed before trial. For the reasons stated below, we affirm Williams' conviction and resulting sentence.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On June 1, 2016, a liquor store owner called Detective Kim of the Phoenix Police Department and said that he had witnessed Williams cash a bad check at his store. According to the store owner, Williams was a regular: in the past several months, he had cashed fourteen checks there. The owner gave Detective Kim a copy of Williams' identification card, which he had previously scanned. He also gave Detective Kim a copy of the check. When Detective Kim saw the check, he recognized it as a forgery because he had worked on at least three other cases involving similar checks. Detective Kim then called a representative of the company that owned the account listed on the check, and the representative confirmed that they had not issued the check and that it was a forgery. Detective Kim was able to pull up Williams' photo, either from the Motor Vehicle Department or from a criminal database, and compiled a photo line-up for the owner. The owner immediately and confidently picked out Williams correctly. With this information, Detective Kim determined that he had probable cause for an arrest, and told Detective Louisoder, also from the Phoenix Police Department, that there was probable cause to arrest Williams for forgery.

¶3 Detective Louisoder did not get a warrant for Williams' arrest. Instead, knowing that Williams was on probation, he coordinated with the Adult Probation Department ("APD") to make the arrest together. Under the terms of his probation, Williams agreed to "submit to search and seizure of person and property by the APD without a search warrant," but these terms do not extend to other law enforcement agencies. Detective Louisoder went to Williams' home and waited for a probation officer to

STATE v. WILLIAMS
Decision of the Court

arrive. Together, they approached the front door and knocked. When Williams opened the door, Detective Louisoder told Williams he was under arrest. Then, Detective Louisoder and the probation officer stepped into Williams' home and arrested him.

¶4 Detective Kim brought Williams to the police station and advised Williams of his *Miranda* rights before beginning the interview. During the interview, Williams confessed that he knew it was a "fake" when he cashed the check.

¶5 Before trial, Williams moved to suppress his confession as tainted by an illegal arrest. Williams argued that the arrest was illegal because Detective Louisoder arrested him inside his home without a warrant. The trial court found that the arrest was illegal, but that the confession was not tainted by the illegal arrest. The court thus admitted the confession into evidence. Williams was subsequently convicted of forgery. Williams' only argument on appeal is that the trial court erred when it admitted his confession.

DISCUSSION

¶6 "The admissibility of a confession following an illegal arrest is a mixed question of law and fact." *State v. Boteo-Flores*, 230 Ariz. 551, 554, ¶ 11 (App. 2012). Therefore, we give deference to the court's factual findings but review the ultimate legal decision de novo. *State v. Wyman*, 197 Ariz. 10, 13, ¶ 5 (App. 2000). On an appeal from a ruling on a motion to suppress, we consider only the evidence presented at the suppression hearing, and we view the evidence in the light most favorable to upholding the trial court's ruling. *Boteo-Flores*, 230 Ariz. at 552, ¶ 2. For purposes of this appeal, the State concedes the arrest was illegal. Therefore, we assume without deciding that the arrest was illegal.

¶7 A confession made following an illegal arrest is admissible only if the confession was "sufficiently an act of free will to purge the primary taint of the unlawful invasion." *State v. Reffitt*, 145 Ariz. 452, 457 (1985). As a threshold matter, if the statement was made involuntarily, it may not be admitted. *Taylor v. Alabama*, 457 U.S. 687, 690 (1982). Even if the statement was made voluntarily, it may still retain the taint of an illegal arrest. A court determining whether a confession has been purged of the taint of an illegal arrest will also look at other factors on a case-by-case basis, including "the temporal proximity between the illegal arrest and the confession," "the presence of intervening circumstances," and "the purpose and flagrancy of [the] misconduct." *Boteo-Flores*, 230 Ariz. at 554, ¶ 12.

STATE v. WILLIAMS
Decision of the Court

¶8 In this case, the threshold requirement has been met because Williams' confession was voluntary: Williams was made aware of his rights with a *Miranda* warning and chose to waive them. Thus, we proceed to evaluate the relevant factors to determine whether the confession retained the taint of the illegal arrest.

¶9 Williams was taken to the police station for questioning immediately after his arrest, so he made the confession relatively soon after he was arrested. This weighs slightly against admissibility. *See Reffitt*, 145 Ariz. at 459 ("[T]he temporal proximity factor is often the least helpful.").

¶10 The trial court found that there were no intervening circumstances. However, intervening circumstances include whether the arrest was made with probable cause. *Id.* While the trial court did not explicitly find that there was probable cause for the arrest, the record indicates that the evidence gathered before the arrest established such probable cause. In addition, Williams does not argue that the arrest lacked probable cause. The presence of probable cause in this case is an intervening circumstance that weighs in favor of admissibility.

¶11 Williams argues that the illegal arrest was a particularly flagrant example of an officer intentionally skirting the warrant requirement, and for this reason this factor should weigh heavily against admissibility. When other courts have considered this factor, they generally look to whether the purpose of the misconduct was to secure evidence unlawfully, particularly in cases where there was no probable cause for the arrest. *See, e.g., Taylor*, 457 U.S. at 693 ("[T]he police effectuated an investigatory arrest without probable cause . . . and involuntarily transported petitioner to the station for interrogation in the hope that something would turn up."); *Boteo-Flores*, 230 Ariz. at 555, ¶ 14 (officers "kept [defendant] in custody in order to interrogate him further, thereby exploiting the illegal arrest"). In this case, the evidence does not suggest that the detectives' purpose in arresting Williams in his home without a warrant was to illegally obtain evidence. Instead, as the trial court stated, it appears that the detectives believed they could legally bypass the need for a warrant if they made the arrest with Williams' probation officer. In addition, as discussed above, there is no question that there was probable cause for the arrest. Because the misconduct was not particularly flagrant and was not done to illegally obtain evidence, this factor weighs in favor of admissibility.

¶12 In sum, while the confession's temporal proximity to the illegal arrest weighed against admissibility, the intervening circumstances

STATE v. WILLIAMS
Decision of the Court

and the purpose and flagrancy of the misconduct control here. For these reasons, we hold that the taint of the illegal arrest was purged from the confession.

CONCLUSION

¶13 Because Williams' confession was not tainted by the illegal arrest, we affirm the trial court's ruling admitting the confession into evidence. We also affirm Williams' conviction and resulting sentence.



AMY M. WOOD • Clerk of the Court
FILED: AA