IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

KATHLEEN STILWELL, *Appellant*.

No. 1 CA-CR 18-0064
FILED 1-15-2019

Appeal from the Superior Court in Maricopa County
No. CR2017-122194-001
The Honorable Christopher Coury, Judge
The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Nicholas Chapman-Hushek
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Mark E. Dwyer
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Paul J. McMurdie delivered the decision of the Court, in which Judge Randall M. Howe and Judge Jennifer B. Campbell joined.

M c M U R D I E, Judge:

¶1 Kathleen Stilwell appeals her convictions and sentences for possession of dangerous drugs and drug paraphernalia. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 On the morning of May 15, 2017, a Glendale police officer responded to a "non priority" call that a woman was passed out or sleeping behind the wheel of a vehicle in a residential area. The caller expressed some concern about burglaries in the area and wanted an officer to check on the woman and her vehicle.

¶3 When the officer arrived at the scene of the call, he observed a "white truck parked on the west side of the road facing southbound." The vehicle was legally parked next to the curb in an area directly exposed to the morning sunlight and the officer could see someone inside it. The officer exited his patrol car and approached the vehicle from the driver's side, where he saw Stilwell seated in the driver's seat through the mostly open driver-side window. Stilwell, still buckled in her seatbelt, was leaning over to her right side, her head tilted towards her right shoulder. She was dressed in a black long-sleeve sweater, black pants, and boots, and the officer noticed Stilwell was sweating and her skin appeared flush.

¶4 Unable to tell if she was sleeping or unconscious, the officer, in a normal speaking volume, identified himself and asked Stilwell if she was okay. Stilwell did not respond. His concern raised, the officer decided to open the driver-side door to check on Stilwell. As the officer opened the

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[1] In reviewing the denial of a motion to suppress, we consider only the evidence presented at the suppression hearing and view that evidence in the light most favorable to sustaining the superior court's decision. *State v. Mendoza-Ruiz*, 225 Ariz. 473, 474, ¶ 2, n.1 (App. 2010).

door, however, Stilwell "popped right up," and in that moment the officer saw what he immediately recognized as a large methamphetamine pipe lying next to Stilwell's right knee. The officer removed Stilwell from the vehicle, handcuffed her, and had her sit on the curb. Upon returning to the vehicle, the officer also noticed a small bag containing what he recognized to be methamphetamine lying next to the pipe. The officer seized both items and returned to the curb to question Stilwell. After she was given *Miranda*[2] warnings, Stilwell admitted the pipe and methamphetamine were hers.

¶5 Before trial, Stilwell moved to suppress all evidence seized after the officer opened her vehicle's door, arguing the officer conducted an unlawful, warrantless search of her vehicle by opening its driver-side door. In response, the State countered that the officer lawfully acted pursuant to the community caretaker and emergency aid doctrines—two recognized exceptions to the Fourth Amendment's warrant requirement. At the suppression hearing, the officer testified that his initial interactions with Stilwell were part of a welfare check, and he did not intend to investigate any criminal activity when he responded to the non-priority call. The officer also testified that he decided to open the driver-side door of Stilwell's vehicle only after he became worried Stilwell might need medical assistance.

¶6 After considering the evidence presented, the superior court found "that there was an objectively reasonable basis for [the officer] to believe that [Stilwell] was in need of immediate aid," and this reasonable belief justified the officer's decision to open the vehicle's door. Although the court did not specifically state which exception it believed the officer's conduct fell within, it nevertheless concluded the search was reasonable and denied the motion to suppress.

¶7 A jury ultimately found Stilwell guilty of possession of dangerous drugs and drug paraphernalia. The court suspended the imposition of Stilwell's sentence and placed her on probation for a term of 18 months. Stilwell timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes sections 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶8 Stilwell argues the superior court erred by denying her motion to suppress. Asserting the officer could not justify his actions under

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2 *Miranda v. Arizona*, 384 U.S. 436 (1966).

the community caretaking or emergency aid exceptions to the Fourth Amendment's warrant requirement, Stilwell contends the officer conducted an unlawful search by opening her vehicle's driver-side door. We disagree.

¶9 We review the denial of a motion to suppress evidence for an abuse of discretion, *Brown v. McClennen*, 239 Ariz. 521, 524, ¶ 10 (2016), but review *de novo* the superior court's ultimate legal conclusion that a search and seizure "complied with the dictates of the Fourth Amendment," *State v. Valle*, 196 Ariz. 324, 326, ¶ 6 (App. 2000). In doing so, we defer to a superior court's determination of witnesses' credibility, *see State v. Mendoza-Ruiz*, 225 Ariz. 473, 475, ¶ 6 (App. 2010), and uphold the court's ruling if it is legally correct for any reason, *State v. Huez*, 240 Ariz. 406, 412, ¶ 19 (App. 2016).

¶10 Both the United States and Arizona constitutions prohibit unreasonable searches. *Mendoza-Ruiz*, 225 Ariz. at 475, ¶ 7; *see also Katz v. United States*, 389 U.S. 347, 357 (1967). "However, 'because the ultimate touchstone of the Fourth Amendment is reasonableness,' those requirements are subject to certain exceptions." *State v. Organ*, 225 Ariz. 43, 46, ¶ 11 (App. 2010) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). One such exception is the "community caretaker" doctrine, which "allows admission of evidence discovered without a warrant when law enforcement engages in 'community caretaking functions' intended to promote public safety." *Mendoza-Ruiz*, 225 Ariz. at 475, ¶ 8.

¶11 The community caretaker exception derives "from a police officer's status as a 'jack-of-all-emergencies,' who is 'expected to aid those in distress . . . and provide an infinite variety of services to preserve and protect community safety.'" *Mendoza-Ruiz*, 225 Ariz. at 475, ¶ 9 (quoting *United States v. Rodriquez-Morales*, 929 F.2d 780, 784–85 (1st Cir. 1991)). These public safety functions are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Organ*, 225 Ariz. at 46, ¶ 12 (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)). But the community caretaking exception is not a blank check; it does not justify any intrusion of privacy that bares some remote connection to law enforcement's public safety duties. *See In re Tiffany O.*, 217 Ariz. 370, 377–78, ¶¶ 26–29 (App. 2007) (because a police officer had no need to do more than seize a purse to protect an individual from its contents, the community caretaker exception did not apply to a subsequent search of that purse). Instead, the exception only permits a warrantless search or seizure when such action is:

> suitably circumscribed to serve the exigency which prompted it . . . . The officer's . . . conduct must be carefully limited to achieving the objective which justified the [search]—the officer may do no more than is reasonably necessary to ascertain whether someone is in need of assistance [or property is at risk] and to provide that assistance [or to protect that property.]

Organ, 225 Ariz. at 47, ¶ 14 (alteration in original) (quoting *Tiffany O.*, 217 Ariz. at 376, ¶ 21). Moreover, our supreme court has held that the community caretaking exception is "grounded in the reduced expectation of privacy" associated with automobiles, and thus cannot be used to justify warrantless searches and seizures in other contexts. *State v. Wilson*, 237 Ariz. 296, 300, 301, ¶¶ 19, 24 (2015).

¶12 Stilwell maintains the officer did not have a reasonable basis for believing that she required assistance, and that consequently the officer lacked justification under the community caretaker exception to engage in a warrantless search of her vehicle by opening its driver-side door. "The reasonableness of a police officer's response in a given situation is a question of fact for the trial court." *Organ*, 225 Ariz. at 47, ¶ 16 (quoting *State v. Fisher*, 141 Ariz. 227, 238 (1984)).

¶13 We conclude the officer's decision to open Stilwell's driver-side door was a proper exercise of his community caretaking functions. As the officer testified, one responsibility of law enforcement is to conduct welfare checks on individuals who appear to be in distress. At the time the officer opened the vehicle's door, he knew Stilwell was leaning over in the driver's seat with her seatbelt still buckled, and that she had not responded to him calling out to her. Although it was early in the morning and Stilwell had rolled down the driver-side window, her vehicle was parked in direct sunlight, and the officer could see through the window that Stilwell was sweating and looked flushed. The officer testified that he opened the driver-side door only after Stilwell failed to respond to him, raising concerns for her safety. Based on these facts, the officer reasonably believed that Stilwell may have needed medical assistance and that he needed to open the vehicle door to ensure Stilwell was not in danger.

¶14 Stilwell contends the superior court erred by failing to interpret the community caretaking exception to require a "least restrictive option" analysis of the officer's conduct. We reject this argument. The reasonableness of a warrantless search or seizure under the community caretaking exception does not turn on whether law enforcement could have

served its public safety functions by less intrusive means; it turns on whether the means chosen were reasonable under the circumstances. *Cady*, 413 U.S. at 447 ("The fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, by itself, render the search unreasonable."). While Stilwell argues the officer could have taken other, less intrusive actions before opening her vehicle's door, we cannot say the officer did "more than [was] reasonably necessary" under the circumstances to determine Stilwell's condition. *Tiffany O.*, 217 Ariz. at 376, ¶ 21 (quoting *People v. Ray*, 981 P.2d 928, 937 (Cal. 1999)). We thus conclude the officer's decision to open the driver-side door of Stilwell's vehicle fell within the community caretaking exception and that it did not violate the Fourth Amendment. Accordingly, the superior court did not abuse its discretion by denying Stilwell's motion to suppress on this ground.[3]

CONCLUSION

¶15 For the foregoing reasons, we affirm Stilwell's convictions and sentences.

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

[3] Because we conclude the officer's actions were justified pursuant to the community caretaking exception, we need not address whether they were permissible under the emergency aid exception. *See State v. Simmons*, 238 Ariz. 503, 506, ¶ 10, n.6 (App. 2015).