IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ERIC SNYDER, *Appellant*.

No. 1 CA-CR 19-0199
FILED 3-3-2020

Appeal from the Superior Court in Yuma County
No. S1400CR201800204
The Honorable Roger A. Nelson, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Gracynthia Claw
Counsel for Appellee

Yuma County Public Defender's Office, Yuma
By Eugene Marquez
Counsel for Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Jennifer B. Campbell joined.

C A T T A N I, Judge:

¶1 Eric Snyder appeals his convictions and probation terms for one count of possession of marijuana and two counts of possession of drug paraphernalia. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 In February 2018, border patrol agents stopped Snyder as he was driving through a checkpoint. He was the owner and only occupant of the car. A drug-detecting canine alerted to Snyder's vehicle, and a border patrol agent directed Snyder to a secondary inspection area. After the agent obtained Snyder's consent, the canine sniffed the exterior of the car and alerted to the trunk. A border patrol agent searched the trunk and found an orange bag, which contained two small plastic bags with 65 milligrams of methamphetamine and 0.33 grams of marijuana. Snyder admitted that the orange bag belonged to him, and the State subsequently charged Snyder with several offenses, including possession of marijuana and two counts of possession of drug paraphernalia.[1]

¶3 After a two-day trial, a jury convicted Snyder of possession of marijuana and both counts of possession of drug paraphernalia. The superior court suspended sentence and placed Snyder on concurrent 24-month terms of supervised probation. Snyder timely appealed, and we have jurisdiction under A.R.S. § 13-4033(A).

DISCUSSION

I. Motion to Compel.

¶4 Snyder argues the superior court erred by denying his motion to compel supplemental discovery, and by doing so without first holding a

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[1] The indictment also included a charge of possession of a dangerous drug (methamphetamine), but that charge was ultimately dismissed after the jury was unable to reach a verdict and the court declared a mistrial.

hearing. Before trial, Snyder filed a motion to compel requested "[a]ll search and seizure raw data" from the checkpoint for the period of March 1, 2017, to March 1, 2018, including arrests, searches during secondary inspections, and the "disposition of referral to secondary inspection" resulting from a canine alert. Snyder explained that he sought the information to determine whether the primary purpose of the checkpoint was immigration enforcement or drug enforcement. Snyder did not request an evidentiary hearing and did not object after the superior court issued its decision without conducting one. Citing Arizona Rule of Criminal Procedure 15.1(g), the court denied Snyder's motion, finding that he had not demonstrated a "substantial need" for the discovery. We review this discovery ruling for an abuse of discretion. *State v. Tankersley*, 191 Ariz. 359, 368, ¶ 35 (1998), *abrogated on other grounds by State v. Machado*, 226 Ariz. 281, 283–84, ¶¶ 11–16 (2011).

¶5 Rule 15.1 of the Arizona Rules of Criminal Procedure governs the State's disclosure obligation. In large part, Rule 15.1 governs disclosure of material and information in the State's possession or control. *See* Ariz. R. Crim. P. 15.1(b), (f); *see also State v. Rienhardt*, 190 Ariz. 579, 585–86 (1997). For material outside the State's possession, a defendant may seek and the court may order additional disclosure not otherwise included in Rule 15.1, but the defendant must first (1) show a "substantial need" for the information to prepare the defense and (2) demonstrate that "the defendant cannot obtain the substantial equivalent by other means without undue hardship." *See* Ariz. R. Crim. P. 15.1(g).

¶6 The superior court did not abuse its discretion by denying Snyder's motion to compel supplemental discovery. Snyder does not contend that the information about the checkpoint was in the State's possession or control, and his motion failed to show either substantial need or inability to access the information by other means, as required to justify disclosure by court order under Rule 15.1(g). The motion offered no meaningful explanation or factual support for the premise that an otherwise-permissible border patrol checkpoint served a *primary* purpose of drug interdiction in violation of the Fourth Amendment. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 545, 555–62, 566–67 (1976) (affirming constitutionality of brief investigative stops at fixed border patrol checkpoints for immigration enforcement); *see also City of Indianapolis v. Edmond*, 531 U.S. 32, 37–38, 41–43, 47–48 (2000) (invalidating a suspicionless vehicle "drug checkpoint" program because its primary purpose was "ordinary criminal wrongdoing," but reaffirming the constitutionality of checkpoints primarily serving "special needs" purposes such as immigration and sobriety control). Without something more than vaguely

questioning the checkpoint's primary purpose, the motion did not make the required showing of substantial need. *Cf. State v. Kevil*, 111 Ariz. 240, 242 (1974) ("[M]ere 'fishing expeditions' are not countenanced.") (citation omitted).

¶7 Moreover, Snyder did not allege that he was unable to obtain the information by other means without undue hardship. The motion to compel did not recite, for example, any prior, unsuccessful attempts to obtain information on the checkpoint's primary purpose. Snyder thus failed to establish the second prong under Rule 15.1(g)(1).

¶8 Snyder's reliance on *United States v. Soto-Zuniga*, 837 F.3d 992 (9th Cir. 2016), is unpersuasive. In that case, the Ninth Circuit reversed the denial of a discovery request for statistics regarding the types and number of vehicle searches and arrests at a border patrol checkpoint. *Id.* at 998, 1002. But *Soto-Zuniga* involved a federal prosecution and information in the federal government's possession, so disclosure was required if the information was simply "material" to the defense. *Id.* at 1000–02; *see also* Fed. R. Crim. P. 16(a)(1)(E)(i). Even if *Soto-Zuniga* shows that the checkpoint statistics might be *material* to Snyder's defense, that case does not address or establish substantial need or inability to obtain the statistics by other means, which Snyder was required to demonstrate under Rule 15.1(g).

¶9 In sum, Snyder's motion to compel did not satisfy either of Rule 15.1(g)'s requirements. Accordingly, the superior court did not err by denying the motion as a matter of law without first holding a hearing *sua sponte*. *See* Ariz. R. Crim. P. 1.9(e); *State v. Neese*, 239 Ariz. 84, 88, ¶ 15 (App. 2016).

II. Motion to Suppress.

¶10 Next, Snyder argues that the superior court erred by denying his motion to suppress evidence found in his car, and by doing so without holding an evidentiary hearing. Snyder's suppression motion acknowledged that, after he was stopped at an immigration checkpoint, a canine twice alerted to his vehicle, and methamphetamine and marijuana were found in a bag in his trunk. The motion stated that the information requested in the motion to compel "would shed light on the propriety of the search," but the only asserted legal basis for suppression was that a warrant was required to search Snyder's vehicle. The court summarily denied suppression, reasoning that no warrant was required because the canine's alert provided probable cause for a lawful search consistent with

the automobile exception to the warrant requirement. *See Carroll v. United States*, 267 U.S. 132, 153–54 (1925) (creating the automobile exception to the warrant requirement, which permits a warrantless search of a vehicle based on probable cause that the vehicle contains contraband). We review de novo the superior court's suppression ruling, including the court's ultimate legal conclusions regarding whether a search "complied with the dictates of the Fourth Amendment." *State v. Valle*, 196 Ariz. 324, 326, ¶ 6 (App. 2000).

¶11 The federal and state constitutions protect individuals against unreasonable searches and seizures, and evidence collected in violation of these constitutional provisions is subject to suppression. U.S. Const. amend. IV; Ariz. Const. art. 2, § 8; *see also Terry v. Ohio*, 392 U.S. 1, 8–9 (1968); *State v. Valenzuela*, 239 Ariz. 299, 302, ¶ 10 (2016). Subject to a few established exceptions, warrantless searches are presumptively unreasonable under the Fourth Amendment. *Schneckloth v. Bustamante*, 412 U.S. 218, 219 (1973); *State v. Fisher*, 141 Ariz. 227, 237 (1984). Under the automobile exception to the warrant requirement, however, "[t]he police may search an automobile and the containers within it [without a warrant] where they have probable cause to believe contraband or evidence is contained." *California v. Acevedo*, 500 U.S. 565, 580 (1991). And a drug-detecting canine's exterior sniff of a vehicle is not itself a search and thus does not implicate the warrant requirement. *State v. Teagle*, 217 Ariz. 17, 27, ¶ 36 n.7 (App. 2007).

¶12 Despite the suppression motion's allegation that the search was improperly conducted without a warrant, Snyder now asserts that his "entire challenge was whether the stop itself—the federal checkpoint—was justified." But his motion to suppress only challenged the propriety of performing the search without a warrant. And the record reflects—and Snyder's motion acknowledged—that the drug-detecting canine alerted to Snyder's car twice. Those alerts provided probable cause to search the vehicle, *see Teagle*, 217 Ariz. at 27, ¶ 36 n.7, which justified a warrantless search consistent with the automobile exception. *See Acevedo*, 500 U.S. at 580. Thus, the superior court did not err by determining that the search complied with the Fourth Amendment.

¶13 Snyder's challenge to the superior court's failure to conduct an evidentiary hearing is similarly unavailing. Because Snyder never raised this issue in superior court, we review only for fundamental, prejudicial error. *State v. Escalante*, 245 Ariz. 135, 138, ¶ 1 (2018); *see also Neese*, 239 Ariz. at 88, ¶ 15. And here, although the superior court is authorized to set a suppression motion for evidentiary hearing, *see* Ariz. R. Crim. P. 1.9(e), the

court need not do so if the motion does not present a factual dispute requiring resolution through an evidentiary hearing. *See State v. Riley*, 196 Ariz. 40, 44, ¶ 8 (App. 1999); *see also State v. Nilsen*, 134 Ariz. 433, 435–36 (App. 1982). Snyder's suppression motion did not contest any material fact related to the canine's alerts, *see Teagle*, 217 Ariz. at 27, ¶ 36 n.7, and he provided no factual support for his allegation that the stop at the checkpoint was constitutionally improper. Because the search issue exclusively raised questions of law, the court did not err by deciding the motion without *sua sponte* conducting an evidentiary hearing.

CONCLUSION

¶14 For the foregoing reasons, we affirm Snyder's convictions and sentences.

AMY M. WOOD • Clerk of the Court
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