IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

MICHAEL SCOTT HICKMAN, *Appellant*.

No. 1 CA-CR 19-0261
FILED 5-28-2020

Appeal from the Superior Court in Maricopa County
No. CR 2018-111409-001
The Honorable Michael J. Herrod, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Andrew Reilly
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Aaron J. Moskowitz
Counsel for Appellant

MEMORANDUM DECISION

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

C A M P B E L L, Judge:

¶1 Michael Hickman appeals his convictions and sentences for identity theft, credit card theft, and possession of drug paraphernalia. For the following reasons, we affirm.

BACKGROUND[1]

¶2 Receiving a dispatch report concerning a man "yelling" and "scaring people" at a shopping center, a patrol officer drove to the location and spotted a man matching the subject's description—Hickman. As the officer approached, Hickman explained, without prompting, that he had been arguing over the phone with his girlfriend. Although Hickman stated he was "under control" and leaving shortly, the officer asked him to provide identification. Hickman complied. Before relaying the information to dispatch for a warrants check, the officer asked Hickman whether he had any weapons, which he denied.

¶3 Moments later, a second patrol vehicle arrived at the scene. While the second officer spoke with Hickman, the first officer provided Hickman's information to dispatch. The second officer instructed Hickman to remove his hands from his pockets, and the first officer asked whether Hickman had anything illegal on his person. Initially, Hickman demurred, expressing frustration that he "could potentially get in trouble" and stating he "want[ed] to go." The officer repeated the question. Hickman responded, "It's a pipe, dude, it's a pipe." The officer asked whether it was a "meth pipe," and Hickman answered, "yes."

¶4 At that point, the officer stated he was going to place Hickman in handcuffs, search his person, and remove the pipe. In response, Hickman pulled the pipe from his jacket pocket, stating, "just take the pipe." After placing the pipe with Hickman's other belongings, the officer began

---

[1] We view the facts in the light most favorable to sustaining the verdicts. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013).

searching Hickman's person. While searching, the officer received a communication from dispatch, prompting Hickman to declare, "see no warrants, I'm good." The officer responded, "they're looking still," and again provided dispatch with Hickman's identifying information. When dispatch again asked for Hickman's identifying information, the officer questioned whether the identification card Hickman provided was "real."

¶5 The officer shifted his search to Hickman's belongings, prompting Hickman to state that he found some of his bags behind a store, so he did not know their contents. While examining one bag, the officer noted that it contained "a few IDs and stuff." When the officers questioned some of the purchases in Hickman's possession, he admitted that he had used another person's credit card, stating he had found the card behind the store with the bags.

¶6 The State charged Hickman with one count of aggravated identity theft (Count 1), one count of identity theft (Count 2), one count of credit card theft (Count 3), and one count of possession of drug paraphernalia (Count 4). The State also alleged aggravating circumstances and that Hickman had six prior felony convictions.

¶7 After a five-day trial, a jury found Hickman guilty of one count of identity theft, credit card theft, and possession of drug paraphernalia. The jury returned a not guilty verdict on the count of aggravated identity theft. The jury also found two aggravating factors regarding identity and credit card theft. After finding Hickman had four prior felony convictions, the superior court sentenced him to concurrent, presumptive sentences on each count. Hickman timely appealed.

DISCUSSION

I. Denial of Motion to Suppress

¶8 Hickman contends the superior court improperly denied his pre-trial motion to suppress all evidence seized during his detention. The superior court conducted an evidentiary hearing on Hickman's motion, then denied the motion, finding: (1) Hickman was detained pursuant to a lawful investigatory stop, (2) the patrol officers' questions "were appropriate," (3) Hickman did not have to answer whether he had any contraband in his possession, and (4) Hickman's answer provided probable cause to arrest.

¶9 On appeal, Hickman does not contest the legality of the initial investigative stop. Nor does he dispute that the officers had probable cause

to arrest and search him once they discovered his methamphetamine pipe. Instead, he argues that the patrol officer's question regarding possession of contraband unlawfully expanded and extended the scope of the otherwise lawful investigatory stop, rendering all subsequently seized evidence inadmissible under both the federal and state constitutions.

¶10 We review the denial of a motion to suppress for an abuse of discretion, considering only the evidence presented at the suppression hearing and viewing those facts in the light most favorable to sustaining the superior court's decision. *State v. Cornman*, 237 Ariz. 350, 354, ¶ 10 (App. 2015); *State v. Mendoza-Ruiz*, 225 Ariz. 473, 474, ¶ 2 n.1 (App. 2010). We review de novo, however, 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 conducting our review, we defer to the superior court's determination of witnesses' credibility, *Mendoza-Ruiz*, 225 Ariz. at 475, ¶ 6, and we will uphold the court's ruling if it is legally correct for any reason. *State v. Huez*, 240 Ariz. 406, 412, ¶ 19 (App. 2016).

¶11 The federal and state constitutions protect individuals against unreasonable searches and seizures, U.S. Const. amend. IV; Ariz. Const. art. 2, § 8, and "any evidence collected in violation" of these provisions "is generally inadmissible in a subsequent criminal trial."[2] *State v. Valenzuela*, 239 Ariz. 299, 302, ¶ 10 (2016). While a law enforcement official may "briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot," *State v. Evans*, 237 Ariz. 231, 234, ¶ 7 (2015) (internal quotation omitted), "an investigative detention must be temporary and last no longer than is necessary to effectuate" its purpose. *Florida v. Royer*, 460 U.S. 491, 500 (1983). When an officer lacks probable cause, "duration is an essential element in determining whether the initially lawful intrusion takes on the characteristics of an unlawful detention." *State v. Sweeney*, 224 Ariz. 107,

[2] To the extent Hickman argues that Article 2, Section 8, of the Arizona Constitution affords him greater protection against warrantless searches than the Fourth Amendment, we note the supreme court has consistently held Arizona's constitutional protections are "coextensive with Fourth Amendment analysis," except Arizona has "more expansive protections . . . concerning officers' warrantless physical entry into a home." *State v. Hernandez*, 244 Ariz. 1, 6, ¶ 23 (2018); *see also State v. Hummons*, 227 Ariz. 78, 82, ¶ 16 (2011). Because the search at issue occurred in a public shopping center, the exclusionary rule applies no more broadly under the state constitution than the federal constitution in this case.

112, ¶ 17 (App. 2010) (internal quotation omitted). "To determine the reasonableness of the length of a detention, we must consider the degree of intrusion on an individual's privacy and weigh that against the purpose of the [detention] and the diligence with which the officer pursued that purpose." *Id*. at ¶ 18.

¶12 In this case, it is uncontroverted that the patrol officers approached Hickman to investigate a report of disorderly conduct in a public shopping area. When the first patrol officer approached, Hickman volunteered that he had been upset and arguing on the phone, substantiating the underlying reported disturbance. Despite Hickman's assurances that he was "under control" and leaving the premises in short order, both the officer's request for identification and his question regarding weapons were appropriate. The purpose of the stop was to resolve the disturbance and ensure there was no threat to public safety, so the officer's efforts to ascertain whether Hickman was armed and had outstanding warrants, before letting him go, were reasonable.

¶13 While waiting for dispatch to complete the warrants check, the second officer instructed Hickman to remove his hands from his pockets, again to ensure the officers' safety. Although Hickman had already denied possessing any weapons, the placement of his hands inside his pockets justified the broader follow-up question regarding possession of contraband.

¶14 Contrary to Hickman's contentions, the patrol officer's question regarding possession of contraband did not unnecessarily extend the investigatory stop. As demonstrated by the body camera video admitted into evidence at the suppression hearing, the initial attempts to run a warrants check on Hickman's identification information were unsuccessful. When the officer posed the contraband question, less than three minutes into the encounter, it was unknown whether Hickman had an outstanding warrant. Because the purpose of the investigatory stop—to ensure Hickman posed no threat to the public—had not ended, the officer's contraband question did not convert the lawful detention into an unlawful, prolonged detention. *See Arizona v. Johnson*, 555 U.S. 323, 332-33 (2009). Therefore, the superior court did not abuse its discretion by denying Hickman's motion to suppress.

II. Imposition of Presumptive Sentences

¶15 Hickman argues the superior court improperly sentenced him to presumptive terms of imprisonment. Specifically, he contends the court

erred by failing to state on the record specific findings justifying the imposition of presumptive terms.

¶16 A sentence within statutory limits will not be disturbed unless the superior court abused its discretion by acting arbitrarily or capriciously. *State v. Cazares*, 205 Ariz. 425, 427, ¶ 6 (App. 2003). While a sentencing court must make specific factual findings justifying a departure from a presumptive sentence, A.R.S. § 13-702(C), there is no corresponding statutory requirement for factual findings when the court imposes a presumptive term. *State v. Winans*, 124 Ariz. 502, 505 (App. 1979) ("[I]t is only when the aggravating or mitigating circumstances are found to be true and are to be relied upon in varying from the presumptive sentence that the trial court must articulate factual findings, and reasons in support of the findings, at the time of the sentencing.").

¶17 Here, the superior court sentenced Hickman to concurrent, presumptive terms for each offense. Because the court imposed presumptive terms, it was not required to articulate its reasons for doing so. Stated differently, there is no requirement that a court "specifically state what information will not be used in the sentencing decision." *Id*. at 505. Therefore, Hickman has presented no basis for overturning his sentence.

CONCLUSION

¶18 For the foregoing reasons, we affirm Hickman's convictions and sentences.

COURT OF APPEALS
STATE OF ARIZONA

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