

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

ROBERT SALAIS, *Appellant*.

No. 1 CA-CR 19-0596
FILED 10-27-2020

Appeal from the Superior Court in Maricopa County
No. CR 2018-001641-001
The Honorable Jay R. Adleman, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Brian R. Coffman
Counsel for Appellee

The Susser Law Firm, PLLC, Chandler
By Adam M. Susser
Counsel for Appellant

STATE v. SALAIS
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Maurice Portley¹ joined.

CAMPBELL, Judge:

¶1 Robert Salais appeals from his conviction and sentence for misconduct involving weapons. For the following reasons, we affirm.

BACKGROUND²

¶2 After the victim of a drive-by shooting identified both Salais as the shooter and his black SUV as the vehicle used in the shooting, the lead investigating detective asked the neighborhood enforcement team (“NET”) to locate the SUV and arrest Salais. Because multiple witnesses to the drive-by shooting reported hearing at least four shots fired, and only two shell casings were recovered from the crime scene, the detective believed that shell casings, “or the weapon itself,” could be inside the SUV.

¶3 Two days after the victim identified Salais, NET officers spotted him and the SUV at a gas station. After Salais got out of the SUV and walked toward the back of his vehicle, officers approached and arrested him without incident. Once Salais was taken into custody, a NET officer contacted the lead detective, who instructed the officer to impound the SUV as evidence and have the vehicle towed to a police property yard. Before the vehicle was towed, NET officers conducted a search of the SUV and found a loaded 9-millimeter handgun underneath the driver’s seat, as well as loose ammunition in the rear-passenger compartment.

¹ The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

² 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).

STATE v. SALAIS
Decision of the Court

¶4 The State charged Salais with misconduct involving weapons.³ The State also alleged aggravating circumstances and that Salais had multiple historical prior felony convictions.

¶5 A jury found Salais guilty as charged. After finding Salais had two prior felony convictions, the superior court sentenced him as a category-three repetitive offender to a minimum term of eight years of imprisonment. Salais timely appealed.

DISCUSSION

¶6 As his sole issue on appeal, Salais contends that the superior court improperly denied his motion to suppress the evidence seized from his vehicle. In making this claim, Salais does not contest the legality of either his arrest or the seizure of his SUV. Instead, he argues only that no exigent circumstances justified a warrantless search of his car.

¶7 Before trial, Salais moved to suppress the evidence seized from his vehicle. At an evidentiary hearing on the motion, the lead detective and two NET officers testified about their involvement in the investigation and apprehension of Salais. In response to questioning by defense counsel, the detective acknowledged that he could have requested a search warrant based on the information the victim had provided him, but did not do so. The NET officers both testified that Salais was outside the SUV when officers approached him. And, once he was taken into custody, officers handcuffed Salais and placed him in the back of a patrol car.

¶8 Although one NET officer initially testified that he conducted an inventory search of the SUV, upon further questioning, he clarified that he searched the vehicle “for a weapon or any type of shell casings that may have been involved at the drive-by shooting scene,” not to catalogue valuable or dangerous items. But, had he not searched the SUV for evidence, the officer explained that he would have conducted an inventory search of the vehicle, pursuant to a mandatory department policy requiring such a search before any vehicle is towed.

¶9 After considering the evidence presented, the superior court found the search of the SUV lawful because: (1) the officers had a reasonable suspicion that the vehicle contained evidence related to the drive-by shooting; (2) the officers had a “genuine safety concern” that justified a warrantless search; and (3) even if the search was otherwise invalid, the

³ Although the State charged Salais with five other offenses, those counts were dismissed without prejudice on the State’s motion.

STATE v. SALAIS
Decision of the Court

handgun and ammunition inevitably would have been discovered during an inventory search before the officers impounded the vehicle. Accordingly, the court denied Salais' motion to suppress.

¶10 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 conducting our review, we defer to a superior court's determination of witnesses' credibility, *Mendoza-Ruiz*, 225 Ariz. at 475, ¶ 6, and uphold the court's ruling if it is legally correct for any reason. *State v. Huez*, 240 Ariz. 406, 412, ¶ 19 (App. 2016) (citation omitted). "[W]e may address the [S]tate's arguments to uphold the court's ruling even if those arguments otherwise could be deemed waived by the [S]tate's failure to argue them below." *Id.*

¶11 Both 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." *State v. Valenzuela*, 239 Ariz. 299, 302, ¶ 10 (2016). "[S]ubject only to a few specifically established and well-delineated exceptions, a search is presumed to be unreasonable under the Fourth Amendment if it is not supported by probable cause and conducted pursuant to a valid search warrant," *State v. Gant*, 216 Ariz. 1, 3, ¶ 8 (2007) (internal quotation omitted), and the State "carries the burden of proving that a warrantless search is constitutionally valid under an exception to the warrant requirement." *State v. Ontiveros-Loya*, 237 Ariz. 472, 476, ¶ 10 (App. 2015).

¶12 One exception to the warrant requirement is a "search incident to a lawful arrest." *Gant*, 216 Ariz. at 3, ¶ 9. "Based on the rationales of officer safety and preservation of evidence," officers are permitted to search an "arrestee's person and the area within his immediate control — that is, the area from within which he might gain possession of a weapon or destructible evidence." *Id.* (internal quotations omitted).

¶13 Although an NET officer testified that the SUV was searched incident to Salais' arrest, the record reflects that Salais was arrested outside his vehicle, secured by physical restraints, and placed inside the back of a patrol car before officers conducted the search. Therefore, he had no access to weapons or evidence that could justify a warrantless search of his SUV incident to his arrest. *See id.* at 4, ¶ 13 (concluding the search of the defendant's vehicle could not "be upheld as a lawful search incident to

STATE v. SALAIS
Decision of the Court

arrest” because the defendant already had been handcuffed and seated in the back of a locked patrol car); *see also Arizona v. Gant* (“*Gant II*”), 556 U.S. 332, 339 (2009) (holding the “search incident to a lawful arrest” exception does not apply when “there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search.”).

¶14 Nonetheless, when police officers have probable cause to believe “a vehicle lawfully in their custody” contains contraband, they may conduct a warrantless search, “even in the absence of exigent circumstances.” *State v. Reyna*, 205 Ariz. 374, 374, ¶ 1 (App. 2003) (quoting *United States v. Johns*, 469 U.S. 478, 484 (1985)). In other words, the warrantless search of a vehicle is “not unreasonable 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); *see also Gant II*, 556 U.S. at 343 (concluding “that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle”) (internal quotation omitted). Probable cause exists when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Buccini*, 167 Ariz. 550, 556 (1991) (internal quotation omitted).

¶15 In this case, the victim reported that Salais was driving the SUV while he committed the drive-by shooting, and multiple witnesses testified that the shooter fired at least four shots, though only two shell casings were found at the scene. Given the victim’s positive identification of both Salais and the SUV and the multiple witness reports regarding the number of shots fired, police officers had sufficient, reliable information to obtain a search warrant for the SUV. As defense counsel conceded at the evidentiary hearing, the officers “could have easily obtained a warrant” based on the victim’s account. Although Salais acknowledges that law enforcement officers had substantial reason to believe the SUV had been used to commit a crime, he contends the officers’ belief that the SUV likely contained contraband was unreasonable because more than two weeks had elapsed between the shooting and the search. Salais has not cited, and our research has not revealed, any authority to support the contention that the date of the underlying offense in this case was sufficiently remote to undermine the reasonableness of the officers’ belief. On this record, we conclude that the officers had probable cause to believe the SUV contained contraband and, given that evidentiary basis for conducting the warrantless search, the seized evidence was admissible.

STATE v. SALAIS
Decision of the Court

¶16 Further, under the inevitable discovery doctrine, “illegally obtained evidence is admissible ‘[i]f the prosecution can establish by a preponderance of the evidence that the illegally seized items [] would have inevitably been seized by lawful means.’” *State v. Jones*, 185 Ariz. 471, 481 (1996) (quoting *State v. Ault*, 150 Ariz. 459, 465 (1986)). Stated differently, “evidence obtained as a result of an unlawful search need not be suppressed when, in the normal course of police investigation and conduct, and absent the illicit conduct, the evidence would have been discovered inevitably or ultimately.” *State v. Acosta*, 166 Ariz. 254, 258 (App. 1990). Although evidence “obtained in violation of a constitutional right should be excluded to deter unlawful police conduct, it serves no purpose to put the government in a worse position than it would have been in had no police misconduct occurred.” *State v. Rojers*, 216 Ariz. 555, 559, ¶ 19 (App. 2007). Nonetheless, the exception applies only “if the evidence would have been lawfully discovered despite the unlawful behavior and independent of it.” *Brown*, 239 Ariz. at 525, ¶ 14.

¶17 Here, the uncontroverted evidence reflects that the police department’s written policy mandates an inventory search of any vehicle before it is towed.⁴ Consistent with this policy, an NET officer testified that had he not searched the SUV for contraband, he would have conducted an inventory search before the vehicle was towed to the property yard. Because the handgun and ammunition would have been discovered through the inventory search, the inevitable discovery doctrine applies in this circumstance. Therefore, the superior court did not err by denying Salais’ motion to suppress.

⁴ We take judicial notice of the police department’s inventory search policy, *see Rojers*, 216 Ariz. at 560, ¶ 26, which states in relevant part, “All vehicles that are to be towed that come under the control of officers will be inventoried prior to the tow.”

STATE v. SALAIS
Decision of the Court

CONCLUSION

¶18 For the foregoing reasons, we affirm.



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