

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALEXANDER PHILLIPS MILLS, *Appellant*.

No. 1 CA-CR 23-0437

FILED 11-26-2024

Appeal from the Superior Court in Maricopa County
No. CR2022-001748-001
The Honorable David W. Garbarino, Judge

AFFIRMED

COUNSEL

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

Bain & Lauritano, PLC, Phoenix
By Sheri M. Lauritano
Counsel for Appellant

STATE v. MILLS
Decision of the Court

MEMORANDUM DECISION

Judge Anni Hill Foster delivered the decision of the Court, in which Presiding Judge Cynthia J. Bailey and Judge Angela K. Paton joined.

F O S T E R, Judge:

¶1 Defendant Alexander Mills appeals his convictions contending the superior court erred by admitting evidence from an unlawful search. The superior court found the totality of the circumstances provided the Arizona Department of Public Safety gang enforcement detectives (“detectives”) reasonable suspicion to search Mills. For the reasons discussed below, this Court affirms.

FACTS AND PROCEDURAL HISTORY

¶2 At approximately 9:45 p.m. on April 8, 2022, detectives were working Arizona Bike Week, a motorcycle rally, at the request of another law enforcement agency due to concerns over potential violence by outlaw motorcycle gang (“gang”) members. The detectives observed Mills operating a motorcycle without a license plate light and pulled him over. Mills was wearing a sleeveless leather vest, generally referred to as a “cut.” The back of the cut contained various patches identifying Mills’ affiliation with the Unforgiven Renegades, a known gang.

¶3 The lead detective contacted Mills and directed him to place his hands on his helmet. The detective informed Mills that the license plate light was missing on the bike and that was the reason for the stop. In response to the detective’s statement, Mills swiftly moved his hands toward the front of his chest. Simultaneously, the detective asked Mills if he was carrying any weapons. Mills replied, “No I’m good.” The detective then asked Mills to place his hands back on his helmet. Mills complied. The detective reached in front of Mills’ cut, touching the zipper area. But before the detective could do anything further, Mills reached for his right pocket and revealed a knife.

¶4 The detective took the knife and began to feel around the cut’s left pocket. The detective then told Mills “don’t move . . . I feel a pistol right here.” A different detective, observing the search, questioned Mills as to why he did not answer truthfully about carrying a weapon. Mills did not

STATE v. MILLS
Decision of the Court

respond but later admitted he was a prohibited possessor. The detective conducting the search arrested and *Mirandized* Mills.

¶5 A grand jury indicted Mills on three counts of weapons misconduct.¹ Mills moved to suppress the gun arguing the search violated the Fourth Amendment. U.S. Const. amend. IV. After a two-day evidentiary hearing, the court denied the motion. The court found that the detectives reasonably feared for their safety as “the apparent danger to the Detectives increased exponentially within a matter of seconds.”

¶6 In September 2023, Mills and the State agreed to submit the case to the court on the record, including the testimony from the suppression hearing. The court found Mills guilty of two counts of weapons misconduct and sentenced him to a term of 4.5 years with 92 days of credit at the Arizona Department of Corrections for the first count and 45 days in Maricopa County Jail with 92 days of credit served as to Count 3.

¶7 Mills timely appealed. This Court has jurisdiction under Article 4, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1), 13-4031 and 13-4033(A).

DISCUSSION

¶8 Mills argues that the detectives had no reasonable suspicion to conduct a warrantless search and that the seized gun was therefore inadmissible. This Court defers to the superior court’s factual findings absent an abuse of discretion when reviewing the denial of a motion to suppress evidence. *State v. Valle*, 196 Ariz. 324, 326, ¶ 6 (App. 2000). “[E]vidence presented at the evidentiary hearing and any reasonable inferences from that evidence, [is viewed] in the light most favorable to” the superior court’s ruling. *State v. Garcia-Navarro*, 224 Ariz. 38, 39, ¶ 2 (App. 2010). This Court reviews *de novo* the superior court’s legal findings in determining whether the search was constitutional under the Fourth Amendment. *Valle*, 196 Ariz. at 326, ¶ 6.

I. Officers conducted a valid investigatory stop.

¶9 The Fourth Amendment guarantees “[t]he right of the people to be secure . . . against unreasonable searches and seizures,” and that such rights “shall not be violated . . . but upon probable cause.” U.S. Const. amend. IV. But, a police officer may “stop and briefly detain a person for investigative purposes” known as a “*Terry* frisk.” *United States v. Sokolow*,

¹ The court dismissed Count 2 at the State’s request.

STATE v. MILLS
Decision of the Court

490 U.S. 1, 7 (1989) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). A “stop and frisk” is permissible when it meets two conditions: first, where it is “lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation,” *Arizona v. Johnson*, 555 U.S. 323, 326 (2009), and second, where the officer has a reasonable suspicion the person stopped is “armed and dangerous,” *id.* at 326-27. If the search is reasonable, any weapons an officer “seized may properly be introduced in evidence against the person” searched. *Terry*, 392 U.S. at 30. But evidence discovered from an unreasonable search must be suppressed as the “fruit of the poisonous tree.” *State v. Fornof*, 218 Ariz. 74, 76, ¶ 5 (App. 2008) (quoting *State v. Richcreek*, 187 Ariz. 501, 506 (1997)).

¶10 Mills argues the detectives conducted an unlawful stop because failure to drive without a license plate light is not by itself indicative of criminal activity. Rather, Mills reasons the detectives used his lack of a license plate lamp as an excuse to “pull over motorcycle riders at Arizona Bike Week to see if they were involved in criminal activity.” In other words, Mills argues the stop was pretextual and not related to criminal activity or a civil traffic violation.

¶11 An investigatory stop of a vehicle is a seizure and implicates the Fourth Amendment. *State v. Becerra*, 231 Ariz. 200, 202-03, ¶ 5 (App. 2013) (citation omitted). But an investigatory vehicle stop requires only reasonable suspicion that a driver “has committed an offense,” not probable cause. *State v. Kjolsrud*, 239 Ariz. 319, 322, ¶ 9 (App. 2016) (quoting *State v. Livingston*, 206 Ariz. 145, 147, ¶ 9 (App. 2003)); *see also Johnson*, 555 U.S. at 327. And while Mills invited the superior court to assess the detective’s reason for the stop, the subjective motives of an officer in a vehicle stop are not relevant. *See Whren v. United States*, 517 U.S. 806, 813 (1996) (“Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”).

¶12 Here, both statute and caselaw authorized the detectives to conduct a lawful stop of Mills for a traffic violation. State law prohibits a driver from operating a vehicle that 1) “[d]oes not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this article”; 2) would “endanger[] a person” and 3) “is equipped in any manner in violation of this article.” A.R.S. § 28-921(A)(1). State law also requires that “a tail lamp or a separate lamp shall be constructed and placed in a manner that illuminates with a white light the rear license plate and renders it clearly legible from a distance.” A.R.S. § 28-925(C). Mills made no argument in the superior court

STATE v. MILLS
Decision of the Court

or on appeal that his tail lamp was operating properly at the time the detectives pulled him over.

¶13 Detectives stopped Mills because his license plate was not illuminated. This Court finds no error in the superior court's finding that the traffic stop was lawful.

II. Officers had reasonable suspicion to search Mills.

¶14 Mills also argues the detectives had no reasonable suspicion to search him. Mills contends the only reason the detectives conducted a *Terry* frisk was because he wore a cut with patches.

¶15 A determination of reasonable suspicion that a person is armed and dangerous requires courts to consider an officer's actions under "the totality of the circumstances." *State v. Evans*, 237 Ariz. 231, 234, ¶ 8 (2015) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Totality of the circumstances includes consideration of factual and practical issues of how a "reasonable and prudent" person acts under the circumstances. *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). An officer "must derive 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Id.* (quoting *Cortez*, 449 U.S. at 417-18). An officer is not justified in conducting a pat down search because of a mere hunch, but "is entitled to draw from the facts in light of his experience." *Id.* (quoting *Terry*, 392 U.S. at 27); *see also State v. Teagle*, 217 Ariz. 17, 24, ¶ 26 (App. 2007) (an officer may rely on knowledge from specialized training and "common sense conclusions about human behavior" to establish particularized suspicion (quoting *Cortez*, 449 U.S. at 418)); *Gastelum v. Hegyi*, 237 Ariz. 211, 214, ¶ 11 (App. 2015) (when "an officer has [] reasonable suspicion both that criminal activity is afoot and that the individual is armed, the officer may conduct a *Terry* frisk without specifically assessing the likelihood that the individual is presently dangerous"). A traffic stop itself poses a safety concern for officers. *State v. Kaiser*, 204 Ariz. 514, 517, ¶ 6 (App. 2003) (officers may take reasonably necessary steps to protect their safety during an investigatory stop).

¶16 Here, the superior court heard from both detectives who testified to their training and experience as a part of the gang task force. The detectives were working in an area where an outlaw motorcycle event was occurring. Additionally, the detectives testified to their knowledge about the Unforgiven Renegades, a gang, which had a history of violent activity against other motorcycle clubs, innocent civilians and law enforcement officers. Footage presented at the evidentiary hearing showed that at the

STATE v. MILLS
Decision of the Court

time of the stop, Mills was wearing a four-piece-patched cut associated with the Unforgiven Renegades. Neither detective had previous contact with Mills but knew that gang members commonly carried weapons. Additionally, while the detectives testified, they did not initially see an outline of any weapon on Mills, the record indicates the detectives knew from experience that gang members conceal weapons in a pocket inside the cut. The detectives further testified regarding their knowledge about a shooting several weeks before this traffic stop, that involved the Unforgiven Renegades and another gang. Additionally, the detectives knew of a 2021 shooting incident where Unforgiven Renegades members were present and other instances of members being arrested for various crimes including weapons misconduct while wearing the group's patches.

¶17 During the evidentiary hearing, the court heard testimony from the detectives that when conducting a traffic stop, law enforcement officers look for indicators of danger. The detectives testified that based on their training, knowledge and experience indicators include a person “not listening to verbal commands, [] reaching around the vehicle or on their person, [and] looking around.” Mills’ cooperation does not, by itself, negate the detectives’ belief that Mills was armed and dangerous. *See State v. Romero*, 178 Ariz. 45, 50 (App. 1993) (“The fact that the suspects are apparently cooperative need not lessen an officer’s reasonable belief that the suspects are dangerous or undermine the appropriateness of an officer’s actions.”). Additionally, the observing detective testified that Mills’ argumentative tone indicated to him either Mills had no experience with law enforcement or he was deliberately being noncompliant. The detective testified Mills’ failure to fully interlace his fingers and place them on top of his head as instructed confirmed that he was being noncompliant. Based on these observations the detectives believed Mills posed a safety concern. Moreover, the detectives testified that because the traffic stop occurred at night, the poor lighting conditions along with Mills wearing black gloves created difficulty in seeing Mills’ hands.

¶18 The court found that the totality of circumstances supported denying Mills’ motion to suppress. The record supports the superior court’s finding that the search was lawful. The superior court did not abuse its discretion in denying Mills’ motion to suppress evidence.

STATE v. MILLS
Decision of the Court

CONCLUSION

¶19 For the reasons above, the superior court did not err by admitting evidence from the search and Mills' convictions are affirmed.



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