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See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
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PHILIP G. URRY, CLERK
BY: JT

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,) 1 CA-CR 08-1124
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JAMES EDWARD RYAN,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-118133-001 DT

The Honorable F. Pendleton Gaines, III, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Sherri Tolar Rollison, Assistant Attorney General
Attorneys for Appellee

Maricopa County Public Defender Phoenix
by Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Presiding Judge

¶1 James Edward Ryan ("Ryan") appeals his conviction and sentence for misconduct involving weapons. On appeal, Ryan

argues that the trial court erred in denying his motion to suppress evidence. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 We review the facts in the light most favorable to sustaining the verdict. *See State v. Stroud*, 209 Ariz. 410, 412, ¶ 6, 103 P.3d 912, 914 (2005).

¶3 On March 20, 2008, two Phoenix police officers were patrolling the area of 13th Avenue and Pima. At approximately 10:00 p.m., they observed two individuals standing at the corner of the intersection and instructed them to "move on." The officers drove around the block, returned to the intersection, and observed that a third individual, Ryan, had joined the group. Ryan walked away as the officers approached the group of men. Officer Z.C. instructed Ryan to stop, but he continued walking. Officer Z.C. drew his weapon and again ordered Ryan to stop. After being handcuffed, Ryan informed Officer Z.C. that he had a gun in his possession.

¶4 On March 28, 2008, a grand jury issued an indictment charging Ryan with misconduct involving weapons. Before trial, Ryan filed a motion to suppress the evidence seized during the search of his person on the basis that it was obtained in violation of the Fourth Amendment to the United States Constitution and Article II, Sections 8 and 33, of the Arizona Constitution. Following an evidentiary hearing, the trial court

denied the motion to suppress. After hearing testimony from Officer Z.C., the court summarily denied the motion, stating that "there is reasonable articulable suspicion." A jury trial commenced on November 4, 2008. The jury found Ryan guilty as charged and the court sentenced him to ten years' imprisonment in the Arizona Department of Corrections.

¶15 Ryan timely appeals from his conviction and sentence. We have jurisdiction pursuant to Arizona Constitution Article VI, Section 9 and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010),¹ and -4033(A) (2010).

DISCUSSION

¶16 Ryan argues that the trial court erred in failing to suppress the evidence seized at the time of his arrest. "We review the denial of a motion to suppress evidence for a clear abuse of discretion, viewing the evidence presented at the suppression hearing in the light most favorable to upholding the trial court's factual findings and reviewing its legal conclusions de novo." *State v. Esser*, 205 Ariz. 320, 322, ¶ 3, 70 P.3d 449, 451 (App. 2003); see also *State v. Newell*, 212 Ariz. 389, 396, ¶ 22, 132 P.3d 833, 840 (2006). Officers may make a limited investigative stop and detain an individual if there are objective facts raising a "reasonable suspicion" that

¹ We cite the current version of the applicable statutes because no revisions material to this decision have since occurred.

the suspect engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). "In deciding whether the police have a particularized and objective basis for suspecting that a person is engaged in criminal activity, [this court looks] at the 'whole picture,' or the 'totality of the circumstances.'" *State v. O'Meara*, 198 Ariz. 294, 295-96, ¶¶ 7, 10, 9 P.3d 325, 326-27 (2000) (citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). In examining the totality of the circumstances, we consider such objective factors as the defendant's appearance and conduct and the officer's relevant knowledge, experience, and training. *State v. Fornof*, 218 Ariz. 74, 76, ¶ 6, 179 P.3d 954, 956 (App. 2008).

¶7 In his brief, Ryan contends that *State v. Wyman*, 197 Ariz. 10, 3 P.3d 392 (App. 2000), is "identical" to the instant case. We disagree. In *Wyman*, a police officer responded to a report that two men were acting nervous outside of a Wal-Mart. *Id.* at 12, ¶ 3, 3 P.3d at 394. The two men walked away from the police officer while looking over their shoulders. *Id.* The police officer asked to talk to the men, but they continued walking. *Id.* The officer then yelled several more times for the men to stop walking, causing the men to ultimately approach the police officer. *Id.* The officer searched one of the men and found a gun. *Id.* At trial, Wyman moved to suppress the gun and the statements he made. *Id.* at 12-13, ¶ 4, 3 P.3d at 394-95. The

court denied the motion and found that, among others, the police officer had cause to believe that Wyman was committing the crime of carrying a concealed weapon. *Id.* On appeal, a panel of this court concluded that the officer had no reasonable suspicion for an investigatory stop and noted that “[t]he mere act of looking at and walking away from a police officer does not give rise to reasonable suspicion to stop and detain a person.” *Id.* at 13-15, ¶¶ 6, 13, 3 P.3d at 395-97.

¶18 Here, the additional circumstances surrounding the seizure of the gun found in Ryan’s possession distinguish this case from *Wyman*. On the evening in question, Officer Z.C. and his partner were patrolling this specific area of Phoenix in conjunction with a police operation relating to narcotics sales and weapons violations.² Officer Z.C. testified that he and his partner noticed a group of men standing closely together at the corner of the intersection. Based on Officer Z.C.’s training and experience, he suspected that the men were engaged in a drug transaction. As the officers approached the group, Ryan walked away. Officer Z.C. testified that he thought Ryan had a gun in his possession due to his baggie clothes, the location of his hands, the neighborhood, and the time of day. Fearful of being

² Officer Z.C. explained that the area was a high crime area, known for gangs, drugs, aggravated assaults, and homicides.

shot, Officer Z.C. drew his weapon and ordered Ryan to stop. Officer Z.C. handcuffed Ryan and found a gun in his waistband.

¶9 In light of the officers' knowledge of the ongoing criminal activity in this neighborhood and Ryan's actions, we conclude that the totality of the circumstances support the trial court's finding of reasonable suspicion.

CONCLUSION

¶10 For the above mentioned reasons, we affirm Ryan's conviction and sentence.

/s/

PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Judge

/s/

DONN KESSLER, Judge