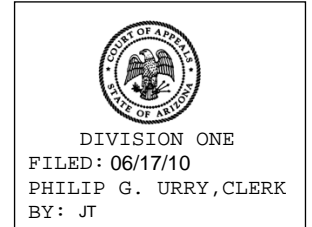


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0372
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
ALEXANDER GONZALEZ-GARCIA,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-182113-002 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 Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

Droban & Company, PC Anthem
By Kerrie M. Droban
Attorney for Appellant

H A L L, Judge

¶1 Alexander Gonzalez-Garcia (defendant) appeals from his convictions and sentences for one count of possession of marijuana for sale, one count of possession of dangerous drugs,

and one count of possession of drug paraphernalia. He contends that the trial court improperly denied his motion to suppress evidence. For the reasons that follow, we reject this argument and therefore affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 The evidence presented at the suppression hearing is as follows.¹ On December 26, 2007, Officer J.R. of the Phoenix Police Department responded to a report of a home invasion. The home-owner reported that two men armed with rifles had forced their way into her home, and she had fled and run to her neighbor's home. Several police units responded to the scene, and Officer J.R., with the assistance of other officers, conducted a "sweep" of the residence. Officer J.R. immediately noticed that the front door had been "kicked in," but the rest of the home appeared "very neat" and "organized." The officers quickly searched the entire home and did not find any victims, perpetrators, or other "evidence of illegal activity." Based on his experience with home invasions, in which "armed invaders" normally target "drug stash houses" and "human stash houses,"

¹ In reviewing a motion to suppress, we review only the facts presented to the superior court at the suppression hearing. *State v. Blackmore*, 186 Ariz. 630, 631, 925 P.2d 1347, 1348 (1996). We view those facts "in the light most favorable to sustaining" the superior court's decision. *State v. Dean*, 206 Ariz. 158, 161, ¶ 9, 76 P.3d 429, 432 (2003).

Officer J.R. believed the attack on this apparent "family residence didn't add up."

¶13 At that point, a patrol officer noticed a marijuana odor on the east side of the home, in the side yard adjacent to the house next door. The officers then conducted a second sweep of the residence to "make sure that [they] didn't miss anything important." During the second sweep, the officers determined the marijuana odor grew stronger as they approached the neighboring residence and that the strength of the odor indicated that a "large quantity" of marijuana was in that property. Based on his experience, Officer J.R. also concluded that the home invaders had probably targeted the wrong house and that they had most likely intended to "take-down [the] drug stash house."

¶14 Based on these conclusions, the officers shifted their attention to the neighboring residence and secured its perimeter. Officer J.R., accompanied by several other officers, approached the front door and "knocked and announced" that they were Phoenix police officers. While waiting for a response, the officers heard movement inside the residence and then heard a car alarm trigger in the garage. Believing that the car alarm could indicate either another victim "trying to get [] attention" or an invader who was attempting to escape, Officer J.R. viewed the situation as extremely volatile and urgent.

¶15 At that point, Ernesto Gonzalez, defendant's co-defendant, opened the front door. As Ernesto opened the door, an "incredibly strong" odor of marijuana wafted out. Ernesto was taken into custody and the officers entered the residence to "check the welfare" of the people inside. During the officers' protective sweep, they found defendant hiding inside a closet and took him into custody. The officers also observed numerous bales of marijuana.

¶16 Shortly thereafter, Detective B.B. of the Phoenix Police Department arrived at the scene. Detective B.B. could smell marijuana as he approached the house from the street, approximately eighteen to twenty feet away. He used this observation, in corroboration with Officer J.R.'s statements, as the basis for acquiring a search warrant of the residence. When Detective B.B. executed the search warrant, he discovered a black trash bag with the original wrappings that had been removed from the marijuana bales, small "sample" bags of marijuana, and eighty bales of marijuana, totaling 1672 pounds, in various stages of wrapping.

¶17 On January 4, 2008, defendant was charged by indictment with one count of possession of marijuana for sale, a class two felony, one count of possession of dangerous drugs for sale, a class two felony, one count of possession of drug paraphernalia, a class six felony, and one count of resisting

arrest, a class six felony. On April 22, 2008, defendant filed a motion to suppress all of the evidence seized from his home as well as any "derivative evidence." The trial court held a hearing on the matter and subsequently denied defendant's motion.

¶8 The matter proceeded to trial and the jury found defendant guilty of one count of possession of marijuana for sale, one count of the lesser-included offense of possession of dangerous drugs, and one count of possession of drug paraphernalia. The trial court sentenced defendant to concurrent presumptive terms that effectively result in a five-year sentence of imprisonment. Defendant timely appealed, and we have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003), 13-4031, and -4033(A)(1) (2010).

DISCUSSION

¶9 Defendant argues that the trial court erred by denying his motion to suppress evidence. Specifically, he contends that there were no exigent circumstances to warrant "the officers' warrantless entry into his home."

¶10 In reviewing a motion to suppress, we defer to the superior court's determinations of the credibility of the officers and the reasonableness of the inferences they drew.

State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996). We review, however, the superior court's legal decisions de novo. *Id.* We will not reverse a superior court's decision on a motion to suppress absent clear and manifest error. *State v. Dean*, 206 Ariz. 158, 161, ¶ 9, 76 P.3d 429, 432 (2003) (internal quotation omitted).

¶11 The United States and Arizona Constitutions protect persons from unreasonable searches and seizures. See U.S. Const. amends. IV, XIV; Ariz. Const. art. II, § 8. Police generally may not search a home or seize evidence without a warrant supported by probable cause. *Illinois v. McArthur*, 531 U.S. 326, 330 (2001); *State v. Smith*, 208 Ariz. 20, 22, ¶ 6, 90 P.3d 221, 223 (App. 2004); *Mehrens v. State*, 138 Ariz. 458, 460, 675 P.2d 718, 720 (App. 1983). Therefore, warrantless entries of the home are unlawful absent consent or exigent circumstances. *State v. Bolt*, 142 Ariz. 260, 265-66, 689 P.2d 519, 524-25 (1984). Exigent circumstances justifying a warrantless entry of a home include: response to an emergency, hot pursuit, potential destruction of evidence, potential violence, and flight. *State v. White*, 160 Ariz. 24, 32-33, 770 P.2d 328, 336-37 (1989). "While [the] mere incantation of the phrase 'exigent circumstance,' will not automatically validate a warrantless search, if there are articulable and particularized facts evidencing an exigency, a warrantless search is

justified." *State v. Stein*, 153 Ariz. 235, 238, 735 P.2d 845, 848 (App. 1987) (quotation omitted).

¶12 At the suppression hearing, Officer J.R. testified that he believed that the armed men mistakenly invaded a family residence and that defendant's home was the intended target. He testified that during his years of experience working as a police officer with the Drug Enforcement Bureau, he responded to approximately ten to twenty reports of a home invasion in which he later discovered the residence next door was a "stash house." The officer further testified that he believed the armed men, upon discovering their targeted home was the wrong residence, may have subsequently targeted the neighboring house and that other victims could be inside. In addition, Officer J.R. stated that when he heard the car alarm engage, he believed it could either have been a victim attempting to garner attention or one of the armed intruders attempting to escape.

¶13 In denying defendant's motion to dismiss, the trial court specifically found Officer J.R. and Detective B.B. "fully credible in all of their testimony." The trial court also found that the likely "presence in the immediate area of armed home invaders; the fleeing suspects as indicated by the car alarm; and the possible imminent destruction of evidence" presented exigent circumstances "to justify [the officers'] entry into [defendant's home] at that time, despite [their] lack of a

