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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 05/24/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 09-0918  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
JACQUARD RASHUN MERRITT, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-120318-004 DT

The Honorable Edward O. Burke, Judge

**AFFIRMED**

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Thomas Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
And Robert A. Walsh, Assistant Attorney General  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

Robert J. Campos & Associates, P.L.C. Phoenix  
By Robert J. Campos  
Attorneys for Appellant

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**T H O M P S O N, Judge**

¶1 Jacquard Rashun Merrit (defendant) appeals the trial court's denial of his motion to suppress evidence. For the following reasons, we affirm.

## I. FACTUAL AND PROCEDURAL HISTORY

¶2 In March 2007, a Southwest Airlines employee provided the Phoenix Police Department with a "ticket tip," reporting that defendant purchased a last-minute one-way ticket in cash for a flight from Birmingham, Alabama, to Phoenix's Sky Harbor Airport. Three detectives approached defendant and his co-passenger, Kendrick, at the baggage claim area in the airport. The detectives identified themselves and asked defendant and Kendrick if they would answer some questions.

¶3 Defendant told Detective Romo that he and Kendrick were "just here to visit the casinos" and admitted that he was carrying three or four thousand dollars. Kendrick likewise admitted that he had approximately five thousand dollars and pulled a large bundle of cash from his pants pocket. Kendrick explained that the cash was for shopping, to find a job, and to possibly move to Phoenix. Kendrick further stated that he had traveled to Phoenix to visit his cousin, Jeffrey, and that he and defendant intended to rent a car.

¶4 The detectives ended their inquiries, and defendant and Kendrick proceeded to a Budget car rental center near the airport. Meanwhile, the detectives researched defendant's criminal history in a nationwide database. They discovered that in 2005, law enforcement seized from defendant two large sums of cash, \$123,011 and \$41,378. The criminal records search also revealed that

defendant had been arrested for marijuana possession in Texas in 2002. Based upon the "ticket tip," the men's possession of unusually large sums of cash, the inconsistent versions of why the two men were in Phoenix, and the criminal history information, Sergeant Cope decided that his unit would investigate the two men further. He ordered subordinate officers to establish surveillance at the car rental facility.

¶15 Defendant and Kendrick left the facility in a Chevrolet Impala. Sergeant Cope and his fellow officers followed the Impala and observed defendant employing several counter-surveillance techniques, commonly used by drug-traffickers in order to detect whether they are being followed. For example, the men took indirect routes to Jeffrey's residence, crossed three lanes of traffic at one point, and engaged in several "evasive maneuvers."

¶16 Eventually, defendant and Kendrick arrived at and entered Jeffrey's residence on 87th Avenue in Phoenix. Later, undercover surveillance officers observed the men leave the residence in the Impala and arrive at a Circle K store, where they met several other men.

¶17 The officers continued their surveillance, and that evening, Sergeant Cope saw Jeffrey, Kendrick, and defendant leave Jeffrey's house together, with Jeffrey leading the way in a Pathfinder and Kendrick and defendant in the Impala. Both vehicles led the police to a Target store parking lot, where a Hispanic man

driving a Honda Civic led the vehicles to a residence located on Cheryl Drive.

¶18 Detective Lebel drove past the residence and observed Jeffrey parking the Pathfinder in front of the house. The Impala backed into the residence's driveway with its trunk closest to the garage door. Defendant, Jeffrey, and Kendrick stood near the back of the Impala, as the trunk was opening. The men entered the residence and Detective Lebel observed another man arrive and enter the residence.

¶19 Approximately twenty minutes later, the garage door opened and the trunk of the Impala popped open again. Defendant left the residence with Kendrick in the Impala. Detective Heimall followed the Impala as it left the residence and entered Peoria. Sergeant Cope contacted the Peoria police department and asked for marked patrol units to stop the Impala.

¶10 Officers Raith and Cousins ultimately stopped the Impala. Detective Heimall arrived at the stop a few moments later and detected a "strong odor of marijuana" emanating from the Impala. Officer Cousins informed Detective Heimall that he also smelled the scent of marijuana. At that point, Officer Cousins decided to secure defendant and Kendrick in handcuffs.

¶11 The state indicted defendant with one count of possession of marijuana for sale and one count of transportation of marijuana for sale in an amount exceeding the statutory threshold. Defendant

filed a motion to suppress "the evidence seized," arguing that the stop was an illegal stop and search in violation of Article 2, § 8 of the Arizona Constitution and the Fourth and Fourteenth Amendments to the U.S. Constitution. Specifically, defendant argued that the police lacked reasonable suspicion to stop his vehicle and that the doctrine of the fruit of the poisonous tree mandated suppression of the marijuana found in the vehicle trunk. The trial court conducted an evidentiary hearing, and ultimately ruled that reasonable suspicion justified the challenged investigative detention.

¶12 Thereafter, defendant failed to appear at several court proceedings, including several change of plea proceedings and his trial. Defendant was tried *in absentia*, resulting in the jury convicting him as charged. Defendant failed to appear for sentencing and the trial court issued a warrant for his arrest. Eighteen months later, when he appeared for an initial appearance on the bench warrant, the sentencing hearing was reset. The trial court sentenced defendant to concurrent presumptive five-year prison terms for both counts, a \$750 fine, and an order of restitution in the amount of \$3,479.71 to cover extradition expenditures.

¶13 Defendant timely appealed the judgment and sentence. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) §§ 12-

120.21(A)(1) (2003), 13-4031, and -4033(A)(2010).

## II. DISCUSSION

¶14 We view the evidence presented at a suppression hearing in the light most favorable to upholding the trial court's factual findings, but we review the trial court's legal conclusions de novo. *State v. Peters*, 189 Ariz. 216, 941 P.2d 228 (1997); *State v. Hackman*, 189 Ariz. 505, 943 P.2d 865 (App. 1997). We will not disturb the trial court's ruling on a motion to suppress unless the trial court "committed clear and manifest error." *State v. Spreitz*, 190 Ariz. 129, 145, 945 P.2d 1260, 1276 (1997). Defendant raises several arguments on appeal, which we consider in turn.

### A. Reasonable suspicion for the stop

¶15 A police officer "may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). "Although 'reasonable suspicion' must be more than an inchoate 'hunch,' the Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory detention." *State v. Teagle*, 217 Ariz. 17, 23-24, ¶ 25, 170 P.3d 266, 272-73 (App. 2007) (citing *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989)).

¶16 Defendant argues that the officers lacked reasonable suspicion to stop his vehicle. He notes that he was cooperative

with the officers at the airport and that his driving behavior was more consistent with a tourist who was simply lost and in need of directions, rather than a drug dealer who was trying to avoid surveillance. Defendant also complains that the State did not provide testimony at the suppression hearing about who provided the ticket tip or the provider's credibility. In sum, defendant argues the facts in this case "do not amount to reasonable suspicion."

¶17 We consider the "totality of the circumstances" in determining whether the police had an objective basis for suspecting that defendant was engaged in criminal activity. *State v. O'Meara*, 198 Ariz. 294, 295-96, ¶7, 9 P.3d 325, 326-27 (2000). First, the "ticket tip" notified officers that defendant purchased a last-minute one-way ticket in cash, a pattern recognized as one "employed by drug couriers presumably to avoid extended surveillance and to maintain anonymity." *U.S. v. Thomas*, 913 F.2d 1111, 1116 (4th Cir. 1990). Additionally, defendant's possession of thousands of dollars in cash in his pocket, including denominations of \$20 or less, is another circumstance giving rise to reasonable suspicion. *U.S. v. Frost*, 999 F.2d 737, 739-41 (3d Cir. 1993). When defendant and Kendrick were questioned in the airport, their travel plans were inconsistent with one another. *U.S. v. Baron*, 94 F.3d 1312 (9th Cir. 1996) (inconsistencies in stories contribute to reasonable suspicion). Defendant's criminal history also "contributes powerfully to the reasonable suspicion

calculus." *U.S. v. Simpson*, 609 F.3d 1140, 1147 (10th Cir. 2010)(emphasis omitted).

¶18 Upon leaving the airport, defendant engaged in counter-surveillance driving techniques, which are indicative of participation in criminal activity. *U.S. v. Del Vizo*, 918 F.2d 821, 826 (9th Cir. 1990). Finally, the officers' observations of the interaction between the men at the Cheryl Drive residence near the trunk of the Impala support a finding of reasonable suspicion. In light of these circumstances, we agree with the trial court that the officers had reasonable suspicion to conduct an investigative stop of defendant's vehicle.

#### **B. Probable cause and search of vehicle**

¶19 On appeal, defendant argues the police lacked probable cause to arrest him and that the search of his vehicle was illegal under the Fourth Amendment. However, defendant did not raise these issues until after the trial court excused the witnesses from the hearing. Specifically, defense counsel stated as follows:

Judge, just as I was sitting here, Judge, it didn't occur to me, and I don't think it occurred to anyone, but there is---if this was a traffic stop, these guys are already in custody, had been secured, and there are more than enough officers. And I was just reminded of *State versus Gant or Grant*.

¶20 In response, the trial court advised, "*Gant* is not what's before me right now. What I have is a motion based on reasonable suspicion." The court further noted that the parties had presented



no evidence regarding *Gant*, and concluded, "I'm not deciding it on *Gant* . . . This is not a case regarding *Gant*. This is not a case about probable cause and a warrantless arrest. This is about whether or not there was reasonable suspicion." The trial court then concluded that the officers had reasonable suspicion based on the totality of the circumstances.

¶21 Defendant argues the trial court abused its discretion in not deciding the *Gant* issue because although raised at the last minute, the issue was nevertheless raised and thus not waived on appeal. Defendant did not file a supplemental brief, nor were the witnesses questioned specifically about defendant's arrest or the search of his vehicle. These arguments were not sufficiently presented to the trial court or preserved for appeal. Accordingly, we decline to consider them.

### III. CONCLUSION

¶22 We affirm the trial court's denial of defendant's motion to suppress evidence.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

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PHILIP HALL, Presiding Judge

/s/

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LAWRENCE F. WINTHROP, Judge