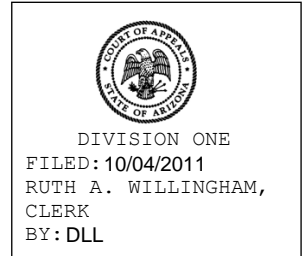


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 10-0782
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RANDY GALAS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-157086-001DT

The Honorable Roger E. Brodman, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

K E S S L E R, Judge

¶1 Randy Galas appeals his conviction for misconduct involving weapons. Galas argues the trial court erred in

denying his motion to suppress evidence obtained during a protective frisk. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 One morning in August 2009, the police received a call that domestic violence was in progress at an apartment complex. Two officers responded: D.M. and L.D. L.D. arrived first and found the victim. The victim told L.D. that she had been pushed by her boyfriend and that he ran away into another apartment in the complex. She told L.D. the offender's name, which was not Galas's name, described him as a Hispanic male, and gave his height and weight. L.D. radioed this information to other officers, but he made no mention of a weapon having been used. L.D. continued gathering information from the victim, and D.M. immediately went to the other apartment without first meeting L.D.

¶3 D.M. went upstairs to the other apartment. D.M. immediately noticed the apartment had a broken window and it raised his awareness, even though he did not know whether it was related to the domestic violence incident. D.M. arrived at the apartment and heard the doorknob jiggle as if someone locked the door. The door opened and Galas exited, followed by a female and male. Both Galas and the male matched the description of the suspect and wore baggy clothing. Galas, the other male, and the female saw D.M., and Galas and the other

male tried to reenter the apartment. Galas was the second to reenter, but the door shut before he could do so. D.M. testified the woman looked frightened.

¶4 D.M. told Galas to stop and put him in a wristlock because he thought he was going to leave. D.M. did this because he did not want to give Galas an opportunity to escape and he had a better chance to control the situation. As D.M. placed Galas in a wristlock, Galas looked around for a route of escape and tensed up. Galas looked both nervous and surprised to be placed in the wrist lock. D.M. then frisked Galas and found a gun in his waistband.

¶5 D.M. and L.D. arrested Galas for misconduct involving weapons, a class 4 felony, because Galas was a prohibited possessor due to prior felony convictions. Galas filed a motion to suppress, arguing that D.M. had no reasonable belief that Galas was armed and dangerous. Rather, Galas argued the frisk was the result of an impermissible routine procedure. Galas also argued that the gun would not have been inevitably discovered. The trial court held a hearing on the motion.

¶6 D.M. testified that he would have waited for assistance from L.D. before he went to the apartment had he believed the suspect used a gun, and he admitted there was no mention of a weapon used in the incident. D.M. also testified he detained Galas because Galas fit the suspect's description,

the second male hurried back into the apartment, and D.M. believed Galas was trying to flee because Galas tried to reenter the apartment.

¶7 D.M. said he had no reason to believe Galas had a weapon until he saw Galas's baggy clothing. Galas was wearing a long T-shirt with a button-up T-shirt over it, black baggy jeans that were not sagging, and tennis shoes. D.M. was concerned because there are many places someone could hide a weapon under baggy clothing. He testified it is "routine for me if it's very baggy clothing, a lot of clothing that time of year, I am going to do a search of the waistband and the front area where they can possibly hide weapons." D.M. also believed he was in danger because he did not "know who was behind the [apartment] door, what he was getting, if there was any type of weapons behind the door or who else was in that apartment."

¶8 L.D. testified the victim never said a weapon had been used in the incident, and he had no reason to believe one had. But L.D. "always suspect[s] that a weapon is present" when he responds to a domestic violence call. He did not see any physical injuries or indication of physical injury on the victim.

¶9 The trial court denied the motion, holding:

[T]he officer responded to a domestic violence call that just occurred. He had information that the suspect pushed the

victim and left to go to apartment 205. Within minutes, the officer is approaching the apartment alone, on a second floor landing, sees that the apartment's window is broken, the door opens, and then he is faced with three people. Upon seeing the officer, one of the males goes back into the apartment and closes the door. Defendant fits the description of the domestic violence suspect and tries to go back in the apartment. The female appeared frightened when she saw the officer. Although the clothes the Defendant was wearing are not unusual attire for young people, they can conceal a weapon. All of this occurred very quickly. While any one of the circumstances can be innocently explained, given the totality of the circumstances, the Court finds that a reasonably prudent person would believe that his safety was in danger and therefore a protective search was warranted.

¶10 Galas filed a motion to reconsider, which the trial court denied. The parties proceeded to trial and the jury found Galas guilty of misconduct involving weapons.

¶11 Galas timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") section 13-4033(A)(1) (2010).

STANDARD OF REVIEW

¶12 In reviewing the propriety of a trial court's ruling on a motion to suppress, we review the court's factual findings for an abuse of discretion, but we review *de novo* the court's "ultimate legal determination that the search complied" with the United States Constitution. *State v. Davolt*, 207 Ariz.

191, 202, ¶ 21, 84 P.3d 456, 467 (2004). “We consider only the evidence presented at the suppression hearing and view it in the light most favorable to upholding the trial court’s factual findings.” *State v. Fornof*, 218 Ariz. 74, 76, ¶ 8, 179 P.3d 954, 956 (App. 2008).

DISCUSSION

¶13 Galas contends that the trial court erred in denying his motion to suppress the gun D.M. found because the protective frisk was illegal. Specifically, he argues D.M. had no reasonable suspicion to justify the frisk and conducted the frisk as a matter of routine procedure, which is unconstitutional. Galas does not contend that the investigatory stop was illegal.

¶14 A police officer has narrowly-drawn authority to conduct a “reasonable search for weapons” for his protection when “he has reason to believe that he is dealing with an armed and dangerous individual.” *Terry v. Ohio*, 392 U.S. 1, 27 (1968). “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Id.* In “determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to the specific

reasonable inferences which he is entitled to draw from the facts in light of his experience.” *Id.* In reviewing whether reasonable suspicion existed, we “must determine whether the officer’s conclusions were reasonable after ‘evaluat[ing] the totality of the circumstances.’” *State v. Johnson*, 220 Ariz. 551, 555, ¶ 6, 207 P.3d 804, 808 (App. 2009) (quoting *State v. O’Meara*, 198 Ariz. 294, 296, ¶ 9, 9 P.3d 325, 327 (2000)).

¶15 “Pat-downs are procedures born of the exigencies of street encounters, in recognition that, even when the police officer has the upper hand, the tables are easily turned.” *State v. Vasquez*, 167 Ariz. 352, 354, 807 P.2d 520, 522 (1991) (citation and internal quotation marks omitted). Domestic violence calls present exigent circumstances justifying a frisk: “[t]hese calls commonly involve dangerous situations in which the possibility for physical harm or damage escalates rapidly.” *Id.* Thus, “[p]olice officers must have options when dealing with [familial domestic violence] situations,” which includes “leeway in handling such situations” and they “should not be compelled to act at their peril.” *Id.* (holding a frisk of a familial domestic violence suspect’s baggy coat was constitutional).

¶16 In *Vasquez*, police responded to a domestic violence call involving a husband and wife arguing. 167 Ariz. at 353, 807 P.2d at 521. Both parties appeared upset and the police

separated the couple. *Id.* The husband had been drinking, so police offered to give him a ride to his home. *Id.* The police allowed husband to grab his bulky leather coat after husband indicated he was cold. *Id.* Before giving the coat to the husband, the police patted it down. *Id.* Because the coat was so bulky, the police reached into its pocket, where they found cocaine. *Id.*

¶17 The Arizona Supreme Court upheld the protective search because the situation was "ripe for conflict" because the husband had been drinking and arguing with his wife. *Id.* at 354, 807 P.2d at 522. The court stated "[f]or the protection of all, it was not only reasonable, but necessary, for [the police] to pat down the jacket for weapons before he handed it to [the husband]." *Id.* at 355, 807 P.2d at 523. The police "lawfully conducted a protective search, reasonably believing that a weapon might be concealed in defendant's jacket. He remained vulnerable and in danger until he checked the pockets." *Id.* at 356, 807 P.2d at 524.

¶18 Here, the trial court correctly denied Galas's motion to suppress. Ample evidence indicates a reasonable person would have feared for his or her safety, including that the emergency call involved domestic violence, D.M. responded to the apartment alone, Galas fit the description of the suspect, Galas exited the apartment where the suspect was believed to

have entered, Galas attempted to go back into the apartment when approached by D.M, and the second male D.M. encountered was still inside the apartment. Galas was also wearing baggy clothing where a weapon could be hidden and the female he was with appeared frightened. That the apartment's window was shattered indicated that the occupants of the apartment may have previously engaged in violence. D.M. observed all these factors within a very short period of time.

¶19 These factors, coupled with the heightened intensity of the nature of a domestic violence call, which L.D. testified existed and the supreme court recognized as important in *Vasquez*, was enough for a reasonable person to fear for his or her safety. There were more inferences of danger here than in *Vasquez*, and D.M.'s testimony that he routinely frisks suspects wearing baggy clothing is outweighed by the other factors.

CONCLUSION

¶20 For the foregoing reasons, we affirm the trial court's ruling denying Galas's motion to suppress.

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
MARGARET H. DOWNIE, Presiding Judge

/s/
PETER B. SWANN, Judge