IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAVIER PATRICK SANCHEZ,
Appellant.

No. 2 CA-CR 2014-0164
Filed August 21, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20131080001
The Honorable Jane L. Eikleberry, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
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Counsel for Appellee

Steven R. Sonenberg, Interim Pima County Public Defender
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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

E C K E R S T R O M, Chief Judge:

¶1 Javier Sanchez appeals from his conviction and sentence for disorderly conduct. On appeal, the single issue he raises is that the trial court erred in denying his motion to suppress evidence. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In reviewing a trial court's ruling on a motion to suppress, we consider only the evidence presented at the suppression hearing, viewed in the light most favorable to upholding the trial court's ruling. *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007).

¶3 In February 2013, at about 6:30 a.m., Officers J.A. and J.F. of the Tucson Police Department responded to a report of a "prowler" at a home in Midvale Park. The complaining witness stated that her doorbell had been pushed several times, but she had not seen anyone near her home. The officers searched the area around the home, but did not find anyone.

¶4 At some point after their search, the officers saw Sanchez and another man walking toward them. Officer J.A. shone his flashlight at the men and called out to them, saying something like, "Hey, let me talk to you," or "Hey, get over here." The man walking with Sanchez immediately attempted to leave and was pursued by Officer J.F. Sanchez continued walking toward Officer J.A. who began to ask him questions, and he initially complied and answered. But when the officer asked Sanchez for his name, he fled.

¶5 Sanchez jumped over a gate and into the backyard of a nearby home and Officer J.A. pursued. In the backyard, Sanchez

began "fidgeting toward his waistband," causing the officer to believe he was reaching for a weapon. The officer attempted to get Sanchez to "[s]top messing with his waistband . . . [and] show me his hands," but Sanchez did not comply. Officer J.A. fired his Taser at Sanchez but it had no effect. The officer then saw Sanchez pull "a black object from his waistband." Officer J.A. could not immediately tell what the black object was, but at some point, he realized it was a handgun. He saw Sanchez "take the handgun completely out of his waistband and start chambering a round by taking the slide back." Officer J.A. fired his own gun at Sanchez, who jumped over a wall and fled from the yard. The officer later found Sanchez's discarded firearm in the yard.

¶6 After a jury trial, Sanchez was convicted as described above. He was sentenced to an enhanced, minimum prison term of 1.5 years and this appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033(A)(1).

Motion to Suppress

¶7 "We review rulings on motions to suppress evidence for a clear abuse of discretion." *State v. Sanchez*, 200 Ariz. 163, ¶ 5, 24 P.3d 610, 612 (App. 2001). Sanchez claims that the gun should have been suppressed as the result of a stop unsupported by reasonable suspicion. *See State v. Teagle*, 217 Ariz. 17, ¶ 20, 170 P.3d 266, 271-72 (App. 2007). Although Sanchez is likely correct that the officer's initial interactions with him constituted a stop, and that no reasonable suspicion existed to support that stop,[1] we need not

[1]*See State v. Rogers*, 186 Ariz. 508, 510-11, 924 P.2d 1027, 1029-30 (1996) (defendant reasonably believed he was not free to leave when officers said "'police officers, we need to talk to you'" and chased defendant when he attempted to leave). Although the state correctly asserts that "[a] citizen's report of unusual activity is sufficient to give rise to reasonable suspicion," there must be some basis to connect the person stopped with the unusual activity. *See, e.g.*, *State v. Blackmore*, 186 Ariz. 630, 631, 633, 925 P.2d 1347, 1348, 1350 (1996) (defendant found in alley adjacent to window witnesses saw burglar exit moments after burglary occurred); *State v. Gomez*, 198 Ariz. 61, ¶ 3, 6 P.3d 765, 766 (App. 2000) (9-1-1 caller described

decide that issue. Assuming arguendo the stop was illegal, Sanchez's conduct in pulling a weapon was sufficient to attenuate the taint of the illegal conduct. Whether evidence is sufficiently attenuated from any illegal conduct presents a mixed question of law and fact, and in our review, "[w]e are deferential to the trial court's factual findings," but we review "[t]he legal conclusions to be drawn from those facts . . . for legal error." *State v. Monge*, 173 Ariz. 279, 281, 842 P.2d 1292, 1294 (1992).

¶8 In *State v. Hummons*, the Arizona Supreme Court articulated a three-factor test "to determine whether the taint of illegal conduct is sufficiently attenuated from a subsequent search to avoid the exclusionary rule." 227 Ariz. 78, ¶ 9, 253 P.3d 275, 277 (2011), *citing Brown v. Illinois*, 422 U.S. 590, 603-04 (1975). We therefore consider the amount of time elapsing between the illegal conduct and the acquisition of the evidence, whether an intervening circumstance occurred, and the "purpose and flagrancy" of the illegal conduct. *Id.*

¶9 Here, Sanchez's act of drawing a weapon was an intervening circumstance that attenuated the taint of the illegal stop.[2] In *United States v. Waupekenay*, the appellate court considered whether evidence of a defendant's assault on police officers, after the officers illegally entered his home, should be suppressed. 973 F.2d 1533, 1537-38 (10th Cir. 1992). The court provided an extensive list of cases that have "rejected motions to suppress arising from"

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vehicle involved in suspicious activity by color, make, license plate number, and direction); *see also State v. Graciano*, 134 Ariz. 35, 37, 653 P.2d 683, 685 (1982) (reasonable suspicion "requires . . . a justifiable suspicion that the *particular individual to be detained is involved in criminal activity*").

[2]Sanchez asserts that because the handgun's hammer "was not cocked back," the evidence does not support a finding that Sanchez attempted to shoot Officer J.A. But even if Sanchez did not fire his weapon, the evidence supports a finding that he drew a weapon with the intent to threaten or harm the officer, which is sufficient to constitute an intervening event.

situations where a defendant used "or threatened violence toward police officers subsequent to" illegal police conduct, and ultimately concluded "[e]vidence of a separate, independent crime initiated against police officers in their presence after an illegal [action] will not be suppressed under the Fourth Amendment." *Id.*

¶10 Additionally, the third factor, the "purpose and flagrancy of the official misconduct," is rooted in the purpose of the exclusionary rule: to deter police misconduct. *Hummons*, 227 Ariz. 78, ¶ 9, 253 P.3d at 80; *see United States v. Leon*, 468 U.S. 897, 916 (1984); *Brown*, 422 U.S. at 603-05 (noting purposeful nature of illegal conduct as basis for suppressing evidence). The exclusionary rule allows suppression of evidence as a remedy for police misconduct; it does not go so far as to allow violence against law enforcement officers in response to such misconduct. *Cf. State v. Jurden*, 237 Ariz. 423, ¶ 13, 352 P.3d 455, 459 (App. 2015) (citizens may not resist illegal arrest). Moreover, whether there was any misconduct by Officer J.A. turns on subtleties in the legal standards for reasonable suspicion and whether his statements constituted a command or request that Sanchez stop to answer questions. Although officers must be attentive to such nuances to vigilantly honor the privacy rights of individuals, nothing in the record before us suggests that any investigative misstep here could be characterized as "flagrant." *Hummons*, 227 Ariz. 78, ¶ 15, 253 P.3d at 279.

¶11 Finally, we acknowledge that the first factor, the time elapsed between the illegality and the acquisition of the evidence, weighs in Sanchez's favor. The chase occurred immediately after the stop and was indeed triggered by it. But our supreme court has identified this as the least important of the three factors. *Id.* ¶ 10. Accordingly, we conclude the trial court did not err in denying Sanchez's motion to suppress the handgun.

Disposition

¶12 For the foregoing reasons, Sanchez's conviction and sentence are affirmed.