

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

VANESSA LYNN RODRIGUEZ,
Appellant.

No. 2 CA-CR 2014-0272
Filed May 20, 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NOT FOR PUBLICATION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. CR20134985001
The Honorable Javier Chon-Lopez, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Lori J. Lefferts, Pima County Public Defender
By Katherine A. Estavillo, Assistant Public Defender, Tucson
Counsel for Appellant

STATE v. RODRIGUEZ
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Howard and Judge Vásquez concurred.

K E L L Y, Presiding Judge:

¶1 Following a jury trial, Vanessa Rodriguez was convicted of armed robbery, aggravated robbery, and kidnapping. The trial court sentenced her to concurrent terms of imprisonment, the longest of which was 10.5 years. On appeal, Rodriguez argues the court abused its discretion by failing to suppress incriminating statements she made to police officers after her allegedly illegal arrest. She also contends the court erred by failing to suppress evidence found in a vehicle near the scene of the robbery. For the following reasons, we affirm Rodriguez’s convictions and sentences.

Factual and Procedural Background

¶2 The trial court’s rulings on Rodriguez’s motions to suppress are the sole issues raised on appeal; we therefore consider only the evidence presented at the suppression hearing, which we view in the light most favorable to sustaining the court’s ruling. *See State v. Moran*, 232 Ariz. 528, ¶ 2, 307 P.3d 95, 98 (App. 2013). On an evening in November 2013, J.A. was selling alarm systems door-to-door in a residential area in Tucson. Rodriguez waved to J.A. and asked him to follow her, saying something about “[her] little nephew.” J.A. followed Rodriguez around a corner and saw two men, each pointing a gun at him. The men forced J.A. to the ground and robbed him. J.A. took out a gun he was carrying and fired several shots towards both men before running away.

¶3 Rodriguez arrived at University Medical Center (UMC) with her co-defendant, Matthew Cordova, within thirty or forty minutes after the first 9-1-1 call came in reporting shots had been fired near the residential area where J.A. had been robbed. Cordova had been shot in the back.

STATE v. RODRIGUEZ
Decision of the Court

¶4 Tucson Police Department Detective Brett Barber interviewed Rodriguez twice at the hospital. After Rodriguez gave her second statement, officers obtained a warrant to search a Ford Crown Victoria that was found near the scene of the robbery.¹

¶5 Rodriguez was tried jointly with Cordova. Before trial, Cordova filed motions to suppress evidence, alleging his arrest and the search and seizure of the Ford were illegal. Rodriguez joined Cordova's motions to suppress the evidence, which the trial court denied. The jury found Rodriguez guilty of all charges, and the court sentenced her as described above. Rodriguez timely appealed.

Discussion

¶6 Rodriguez argues the trial court abused its discretion by denying her motions to suppress the evidence against her. We review the denial of a motion to suppress for an abuse of discretion.² *State v. Jacot*, 235 Ariz. 224, ¶ 9, 330 P.3d 981, 984 (App. 2014).

Probable Cause to Arrest

¶7 Rodriguez argues the trial court abused its discretion in denying her motion to suppress incriminating statements she made to officers because the officers lacked probable cause to arrest her. *See State v. Spears*, 184 Ariz. 277, 285, 908 P.2d 1062, 1070 (1996) (concluding officers had probable cause for arrest and trial court

¹The Ford was registered to Kenneth Thompson, whose name Rodriguez had mentioned to Barber at the hospital. Police searched the vehicle and found, among other things, "a small black shirt or something that could be used as a mask," a red bandana, and a .40 caliber handgun.

²The state argues Rodriguez has forfeited all but fundamental error review because she did not file a specific motion to suppress the statements she made to police. Although she did not file a separate motion and did not offer any argument specific to her arrest in her joinder in Cordova's motion, she argued at the suppression hearing that there was no probable cause to arrest her. Thus, she arguably preserved the issue for our review.

STATE v. RODRIGUEZ
Decision of the Court

therefore did not err by denying defendant's motion to suppress statements and evidence following arrest). We review de novo whether the evidence presented at the suppression hearing supported the court's probable cause determination. *Moran*, 232 Ariz. 528, ¶ 8, 307 P.3d at 99.

¶8 At the suppression hearing, the evidence established that J.A. had told officers "a girl waved him down saying something about a nephew." J.A. described the woman who flagged him down as "wearing blue shorts, a red U of A sweater, about five two, brown-ish hair, looked Hispanic, and spoke English." A witness who was about seventy-five yards away told police she had seen "the female suspect that was supposed to be a part of this robbery." She described the woman as white, "about five feet tall, wearing a red jacket and jean shorts" and as having "blonde or . . . dirty blonde hair."

¶9 Officers went to UMC after the hospital reported a gunshot victim because police had received a call reporting shots fired or an armed robbery in the same time period. They determined that Cordova was the individual with the gunshot wound and that he had been "shot in the chest, from back to front." Detective Barber estimated that Rodriguez and Cordova arrived at the hospital within thirty or forty minutes of the shooting. Barber showed J.A. a photo line-up that included a photograph of Rodriguez, but J.A. was unable to identify her as the woman who had flagged him down.

¶10 Rodriguez argued at the suppression hearing that officers lacked probable cause to arrest her because the description given by the witness did not match her. She pointed out that the witness described a "white female with dirty blonde hair wearing a red sweater," but that Rodriguez did not have a red sweater at the hospital and is neither white nor blonde. Rodriguez suggested that J.A.'s description could have included many others as "there are a number of Hispanic females in Tucson."

¶11 In denying the motion to suppress, the trial court stated it had "considered that no witness positively identified either Cordova or Rodriguez as the alleged robbers," that "the victim did

STATE v. RODRIGUEZ
Decision of the Court

not identify Rodriguez from a photo line-up,” and that “another witness gave a description that did not fit Rodriguez.” But the court concluded, “[G]iven the totality of the circumstances in the collective knowledge of police officers, and the evidentiary record as a whole, the Court finds that probable cause existed to believe that Cordova and Rodriguez were two of the suspects that committed the criminal offenses against the victim.”

¶12 An officer may arrest a person without a warrant “if the officer has probable cause to believe [that a] felony has been committed and probable cause to believe the person to be arrested has committed the felony.” A.R.S. § 13-3883(A)(1). “[W]hether probable cause exists depends on all of the facts and circumstances known at the time of the arrest,” and “those facts may include the collective knowledge of all of the officers involved in the case.” *State v. Keener*, 206 Ariz. 29, ¶ 15, 75 P.3d 119, 122 (App. 2003). “Probable cause exists where the arresting officers have reasonably trustworthy information of facts and circumstances which are sufficient in themselves to lead a reasonable man to believe an offense is being or has been committed and that the person to be arrested is committing or did commit it.” *State v. Richards*, 110 Ariz. 290, 291, 518 P.2d 113, 114 (1974). ““When assessing whether probable cause exists, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”” *Moran*, 232 Ariz. 528, ¶ 10, 307 P.3d at 99, quoting *State v. Dixon*, 153 Ariz. 151, 153, 735 P.2d 761, 763 (1987).

¶13 We assume, arguendo, that Rodriguez was under arrest at the time Barber first interviewed her at the hospital. As Rodriguez points out, the testimony at the suppression hearing did not specify when she was arrested because Barber interviewed her twice.³ Testimony at the hearing indicated that, independent of Barber’s interview of Rodriguez, officers knew she had arrived at the hospital with Cordova, who had been shot in the back, within thirty or forty minutes of the shooting. In addition, J.A.’s

³The state takes no position regarding when Rodriguez was arrested.

STATE v. RODRIGUEZ
Decision of the Court

description of the woman who flagged him down matched Rodriguez in most respects.

¶14 In concluding the officers had probable cause to arrest Rodriguez, the trial court acknowledged that they knew a witness had given a description of Rodriguez that did not closely match her. Because the witness had seen Rodriguez from about seventy-five yards away, the court reasonably could have given more weight to J.A.'s description; J.A. had been in close proximity to Rodriguez when he followed her and it was reasonable to conclude he was in a better position than the witness to observe her. In addition, because it was dark at the time of the robbery, the court could have considered the more distant witness's description to be less reliable. The evidence produced at the suppression hearing supported the trial court's determination that there was probable cause for the officers to believe Cordova and Rodriguez committed the offenses against J.A. We see no error in the court's ruling. *See id.* ¶ 8.

¶15 Rodriguez argues the statements she made during her second interview with Barber should have been excluded as fruit of the illegal arrest. Because we already have concluded there was probable cause to arrest Rodriguez at the time she gave her first statement, we do not consider this argument further.

Search and Seizure

¶16 Rodriguez argues the trial court erred by denying her motion to suppress evidence obtained from the search and seizure of the Ford Crown Victoria found near the scene of the robbery. She contends the statements she made to officers after her illegal arrest provided the basis for a warrant to search the Ford, and "the State cannot show the taint of illegal arrest was purged." In her motion to suppress, Rodriguez argued the Ford was seized illegally because a judge had denied an application for a warrant to search the vehicle before police moved it to the evidence yard, and therefore the search also was illegal. The court denied the motion, finding that Rodriguez had failed to prove she had a "reasonable expectation of privacy as to the alleged illegal search and seizure of the Ford Crown Victoria purportedly containing incriminating evidence" against her.

STATE v. RODRIGUEZ
Decision of the Court

¶17 To assert a Fourth Amendment violation, a person must have “a legitimate expectation of privacy in the invaded place.” *State v. Martinez*, 221 Ariz. 383, ¶ 21, 212 P.3d 75, 81 (App. 2009), quoting *State v. Juarez*, 203 Ariz. 441, ¶ 12, 55 P.3d 784, 787 (App. 2002). “To have a *legitimate* expectation of privacy protected by the Fourth Amendment, a person must show both an ‘actual (subjective) expectation of privacy’ and that the expectation is one that society is prepared to recognize as ‘justifiable’ under the circumstances.” *State v. Allen*, 216 Ariz. 320, ¶ 13, 166 P.3d 111, 114 (App. 2007), quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979). “Mere possession or ownership of a seized item is insufficient to create a legitimate expectation of privacy in the area searched.” *Juarez*, 203 Ariz. 441, ¶ 12, 55 P.3d at 787. In addition, “[a] person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed.” *Rakas v. Illinois*, 439 U.S. 128, 134 (1978).

¶18 In this case, the owner of the Ford—Kenneth Thompson—told police his “little brother” had been driving it. Rodriguez did not claim she owned or possessed the Ford, and she presented no evidence that could establish she had a reasonable expectation of privacy in the vehicle. See *Juarez*, 203 Ariz. 441, ¶ 12, 55 P.3d at 787. We conclude the court did not abuse its discretion in denying Rodriguez’s motion to suppress evidence seized during the search of the Ford.

Disposition

¶19 For the foregoing reasons, we affirm Rodriguez’s convictions and sentences.