

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ROBERT JAMES MAJOR,
Appellant.

No. 2 CA-CR 2021-0075
Filed April 1, 2022

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201902721
The Honorable Christopher J. O'Neil, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Elizabeth M. Hale, Lakeside
Counsel for Appellant

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Eppich and Vice Chief Judge Staring concurred.

BREARCLIFFE, Judge:

¶1 Robert James Major appeals his conviction following a jury trial for one count of unlawful flight from a pursuing law enforcement vehicle. The trial court sentenced Major to a prison term of seven years. On appeal, Major claims the court erred in denying his motion to suppress the pursuing officer's pre-trial and subsequent trial identification. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Major. *See State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015). In June 2019, Pinal County Sheriff Deputy Juan Reyes was patrolling San Tan Valley around midnight in his marked patrol vehicle when he observed a white truck fail to stop at a stop sign. Reyes initiated a traffic stop on the truck by activating his patrol vehicle's lights. At first, the truck pulled over onto the right shoulder of the road but then "took off from the scene." Reyes pursued the truck with his lights and siren activated and advised dispatch that he was involved in a pursuit. The driver of the truck then made a wide left-hand turn and lost control of the truck. The truck left the roadway and entered a dirt field where it began to fishtail.

¶3 At this point, Deputy Reyes's headlight illuminated the truck, and Reyes was able to observe the driver through the truck's lowered driver's side window. Reyes noted the driver was a "white male with a black hat," "a black shirt," and "a white light colored beard." The truck then returned to the paved road and continued on. The truck ultimately stopped in front of a home, and the driver left the vehicle. Reyes stopped about one or two car lengths behind the truck. Reyes's headlights and spotlight were facing the truck when the driver left the truck and turned towards him, and Reyes was again able to observe the man. Reyes saw that the driver was wearing shorts and was "heavy set." The driver then walked toward a fence by the residence, and Reyes lost sight of him.

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¶4 After additional deputies arrived, they told Deputy Reyes that they had been to that residence before for incidents involving Major. Reyes’s research confirmed that there had been multiple calls to that residence for incidents involving Major. The deputies gave Reyes a description of Major that Reyes believed matched the driver of the truck. Reyes then pulled up photographs of Major from the Motor Vehicle Division and “some booking photographs.” Reyes recognized the person in the photographs as the driver of the truck.

¶5 Major was charged with one count of unlawful flight from a pursuing law enforcement vehicle. During trial, Major moved to suppress Deputy Reyes’s pre-trial and trial identification of Major. He claimed that the identification was unduly suggestive in violation of his due process rights. The state countered that there was no improper police conduct in Reyes searching for a potential suspect’s photo and then identifying the suspect. At a *Dessureault* hearing on the motion,¹ the trial court found that the state had met its burden to prove that there was not any unduly suggestive identification procedure. The court explained that “there may be an assumption that’s drawn or even a suggestion that is drawn that the person who is the owner of that house must be the person who ran into the house” but “[t]hat suggestion is not drawn by an identification procedure.” And, the court continued, “[t]he officer here simply viewed on his own, a photograph of the person he had found to be the resident of the house.” At trial, Reyes identified Major as the driver.

¶6 Major was convicted and sentenced as described above. This appeal followed. We have jurisdiction pursuant to article VI, § 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Analysis

¶7 On appeal, Major argues that the trial court abused its discretion in denying his motion to suppress both Deputy Reyes’s pre-trial and in-court identifications. He asserts that the pre-trial identification was both unduly suggestive and unreliable and that Reyes’s subsequent in-court identification was entirely based on the “tainted” pre-trial identification. “We review the reliability and fairness of a challenged identification for abuse of discretion.” *State v. Goudeau*, 239 Ariz. 421, ¶ 103 (2016). “We consider only the evidence presented at the suppression

¹See *State v. Dessureault*, 104 Ariz. 380, 384 (1969).

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hearing and defer to the trial court's factual findings unless clearly erroneous, but we review de novo the 'ultimate question' of the constitutionality of a pretrial identification." *Id.*

¶8 The Due Process Clause of the Fourteenth Amendment requires that police identification procedures be conducted "in a manner that is fundamentally fair and secures the suspect's right to a fair trial." *State v. Lehr*, 201 Ariz. 509, ¶ 46 (2002). "Whether an identification procedure is so suggestive that it violates a defendant's due process rights depends on the totality of the circumstances." *State v. Rojo-Valenzuela*, 237 Ariz. 448, ¶ 6 (2015). "[T]here is a two-part test for determining admissibility: (1) whether the method or procedure used was unduly suggestive, and (2) even if unduly suggestive, whether it led to a substantial likelihood of misidentification, i.e., whether it was reliable." *Lehr*, 201 Ariz. 509, ¶ 46.

¶9 "An inherently suggestive one-person show-up identification procedure implicates due process, but such an identification is nevertheless admissible at trial if it is sufficiently reliable." *Rojo-Valenzuela*, 237 Ariz. 448, ¶ 1. Even assuming without deciding that Deputy Reyes's identification here was comparable to a one-person show-up and was thus inherently suggestive, it was nonetheless reliable and admissible.²

¶10 In determining whether an identification is reliable, we look to the totality of the circumstances including the following factors: "(1) the witness's opportunity to view or hear the perpetrator at the time of the offense; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description; (4) the level of certainty; and (5) the length of time between the crime and the confrontation." *Goudeau*, 239 Ariz. 421, ¶ 132. Deputy Reyes was able to view Major's face two times: once while Major was driving and then again when Major got out of the truck. Reyes was able to identify the color shirt and hat Major was wearing, as well as his physical stature, and that he had a beard. Based on these observations, Reyes determined that the description the officers gave of Major matched his own observations of the man driving the truck. Reyes viewed the photographs of Major the same night that he had viewed the driver of the

²Because the trial court held a *Dessureault* hearing, the record is sufficiently developed for us to conduct an independent reliability analysis despite the absence of such an analysis by the trial court. See *Rojo-Valenzuela*, 237 Ariz. 448, ¶ 15.

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truck. Reyes testified that he was able to get a “very good look at [Major]” and was “completely confident” that Major was the man driving the truck.

¶11 Based on the *Goudeau* factors, the record here adequately establishes that Deputy Reyes’s identification of Major was sufficiently reliable to be presented to a jury. See *State v. Hernandez*, 246 Ariz. 543, ¶¶ 3-4, 12 (App. 2019) (holding identification reliable after officer saw profile of fleeing suspect and minutes later identified suspect in single photograph provided to him by other officers), *vacated in part on other grounds*, 250 Ariz. 28 (2020). And, because the pre-trial identification was sufficiently reliable, we cannot say that Reyes’s later in-court identification should have been precluded. The trial court did not abuse its discretion in admitting the identifications.

Disposition

¶12 For the foregoing reasons, we affirm Major’s conviction and sentence.