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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. TRAVIS SCOTT BELL, Appellant.	2 CA-CR 2008-0338 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20070676

Honorable Deborah Bernini, Judge

AFFIRMED

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H O W A R D, Chief Judge.

¶1 After a jury trial held in absentia, appellant Travis Bell was convicted of possessing methamphetamine, marijuana, and drug paraphernalia. The trial court

sentenced him to three mitigated, concurrent prison terms, the longest for 1.5 years. On appeal, Bell challenges the validity of a warrantless search of his backpack during what he contends was an unlawful detention and argues the court erred in failing to suppress evidence discovered during the search. Because the court did not err, we affirm Bell's convictions and sentences.

BACKGROUND

¶2 "In reviewing the denial of a motion to suppress evidence, we view the facts in the light most favorable to upholding the trial court's ruling." *State v. Wyman*, 197 Ariz. 10, ¶ 2, 3 P.3d 392, 394 (App. 2000). On January 31, 2007, around 12:40 a.m., Officer Bradley Pelton saw Bell in the middle of the roadway on a bicycle without an illuminated headlight, a violation of Arizona law. A.R.S. § 28-817(A). Bell was wearing a ski mask and carrying a backpack. Pelton thought Bell looked "suspicious" and decided to "find out whether he needed help, whether he had a light on his bike, [and] what he was doing in the neighborhood at 12:30 at night." Bell appeared to be "fidgeting [with] or working on" a red light that "presumably was going to go on the back of his bicycle," and he showed Pelton that the headlight of his bicycle worked.

¶3 After stopping Bell to investigate the headlight violation, Pelton requested a preliminary records check, which disclosed an outstanding warrant for Bell's arrest.[1] While waiting for the dispatcher to confirm the warrant, Pelton noticed a crowbar protruding from Bell's backpack. When asked, Bell claimed he carried the crowbar to

[1]In his testimony at the suppression hearing, Pelton refers variously to "a warrant" and later to "warrants." The record shows there were in fact two outstanding misdemeanor warrants.

defend himself. To prevent Bell from using it as a weapon against him, Pelton took the crowbar from Bell. After confirming there were two valid misdemeanor warrants for Bell's arrest, Pelton handcuffed Bell, searched his person, and placed him in the back of the patrol car. He then searched Bell's backpack, in which he found the methamphetamine, marijuana, and paraphernalia Bell was later charged with possessing. Pelton transported Bell to the Pima County Jail for booking.

DISCUSSION

¶4 Bell first contends the trial court erred in denying his motion to suppress evidence because he had not been lawfully detained when Pelton searched his backpack. Bell maintains he was illegally seized without reasonable suspicion of criminal activity when the officer took possession of his crowbar. His detention and the ensuing search, he argues, violated the Fourth Amendment to the United States Constitution and article II, § 8 of the Arizona Constitution, and require suppression of the contraband discovered in his backpack.

¶5 "We review only the evidence presented at the suppression hearing" and defer to the trial court's factual findings. *Wyman*, 197 Ariz. 10, ¶¶ 2, 5, 3 P.3d at 394, 395. We review the trial court's legal conclusions de novo, including its resolution of the ultimate issue of whether the warrantless search of Bell's backpack offended the Fourth Amendment's prohibition against unreasonable searches and seizures. *See id.* ¶ 5; *see also State v. Estrada*, 209 Ariz. 287, ¶ 2, 100 P.3d 452, 453 (App. 2004). "Whether a person has been seized . . . is a mixed question of law and fact" and is reviewed de novo.

Wyman, 197 Ariz. 10, ¶¶ 5, 7, 3 P.3d at 395. The state bears the burden of proving the lawfulness of a detention and search. Ariz. R. Crim. P. 16.2(b).

¶6 General traffic laws apply to bicyclists in Arizona. A.R.S. § 28-812.[2] A police officer may make an investigative traffic stop if the officer has reasonable suspicion of a traffic violation. *State v. Starr*, 222 Ariz. 65, ¶ 12, 213 P.3d 214, 218 (App. 2009). And A.R.S. § 28-1594 authorizes peace officers to "stop and detain a person as is reasonably necessary to investigate an actual or suspected violation . . . and to serve a copy of the traffic complaint for an alleged civil or criminal violation of [that] title." Having first noticed Bell in the middle of the road at night on a bicycle without a headlight, Pelton had probable cause to stop him and investigate a violation of A.R.S. § 28-817(A), which provides, "A bicycle that is used at nighttime shall have a lamp on the front that emits a white light visible from a distance of at least five hundred feet to the front . . . ."

¶7 After approaching Bell to investigate the potential traffic violation, Pelton requested a records check for any outstanding warrants, as he was entitled to do. *See State v. Ybarra*, 156 Ariz. 275, 276, 751 P.2d 591, 592 (App. 1987) ("Warrants check[s] during valid investigatory stops have been approved."). Once a preliminary check showed an outstanding warrant for Bell's arrest, Pelton was then justified in detaining him further while waiting for the dispatcher to confirm the validity of the warrant. *See id.* Pelton testified that the length of time Bell was detained while he verified the warrant

[2]Section 28-812 states: "A person riding a bicycle on a roadway or on a shoulder adjoining a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle . . . ."

was brief. Although the process of confirming the validity of a warrant can take up to twenty minutes, Pelton testified, "in this particular case, [he] d[id]n't think it was very long."

¶8 It was during this time that Pelton noticed the crowbar protruding from Bell's backpack and inquired about it. Bell admitted that he carried the crowbar for possible use as a weapon, and Pelton took possession of it to ensure his own safety. Bell asserts that, by taking control of his personal property while waiting for confirmation of the warrant, Pelton effected an illegal seizure of Bell's person without reasonable suspicion of criminal activity. We have already determined that Pelton was justified in detaining Bell while he verified the existence of the outstanding warrants for his arrest. We cannot see the relevance of Pelton's control of the crowbar. But the trial court also found "[i]t was appropriate for the officer to seize the weapon at that time," and we agree. An officer is "entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of [possibly armed and presently dangerous] persons in an attempt to discover weapons which might be used to assault him." *Terry v. Ohio*, 392 U.S. 1, 30 (1968); *see* State v. Johnson, 220 Ariz. 551, ¶ 6, 207 P.3d 804, 808 (App. 2009). In sum, we find no error in the trial court's conclusion that Bell was lawfully detained.

¶9 Bell next contends the search of his backpack was unreasonable under the Fourth Amendment and violated his right to privacy guaranteed under article II, § 8 of the

Arizona Constitution.[3] Warrantless searches are presumptively unreasonable under the Fourth Amendment, "subject only to a few specifically established, 'jealously and carefully drawn' exceptions." *State v. Fisher*, 141 Ariz. 227, 237, 686 P.2d 750, 760 (1984), *quoting Jones v. United States*, 357 U.S. 493, 499 (1958); *see also Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710, 1716 (2009).

¶10 The trial court found the search of Bell's backpack was a lawful search incident to his arrest. Bell argues the court should have applied the principles of *Gant*, because "exceptions to the warrant requirement must be narrowly construed [and] . . . the scope of the search incident to an arrest is strictly limited to protecting the arresting officer and safeguarding evidence justifying the arrest." *See Gant*, ___ U.S. at ___, 129 S. Ct. at 1716. We need not address that argument, however, because as we discuss below, the contraband inevitably would have been discovered.

¶11 "The inevitable discovery doctrine, which is an exception to the exclusionary rule, provides that illegally obtained evidence is admissible '[i]f the prosecution can establish by a preponderance of the evidence that the illegally seized items or information would have inevitably been seized by lawful means . . . .'" *State v.*

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[3]Bell suggests the trial court erred based on Arizona's constitution because it provides broader privacy protections than does the federal constitution. But, except in the context of a home search, the Arizona Constitution affords no greater protection than its federal counterpart from searches and seizures conducted by the state. *State v. Juarez*, 203 Ariz. 441, ¶¶ 14-15, 55 P.3d 784, 788 (App. 2002); *State v. Calabrese*, 157 Ariz. 189, 190-91, 755 P.2d 1177, 1178-79 (App. 1988) (declining to extend broader protections of article II, § 8 to exclude evidence seized as result of warrantless search incident to arrest, even if evidence unrelated to crime for which person arrested); *cf. State v. Ault*, 150 Ariz. 459, 466, 724 P.2d 545, 552 (1986); *State v. Bolt*, 142 Ariz. 260, 264-65, 689 P.2d 519, 523-24 (1984).

Jones, 185 Ariz. 471, 481, 917 P.2d 200, 210 (1996), *quoting State v. Ault*, 150 Ariz. 459, 465, 724 P.2d 545, 551 (1986) (alterations in *Jones*). The state claims that, even if the search of Bell's backpack was improper, the backpack would have been lawfully searched when he was booked into jail and the exclusionary rule therefore does not bar its admission because the evidence would inevitably have been discovered by lawful means.

¶12 Although Bell argues we should not reach this issue because the trial court did not rule on this basis, the parties argued it below, and we can decide the issue as a matter of law. *See People v. Boyer*, 133 P.3d 581, 608 (Cal. 2006); *Green v. Superior Court*, 707 P.2d 248, 256 (Cal. 1985). When the record fully establishes an alternative basis for affirming a trial court's ruling, including the doctrine of inevitable discovery, we may resolve such issues on appeal, even if not explicitly litigated below. *Boyer*, 133 P.3d at 608; *Green*, 707 P.2d at 256. We will uphold the trial court if its ruling was legally correct for any reason. *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984); *State v. Harris*, 152 Ariz. 150, 151, 730 P.2d 859, 860 (App. 1986). Accordingly, we consider the state's inevitable discovery argument.

¶13 Under the doctrine, "evidence obtained as a result of an unlawful search need not be suppressed when, in the normal course of police investigation and conduct, and absent the illicit conduct, the evidence would have been discovered inevitably or ultimately." *State v. Acosta*, 166 Ariz. 254, 258, 801 P.2d 489, 493 (App. 1990). Although "evidence . . . obtained in violation of a constitutional right should be excluded to deter unlawful police conduct, it serves no purpose to put the government in a worse position than it would have been in had no police misconduct occurred." *State v. Rojers*,

216 Ariz. 555, ¶ 19, 169 P.3d 651, 655 (App. 2007), *see also Nix v. Williams*, 467 U.S. 431, 446 (1984) ("Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial."). Still, the search itself must meet constitutional requirements—that is, it must not be a pretext to search for evidence, it must be conducted "according to standardized procedures, and that evidence of these standardized procedures must be in the record to uphold a conviction." *Rojers*, 216 Ariz. 555, ¶ 20, 169 P.3d at 655.

¶14 When an arrested person is booked into jail, a reasonable inventory search of the articles in his or her possession "protect[s] the owner's property while in the custody of the police and protect[s] the police against possible false claims of theft." *State v. Stukes*, 151 Ariz. 216, 218, 726 P.2d 632, 634 (App. 1986); *see also Colorado v. Bertine*, 479 U.S. 367, 373 (1987). And, the "[s]torage of controlled substances may pose internal security problems for law enforcement agencies[,] giving rise to yet another reason justifying the inventory search." *Stukes*, 151 Ariz. at 218, 726 P.2d at 634. Likewise, as part of the routine procedure incident to incarcerating an arrested person, it is not unreasonable "'to search *any container or article in* [police] *possession*, in accordance with established inventory procedures.'" *Id.* at 217, 726 P.2d at 633, *quoting Illinois v. Lafayette*, 462 U.S. 640, 648 (1983) (emphasis in *Stukes*). "[I]t would be unreasonable to expect police officers in the everyday course of business to make fine and subtle distinctions in deciding which containers or items may be searched and which must be sealed as a unit." *Id*. at 217-18, 726 P.2d at 633-34, *quoting Lafayette*, 462 U.S. at 648.

¶15 However, "'the right to [make an] inventory . . . does not carry in its wake unlimited discretion.'" *United States v. Mendez*, 315 F.3d 132, 137 (2d Cir. 2002), *quoting United States v. Griffiths*, 47 F.3d 74, 78 (2d Cir. 1995) (alterations in *Mendez*). The inventory search must be conducted pursuant to "established inventory procedures," *see Lafayette*, 462 U.S. at 648, so that inventory searches do not become "a ruse for a general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. 1, 4 (1990).

¶16 Officer Pelton testified that, because Bell had two outstanding warrants, "[t]his was a full custody arrest" and he "was taking [Bell] to jail." Further, Pelton testified, police department policy required him to search any backpack and its contents, including locked containers, and to remove any weapons, contraband, and other potentially dangerous items such as glass containers, mirrors, and scissors, before placing it into either the jail's or the police department's property section. Thus, the state presented sufficient evidence of police procedures to satisfy the constitutional requirements for an inventory search. *See Stukes*, 151 Ariz. at 218, 726 P.2d at 634 (not unreasonable to search any container or article in accordance with established inventory procedures).

¶17 Bell relies on *State v. Calabrese*, 157 Ariz. 189, 755 P.2d 1177 (App. 1988), to counter the state's argument that the contraband found in his backpack would inevitably have been discovered and was therefore admissible. In *Calabrese*, the defendant "was arrested for criminal trespass, a misdemeanor, and therefore, he could have been released without booking." *Id.* at 191, 755 P.2d at 1179. We affirmed the

search there as a valid search incident to arrest, but went on to comment in dicta on the proper limits of the inevitable discovery exception in pre-booking searches. *Id.*

¶18 However, as we later noted in *State v. Paxton*, 186 Ariz. 580, 585 n.4, 925 P.2d 721, 726 n.4 (App. 1996), our comments in *Calabrese* do not mention the earlier case of *State v. Michelena*, 115 Ariz. 109, 563 P.2d 908 (App. 1977), in which we affirmed the admission of evidence that would have been inevitably discovered. In *Michelena*, officers arrested the defendant on an outstanding warrant and, through a violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), discovered cocaine in the defendant's possession. 115 Ariz. at 109, 563 P.2d at 908. This court affirmed the trial court's denial of his motion to suppress the evidence because the cocaine inevitably would have been discovered during a routine search when he was booked into jail. *Id*. at 109-10, 563 P.2d at 908-09. And, as the *Paxton* court explained, the concern noted in *Calabrese* does not arise where "the booking procedure was . . . inevitable." 186 Ariz. at 585, 925 P.2d at 726.

¶19 Here, Pelton was executing a full custody arrest for misdemeanor warrants and intended to book Bell into jail. Although Bell claims that the amount of his bond was already set, obviating the need for booking, he was, in fact, booked into jail. Thus, Bell's argument based on *Calabrese* fails. Because the methamphetamine, marijuana, and paraphernalia Pelton found in Bell's backpack would have been found in any event during standard booking procedures, the inevitable discovery rule applies, and the evidence was admissible against Bell at trial. The trial court did not err in denying Bell's motion to suppress.

CONCLUSION

¶20 Based on the foregoing, Bell's convictions and sentences are affirmed.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

PETER J. ECKERSTROM, Judge