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Court of Appeals of Arizona, Division 1.

STATE of Arizona, Appellee,
v.
Shuron Lee JONES, Appellant.

No. 1 CA-CR 17-0454
|
FILED 7/12/2018

Appeal from the Superior Court in Mohave County, No. S8015CR201501555, The Honorable Billy K. Sipe, Judge *Pro Tempore*. **AFFIRMED**

Attorneys and Law Firms

Arizona Attorney General's Office, Phoenix, By Nicholas Chapman-Hushek, Counsel for Appellee

Mohave County Legal Advocate's Office, Kingman, By Jill L. Evans, Counsel for Appellant

Presiding Judge James P. Beene delivered the decision of the Court, in which Judge Michael J. Brown and Judge Jennifer M. Perkins joined.

MEMORANDUM DECISION

BEENE, Judge:

*1 ¶ 1 Shuron Lee Jones (“Jones”) appeals his convictions and resulting sentences, arguing the superior court erred in denying his motion to suppress evidence discovered during a traffic stop. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶ 2 After midnight on December 16, 2015, Trooper Todd Dickinson conducted a traffic stop on Interstate 40 in Kingman. The driver, Jones, and the passenger, Tyron

Lee Tucker (“Tucker”), were in a rental car and produced California identification. Based on Jones's behavior and the discrepancies in statements given by Jones and Tucker, Dickinson detained the pair to conduct a search of the car. A bag containing two pounds of methamphetamine was found in the car's trunk.

¶ 3 Jones was charged with possession of methamphetamine for sale (count 1), transportation of methamphetamine for sale (count 2), and possession of drug paraphernalia (count 3). Before trial, Jones unsuccessfully moved to suppress the evidence found in the car. Following a three-day trial, the jury convicted Jones on all counts, and the superior court sentenced him to 7.5 years in prison for counts 1 and 2, and six months for count 3, to be served concurrently. This timely appeal followed. We have jurisdiction pursuant to [Article 6, Section 9, of the Arizona Constitution](#) and [Arizona Revised Statutes sections 12-120.21\(A\)\(1\), 13-4031, and -4033\(A\)](#).

DISCUSSION

¶ 4 Jones argues the superior court erred in denying his motion to suppress because law enforcement lacked reasonable suspicion to extend the traffic stop after completing the purpose of the stop in issuing him a traffic warning. Thus, he argues, the drugs and drug paraphernalia discovered during the search of the car must be suppressed. We disagree.

¶ 5 Pursuant to the Fourth Amendment of the United States Constitution and [Article 2, Section 8, of the Arizona Constitution](#), persons are protected from unreasonable searches and seizures. [State v. Allen](#), 216 Ariz. 320, 323, ¶ 9 (App. 2007). When a violation of the Fourth Amendment or its state counterpart is determined to have occurred, the exclusionary rule generally requires the suppression at trial of any evidence directly or indirectly gained as a result of the violation. [State v. Schinzel](#), 202 Ariz. 375, 382, ¶ 28 (App. 2002).

¶ 6 “We review a trial court's ruling on a motion to suppress for abuse of discretion, considering only the evidence presented at the suppression hearing and viewing the facts in a light most favorable to sustaining the trial court's ruling.” [State v. Adair](#), 241 Ariz. 58, 60, ¶ 9 (2016). Although we generally defer to the court's factual

findings if the evidence reasonably supports them, we review the court's ultimate legal determination that the search complied with the Fourth Amendment *de novo*. *State v. Evans*, 237 Ariz. 231, 233, ¶ 6 (2015); *State v. Davolt*, 207 Ariz. 191, 202, ¶ 21 (2004). “We do not reweigh the evidence on appeal and will overturn the trial court's findings only if no substantial evidence supports them.” *State v. Rodriguez*, 205 Ariz. 392, 397, ¶ 18 (App. 2003).

*2 ¶ 7 “[P]olice can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” *Evans*, 237 Ariz. at 234, ¶ 7 (citation omitted). “In determining whether reasonable suspicion exists, officers and courts reviewing their actions take into account the totality of the circumstances—the whole picture of what occurred at the scene”—and “[f]rom that whole picture the officers must derive a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Id.* at ¶ 8 (internal citations and quotations omitted). “Although a mere unparticularized suspicion or hunch does not establish reasonable suspicion,” courts must give consideration “to the specific reasonable inferences [that an officer] is entitled to draw from the facts in light of his experience.” *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)) (internal quotations omitted); see *State v. Teagle*, 217 Ariz. 17, 24, ¶ 26 (App. 2007) (“In reviewing the totality of the circumstances, we accord deference to a trained law enforcement officer's ability to distinguish between innocent and suspicious actions.”); see also *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002) (reviewing reasonable-suspicion determinations in view of the totality of the evidence, giving due weight to officers' experience and specialized training).

¶ 8 A traffic stop becomes an unlawful seizure “if it is prolonged beyond the time reasonably required to complete th[e] mission of issuing a ticket for the violation.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1612 (2015) (internal quotation and citation omitted). Police “may not extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff.” *State v. Driscoll*, 238 Ariz. 432, 434, ¶ 8 (App. 2015) (citing *Rodriguez*, 135 S. Ct. at 1614) (internal quotation omitted).

¶ 9 At the suppression hearing, Trooper Dickinson testified that he had been a law enforcement officer for

nine years. In that time, he received advanced training in criminal interdiction, **DUI**, and collision investigations; investigated numerous drug cases; and conducted more than 10,000 traffic stops. In pertinent part, to detect criminal activity, Dickinson was trained to look for signs of nervousness, deception, and discrepancies in story lines and travel plans.

¶ 10 Dickinson testified that on December 16, 2015 at approximately 12:40 a.m., he was on routine patrol on Interstate 40 at a stationary post. Based on Dickinson's experience, Interstate 40 is a high crime area, including drug trafficking. While stopped, Dickinson observed a car traveling at 70 mph in a 75-mph zone. Once the car passed Dickinson, it slowed abruptly and pulled into the right lane, reducing its speed to 50 mph, 25 mph under the speed limit. Dickinson followed the car and observed it move from the right lane to the left lane, cross the left lane fog line, drive off the left shoulder one or two times, then move back in the right lane in front of Dickinson. Traffic at that time of night was moderate, so the car did not have to make those lane changes to avoid traffic. Dickinson testified that based on his training, this type of driving indicated the driver may be impaired.

¶ 11 Dickinson conducted a traffic stop, approached the car, and asked the driver to come back to his patrol car. Jones, the driver, produced a California driver's license and a rental car agreement showing the car was rented by Clara Tucker, Tucker's mother. When asked why he was not able to maintain his lane, Jones replied that he was not used to driving long distances and was driving from California to Farmington, New Mexico. Jones said he and his passenger were going to stay in New Mexico for five days for a cousin's birthday party. However, the rental car agreement Jones produced indicated the car was rented for three days only, not five. The discrepancy between the three-day rental car, rented just the day before on December 15, and the planned five-day trip arose Dickinson's suspicion because “[p]eople make changes in their travel plans all the time, but typically not a couple hours after they rented a car.” When Dickinson asked Jones the name of his cousin they were going to visit, Jones hesitated and did not provide a name or any other details. Dickinson testified that Jones seemed overly nervous, very unsure about the facts surrounding his trip and that he suspected that Jones's statements were made-up. Dickinson stated typically a person pulled over by the police would be nervous at first, but it would subside.

Jones's nervousness, however, did not subside. While Dickinson spoke with Jones at the patrol car, Jones kept “looking back” at the car, which indicated to Dickinson that “potentially something's going on in the vehicle or something is hidden in the vehicle that [drivers] don't want you to know about.” Dickinson asked Jones if he had a family and, if so, why he was traveling from California to New Mexico so close to the holidays. Jones replied that he had a family and the trip was “spur-of-the-moment.” Dickinson estimated by that time, the stop had lasted approximately four to five minutes.

*3 ¶ 12 Tucker, who was in the passenger seat, yelled out through the window, “Is this going to take too long?” Dickinson approached Tucker, told him it would not be much longer, and asked him about their travel plans. As with Jones, Tucker said they were going to Farmington, New Mexico. But Tucker said they would be in New Mexico for eight days, not five days as Jones said, and Tucker said they were visiting his cousin, William, not Jones's cousin. To Dickinson, these discrepancies were typical of drug smugglers or someone involved in criminal activity as they rehearse several details about a story, but it is impossible to rehearse everything.

¶ 13 At that point, Dickinson walked back to Jones and issued him a warning for unsafe lane usage and failure to signal lane changes. Because Jones appeared unusually nervous, Dickinson asked to take Jones's pulse. Jones responded by holding out his hand. Jones's pulse rate was 160 beats per minute. Pursuant to his training and experience, Dickinson testified that a normal resting pulse rate is 60-90 beats per minute, where someone using methamphetamine has a pulse rate of 120-160 beats per minute. Jones explained that his pulse rate was so high because he consumed an energy drink earlier. Dickinson asked Jones if he had anything illegal in the car. Jones replied that he did not know because it was a rental car and other people drove it. Dickinson then advised Jones that Arizona had a problem with drug trafficking. To that statement, Dickinson testified, Jones became aggravated, threw his hand up and down, as if throwing a tantrum, and said “I don't do drugs. Do I look like someone that does drugs? ... Take my blood and test it.” At this point, Dickinson believed Jones and Tucker were involved in criminal activity and, based on Jones's response to Dickinson's comment, the car would contain money or drugs. When asked if he would consent to a search of the car, Jones refused, stating, “You don't have probable

cause. I don't do drugs. No.” Dickinson called for another officer to assist. Dickinson testified at that point, the traffic stop lasted approximately 10-15 minutes.

¶ 14 Dickinson went back to the passenger side and made contact with Tucker again. Dickinson told Tucker that Arizona had a problem with drug trafficking and asked if he could search the car. Tucker yelled back to Jones through the window, “You're not gonna let him search the vehicle, are you?” With no consent to search the car, Dickinson called for a K9 unit, which arrived approximately 15-25 minutes later. After the dog alerted on the car, Dickinson conducted a search and found a football-sized trash bag in the trunk by the spare tire. The substance inside was later identified as methamphetamine.

¶ 15 Dickinson testified that he stopped Jones and Tucker at 12:40 a.m.; concluded the reason for the initial stop by issuing Jones a warning at 12:55 a.m.; spoke with Jones, including taking his pulse for approximately six minutes; and called for the K9 unit at 1:01 a.m. The K9 unit arrived approximately 15-25 minutes after Jones refused to consent to the search. Upon discovering the drugs in the car, Tucker and Jones were arrested at 1:38 a.m. By Dickinson's calculations, from the time of the initial stop to arrest, Jones had been detained for approximately one hour.

¶ 16 In denying Jones's motion to suppress, the superior court noted that the area of Interstate 40 Dickinson was patrolling was well-known as a common location where law enforcement watched traffic for criminal interdiction, and stated that Dickinson “has a significant amount of training and experience in interacting with the public during traffic stops and has established a baseline of normal reaction and nervousness the public exhibits during a law enforcement encounter.” The court found that once Dickinson issued Jones a traffic warning, the purpose of the stop was complete. But in considering the totality of the circumstances and Dickinson's extensive training and experience, the court found that Dickinson had developed reasonable suspicion to extend the stop post-warning based on objective evidence that occurred *before* issuance of the warning. Specifically, the court found (1) the inconsistencies in the statements provided by Jones and Tucker as to their travel plans in New Mexico—Jones said they were staying for five days, Tucker said eight days, but the rental car agreement was for three days only; and (2) Jones's extreme nervousness, substantially

more than the average motorist, provided Dickinson with reasonable suspicion to investigate further and extend the traffic stop.

*4 ¶ 17 Such objective factors gave rise to reasonable suspicion supporting the continued detention of Jones and Tucker to investigate further and extend the stop to wait for the K9 unit. See *State v. Organ*, 225 Ariz. 43, 46, ¶ 10 (App. 2010) (“If the trial court has not articulated specific findings, we will infer those factual findings reasonably supported by the record that are necessary to support the trial court's ruling.”).

¶ 18 Nevertheless, Jones argues, in essence, that each factor alone (“some evidence of nervousness” or “slight, if any, discrepancies in travel plans”) did not give rise to the requisite reasonable suspicion to detain him after Dickinson issued the warning. Contrary to Jones's assertion, in determining whether evidence should be suppressed, the court reviews the totality of circumstances, all of the factors as a whole, not each factor or circumstance individually. See *Evans*, 237 Ariz. at 234, ¶ 8; *State v. O'Meara*, 198 Ariz. 294, 296, ¶ 10 (2000) (“One cannot parse out each individual factor, categorize it as

potentially innocent, and reject it. Instead, one must look at all of the factors ... and examine them collectively.”).

¶ 19 Given the totality of the circumstances considering Dickinson's training and expertise, reasonable suspicion existed to believe that Jones and Tucker may be involved in criminal activity. Thus, prolonging the otherwise-completed traffic stop for unsafe lane usage and failure to signal lane changes to investigate and conduct a K9 search for possible drugs was not an unlawful seizure. See *Rodriguez*, 135 S. Ct. at 1614; *Driscoll*, 238 Ariz. at 434, ¶ 8. Because substantial evidence supports the superior court's findings, it did not abuse its discretion in denying Jones's motion to suppress.¹

CONCLUSION

¶ 20 For the foregoing reasons, we affirm Jones's convictions and resulting sentences.

All Citations

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Footnotes

¹ We previously examined a similar situation in *State v. Sweeney*, 224 Ariz. 107 (App. 2010), in which we arrived at a different conclusion. There, Sweeney was stopped for a traffic violation by a K9 unit officer traveling with his drug interdiction dog. *Id.* at 109, ¶¶ 1-2. During the stop, the officer became suspicious that Sweeney was involved in criminal activity based on a number of observations. *Id.* at 110, ¶ 9. Nevertheless, the officer issued Sweeney a citation, told him he was free to go, and “wished him a safe trip.” *Id.* at 109, ¶ 5. *Sweeney*, however, is distinguishable from the instant case. Here, several intervening events following completion of the initial traffic stop gave rise to reasonable suspicion supporting the continued detention of Jones and Tucker to investigate further.