



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. NELSON IVAN BOTELO-FLORES
CR-11-0180-PR**

PARTIES:

Petitioner: Nelson Ivan Boteo-Flores

Respondent: State of Arizona

FACTS:

After a jury trial, Nelson Boteo-Flores was convicted of facilitation of theft of a means of transportation and sentenced to a prison term of 1.75 years. On appeal, he argued, among other things, that the trial court erred in denying his motion to suppress incriminating statements because they were the result of an illegal detention or arrest.

The court of appeals found most of the underlying facts were undisputed. After a police officer went to an apartment complex to investigate a report of a stolen truck, he conducted surveillance of the parking lot and saw a driver arrive in a car registered to that address. A few minutes later, the car drove away. The driver was using a cellular telephone and, as he left the parking lot, he looked up and down the street. The car returned a short time later with three people whom the officer could not identify. Minutes after that, Boteo-Flores walked from the apartment complex to the street and looked up and down the street several times. The original driver of the car then drove out of the complex in the stolen truck the officers had been trying to locate. The driver “yelled or said something” to Boteo-Flores before he drove away, and Boteo-Flores watched the vehicle leave. The officer approached Boteo-Flores, commanded him to move to the front of the officer’s car, and handcuffed him. The officer then administered the *Miranda* warnings and questioned him. Another officer arrived later, also giving Boteo-Flores the *Miranda* warnings and questioning him. Boteo-Flores then made incriminating statements. He had been detained from 25 to 40 minutes before the second interview.

At an evidentiary hearing, the officer, based on his experience, testified that he believed Boteo-Flores was acting as a lookout for the driver of the stolen truck. He did not know where the third person from the car was located. Finally, the officer testified that vehicle theft, especially the theft of trucks such as the one that was stolen, is often connected with human or narcotics smuggling, and that people involved in smuggling often are armed. The trial court found the officer had testified credibly, had a reasonable suspicion that Boteo-Flores was involved with the stolen truck, and had detained Boteo-Flores properly but had not arrested him. The trial court denied Boteo-Flores’s motion to suppress evidence.

The court of appeals held that the record supported the trial court's finding that the officer had a reasonable, articulable suspicion that Boteo-Flores was involved in criminal activity, and, though the question was a close one, that the trial court did not err when it determined that Boteo-Flores was not under arrest.

ISSUE:

The issue that Boteo-Flores presented in his petition for review is: "Whether the trial court abused its discretion when it failed to suppress Nelson's statements that were the result of an improper detention and arrest."

The Arizona Supreme Court ordered the State of Arizona to file a response addressing paragraphs 9-12 of the court of appeals' Memorandum Decision.

OTHER RESOURCES:

In paragraphs 9-12, the court of appeals wrote:

Boteo-Flores further argues his detention was a *de facto* arrest. The trial court implicitly found handcuffing Boteo-Flores was reasonable when it concluded that Boteo-Flores was not under arrest. We defer to the court's findings of fact, *State v. Lopez*, 198 Ariz. 420, ¶ 7, 10 P.3d 1207, 1208 (App.2000), including its findings on officer credibility and the reasonableness of the officers' inferences, *State v. Mendoza-Ruiz*, 225 Ariz. 473, ¶ 6, 240 P.3d 1235, 1237 (App.2010). But, we review *de novo* the ultimate legal issue. *State v. Navarro*, 201 Ariz. 292, ¶ 12, 34 P.3d 971, 974 (App.2001). Whether a person is arrested "turns upon an evaluation of all the surrounding circumstances to determine whether a reasonable person, innocent of any crime, would reasonably believe that he was being arrested." *Id.* ¶ 20, quoting *State v. Winegar*, 147 Ariz. 440, 448, 711 P.2d 579, 587 (1985). Factors to determine what a reasonable person would believe include "the officer's display of authority, the extent to which the defendant's freedom was curtailed, and the degree and manner of force used." *State v. Acinelli*, 191 Ariz. 66, 69, 952 P.2d 304, 307 (App.1997).

However, an officer may take reasonable steps "to preserve his own safety and to prevent [a] defendant from fleeing." *Blackmore*, 186 Ariz. at 634, 925 P.2d at 1351; see *State v. Romero*, 178 Ariz. 45, 49, 870 P.2d 1141, 1145 (App.1993) ("The use of force does not transform a stop into an arrest if the situation explains an officer's fears for his personal safety."). Handcuffs may be evidence that a person is under arrest, see *State v. Monge*, 173 Ariz. 279, 280 n. 1, 842 P.2d 1292, 1293 n. 1 (1992), but they also may be a reasonable measure to protect an officer's safety, see *Blackmore*, 186 Ariz. at 631, 634, 925 P.2d at 1348, 1351. See also *Washington v. Lambert*, 98 F.3d 1181, 1186 (9th Cir.1996) ("[B]ecause we consider ... the inherent danger of the situation[,] ... pointing a weapon at a suspect and handcuffing him, or ordering him to lie on the ground, or placing him in a police car will not *automatically* convert an investigatory stop

into an arrest that requires probable cause.”). When an officer’s safety concerns arise, we also look to: “(1) the proximity between the location of the crime and the site of the stop; (2) the amount of time between the crime and the stop; and (3) the duration of the stop.” *Blackmore*, 186 Ariz. at 633, 925 P.2d at 1350 (citations omitted). In order to determine the reasonableness of the duration of a stop “we must consider the degree of intrusion on an individual’s privacy and weigh that against the purpose of the stop and the diligence with which the officer pursued that purpose.” *State v. Sweeney*, 224 Ariz. 107, ¶ 18, 227 P.3d 868, 873 (App.2010).

Here, the officer testified that vehicle theft, especially the theft of large trucks, often is connected with human or narcotics smuggling and that people involved in smuggling often are armed. The officer also testified he handcuffed Boteo-Flores because the whereabouts of the third person in the car was still unknown. The trial court explicitly found credible the officer’s testimony. The officer also knew that the individual in the stolen truck had sped away, apparently attempting to elude police. Thus, the situation implicated officer safety concerns. Furthermore, the stop was at the location where the stolen truck had been seen and immediately after the crime—controlling a stolen vehicle—had occurred. *See Blackmore*, 186 Ariz. at 633, 925 P.2d at 1350. And the record does not indicate that Boteo-Flores was told he was under arrest. Finally, Boteo-Flores may have been stopped for only twenty-five minutes, during which the two officers questioned him to determine his involvement in the theft of the truck.

Although this situation may present a close question, deferring to the trial court’s findings of fact on officer credibility and the reasonableness of the officer’s inferences, *Mendoza-Ruiz*, 225 Ariz. 473, ¶ 6, 240 P.3d at 1237, we conclude the court did not abuse its discretion in determining Boteo-Flores was not under arrest. *See Sweeney*, 224 Ariz. 107, ¶ 18, 227 P.3d at 873; *State v. O’Meara*, 197 Ariz. 328, ¶¶ 5, 13–14, 4 P.3d 383, 385, 387 (App.1999) (forty-five to fifty minute investigative detention waiting for drug detection dog reasonable). The officer acted reasonably to protect his own safety and to prevent Boteo-Flores from fleeing, and he diligently pursued the purpose of the stop. The trial court did not err in denying Boteo-Flores’s motion to suppress.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.