



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DALE LEE EVANS
CR-14-0285-PR**

PARTIES:

Petitioner: Dale Lee Evans

Respondent: The State of Arizona

FACTS:

Deputy Anderson and his partner stopped to investigate Evans, who was seated in his parked truck in the roadway, based on Deputy Anderson’s observations that led him to believe Evans may have been assaulting his passenger. During the course of the investigation, the deputies discovered evidence leading them to charge Evans with possession of marijuana, possession of paraphernalia, and aggravated DUI.

Evans filed a pretrial motion to suppress evidence obtained from the traffic stop, alleging the deputies lacked reasonable suspicion to stop his vehicle. At the hearing on the motion, Deputy Anderson testified that he was riding in a marked patrol car with his partner, who was driving, when he saw a truck parked “right at the stop sign” of an intersection in an area “known for illegal immigrant activity . . . [and] marijuana hauling.” He saw the driver of the parked truck was turned in his seat and “[f]lailing his arms towards the passenger” with closed fists. Deputy Anderson told his partner that they “might have a rolling domestic violence.” As the officers returned to the intersection to investigate, the truck pulled away. The deputies then initiated the traffic stop.

On cross-examination, Deputy Anderson estimated that the patrol car had been travelling at fifty-five miles an hour, that he was twenty-five to thirty feet from the intersection when the driver’s actions “caught the corner of [his] eye,” and that he observed the driver for “four or five seconds.” He stated he saw the driver make three arm movements toward the vehicle’s passenger, which he described as “[l]eft, right, left,” but had not seen any contact made, “just . . . arms.”

At the close of the hearing, the trial court agreed with Evans that it was unlikely Anderson had observed the driver for as much as four or five seconds. Rather, based on Anderson’s testimony, the court found his observations of Evans’s arm movements lasted “closer to a second-and-a-half or a second.” The court then stated:

But, in any event, I believe, based on the evidence presented, that the arm movements, though they might not have been criminal activity, were articulable facts that justified the Officers in trying to find out more.

. . . .

[T]here was a lot that [Anderson] didn’t know, but it wasn’t as if [he] looked at the

vehicle and decided based on a hunch that there was something afoot. He saw arm activity that might have been consistent with some domestic violence assault, and I think that the officers were justified in investigating further by stopping the vehicle, after it apparently started up.

Accordingly, the trial court denied Evans's motion to suppress the evidence. A jury later convicted Evans as charged, and the trial court sentenced him to concurrent prison terms, the longest being 2.5 years.

Evans appealed his conviction, contending the trial court erred in denying his motion to suppress. He claimed Deputy Anderson's limited observations of Evans's arm movements did not rise to the reasonable suspicion required by *Terry v. Ohio*, 392 U.S. 1, 20, 30 (1968), for an investigatory stop. Relying on *United States v. Foreman*, 369 F.3d 776 (4th Cir. 2004), Evans argued that the State had to show Anderson's fleeting observation of ambiguous arm movements eliminated "that substantial portion of the innocent motoring public necessary [to establish] a reasonable suspicion" for the investigative stop. *Id.* at 781. Evans suggested that he could have been gesticulating while telling a story, waving away an insect, extinguishing a match, dancing to a musical beat, or using sign language.

The court of appeals rejected Evans's argument, even though two other cases issued by the Arizona Court of Appeals cite *Foreman* with approval. See *State v. Sweeney*, 224 Ariz. 107, 113 ¶ 22, 227 P.3d 868, 874 (App. 2010), and *State v. Teagle*, 217 Ariz. 17, 24 ¶ 25, 170 P.3d 266, 273 (App. 2007). The court explained that reasonable suspicion is a "commonsense, nontechnical concept[] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Ornelas v. United States*, 517 U.S. 690, 695 (1996). In this case, Deputy Anderson saw Evans flailing his closed fists toward the truck's passenger in a manner consistent with an assault. The deputy was "not required to rule out the possibility of innocent explanations for a defendant's conduct." *State v. Ramsey*, 223 Ariz. 480, 485 ¶ 23, 224 P.3d 977, 982 (App. 2010). The relevant inquiry for reasonable suspicion "is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts." *United States v. Sokolow*, 490 U.S. 1, 10 (1989).

The court here noted that before making an investigatory stop, a police officer must have "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-18 (1981). The court found it unreasonable to demand that the same officer, before acting on his particularized suspicion, must also consider the number of innocent travelers who might engage in similar behaviors, under similar circumstances, and whether his suspicions serve to eliminate a substantial portion of those innocent persons.

The *Foreman* court stated that "[t]he articulated factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied." 369 F.3d at 781. The court of appeals here questioned whether that language is a correct statement of the law because it states a standard not present in the Supreme Court's opinion in *Sokolow*, 490 U.S. at 7-8 (requiring that, in determining the validity of a stop, the court "must consider the totality of the circumstances – the whole picture"). "The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as

such, practical people formulated certain common-sense conclusions about human behavior; jurors as fact-finders are permitted to do the same – and so are law enforcement officers.” *Id.* at 8.

Thus, the court of appeals concluded, *Foreman*’s requirement that the factors an officer considers before making a stop “together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied” is inconsistent with the Supreme Court’s reasoning in *Sokolow*. It also is inconsistent with the greater weight of authority that holds that “[w]hen determining whether reasonable suspicion exists, the police are not required to rule out the possibility of innocent explanations for a defendant’s conduct.” *Ramsey*, 223 Ariz. at 485 ¶ 23, 224 P.3d at 982. Giving due weight to the trial court’s factual findings and related inferences, the court concurred with the conclusion that the deputies were justified in stopping Evans to investigate a reasonable suspicion of criminal activity. The investigatory stop did not violate the Fourth Amendment.

ISSUE:

Were the Court of Appeals’ prior opinions in *State v. Teagle*, 217 Ariz. 17, 170 P.3d 266 (App. 2007), and *State v. Sweeney*, 224 Ariz. 107, 227 P.3d 868 (App. 2010), based on incorrect statements of law to the extent that those Opinions require that the factors relied upon by law enforcement serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied?

DEFINITION:

Reasonable suspicion: The standard set forth by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 20, 30 (1968), to justify law enforcement officers to stop a person for investigatory purposes. While more than a mere hunch is necessary to justify an investigatory stop, the likelihood of criminal activity does not need to rise to the level required for probable cause.