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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0742
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
KASEY DARNELL KAUAKAHI,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-129452-001 DT

The Honorable Pamela H. Svoda, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Phoenix

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By Charles R. Krull, Deputy Public Defender
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B R O W N, Judge

¶1 Kasey Darnell Kauakahi appeals his convictions and sentences for two counts of aggravated driving under the

influence. Counsel for Kauakahi filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that after searching the record on appeal, he was unable to find any arguable grounds for reversal. Kauakahi was granted the opportunity to file a supplemental brief in *propria persona*, but he has not done so.

¶2 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Kauakahi. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

BACKGROUND

¶3 Kauakahi was indicted on one count of aggravated driving while impaired to the slightest degree, in violation of Arizona Revised Statutes ("A.R.S") § 28-1381(A)(1) (2012),¹ and one count of aggravated driving while exceeding the blood alcohol limit, in violation of A.R.S. § 28-1381(A)(2). Both counts were charged as class four felonies under A.R.S. § 28-1383(A)(1) (2012), because the offenses were committed while

¹ Absent material revision after the date of the alleged offense, we cite the statute's current version.

Kuakahi's driver's license was suspended. The following evidence was presented at trial.

¶4 Early in the morning on January 9, 2010, D.K. heard a loud crash. As he walked outside in front of his condominium unit, he saw that a truck had crashed into a fence surrounding the community pool. He also noticed that an individual in the driver's seat, later identified as Kauakahi, was trying to back the truck off of a curb, but the tires kept spinning. D.K. called the police, who arrived at the scene within a few minutes.

¶5 Kauakahi told Officer Callies that a friend had been driving the vehicle when it crashed. Kauakahi also explained, however, that he later operated the vehicle in an attempt to "move it away from the wall where it crashed into." Kauakahi also mentioned he was with someone at a bar and that "she's just a friend and it is cool." In context, these statements made no sense to Callies, so he asked for identification, whereupon Kauakahi handed him his Arizona State ID card, chapstick, and a gentleman's club card. Kauakahi also had a set of car keys. Confused at Kauakahi's actions and statements, Callies told him "you are not making any sense, . . . tell me the truth about what happened." Kauakahi then admitted he was the driver of the vehicle. Callies conducted several field sobriety tests, which Kauakahi could not perform satisfactorily. Kauakahi was

arrested and taken to a hospital for a blood draw, which revealed a blood alcohol concentration of .240, three times the legal limit. Callies then took Kauakahi to the police station, gave Kauakahi *Miranda*² warnings and asked additional questions. Kauakahi admitted his driver's license was "most likely suspended," he had been drinking alcohol, and he had been driving the vehicle.

¶6 Evidence at trial also demonstrated that Kauakahi's driver's license was suspended at the time of the accident. A letter notifying Kauakahi of his driver's license suspension was properly mailed to his address on file with the Arizona Motor Vehicle Department. A jury found Kauakahi guilty as charged on both counts. The court sentenced Kauakahi to concurrent four-month prison terms followed by three years of supervised probation, with credit for 29 days of presentence incarceration. This timely appeal followed.

DISCUSSION

¶7 We have searched the entire record for reversible error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Kauakahi was present and represented by counsel at all pertinent stages of the proceedings, was afforded the opportunity to speak before sentencing, and the sentence imposed

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

was within statutory limits. Additionally, as explained below, the court did not commit fundamental error in denying Kauakahi's motion to suppress.

¶8 Kauakahi moved to suppress the statements he made to Callies at the accident scene because *Miranda* warnings were not provided and because the statements were not given voluntarily. We find *Miranda* does not apply to Callies' on-the-scene questioning of Kauakahi because he was not in custody. See *Miranda*, 384 U.S. at 477-78 (explaining that "general on-the-scene questioning as to facts surrounding a crime" does not require *Miranda* warnings); *State v. Bainch*, 109 Ariz. 77, 79, 505 P.2d 248, 250 (1973) (noting that a key factor in deciding whether a person is in custody is whether he was "deprived of his freedom of action in any significant manner").

¶9 The initial questions from Callies took place at the scene of the accident, where officers were engaged in routine investigatory questioning of those who may have been involved in or witnessed the accident. When Kauakahi provided incoherent answers, Callies merely requested clarification. The record supports the trial court's determination that Kauakahi was not in custody at the time of Callies' questions at the scene of the accident.

¶10 We also agree with the trial court's conclusion that Kauakahi's admission was voluntary. Nothing in the record

suggests there was any threat, promise, or coercion. Callies' statement to Kauakahi that he should "tell me the truth about what happened" is not coercive. See *State v. Pettit*, 194 Ariz. 192, 196, 979 P.2d 5, 9 (App. 1998) (threshold of determining voluntariness is whether a defendant's will was overborne as a result of coercive police conduct). Thus, the trial court did not err in denying Kauakahi's motion to suppress.

CONCLUSION

¶11 Based on the foregoing, we affirm Kauakahi's convictions and sentences. Upon the filing of this decision, counsel shall inform Kauakahi of the status of the appeal and his options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

Kauakahi shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/S/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/S/

MARGARET H. DOWNIE, JUDGE

/S/

RANDALL M. HOWE, JUDGE