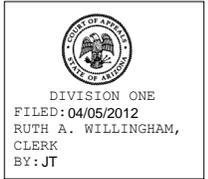


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0099
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
LEO PATRICK PADILLA,) Rule 111, Rules of
) the Arizona Supreme
Appellant.) Court)
) **FILED 4/5/2012**
)
_____)

Appeal from the Superior Court in Apache County

Cause No. S0100CR2008269

The Honorable Donna J. Grimsley, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Melissa M. Swearingen, Assistant Attorney General
Attorneys for Appellee

Emily L. Danies Tucson
Attorney for Appellant

G O U L D, Judge

¶1 Leo Patrick Padilla appeals his convictions and
resulting sentences for one count of aggravated DUI while a

minor is present, one count of driving with a blood alcohol content ("BAC") of 0.08 or more while a minor is present, and one count of aggravated extreme driving with a BAC of 0.15 or more while a minor is present, all class six felonies. He argues the court erred when it denied his motion to suppress evidence obtained as fruit of an illegal traffic stop. For the following reasons we affirm.

Factual and Procedural Background¹

¶12 Around 9:30 p.m. on July 12, 2008, Deputy Wallace received a dispatch call reporting that three trucks were turning "brodies"² in the parking lot of the Apache County Fairgrounds. When he responded to the location, there were no trucks present. Shortly thereafter, Deputy Wallace located a truck about five or six blocks from the fairgrounds. He conducted a traffic stop and the driver confirmed he had been doing brodies at the fairgrounds with a few other pick-up trucks. Deputy Wallace gave the driver a verbal warning.

¶13 After concluding the traffic stop, Deputy Wallace drove to the north end of the roadway and parked near Barth

¹ We view the evidence in the light most favorable to sustaining the convictions and resulting sentences. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

² A "brody" consists of quickly turning a vehicle in a tight circle; brodies are usually done on dirt, mud or grass and cause damage to the driving surface.

Park. Barth Park is an area known to be frequented by juveniles and adults for drinking, loitering, littering, and engaging in other publicly disruptive activities. While parked, the deputy saw a pick-up truck drive toward the back of the field, make a quick turn, and park. It was dark when the deputy made these observations, and the lighting at Barth Park was very poor. As a result, Deputy Wallace could only see the truck's headlights to track its turning motion. After turning the brody, the truck pulled away from the field and drove toward town; Deputy Wallace pulled the truck over. Once the truck had stopped, Deputy Wallace approached to conduct a traffic stop.

¶4 Padilla was driving the truck; in the passenger seat was his girlfriend's minor child. While conducting the traffic stop, Deputy Wallace noticed a strong odor of alcohol emanating from Padilla. He also observed beer and liquor bottles lying in the cab of the truck. Deputy Wallace subsequently searched the vehicle and discovered an open bottle of Crown Royal between the driver and passenger seats. When asked if he had been drinking alcohol, Padilla admitted to having a beer. After Padilla performed poorly on several field sobriety tests, Deputy Wallace placed Padilla under arrest, and took him to the police station. At the police station Padilla agreed to submit to an Intoxilyzer test, which revealed a breath alcohol concentration of 0.155 and 0.156 on successive blows.

¶15 Padilla was charged with one count of aggravated DUI while a minor is present, one count of driving with a BAC of 0.08 or more while a minor is present, and one count of aggravated extreme driving with a BAC of 0.15 or more while a minor is present. Before trial, Padilla filed a motion to suppress arguing Deputy Wallace stopped him without legal grounds and all evidence collected in the case should be suppressed as fruits of the illegal stop. After holding a suppression hearing, the court denied Padilla's motion. Padilla waived a jury trial and submitted the case to the court on a stipulated record. The judge found Padilla guilty on all counts and sentenced him to three years' probation with a mandatory jail term of thirty consecutive days. Imposition of Padilla's sentence was stayed pending this appeal.

Discussion

¶16 Padilla claims the court improperly denied his motion to suppress. He argues Deputy Wallace did not have legal grounds to conduct the traffic stop. We review the court's denial of a motion to suppress for an abuse of discretion and will not disturb the ruling absent clear and manifest error. *State v. Stanley*, 167 Ariz. 519, 523, 809 P.2d 944, 948 (1991); *State v. Zamora*, 220 Ariz. 63, 67, ¶ 7, 202 P.3d 528, 532 (App. 2009). "[W]e consider only the evidence presented at the suppression hearing and view it in the light most favorable to

upholding the trial court's factual findings." *State v. Fornof*, 218 Ariz. 74, 76, ¶ 8, 179 P.3d 954, 956 (App. 2008). We defer to the trial court's factual determinations and review its conclusions of law *de novo*. *Zamora*, 220 Ariz. at 67, ¶ 7, 202 P.3d at 532.

¶7 A traffic stop is a seizure under the Fourth Amendment. As a result, before conducting a traffic stop a police officer must have a reasonable suspicion of criminal activity supported by specific, articulable facts. *State v. Starr*, 222 Ariz. 65, 68, ¶¶ 9-12, 213 P.3d 214, 217 (App. 2009); see also *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)) (discussing standard of reasonable suspicion). To determine if the officer had a reasonable suspicion, we examine the totality of the circumstances from the standpoint of "an objectively reasonable police officer." *Ornelas v. United States*, 517 U.S. 690, 696 (1996).

¶8 Considering the totality of the circumstances, Deputy Wallace had a reasonable suspicion to stop and investigate Padilla for reckless driving. Deputy Wallace received a dispatch call advising that three vehicles were seen turning brodies at the Apache County Fairgrounds. A few minutes after receiving the call, the deputy stopped a truck driving in the vicinity of the fairgrounds. The driver confirmed that he and

a few other trucks had been doing brodies at the fairgrounds. About thirty minutes later, Deputy Wallace saw another truck pull onto Barth Park, an area known for illegal and publicly disruptive activities. The deputy observed a truck make a quick turn, which appeared to be a brody, park, and then drive toward town. At the suppression hearing, the deputy testified the reason for the stop was "the turn on the high speed and where he was at, and the . . . previous conditions of kids being up there and things like that." Based on these facts, the court did not abuse its discretion in denying Padilla's motion to suppress. See *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) ("[T]he fact that the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a *Terry* analysis."); *State v. Ramsey*, 223 Ariz. 480, 485, ¶ 26, 224 P.3d 977, 982 (App. 2010) (stating that the critical fact that investigatory stop occurred in a high crime area in addition to defendant's conduct supported officer's reasonable suspicion); *Fornof*, 218 Ariz. at 78, ¶ 17, 179 P.3d at 958 (stating that specific location known for drug-related activity is a fact that may give rise to reasonable suspicion).

Conclusion

¶19 For the reasons stated above, we affirm Padilla's convictions and sentences.

/S/

ANDREW W. GOULD, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

ANN A. SCOTT TIMMER, Judge