

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

FILED BY CLERK

MAY 29 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellant,)	2 CA-CR 2011-0374
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
RAMON MENDOZA, JR.,)	Rule 111, Rules of
)	the Supreme Court
Appellee.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR201100156

Honorable Joseph R. Georgini, Judge

REVERSED AND REMANDED

James P. Walsh, Pinal County Attorney
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B R A M M E R, Judge.

¶1 The state appeals from the trial court's order granting in part appellee Ramon Mendoza, Jr.'s motion to suppress evidence. It contends the court erred in concluding the state had not supported the warrantless search of Mendoza's truck by establishing a valid exception to the warrant requirement. The state argues a warrant was not required for the search because the vehicle exception applied and the officers had probable cause to search it after a trained drug-detection dog had alerted to the vehicle. We reverse and remand.

Factual and Procedural Background

¶2 “In reviewing the grant of a motion to suppress, we view the evidence presented at the evidentiary hearing and any reasonable inferences from that evidence, in the light most favorable to upholding the trial court's order.” *State v. Garcia-Navarro*, 224 Ariz. 38, ¶ 2, 226 P.3d 407, 408 (App. 2010). On January 17, 2011, Maricopa Police Officer Donnie Burnias pulled over a truck Mendoza was driving because it did not have adequate mud flaps. The officer asked Mendoza if there were any weapons or drugs in the truck, and Mendoza replied there were not. Mendoza declined to consent to a search of the truck.

¶3 Maricopa Police Officer Melissa Drane arrived to assist Burnias and her trained drug-detection dog alerted on the exterior of both doors of the driver's side of the truck. Once the dog entered the interior of the truck, it alerted on the area around the center console and on a duffle bag. When Burnias attempted to detain him, Mendoza pulled away, threw something into the nearby desert, continued to struggle, and

ultimately was bitten by Drane's dog. Eventually, Mendoza was detained for further investigation.

¶4 Because Mendoza had been stopped next to a busy road and the officers lacked sufficient lighting to continue their investigation, they had the truck towed to the Maricopa Police Department to be searched. During the search, an officer discovered a loaded handgun near the center console, which Mendoza admitted belonged to him.

¶5 Mendoza was charged with misconduct involving weapons and resisting arrest. He moved to suppress evidence obtained during the search, arguing, inter alia, that neither the initial stop nor the subsequent investigation were supported by reasonable suspicion, that officers had detained Mendoza beyond the permissible scope of the traffic stop, and that the search at the police department was impermissible. After a hearing, the trial court denied the motion as to Mendoza's initial stop and detention but granted the motion as to the search of the truck at the police department and suppressed the gun evidence. The state appeals the court's grant of Mendoza's motion to suppress evidence obtained through the search conducted at the police department. *See* A.R.S. § 13-4032(6) (state may appeal grant of motion to suppress).

Discussion

¶6 The state argues the trial court erred in concluding it had not provided a valid exception to the warrant requirement.¹ It contends the vehicle exception allowed

¹Mendoza has failed to file an answering brief. Although we could treat the failure to file an answering brief as a confession of error, such treatment is discretionary

officers to search the truck after a trained drug-detection dog alerted to its exterior, providing sufficient probable cause. “In reviewing a trial court’s ruling on a motion to suppress, we defer to the trial court with respect to the factual determinations it made but review the court’s legal conclusions de novo.” *State v. Olm*, 223 Ariz. 429, ¶ 7, 224 P.3d 245, 248 (App. 2010).

¶7 The trial court denied Mendoza’s motion to suppress evidence and statements “as to the stop and detainment of [Mendoza] only.” We do not address this ruling because it is not before us. *See* A.R.S. § 13-4033 (defendant may appeal from final conviction, sentence, denial of motion for new trial, post-judgment order affecting substantial right); § 13-4032(6) (state may appeal from order granting motion to suppress). Consistent with the state’s argument on appeal, we address the court’s separate grant of Mendoza’s motion to suppress evidence found during the search of his truck only with respect to whether the warrantless search of the truck was lawful. Although we determine the search was lawful and thus the court erred in suppressing the gun for that reason, we express no opinion on whether the gun could have been suppressed for other reasons, including any issues related to the stop or detention of Mendoza.

¶8 “The Fourth Amendment generally requires police to secure a warrant before conducting a search.” *Maryland v. Dyson*, 527 U.S. 465, 466 (1999). “Under the ‘automobile exception’ to the Fourth Amendment warrant requirement,” however, “law

and we have chosen to address the merits of the case. *See Gibbons v. Indus. Comm’n*, 197 Ariz. 108, ¶ 8, 3 P.3d 1028, 1031 (App. 1999).

enforcement officers can search a vehicle lawfully in their custody if probable cause exists to believe that the vehicle contains contraband, even in the absence of exigent circumstances.” *State v. Reyna*, 205 Ariz. 374, ¶ 1, 71 P.3d 366, 366 (App. 2003); *see also Dyson*, 527 U.S. at 467 (“the automobile exception does not have a separate exigency requirement”—probable cause alone sufficient); *United States v. Johns*, 469 U.S. 478, 484 (1985) (“There is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure.”). A warrantless search of a vehicle is permissible “if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.” *United States v. Ross*, 456 U.S. 798, 809 (1982). And because exigent circumstances are not required before law enforcement officers may conduct a warrantless search of a vehicle lawfully in police custody, officers, if they have probable cause, can wait to search the vehicle until after it is taken to the police station. *Reyna*, 205 Ariz. 374, ¶ 15, 71 P.3d at 370.

¶9 The use of a drug-detection dog outside of a vehicle for investigative purposes does not constitute a search under the Fourth Amendment. *See State v. Weinstein*, 190 Ariz. 306, 310, 947 P.2d 880, 884 (App. 1997); *see also City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000) (exterior sniff of vehicle by drug-detection dog not search). And police do not need reasonable suspicion that a drug-related activity is occurring before utilizing a drug-detection dog on the exterior of a lawfully-detained vehicle. *State v. Paredes*, 167 Ariz. 609, 613, 810 P.2d 607, 611 (App. 1991). But a drug-detection dog alerting to the outside of a vehicle provides sufficient

probable cause to justify the warrantless search of the vehicle. *State v. Box*, 205 Ariz. 492, ¶ 14, 73 P.3d 623, 627 (App. 2003); *Weinstein*, 190 Ariz. at 310-11, 947 P.2d at 884-85. And once the dog alerts outside it, officers have probable cause to search the entire vehicle. *Weinstein*, 190 Ariz. at 310-11, 947 P.2d at 884-85.

¶10 At the suppression hearing, Officer Drane testified the dog had been trained to detect narcotics, had alerted first to the exterior of Mendoza's truck, and then had alerted to the center console and a duffel bag inside the truck. This evidence establishes the officers had probable cause to search the truck for illegal drugs. *See Box*, 205 Ariz. 492, ¶ 14, 73 P.3d at 627 (drug-detection dog's alert provides probable cause to search car without warrant); *Weinstein*, 190 Ariz. at 310-11, 947 P.2d at 884-85 (same). Once the dog alerted to the exterior of Mendoza's truck, officers had probable cause to search the entire truck. *See Weinstein*, 190 Ariz. at 310-11, 947 P.2d at 884-85. And officers were permitted to search the truck after first taking it to the police department. *See Reyna*, 205 Ariz. 374, ¶ 15, 71 P.3d at 370; *Johns*, 469 U.S. at 484 (warrantless search of vehicle need not be contemporaneous with seizure). Therefore, because the warrantless search of Mendoza's truck falls within the automobile exception to the warrant requirement, the trial court erred in concluding the state had not demonstrated a valid exception to the Fourth Amendment's warrant requirement and in suppressing the gun discovered during that search for that reason. *See Reyna*, 205 Ariz. 374, ¶ 1, 71 P.3d at 366.

Disposition

¶11 For the foregoing reasons, we reverse the trial court's ruling granting Mendoza's motion to suppress and remand for further proceedings.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge