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



DIVISION ONE  
FILED: 07/12/2011  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 09-0894  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) MEMORANDUM DECISION  
)  
JOHN NAYLOR, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-157765-001 SE

The Honorable Carolyn K. Passamonte, Judge *Pro Tempore*

**AFFIRMED**

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**T I M M E R**, Chief Judge

¶1 John Naylor appeals his conviction and resulting disposition imposed for driving or having actual physical control of a vehicle while there was any drug or its metabolite in his body and while a person under the age of fifteen was in the vehicle. The sole issue presented on appeal is whether the trial court erred by failing to suppress evidence obtained after police conducted a traffic stop. For the reasons that follow, we affirm.

#### **BACKGROUND**

¶2 On April 17, 2008, at approximately 7:30 p.m., Mesa Police Officers Slaughter and Mullen were stopped in an unmarked police car in a westbound lane on Main Street at a traffic signal at the intersection with Extension Street in Mesa. The officers heard honking and yelling, which drew their attention to Naylor's car, which was stopped facing northbound in the center two-way turn lane just north of Main. Naylor's car was not near any intersecting road or driveway, and the turn signal was not activated.

¶3 While Naylor remained in a parked position in the roadway, the officers made a right turn and proceeded northbound on Extension. As the officers approached Naylor's car, they observed other traffic pass him and, when such traffic was positioned right next to Naylor's vehicle, the officers heard shouting and screaming coming from Naylor's window. The

officers activated their overhead lights, and Naylor, after sitting in the roadway an additional five or six seconds while traffic passed, drove his vehicle approximately 100 feet forward and made a left turn into an apartment complex without using his turn signal.

¶4 After Naylor stopped, the officers approached his vehicle and saw his infant son sitting in the back seat. The officers engaged Naylor in conversation, and detected the odor of marijuana, prompting them to ask Naylor to perform various sobriety tests. At the conclusion of the tests, the officers arrested Naylor for driving under the influence of alcohol or drugs. In subsequent questioning, Naylor told the officers he smoked marijuana daily and that he had smoked marijuana that morning.

¶5 The State charged Naylor with one count of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs and while a person under the age of fifteen was in the vehicle (Count 1), and one count of aggravated driving or actual physical control of a vehicle while there was any drug or its metabolite in his body and while a person under the age of fifteen was in the vehicle (Count 2). Naylor filed a motion to suppress, contending the traffic stop was illegal. After conducting an evidentiary hearing, the court denied the motion, reasoning as follows:

[T]he issue related to this stop is whether or not the officer stop was based upon a reasonable suspicion of illegal activity. And in reviewing the evidence that was presented the Court does find that the defendant's -- that the officers' testimony was credible. And what I am focusing on in the officers' testimony is the fact that they noticed the vehicle after hearing noise, honking and loud voices and looked in that northbound direction and saw the defendant's vehicle. The officers[], I believe was Officer Mullen testified that the vehicle sat stationary as if stopped and parked there while the officers made their turn and pulled up behind the vehicle and that the vehicle did not move until the officers had turned on their lights to initiate the stop. And it was at that time that the defendant's vehicle pulled forward and made an unlawful and improper left-hand turn into the apartment complex.

So, based on that, based upon Officer Slaughter's testimony regarding his experience on NHTSA [National Highway Traffic Safety Administration] nighttime driving cues and what he observed, the Court does find that there was a reasonable suspicion for the stop of the defendant at that time. So, as to that issue the motion to suppress is denied.

¶6 A jury later acquitted Naylor of Count 1 but convicted him of Count 2. After disposition by the court, this timely appeal followed.

#### **DISCUSSION**

¶7 Naylor argues the trial court committed reversible error by denying his motion to suppress because no evidence established a reasonable suspicion that he committed a Title 28

violation prior to the police stop. The State counters that the evidence justified a stop for both a Title 28 violation and to check the welfare of Naylor and his passenger. In deciding the propriety of the court's ruling, we defer to the court's factual findings but review the ultimate legal determination de novo. *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996). In our review, we consider only the facts adduced at the suppression hearing. *State v. Teagle*, 217 Ariz. 17, 20, ¶ 2, 170 P.3d 266, 269 (App. 2007).

¶18 "An investigatory stop of a motor vehicle constitutes a seizure under the Fourth Amendment" to the United States Constitution. *Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778. Although probable cause is not required to justify a stop because it is considered less intrusive than detention, an officer must have a reasonable suspicion that a person has engaged in criminal activity before making a stop. *Id.* Reasonable suspicion exists if the officer possesses "a particularized and objective basis for suspecting the particular person stopped of criminal activity" gleaned from the "totality of circumstances." *Id.*

¶19 The record at the suppression hearing supports the trial court's finding that the officers had reasonable suspicion to stop Naylor. Officer Slaughter testified that a vehicle stopped on a roadway for no apparent reason at night constitutes

a NHTSA nighttime driving clue for potentially impaired driving. In this case, the officer saw Naylor's car stopped for an extended period in the two-way left-turn lane at night, well short of a place to turn into, and with no signal activated to indicate Naylor's intentions. The unusualness of the circumstance was highlighted by the fact that occupants of passing vehicles honked and yelling was overheard. Based on this evidence, the officers possessed a particularized and objective basis for suspecting Naylor of driving while impaired, and the stop was justified. See *State v. Fornof*, 218 Ariz. 74, 76, ¶ 6, 179 P.3d 954, 956 (App. 2008) (explaining that an officer's reasonable suspicion of criminal activity so as to justify the vehicle stop is "based on the totality of the circumstances, considering such objective factors as the suspect's conduct and appearance, location, and surrounding circumstances, such as the time of day, and taking into account the officer's relevant experience, training, and knowledge").

¶10 The officers possessed an independent basis for stopping Naylor in light of his conduct after they initiated the traffic stop by activating their overhead lights and pulling behind him. Specifically, Naylor pulled forward and turned into his apartment complex in the presence of other "affected" vehicles without first activating his turn signal, in violation of Arizona Revised Statutes section 28-754(A) (2004) (requiring

the use of a signal in the presence of affected traffic, which is defined as traffic that "may be affected by the movement" of the driver's vehicle). Thus, before Naylor stopped, the officers had reasonable suspicion that he had committed a second traffic violation, which independently justified the stop. See *State v. Starr*, 222 Ariz. 65, 72, ¶ 25, 213 P.3d 214, 221 (App. 2009) (holding officer had reasonable suspicion to stop defendant based on violation of statute when defendant failed to signal his lane change in the event that other traffic may be affected); *People v. Miranda*, 17 Cal. App. 4th 917, 921, 21 Cal. Rptr. 2d 785, 786 (Cal. Ct. App. 1993) (standing for the principle that an officer's vehicle behind the defendant can constitute "affected traffic" for the purpose of violating a statute).

¶11 Based on the record before us, we conclude sufficient evidence existed to support the trial court's finding that the officers possessed a reasonable suspicion of criminal activity before stopping Naylor. In light of our conclusion, we need not consider the State's alternative argument that the stop was a legitimate exercise of the officers' duty to check on the welfare of Naylor and his passenger.

**CONCLUSION**

¶12 For the foregoing reasons, the trial court did not err in denying Naylor's motion to suppress. Consequently, we affirm Naylor's conviction and resulting disposition.

/s/  
Ann A. Scott Timmer, Chief Judge

CONCURRING:

/s/  
Diane M. Johnsen, Presiding Judge

/s/  
Patricia A. Orozco, Judge