

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



DIVISION ONE  
FILED: 09/27/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

STATE OF ARIZONA, ) 1 CA-CR 11-0022  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
)  
GARY BRYANT, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

Appeal from the Superior Court in Coconino County

Cause No. CR 2010-00410

The Honorable Dan Slayton, Judge

**AFFIRMED**

---

Thomas C. Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
and Joseph T. Maziarz, Assistant Attorney General  
Attorneys for Appellee

H. Allen Gerhardt, Coconino County Public Defender Flagstaff  
Attorney for Appellant

---

**H A L L**, Judge

¶1 Gary Bryant (defendant) appeals from his convictions for two counts of aggravated driving under the influence (DUI) (Count I - impaired driving with a suspended driver license,

Count II - driving with a blood alcohol concentration of 0.08 or higher with a suspended driver license), class four felonies, and the sentences imposed. For the reasons that follow, we affirm defendant's convictions and sentences.

#### FACTS AND PROCEDURAL BACKGROUND

¶2 In reviewing a trial court's ruling on a motion to suppress, we view the facts in the light most favorable to upholding the court's ruling. *State v. Teagle*, 217 Ariz. 17, 20, ¶ 2, 170 P.3d 266, 269 (App. 2007). We consider only the evidence presented at the suppression hearing. *Id.*

¶3 At approximately 9:30 a.m. on May 23, 2009, T.J. was in the front of his home doing yard work when a large white van stopped in front of his house. A passenger-side door opened and T.J. heard some "threatening talk," with one occupant of the van threatening to physically assault another occupant. A male occupant then emerged from the passenger-side of the van. He attempted to walk around the vehicle, but he was unable to do so without holding on to the van to reach the driver-side door. T.J. became concerned about the threats of violence and the possibility that the person who maneuvered his way to the driver's seat was heavily inebriated. He went inside his home and explained the situation to his wife, L.J., and she then telephoned the police to report the incident. While speaking with the police, L.J. walked to the front of the house with the

telephone and was able to report the color, make, and license plate number of the van as well as the direction the van was headed as it drove away.

¶4 A few moments later, Officer Wayne Winsor, who was conducting routine patrol, received a call from dispatch that a full-size white van had been reported as a suspected DUI. Dispatch provided the vehicle's license plate number and approximate location and Officer Winsor was able to quickly achieve "visual contact" with the vehicle. When Officer Winsor first saw the van, it was "stopped" in the turn lane. The van was not yielding to traffic, as there was no other traffic at that time, but it remained "stopped" in the turn lane for approximately twenty seconds before making a "wide" left turn, "almost hit[ting] the dirt where the asphalt and dirt meet as it was entering the parking lot." Officer Winsor activated his emergency lights and the van immediately came to a stop in the parking lot.

¶5 After the van stopped, Officer Winsor approached the driver's side of the vehicle. He recognized defendant from "prior contacts" and attempted to "get his attention," but defendant "just stared at [Officer Winsor] through the window, as if [he] wasn't even there." A few moments later, defendant apparently "realized" Officer Winsor was at the door, and he attempted to roll down his window and open the door, but he was

unable to do so. Officer Winsor then opened the driver-side door. Defendant provided Officer Winsor with an Arizona identification card and the officer asked dispatch to perform a driver license check and was informed that defendant's driver license had been suspended.

¶16 At that point, Officer Winsor asked defendant to exit the vehicle. Officer Winsor observed that defendant had red, watery, droopy eyes, slurred speech, and a strong odor of alcohol. When Officer Winsor asked defendant to perform several field sobriety tests, he was unable to do so. Officer Winsor then placed defendant under arrest for DUI and secured him in the back of his patrol car. Defendant fell asleep in the patrol car during the short drive to the Coconino County Jail and Officer Winsor had to wake him and help him walk into the jail. Defendant refused to submit to a breath test or blood draw, but his blood was eventually drawn pursuant to a search warrant.

¶17 On May 13, 2010, defendant was charged by indictment with two counts of aggravated DUI. The State also alleged that defendant had two prior felony convictions.

¶18 Before trial, defendant filed a motion to suppress all the evidence the State obtained after Officer Winsor's stop of his vehicle. Defendant argued that the stop was unlawful because he did not violate any traffic laws and the information

reported to the police from L.J. did not provide a legal basis for the stop.

¶19 The trial court denied defendant's motion to suppress and the matter proceeded to trial. The jury found defendant guilty as charged and also determined that the State had proven the aggravating circumstance of a previous felony conviction. The trial court later found that defendant had two historical prior felony convictions and sentenced him to a presumptive ten-year term of imprisonment for each count.

¶10 Defendant timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003), 13-4031, and -4033(A)(1) (2010).

#### DISCUSSION

¶11 As his sole issue on appeal, defendant contends that the trial court erred by denying his motion to suppress evidence. Specifically, defendant argues that the information provided by L.J. to police "did not support an[] investigative detention."

¶12 "In reviewing a trial court's decision on a motion to suppress evidence based on an alleged Fourth Amendment violation,<sup>[1]</sup> we defer to the trial court's factual findings,

---

<sup>1</sup> Although, on appeal, defendant contends that the stop violated the Arizona constitution, he failed to make this argument in the trial court and has therefore forfeited that claim. See *State*

including findings on credibility and the reasonableness of the inferences drawn by the officer[.]” *Teagle*, 217 Ariz. at 22, ¶ 19, 170 P.3d at 271. We review de novo, however, the trial court’s ultimate legal conclusion as to whether the totality of the circumstances warranted an investigatory stop. *State v. Gomez*, 198 Ariz. 61, 62, ¶ 8, 6 P.3d 765, 766 (App. 2000).

¶13 The Fourth Amendment’s “protection against unreasonable seizures ‘extends to brief investigatory stops of persons or vehicles that fall short of traditional arrest.’” *Teagle*, 217 Ariz. at 22, ¶ 20, 170 P.3d at 271 (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). “[A] police officer may make a limited investigatory stop in the absence of probable cause if the officer has an articulable, reasonable suspicion, based on the totality of the circumstances, that the suspect is involved in criminal activity.” *Teagle*, 217 Ariz. at 22-23, ¶ 20, 170 P.3d at 271-72.

¶14 Defendant argues that L.J.’s report to police was not sufficiently reliable to provide the reasonable suspicion of

---

*v. Martinez*, 210 Ariz. 578, 580 n.2, ¶ 4, 115 P.3d 618, 620 n.2 (2005) (explaining that a defendant who fails to object at trial does not “waive” the claim; rather, it is forfeited unless defendant can prove fundamental error occurred). Moreover, “[e]xcept in cases involving ‘unlawful’ warrantless home entries, the right of privacy afforded by Article 2, Section 8, [of the Arizona Constitution] has not been expanded beyond that provided by the Fourth Amendment.” *Teagle*, 217 Ariz. at 22 n.3, 170 P.3d at 271 n.3.

criminal activity necessary to justify an investigatory stop. We disagree.

¶15 Generally, “[a] citizen’s report of unusual activity is sufficient to give rise to reasonable suspicion.” *State v. Kinney*, 225 Ariz. 550, 555, ¶ 14, 241 P.3d 914, 919 (App. 2010). In an analogous case, we held that a citizen’s report of criminal activity made from a traceable home telephone “qualifie[s] for the enhanced reliability of information volunteered by a disinterested private citizen” because the caller places his credibility at risk. *Gomez*, 198 Ariz. at 63-64, ¶¶ 15-18, 6 P.3d at 767-68.

¶16 Here, L.J. not only made the report to police from her home phone, but she readily identified herself, explained that her husband had observed a vehicle occupant threaten violence and then take over driving the vehicle in an apparent intoxicated state, and then furnished very specific information about the van’s make, model, license plate number, and location. Thus, L.J.’s police report was sufficiently reliable and specific to provide the police with reasonable suspicion of criminal activity and the trial court did not err by denying defendant’s motion to suppress.

**CONCLUSION**

¶17 For the foregoing reasons, we affirm defendant's convictions and sentences.

/s/  
\_\_\_\_\_  
PHILIP HALL, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
DIANE M. JOHNSEN, Presiding Judge

/s/  
\_\_\_\_\_  
PATRICIA A. OROZCO, Judge