IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JACKIE MARIE LANG,
Appellant.

No. 2 CA-CR 2014-0226
Filed March 4, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20132759001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
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Counsel for Appellee

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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Vásquez concurred.

H O W A R D, Judge:

¶1 Following a jury trial, appellant Jackie Lang was convicted of possession of a dangerous drug and possession of drug paraphernalia. On appeal, she argues the trial court erred in denying her motions to suppress evidence obtained as a result of an illegal traffic stop and inventory search of her car. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In reviewing a trial court's ruling on a motion to suppress, "we consider only the evidence presented at the suppression hearing and view the facts in the light most favorable to sustaining the . . . ruling." *State v. Gonzalez*, 235 Ariz. 212, ¶ 2, 330 P.3d 969, 970 (App. 2014). In June 2013, a police officer with the Tucson Police Department (TPD) conducting surveillance in an unmarked car observed Lang make a right turn immediately into the far left, southbound lane of a divided, six-lane road. Recognizing this wide turn as a traffic violation, the officer called for another officer in a marked patrol car to initiate a traffic stop.

¶3 The second officer stopped Lang and during the stop discovered she had been driving on a suspended license. The officer impounded the car in accordance with A.R.S. § 28-3511, and pursuant to TPD policy, he placed Lang under arrest and began an inventory search of the car. During the inventory search, the officer discovered a plastic bag of methamphetamine in an ibuprofen bottle contained in Lang's purse.

¶4 Lang was indicted on the two counts described above. Before trial, she moved to suppress the evidence seized on the grounds that the officers had lacked reasonable suspicion of a traffic

violation and that the inventory search had been a pretext to search for evidence and not conducted in good faith. The trial court denied her motions to suppress. Lang subsequently was convicted of the two charges, and the court sentenced her to time-served on the paraphernalia count and placed her on a one-year term of probation on the possession count. We have jurisdiction over this appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033(A)(1).

Discussion

¶5 On appeal, Lang again argues the trial court erred in failing to suppress the evidence as illegally obtained under the Fourth Amendment.[1] "In reviewing a trial court's ruling on a motion to suppress evidence, we evaluate discretionary issues for an abuse of discretion but review legal and constitutional issues de novo." *State v. Huerta*, 223 Ariz. 424, ¶ 4, 224 P.3d 240, 242 (App. 2010).

Traffic Stop

¶6 Lang first argues the officers lacked reasonable suspicion that she violated A.R.S. § 28-751(1), which requires drivers to make right turns "as close as practicable to the right-hand curb or edge of the roadway," because her turn into the far left lane was as close as practicable to the right-hand curb given that she intended to make an immediate left in "one [Tucson city] block." And she argues the trial court erred in finding the officer had observed a traffic violation because "the State . . . conceded that the traffic violation was a pretext for the actual stop, and thus, it is important

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[1]Lang also appears to allege the stop and search violated her rights under article II, § 8 of the Arizona Constitution. Except in the context of home searches, we construe article II, § 8 consistently with the Fourth Amendment. *See State v. Johnson*, 220 Ariz. 551, ¶ 13, 207 P.3d 804, 810 (App. 2009); *State v. Juarez*, 203 Ariz. 441, ¶ 15, 55 P.3d 784, 788 (App. 2002). Thus, "we rely on Fourth Amendment jurisprudence in determining the propriety of the trial court's [ruling]." *State v. Teagle*, 217 Ariz. 17, n.3, 170 P.3d 266, 271 n.3 (App. 2007).

to consider the subjective motives of the officers" when assessing the existence of a violation.

¶7 An officer only needs reasonable suspicion of a traffic violation to justify a traffic stop under the Fourth Amendment. *Heien v. North Carolina*, ___ U.S. ___, ___, 135 S. Ct. 530, 536 (2014). The officer's subjective motives are irrelevant so long as the stop is otherwise supported by reasonable suspicion. *State v. Livingston*, 206 Ariz. 145, ¶ 13, 75 P.3d 1103, 1106 (App. 2003), *citing Whren v. United States*, 517 U.S. 806, 813 (1996). And we defer to the trial court's determination of the facts supporting reasonable suspicion because the trial court is in the best position to assess witness credibility. *State v. Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d 228, 230 (App. 2007).

¶8 At the motion to suppress hearing, the officer who observed Lang's right turn testified that he had seen her "turn all the way into the far left . . . lane, even though the first two available lanes were clear and unobstructed at the time." He testified that Lang had made a left turn after "[o]ne Tucson city block," and the parties presented the trial court with evidence showing the distance between the location of her right turn and her subsequent left turn. The court then determined "that it was practicable for [Lang] to make the turn without crossing all of the lanes of traffic into the far left[-]hand lane," that "there was nothing obstructing either of the two lanes prior to the one that she turned into," and that the officer properly had observed a violation of § 28-751.

¶9 Lang asserts, "The trial court did not address the issue of the proximity" of the right turn to the subsequent left turn. In light of Lang's argument to the court below that "this turn could [not] have been made practicably" and "there is just no way that [she could have] turn[ed] right and then left," and the evidence of proximity presented at the suppression hearing, a fair reading of the court's ruling that "it was practicable for her to make the turn without crossing all of the lanes of traffic into the far left[-]hand lane" shows that the court, in fact, did address the proximity issue.

¶10 Nevertheless, the state, in accordance with the officer's testimony, argued below Lang had committed a traffic violation because she had not turned into the nearest right lane, regardless of

her travel plans. And the trial court found "there was nothing obstructing either of the two lanes prior to the one that she turned into" and therefore the officer had observed a violation. Thus, it is possible the court adopted the state's interpretation of § 28-751(1) that Lang's travel plans were irrelevant. We need not decide this issue of statutory interpretation, however, because the stop was lawful in any event.

¶11 Section 28-751(1) is reasonably susceptible to the interpretation that "practicable" refers to such restrictions as physical barriers in the right lane or other traffic regulations. *See State v. Bouck*, 225 Ariz. 527, n.3, 241 P.3d 524, 527 n.3 (App. 2010) ("'[A]s close as practicable' allows for certain exceptions to the general rule, for example, in the case of an intersection with two right turn lanes or a bike lane.") (alteration in *Bouck*). No Arizona court has decided this issue, and it would have been reasonable for the officer in this case to assume that Lang's plan to turn left in "[o]ne Tucson city block" had no relevance as to whether or not she made the right turn properly under the law. *See Heien*, ___ U.S. at ___, 135 S. Ct. at 539-40 (officer still can have reasonable suspicion even if he makes an objectively reasonable mistake of law as to ambiguous statutory language not yet construed by courts). Thus, the officer still had reasonable suspicion of a violation of § 28-751(1) necessary to justify the stop, even if no actual violation had occurred. *See id.*

¶12 Regarding Lang's argument that the trial court should have considered pretext in assessing the officer's testimony, nearly two decades of precedent make clear that the court was not obligated to consider the subjective motives of the officer in evaluating whether the traffic violation had occurred or whether reasonable suspicion had existed. *See, e.g., id.* at ___, 135 S. Ct. at 539; *Whren*, 517 U.S. at 813; *Livingston*, 206 Ariz. 145, ¶ 13, 75 P.3d at 1106. Consequently, we defer to the court's factual ruling that the turn had not been "as close as practicable" to the right and that Lang had committed a traffic violation, even if she had planned to make an immediate left turn. *See Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d at 230.

¶13 The trial court did not abuse its discretion in determining the traffic stop had been supported by reasonable suspicion and in denying the motion to suppress on this ground. *See Huerta*, 223 Ariz. 424, ¶ 4, 224 P.3d at 242; *see also State v. Moreno*, 236 Ariz. 347, ¶ 5, 340 P.3d 426, 429 (App. 2014) ("We will uphold the court's ruling if legally correct for any reason supported by the record.").

Inventory Search

¶14 Lang also argues the inventory search was an illegal search because "[t]he evidence in this case overwhelmingly shows that [the officers were] using the inventory search as quest for evidence of drug possession or sales." The evidence she cites to support this claim is the officer's testimony that he would have "automatically" suspected Lang of criminal drug activity because she was leaving an area known for narcotics sales, testimony allegedly showing the officer deviated from normal procedure in not allowing Lang to take possession of her purse, and the fact that the officer found the methamphetamine by opening the ibuprofen bottle, which "easily could [have been] inventoried as 'bottle of [i]buprofen.'"

¶15 A warrantless inventory search is valid under the Fourth Amendment if "(1) law enforcement officials . . . have lawful possession or custody of the vehicle, and (2) the inventory search [was] conducted in good faith and not used as a subterfuge for a warrantless search." *State v. Organ*, 225 Ariz. 43, ¶ 21, 234 P.3d 611, 616 (App. 2010). If the search is conducted "solely" to discover evidence of a crime, it is invalid. *Id.* If the search is "conducted pursuant to standard procedures," it "is presumptively considered to have been conducted in good faith and therefore reasonable." *Id.* We defer to a trial court's finding of good faith unless the finding is not supported by sufficient evidence. *Id.* ¶ 26.

¶16 A finding of good faith does not require the police to "affirm that they had no hope or expectation of finding" evidence during the inventory search, and their motives need not be "simplistically pure." *In re One 1965 Econoline*, 109 Ariz. 433, 435, 511 P.2d 168, 170 (1973). Further, the police are not prohibited from

searching closed containers found within the vehicle if they follow standard procedures. *Id.* at 436, 511 P.2d at 171 (search could extend to inside of shaving satchel); *see also Colorado v. Bertine*, 479 U.S. 367, 369-70, 375-76 (1987) (search could extend to inside metal canisters found in nylon bag inside of backpack). Inventory searches that extend into closed containers are justified by the interest of the police in "protect[ing] themselves or the owners of the [impound] lot against false claims of theft or dangerous instrumentalities." *Bertine*, 479 U.S. at 373.

¶17 The record shows sufficient evidence that the officer conducted a lawful inventory search of Lang's car. First, the officer conducting the search was in lawful possession of Lang's car because the law required him to seize and impound her vehicle once he discovered that she had been driving on a suspended license. *See* § 28-3511(A)(1)(a); *see also Organ*, 225 Ariz. 43, ¶ 22, 234 P.3d at 616. Second, the officer testified that he had conducted his search in compliance with TPD's policy on inventory searches, which requires conducting an inventory of all valuables and items that pose potential hazards if left in the vehicle, such as firearms and contraband. Based on this testimony, the trial court found the search had been conducted according to standard procedures and had not been a pretext to search for evidence of a crime, implicitly finding the search had been conducted in good faith. *See Organ*, 225 Ariz. 43, ¶ 10, 234 P.3d at 614 ("[W]e will infer those factual findings reasonably supported by the record that are necessary to support the trial court's ruling."). Because sufficient evidence supported the court's findings, we defer to those findings and conclude that the search met both criteria for a valid inventory search under the Fourth Amendment. *See id.* ¶¶ 21-22, 26.

¶18 Additionally, we do not find any merit to Lang's claim that other evidence produced at the suppression hearing required the trial court to find the officer lacked good faith. Although Lang alleges that the officer used the inventory search as a pretext because he believed Lang was suspicious given where she had been that evening, any such testimony does not prevent a finding that he had conducted the search in good faith. *See One 1965 Econoline*, 109 Ariz. at 435, 511 P.2d at 170. And the Fourth Amendment did not prohibit

the officer from searching the contents of the ibuprofen bottle because, as he testified, TPD policy required officers to look for hazardous items, such as contraband, that may exist in closed containers found within an impounded vehicle. *See id.* at 436, 511 P.2d at 171; *see also Bertine*, 479 U.S. at 369-70, 376.

¶19 Lang claims the officer's own testimony shows he did not comply with standard TPD procedures when he did not allow her to take her personal belongings out of the car. The evidence produced at the suppression hearing directly contradicts this claim. The officer testified that only after the police inventory the contents of the vehicle and ensure no contraband is present do they allow the driver of the vehicle "to move about in the vehicle and gather . . . personal belongings." Thus, the officer was not required by TPD policy to hand Lang her purse before conducting his inventory search of the car and its contents. Contrary to Lang's suggestion, the search of the purse was within the scope of TPD's inventory search policy, as testified to by the officer.

¶20 Consequently, the trial court did not abuse its discretion in concluding the inventory search was reasonable under the Fourth Amendment and in denying the motion to suppress. *See Huerta*, 223 Ariz. 424, ¶ 4, 224 P.3d at 242.

Disposition

¶21 Based on the foregoing, we affirm Lang's convictions, sentence, and probationary term.