IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

RAYMOND AVALOS,
Appellant.

No. 2 CA-CR 2015-0448
Filed December 27, 2016

Appeal from the Superior Court in Pima County
No. CR20150821001
The Honorable Danelle B. Liwski, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Jonathan Bass, Assistant Attorney General, Tucson
Counsel for Appellee

Dean Brault, Pima County Legal Defender
By Robb P. Holmes, Assistant Legal Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Following a jury trial, Raymond Avalos was convicted of aggravated driving under the influence of an intoxicant (DUI) and aggravated driving with an alcohol concentration of .08 or more, both while his license was suspended, revoked, or restricted. The trial court sentenced him to concurrent terms of ten years' imprisonment. On appeal, Avalos argues the court erred by denying his request for an instruction expressly requiring the jury to find his ability to drive was impaired. He also contends the court erred by denying his motion to suppress because the officer lacked reasonable suspicion to stop his vehicle. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding Avalos's convictions. *See State v. Allen*, 235 Ariz. 72, ¶ 2, 326 P.3d 339, 341 (App. 2014). On February 23, 2015, Tucson Police officer Joseph Buck initiated a traffic stop of Avalos's vehicle after a records check revealed its registration had expired eight days earlier. Buck got out of his vehicle, and, as he approached, Avalos stepped out of his, handed Buck his keys, and said "he kn[ew] that [Buck] was going to tow the vehicle." Buck "took him back to the driver's door . . . to have him sit back in the car," but as they approached the vehicle, Buck noticed a couple of open beer bottles on the driver-side floorboard. Avalos admitted he had been drinking and his license was "revoked or suspended." A subsequent analysis of a blood sample taken from Avalos revealed an alcohol concentration of .196.

¶3 A grand jury indicted Avalos for aggravated DUI and aggravated driving with an alcohol concentration of .08 or more,

both while his license was suspended, revoked, or restricted. Avalos filed a motion to suppress "all the evidence" from the traffic stop, arguing Buck lacked reasonable suspicion that the vehicle's registration had expired because the sticker on his license plate indicated it was valid "FEB" "15." After a suppression hearing, the trial court denied the motion.

¶4 At trial, Avalos challenged the trial court's instruction for aggravated DUI. He requested the jury be instructed that it was required to find that his "ability to operate a motor vehicle" was impaired. The court denied Avalos's request and instead instructed the jury: "The crime of aggravated driving while under the influence while license to drive is suspended, cancelled or revoked requires proof that: . . . The defendant was impaired to the slightest degree by reason of being under the influence of intoxicating liquor . . . ." The jury found Avalos guilty as charged, and the court sentenced him as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Jury Instruction

¶5 Avalos argues "[t]he phrase 'if the person is impaired' [under A.R.S. § 28-1381(A)(1)] should be interpreted to require reference to a driver's ability to safely operate a motor vehicle in order to have fair meaning in the statute." We review de novo whether a jury instruction properly states the law. *State v. Payne*, 233 Ariz. 484, ¶ 68, 314 P.3d 1239, 1260 (2013).

¶6 Section 28-1381(A)(1) states, "It is unlawful for a person to drive or be in actual physical control of a vehicle in this state . . . [w]hile under the influence of intoxicating liquor . . . if the person is impaired to the slightest degree." In *State v. Miller*, 226 Ariz. 190, ¶ 4, 245 P.3d 454, 455 (App. 2011), this court directed a trial court to refrain from instructing a jury that the state needed "to prove the defendants' ability to drive was impaired instead of proving only that they had been impaired." Relying on the statute's plain and unambiguous language, we concluded, "The legislature has prohibited a person from driving or being in actual physical control of a vehicle while impaired to the slightest degree by intoxicating

liquor" but "has not chosen to require any finding that the person's physical ability to drive was impaired." *Id.* ¶¶ 9, 12. We also rejected the defendants' argument that previous case law supported the trial court's proffered instruction. *Id.* ¶ 12 (because statute's language has changed, "[p]revious cases interpreting predecessor statutes . . . have little bearing on the present question"). We noted that the trial court's intended jury instruction had "the potential to confuse or mislead the jury as to the elements of the offense" because "[t]he state need not offer evidence of bad driving to prove that a defendant is guilty of DUI." *Id.* ¶ 10. Because Avalos essentially raises the same issue, *Miller* is controlling here.

¶7 Avalos nevertheless argues *Miller* is not binding precedent because this court declined to address an argument Avalos has raised in this case. Specifically, he argues the DUI statutes proscribe only dangerous driving, not intoxication generally. Avalos thus maintains "only behavior, not persons, can be impaired." *Id.*¶ 14. However, the overarching issue in *Miller* and in this appeal are the same, and "any departure from the doctrine of stare decisis demands special justification." *State v. Hickman*, 205 Ariz. 192, ¶ 37, 68 P.3d 418, 426 (2003), *quoting Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). We will not disregard previous decisions of this court "unless we are convinced that the prior decision is clearly erroneous or conditions have changed so as to render the prior decision inapplicable." *State v. Dungan*, 149 Ariz. 357, 361, 718 P.2d 1010, 1014 (App. 1985).

¶8 Avalos's argument does not merit a departure from *Miller*. He asserts "impaired" only has meaning in reference to some activity, not to a person. And to support the argument, he seems to argue that, if the statute did refer to impaired people—a term that includes people with physical disabilities—this would lead to absurd results. But this court rejected this premise in *State v. Morales*, 198 Ariz. 372, 10 P.3d 630 (App. 2000).

¶9 In *Morales*, we recognized the impairment must result from alcohol and not from a physical condition. *Id.* ¶¶ 3-5. However, we concluded that a jury instruction need not explicitly state as much. *Id.* We reasoned, "Common sense refutes the argument" that jurors might find a defendant "impaired" under

§ 28-1381(A)(1) due to a physical disability. *Id.* ¶ 5 ("For too long, we have treated jurors like untrustworthy children instead of responsible adults, insulting their individual and collective intelligence by attempting to micromanage their discussions and deliberations."), *quoting State v. LeBlanc*, 186 Ariz. 437, 439, 924 P.2d 441, 443 (1996). Accordingly, the trial court here did not err by denying Avalos's proposed jury instruction. *See Payne*, 233 Ariz. 484, ¶ 68, 314 P.3d at 1260.

Motion to Suppress

¶10 Avalos next argues "the trial court should have granted the motion to suppress based upon the illegality of the traffic stop." "Whether there is a sufficient legal basis to justify a stop of a vehicle is a mixed question of fact and law," and, while we will not overturn the court's factual findings absent an abuse of discretion, "we review its ultimate legal determination de novo." *State v. Evans*, 237 Ariz. 231, ¶ 6, 349 P.3d 205, 207 (2015). We consider only "the evidence presented at the suppression hearing and view the facts in the light most favorable to sustaining the trial court's ruling." *State v. Hausner*, 230 Ariz. 60, ¶ 23, 280 P.3d 604, 614 (2012).

¶11 In Arizona, police officers may conduct a traffic stop to "investigate an actual or suspected violation of any traffic law," A.R.S. § 13-3883(B), including to determine whether a vehicle's registration has expired, *see* A.R.S. § 28-2153(A); *State v. Gradillas*, 25 Ariz. App. 510, 512, 544 P.2d 1111, 1113 (1976). Because a traffic stop is a form of seizure—albeit less intrusive than an arrest—officers must have "reasonable suspicion that the driver has committed an offense." *State v. Kjolsrud*, 239 Ariz. 319, ¶ 9, 371 P.3d 647, 650 (App. 2016), *quoting State v. Livingston*, 206 Ariz. 145, ¶ 9, 75 P.3d 1103, 1105 (App. 2003). "In deciding whether the police have a particularized and objective basis for suspecting that a person is engaged in criminal activity, we look at the whole picture, or the totality of the circumstances." *State v. Woods*, 236 Ariz. 527, ¶ 11, 342 P.3d 863, 866 (App. 2015), *quoting State v. O'Meara*, 198 Ariz. 294, ¶ 7, 9 P.3d 325, 326 (2000).

¶12 In this case, Buck "conducted a records check on [Avalos's] license plate" after he saw Avalos drive by. Using his in-

vehicle computer, Buck searched the Motor Vehicle Division's records and learned that the vehicle's registration had expired. This was sufficient to provide reasonable suspicion that Avalos had violated § 28-2153(A).

¶13 Avalos nevertheless asserts that the registration sticker on his license plate stated "FEB" "15," indicating the registration was still valid for the month of February 2015. In turn, he argues a "stalemate" of evidence existed between Buck's testimony and the license plate sticker, which the state failed to overcome by providing a physical record from the Motor Vehicle Division. However, Buck resolved the apparent conflict during his testimony. He explained that vehicle registrations may expire in "the middle or the end" of a month. *See* A.R.S. § 28-2159(A) (mandating "a system of staggered registration on a monthly basis"); Ariz. Admin. Code R17-4-304(A) (registrations expire either on fifteenth or final day of month). Thus, the license plate sticker did not diminish Buck's reasonable suspicion, and he was justified in conducting a traffic stop for further investigation. *See State v. Nevarez*, 235 Ariz. 129, ¶ 12, 329 P.3d 233, 238 (App. 2014). Therefore, the trial court did not err by denying Avalos's motion to suppress. *See Evans*, 237 Ariz. 231, ¶ 6, 349 P.3d at 207.

Disposition

¶14 For the foregoing reasons, we affirm Avalos's convictions and sentences.