

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOHN EDWIN PARADISE,
Appellant.

No. 2 CA-CR 2016-0027
Filed May 17, 2017

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NOT FOR PUBLICATION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. CR20141021001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Harriette P. Levitt, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Judge Staring and Judge Howard¹ concurred.

E C K E R S T R O M, Chief Judge:

¶1 Following a jury trial, appellant John Paradise was convicted of two counts of aggravated driving under the influence of an intoxicant (DUI). On appeal, Paradise challenges the legality of his roadside detention. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In March 2014, a park ranger with Saguaro National Park stopped a truck driving southbound on Sandario Road because the driver was weaving in his lane, crossing over the fog line, and leaving the paved surface. Because the ranger was outside of the park boundary when he observed the driving, he requested that the Pima County Sheriff's Department send a deputy to conduct an investigation. Some thirty to forty minutes after the initial stop, a deputy arrived, promptly began an investigation, and arrested Paradise for DUI.

¶3 Paradise moved to suppress all of the state's evidence, arguing that the delay constituted a de facto arrest unsupported by probable cause. After an evidentiary hearing, the court denied his motion.

¶4 Following conviction on both counts, the court imposed concurrent three-year probationary terms and sentenced Paradise to concurrent four-month prison terms. Paradise timely appealed. We have jurisdiction pursuant to A.R.S. §§ 13-4031 and 13-4033.

¹The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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Motion to Suppress

¶5 Paradise contends the trial court erred in denying his motion to suppress, arguing that the ranger subjected him to a de facto arrest without probable cause.² When a trial court's ruling on a motion to suppress evidence involves a discretionary issue, we review for abuse of discretion. *State v. Moody*, 208 Ariz. 424, ¶ 62, 94 P.3d 1119, 1140 (2004). "'Whether an illegal arrest occurred is a mixed question of fact and law' that we review de novo." *State v. Boteo-Flores*, 230 Ariz. 107, ¶ 11, 280 P.3d 1239, 1241 (2012), *quoting State v. Blackmore*, 186 Ariz. 630, 632, 925 P.2d 1347, 1349 (1996).

¶6 Even assuming arguendo that Paradise's detention evolved into a de facto arrest, suppression was not required if the arrest was supported by probable cause. *See State v. Romero*, 178 Ariz. 45, 49, 870 P.2d 1141, 1145 (App. 1993) (If "police action exceeds the bounds permitted by reasonable suspicion, a seizure becomes an arrest and must then be supported by probable cause."). "A police officer has probable cause when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense." *State v. Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d 997, 1007-08 (2000). In the DUI context, the standard for probable cause is "[o]nly the probability" of intoxication and "not a prima facie showing." *State v. Moran*, 232 Ariz. 528, ¶ 10, 307 P.3d 95, 99 (App. 2013), *quoting State v. Aleman*, 210 Ariz. 232, ¶ 15, 109 P.3d 571, 576 (App. 2005) (alteration in *Moran*). Further, such calculations "are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

²Paradise also challenges his removal from the truck as a violation of *Terry v. Ohio*, 392 U.S. 1 (1968). It is well established, however, that officers conducting routine traffic stops may order drivers out of their vehicles in the general interest of officer safety. *State v. Webster*, 170 Ariz. 372, 373, 824 P.2d 768, 769 (App. 1991), *citing Pennsylvania v. Mimms*, 434 U.S. 106 (1977).

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¶7 In *Moran*, this court determined sufficient evidence supported a finding of probable cause when the defendant provided his wife's social security number instead of producing his driver's license, had watery, bloodshot eyes, smelled of alcohol, and showed several cues of impairment before failing to complete a horizontal gaze nystagmus test. 232 Ariz. 528, ¶¶ 9-11, 307 P.3d at 99.

¶8 Here, the ranger testified at the evidentiary hearing that he had observed Paradise weaving in his lane, crossing over the fog line, and leaving the paved surface. See *State v. Quinn*, 218 Ariz. 66, ¶ 10, 178 P.3d 1190, 1193-94 (App. 2008) (unexplained erratic driving may furnish probable cause that driver is under the influence). When the ranger asked for his driver's license, Paradise responded slowly and, like the driver in *Moran*, had difficulty providing his identification. 232 Ariz. 528, ¶ 9, 307 P.3d at 99. Additionally, the ranger testified that Paradise had swayed slightly after stepping out of the truck and admitted to having consumed five drinks. See *State v. Peltz*, 241 Ariz. 792, ¶ 35, 391 P.3d 1215, 1224 (App. 2017) (admission of drinking supports determination of probable cause for DUI).³

¶9 Viewing the facts in the light most favorable to the trial court's ruling, *State v. Howard*, 163 Ariz. 47, 49, 785 P.2d 1235, 1237 (App. 1989), we cannot say that the trial court erred in denying Paradise's motion to suppress.⁴

³Paradise emphasizes that, when asked whether he had probable cause to arrest, the ranger testified that he had only reasonable suspicion. But the ranger was asked if he had probable cause to arrest based on Paradise's driving, not on the full set of facts developed by the time he called for a deputy to respond. Further, probable cause "is not a subjective standard but an objective one." *State v. Sergheyev*, 24 Ariz. App. 189, 191, 536 P.2d 1081, 1083 (1975). Thus, the officer's subjective belief is not controlling.

⁴The trial court denied Paradise's motion to suppress without articulating the basis for its ruling. But, we can affirm a trial court's ruling on any basis supported by the record and do so here. *Moody*, 208 Ariz. 424, ¶ 81, 94 P.3d at 1144.

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Disposition

¶10 Accordingly, we affirm Paradise's convictions and sentences.