IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MARIO CESAR QUIJADA,
Appellant.

No. 2 CA-CR 2017-0139
Filed April 13, 2018

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20152729001
The Honorable Richard D. Nichols, Judge

AFFIRMED

COUNSEL

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

Joel Feinman, Pima County Public Defender
By Michael J. Miller, Assistant Public Defender, Tucson
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MEMORANDUM DECISION

Judge Eppich authored the decision of the Court, in which Presiding Judge Vásquez and Judge Espinosa concurred.

E P P I C H, Judge:

¶1 After a jury trial, Mario Quijada was convicted of one count each of aggravated driving under the influence of an intoxicant (DUI), and aggravated driving with an alcohol concentration of .08 or more, both committed while his license was suspended, revoked, or restricted. On appeal, he argues evidence obtained as a result of the traffic stop should have been suppressed and that the trial court erred in admitting prejudicial, needlessly cumulative evidence against him. For the reasons that follow, we affirm.

Facts and Procedural Background

¶2 We review the evidence presented at the suppression hearing "in the light most favorable to sustaining the court's ruling, deferring to the court's determination of facts and witness credibility but reviewing de novo its legal conclusions." *State v. Waller*, 235 Ariz. 479, ¶ 5 (App. 2014) (citation omitted). While sitting at an intersection, a Pima County deputy sheriff saw Quijada's car cross through the intersection. From a distance the officer estimated to be about twenty feet, he noticed that only one corner of Quijada's license plate was illuminated, rendering it illegible. The deputy stopped Quijada for violating A.R.S. § 28-925, which requires a motor vehicle to be equipped with a lamp "that illuminates with a white light the rear license plate and renders it clearly legible from a distance of fifty feet to the rear." During the stop the deputy took a photograph of Quijada's license plate from a distance of approximately thirteen feet. Quijada was charged with the two counts noted above, possession of a narcotic drug, and possession of drug paraphernalia.[1]

¶3 Before trial, Quijada filed a motion to suppress evidence obtained from the traffic stop, arguing the deputy lacked reasonable

[1]The charges for possession of a narcotic drug and possession of drug paraphernalia were severed from the remaining counts prior to trial.

suspicion or probable cause to initiate the stop.[2] At the suppression hearing, the state introduced testimony from the deputy as well as the photograph of the license plate. The deputy testified the photograph accurately depicted the legibility of the license plate. Quijada testified, however, that he could read the plate while he was detained in the back of the patrol car. He argued the photograph taken of his plate was underexposed and asserted the statute justifying the stop was unconstitutionally vague.[3] The trial court found the deputy had reasonable suspicion for the stop based on the deputy's testimony and the photograph.

¶4 At trial, the state introduced evidence obtained as a result of the traffic stop. The state also introduced evidence that Quijada's license had been revoked and had been suspended multiple times. Quijada was convicted by a jury of both counts and sentenced to concurrent prison sentences of 4.5 years. We have jurisdiction over this appeal pursuant to Ariz. Const. art. VI, § 9, A.R.S. §§ 13-4031, 13-4033(A)(1), and Ariz. R. Crim. P. 31.2.[4]

Motion to Suppress

¶5 Quijada challenges the traffic stop on two bases. First, he argues the trial court erred in finding the officer had a sufficient legal basis to conduct the stop. Second, he argues § 28-925 is unconstitutionally vague.

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[2]Both in the suppression motion and on appeal, Quijada refers to a lack of probable cause; however, the deputy needed only reasonable suspicion, a lesser standard of proof, to legally initiate the traffic stop. *See State v. Sweeney*, 224 Ariz. 107, ¶ 16 (App. 2010). Quijada's motion also alleged the arresting officer had provided false information in his application for a search warrant. Quijada does not raise this argument on appeal.

[3]The state argues Quijada raised this constitutional challenge to § 28-925(C) for the first time in his motion for new trial, thereby forfeiting the right to seek relief for all but fundamental, prejudicial error. But, Quijada argued the statute was unconstitutionally vague during the hearing on the motion to suppress. Although the trial court did not explicitly address the challenge, its ruling implicitly rejected it. Though not particularly well-developed below, the issue was sufficiently preserved for our review.

[4]In his opening brief, Quijada mentions the motion for new trial that he filed after his conviction. However, he does not develop any argument challenging the trial court's denial of that motion.

We review the court's ruling on the suppression motion "for abuse of discretion if it involves a discretionary issue, but review constitutional issues and purely legal issues de novo." *State v. Gay*, 214 Ariz. 214, ¶ 4 (App. 2007). We review the constitutionality of a statute de novo. *State v. McDermott*, 208 Ariz. 332, ¶ 5 (App. 2004).

¶6 Quijada argues the deputy could not have seen his license plate due to the way his patrol car was positioned at the intersection. Although Quijada's path through the intersection was perpendicular to the deputy's vehicle, we cannot say that he would not have been able to view the plate at an angle as the car passed by. Moreover, the question of whether the deputy could have seen what he claimed to is an issue of fact and witness credibility, upon which we defer to the trial court. *Waller*, 235 Ariz. 479, ¶ 5. Once the deputy saw the license plate was not sufficiently illuminated, he had the necessary legal justification to initiate a traffic stop. *See State v. Sweeney*, 224 Ariz. 107, ¶ 37 (App. 2010) ("A police officer may make an investigative traffic stop if the officer has a reasonable suspicion of a traffic violation.").

¶7 Quijada also argues the state failed to otherwise establish there was sufficient legal justification for the deputy to initiate the traffic stop. But, the deputy testified Quijada's license plate was illegible from a distance of about twenty feet. And despite Quijada's argument that the photograph of his license plate was underexposed, the court was entitled to give the photograph the weight it deemed appropriate.[5] Quijada essentially

[5]Quijada suggests the trial court erred in considering the deputy's testimony that he was unable to read the license plate from even thirteen feet after Quijada was stopped. He relies upon *State v. Taylor*, 167 Ariz. 439, 440 (App. 1990), for the well-established proposition that reasonable suspicion must exist before the stop, not be developed afterward. However, by failing to object to the testimony or the admission of the photograph at the suppression hearing, Quijada has forfeited review of this argument for all but fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20 (2005). And because he does not contend any alleged error was fundamental, the argument is waived. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008). Moreover, in the context of this case, the evidence in question was not offered to establish additional grounds unknown to the officer when he initiated the stop, but as further proof of what the officer saw that led to the stop. *See State v. Nevarez*, 235 Ariz. 129, ¶ 8 (App. 2014) (post-stop photographs of size and location of temporary registration considered in assessing reasonableness of stop).

asks that we reweigh the conflicting evidence presented at the suppression hearing. We will not. *See State v. Groshog*, 175 Ariz. 67, 69 (App. 1993). We see no error.

¶8 Quijada next complains § 28-925 is unconstitutionally vague. The testimony and photograph introduced at the suppression hearing make it clear that his license plate was not visible from a distance of thirteen feet. The statute requires a license plate to be illuminated so that it is legible from fifty feet. § 28-925. Quijada's conduct is clearly proscribed by the language in the statute, even if the fifty-foot requirement could conceivably be vague under some circumstances. He therefore lacks standing to argue the statute is unconstitutionally vague. *See State v. Alawy*, 198 Ariz. 363, ¶ 6 (App. 2000) ("Even if an ordinance or statute is vague in some particulars, a person 'to whose conduct a statute clearly applies may not successfully challenge it for vagueness.'"), *quoting State v. Trachtman*, 190 Ariz. 331, 334 (App. 1997). Accordingly, we need not address this claim.[6]

Trial

¶9 Quijada also challenges the admission of testimony regarding the status of his license as needlessly cumulative. At trial, the state introduced a copy of Quijada's driving history without objection.[7] The state then continued to question the motor vehicle custodian of records, who had provided foundation for the exhibit's admission, about the information contained therein. Quijada objected to the custodian's continued testimony as unfairly prejudicial under Rule 403, Ariz. R. Evid. The trial court initially sustained his objection, preventing the custodian from testifying about when several previous suspensions of his license went into effect. But, it allowed the custodian to testify that Quijada's driving record indicated that his license was both revoked and suspended "multiple times" on the date of the offense, over his objection.

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[6]Much of Quijada's vagueness argument is predicated on the notion that legibility of a license plate at a given distance is dependent upon the visual acuity of a particular observer. Aside from the issue of standing, we question the degree to which this argument applies in a case such as this, which involves the question of adequate illumination.

[7]The state introduced two separate copies: a complete history, which was admitted solely for purposes of the record, and a redacted history, which was given to the jury.

¶10 Although relevant evidence is generally admissible, *see* Ariz. R. Evid. 402, Rule 403 allows the trial court to "exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice . . . or needlessly presenting cumulative evidence." There is no bright-line rule that dictates when evidence is cumulative as opposed to needlessly cumulative to the point of exclusion. Instead, the decision whether to exclude cumulative evidence lies within the discretion of the trial court. *State v. Verive*, 128 Ariz. 570, 576 (App. 1981). "Because the trial court is best situated to conduct the Rule 403 balance, we will reverse its ruling only for abuse of discretion." *State v. Cañez*, 202 Ariz. 133, ¶ 61 (2002), *abrogated on other grounds by State v. Valenzuela*, 239 Ariz. 299, n.1 (2016).

¶11 Quijada argues that the custodian's testimony, while relevant, was so unnecessarily cumulative that it resulted in unfair prejudice.[8] Quijada is correct that the custodian's challenged testimony was cumulative in the sense that the information was contained in his driving record. However, it was not needlessly so. The custodian's cumulative testimony directly related to the current status of Quijada's license, which was an element the state was required to prove at trial. *See* A.R.S. § 28-1383(A)(1). It was therefore not improper to allow a single state witness to testify directly to the portions of the driving record that pertained to that element of the offense, even if Quijada did not argue he was unaware his driving privilege had been suspended. *See Old Chief v. United States*, 519 U.S. 172, 186-87 (1997) (noting the "standard rule" that "the prosecution is entitled to prove its case by evidence of its own choice, or, more exactly, that a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the Government chooses to present it"). Additionally, in initially sustaining Quijada's objection in part, the trial court exercised its discretion to exclude needlessly cumulative evidence, as contemplated by Rule 403. Its decision further demonstrates its awareness and contemplation of the scope of the rule, and reflects no abuse of discretion.

[8]To the extent Quijada suggests evidence of the multiple suspensions resulted in unfair prejudice, by failing to object to the admission of the driving history below, he has forfeited review for all but fundamental, prejudicial error. *See Henderson*, 210 Ariz. 561, ¶¶ 19-20. Because he does not argue admission of this evidence resulted in fundamental, prejudicial error, the issue is waived. *See Moreno-Medrano*, 218 Ariz. 349, ¶ 17.

Disposition

¶12 For the foregoing reasons, we affirm Quijada's convictions and sentences.