IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JORGE MEDRANO,
Appellant.

No. 2 CA-CR 2021-0037
Filed December 28, 2021

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NOT FOR PUBLICATION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 Gila County
No. S0400CR202000025
The Honorable Timothy M. Wright, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Karen Moody, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Espinosa authored the decision of the Court, in which Vice Chief Judge Staring and Judge Eckerstrom concurred.

E S P I N O S A, Presiding Judge:

¶1 Jorge Medrano appeals his convictions and sentences for transportation of a narcotic drug for sale and possession of drug paraphernalia. He challenges the trial court's denial of his motion to suppress evidence obtained from a traffic stop. We affirm Medrano's convictions and sentences.

Factual and Procedural Background

¶2 In December 2019, while Show Low Police Officer Richard Rosales was parked in a median on State Route 87 in Payson, he observed a blue pickup truck travelling northbound. The driver, later identified as Medrano, displayed an "abnormal reaction" upon seeing the officer and made an "odd gesture," which drew Rosales's attention. He also noticed "an object on the windshield" of the truck and followed it to a gas station where it stopped at a pump. Rosales observed the truck's license plate number and confirmed there were objects partially obstructing its windshield. A short time later, the truck left the gas station and pulled into an ordering bay at a nearby carhop-style restaurant. The truck left that location by driving through an adjacent dirt lot, over a curb, and then to a nearby casino. Rosales believed the unusual route indicated the driver was attempting to evade him. As the driver started to enter the casino, Rosales approached him and explained he was conducting an investigatory stop for the "[i]mproper material on [his] windshield."

¶3 Medrano gave Officer Rosales his California driver license, which a records check indicated was suspended. Rosales asked Medrano if he had ever been arrested, and Medrano responded that he had been "involved in a high speed pursuit." Rosales then requested a K-9 unit. He also noticed that Medrano had apparently not purchased any food or beverages from the restaurant. At some point, other officers arrived to assist and, before the K-9 unit arrived, Rosales arrested Medrano for driving on a suspended or revoked license and placed him in a patrol vehicle. After the K-9 unit arrived, a "free air sniff" was conducted with an off-lead narcotics canine. The canine alerted to the tailgate of Medrano's pickup

truck twice. Officer Rosales and the K-9 handler eventually dismantled the tailgate and found three packages of fentanyl.

¶4 Medrano was indicted for possession of a narcotic drug for sale, transportation of a narcotic drug for sale, and possession of drug paraphernalia. He subsequently moved to suppress the evidence from the traffic stop, arguing it was obtained in violation of the Fourth Amendment. At the conclusion of a suppression hearing, the trial court denied Medrano's motion.

¶5 Following a two-day jury trial, Medrano was found guilty of all three counts. On Medrano's motion and without opposition from the state, the trial court dismissed the charge of possession of a narcotic drug for sale as a lesser-included offense and imposed concurrent, maximum prison terms, the longer of which is ten years. We have jurisdiction over Medrano's appeal pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶6 We review the trial court's denial of a motion to suppress for an abuse of discretion and will only reverse if there is clear error. *State v. Cornman*, 237 Ariz. 350, ¶ 10 (App. 2015). Whether reasonable suspicion existed to support an investigatory stop is a mixed question of fact and law that we review de novo. *State v. Kjolsrud*, 239 Ariz. 319, ¶ 8 (App. 2016). "We will uphold the court's ruling if legally correct for any reason supported by the record." *State v. Moreno*, 236 Ariz. 347, ¶ 5 (App. 2014). "In reviewing a trial court's denial of a motion to suppress, we view the facts in the light most favorable to upholding its ruling, considering only the evidence presented at the suppression hearing." *Id.* ¶ 2.

Reasonable Suspicion for Stop

¶7 Medrano first contends Officer Rosales violated his Fourth Amendment rights by initiating the traffic stop without reasonable suspicion. "The Fourth Amendment prohibits unreasonable searches and seizures," *Kjolsrud*, 239 Ariz. 319, ¶ 9, and an investigatory stop of a motor vehicle is a seizure that must be justified by reasonable suspicion, *State v. Livingston,* 206 Ariz. 145, ¶ 9 (App. 2003).

¶8 Reasonable suspicion is less than probable cause but more than an inchoate and unparticularized suspicion or hunch. *State v. Sweeney*, 224 Ariz. 107, ¶ 21 (App. 2010). The Fourth Amendment requires that an officer have "some minimal, *objective* justification" for the seizure. *Id.* When

determining the validity of a traffic stop we assess the totality of the circumstances from the perspective of an objectively reasonable officer. *Moreno*, 236 Ariz. 347, ¶ 12. Relevant considerations include the circumstances of the stop as well as the officer's experience, training, and knowledge. *Id.* And while officers must have an objective and particularized basis for initiating a traffic stop, they need not have "some measurable proof of a violation before conducting" the stop. *Id.* ¶ 14. A traffic stop justified solely upon reasonable suspicion of an equipment violation comports with the Fourth Amendment. *State v. Vera*, 196 Ariz. 342, ¶¶ 2-3 (App. 1999) (stop justified by crack in windshield, notwithstanding no erratic or unsafe driving, and no reports of any unlawful activity associated with the automobile).

¶9 Medrano argues that "[n]either the placement of his cell-phone mount, the air freshener, or his repositioning himself in the driver's seat was sufficient to justify the traffic stop." Under A.R.S. § 28-959.01(B),

> [A] person shall not operate a motor vehicle with an object or material placed, displayed, installed, affixed or applied on the windshield . . . or with an object or material placed, displayed, installed, affixed or applied in or on the motor vehicle in a manner that obstructs or reduces a driver's clear view through the windshield.

However, a driver may mount "[s]afety monitoring equipment and driver feedback . . . [i]mmediately behind, slightly above or slightly below the rearview mirror." § 28-959.01(A)(12)(a).

¶10 At the suppression hearing, Officer Rosales testified that before he initiated the traffic stop he had seen "improper materials" on Medrano's windshield that were "an obstruction to the driver's view." Photographs of the air freshener and cell-phone mount in the vehicle were admitted during the hearing. Upon reviewing the evidence at the hearing, including the photographs of the objects in Medrano's windshield, the trial court found that "the air freshener[] and phone holder at least from one angle obstructs a substantial area of the windshield . . . it appears that the obstruction goes from dash to mirror." Accordingly, the court found Rosales had reasonable suspicion to stop Medrano to investigate a potential violation of § 28-959.01(B).

¶11 Medrano asserts "[t]he statute specifically allows for driver feedback devices to be mounted below the rearview mirror, and the cell-phone mount did not create an obstruction of the driver's view that would constitute a violation of [§ 28-959.01(B)]." Medrano further contends that these are "common devices which the statute allows" and not obstructions. However, even assuming Medrano did not violate § 28-959.01(B), the trial court was correct that police need only reasonable suspicion of a violation to justify a traffic stop. *See* A.R.S. § 28-1594 ("A peace officer . . . may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this title . . . ."); *State v. Nevarez*, 235 Ariz. 129, ¶ 7 (App. 2014) (law enforcement need not conclusively establish whether violation occurred prior to initiating stop so long as they have a particularized and objective basis for suspecting a violation); *Vera*, 196 Ariz. 342, ¶ 6 (officer has reasonable suspicion to stop vehicle with cracked windshield to investigate whether it was "adequate" as required by A.R.S. § 28-957.01(A)). As such, even if Medrano were fully compliant with § 28-959.01, the stop would have been lawful because Officer Rosales had seen objects in Medrano's windshield that could be fairly described as an obstruction prohibited by the statute, as confirmed by the court after viewing the photos.[1] Thus, the court did not err in finding that Rosales had reasonable suspicion to initiate the traffic stop.

Dog Sniff

¶12 Medrano next contends the post-arrest dog sniff of his vehicle was unlawful under the Fourth Amendment.[2] He asserts, without citation

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[1]Medrano further asserts, for the first time on appeal, that Officer Rosales stopped him "on a hunch" and used the windshield obstruction as a "pretext" for the stop. While an ulterior motive can be relevant to an officer's credibility on the threshold issue of whether they actually witnessed a violation, an officer's subjective intent for conducting a stop does not invalidate an otherwise lawful traffic stop. *Livingston*, 206 Ariz. 145, ¶13; *see also State v. Bolton*, 182 Ariz. 290, 298 (1995) (arguments not raised below generally waived on appeal).

[2]As an initial matter, the state contends Medrano failed to "squarely" raise this argument to the trial court and we should deem it waived. We disagree. Medrano raised this issue in his written motion, and argued at the suppression hearing that "[o]nce we get to the part where we have the dog doing a free air . . . sniff . . . [Officer Rosales] can't articulate any reason to continue the investigation after the point of the arrest."

to authority, that "the traffic stop ended when [he had been] arrested for driving on a suspended license," and the dog sniff "needed to be supported by an independent reasonable suspicion," which the officer lacked.

¶13 To prevail on his Fourth Amendment claim, Medrano must demonstrate he was subject to either an unreasonable search or an unreasonable seizure. But he has shown neither here. To the extent Medrano argues that the dog sniff was a search in violation of the Fourth Amendment, we disagree. It is well established that the use of a trained narcotics dog under circumstances similar to those at hand does not constitute a search under the Fourth Amendment. *See Illinois v. Caballes*, 543 U.S. 405, 408-09 (2005) (dog sniff of vehicle in public does not implicate legitimate privacy interests and thus does not rise to the level of a constitutional infringement); *United States v. Place*, 462 U.S. 696, 707 (1983) (dog sniff of luggage conducted in public where noncontraband items not exposed not a search under Fourth Amendment); *State v. Teagle*, 217 Ariz. 17, n.7 (App. 2007) ("The canine investigation of the exterior of defendant's vehicle was not a 'search' under the Fourth Amendment."). Therefore, Medrano's argument that the dog sniff violated his Fourth Amendment rights hinges on the proposition that he was subject to an unreasonable seizure because the dog sniff impermissibly extended the otherwise completed traffic stop.

¶14 "[A] dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment[]" so long as it does not prolong the traffic stop beyond the amount of time reasonably necessary to complete the mission of issuing a ticket for the violation. *Rodriguez v. United States*, 575 U.S. 348, 350-51 (2015). However, an investigatory stop cannot be unlawfully prolonged if the individual is under arrest and therefore not free to go about their business. *See State v. Green*, 245 Ariz. 529, ¶¶ 8-9 (App. 2018) (police did not unlawfully prolong detention of person under arrest in order to investigate unrelated offenses), *vacated in part on other grounds*, 248 Ariz. 133, ¶ 24 (2020); *see also United States v. Hunnicutt*, 135 F.3d 1345, 1350 (10th Cir. 1998) ("detention . . . to accomplish a canine sniff is generally reasonable where the driver is already under lawful arrest" and requires "no individualized reasonable suspicion of criminal activity"); *United States v. Fiala*, 929 F.2d 285, 288 (7th Cir. 1991) (no Fourth Amendment violation from ninety minute roadside detention for dog sniff after lawful arrest for driving without valid license).

¶15 Here, Medrano had been arrested for driving on a suspended or revoked license when the dog sniff occurred, and therefore he was not entitled to leave an otherwise completed traffic stop. *See Green*, 245 Ariz.

529, ¶¶ 8-9. Thus, the dog sniff did not unreasonably prolong the seizure of Medrano's person because he was lawfully under arrest. *See* A.R.S. §§ 28-3473 (driving on suspended license is class one misdemeanor), 13-3883(A)(2) (police may arrest without warrant if probable cause to believe person committed misdemeanor in officer's presence). Medrano cites no authority, nor are we aware of any, to support the proposition that police must immediately cease investigating a vehicle in a public place upon their lawful arrest of the driver. Because the dog sniff was neither a search nor attendant to an unreasonable seizure, the trial court did not err by denying Medrano's motion to suppress.[3]

Disposition

¶16 Medrano's convictions and sentences are affirmed.

[3]In the trial court, Medrano also asserted the warrantless search of his truck violated the Fourth Amendment. However, he has not raised this issue on appeal, and it therefore has been waived absent fundamental error, which is neither claimed nor present here. *See Bolton*, 182 Ariz. at 298 (failure to raise issue on appeal constitutes waiver of that claim); *State v. Fernandez*, 216 Ariz. 545, ¶ 32 (App. 2007) (appellate court will not ignore fundamental error if found).