

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

LEOBARDO ALVARADO II,
Appellant.

No. 2 CA-CR 2022-0018
Filed November 18, 2022

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NOT FOR PUBLICATION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 Cochise County
No. CR202100347
The Honorable Laura Cardinal, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Leobardo Alvarado was convicted of transportation of a narcotic drug for sale and sentenced to a twelve-year prison term. On appeal, Alvarado argues the trial court abused its discretion by denying his motion to suppress because officers lacked reasonable suspicion for the traffic stop that led to his arrest. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence and all reasonable inferences therefrom in the light most favorable to affirming Alvarado’s convictions. *See State v. Sallard*, 247 Ariz. 464, ¶ 2 (App. 2019). After conducting a traffic stop of a vehicle in which Alvarado was a passenger, Douglas police officers and a border patrol canine unit found more than fourteen pounds of cocaine in the vehicle’s radiator. A grand jury indicted Alvarado for transportation of a narcotic drug for sale and possession of a narcotic drug for sale.

¶3 Alvarado filed a motion to suppress “all property seized by the arresting officers, all observations made by the arresting officers, and all statements made by” him, arguing officers lacked reasonable suspicion to conduct the traffic stop. The trial court denied the motion after a hearing. A jury found Alvarado guilty of both counts, and the court dismissed the possession charge during sentencing. He was sentenced as described above, and this appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶4 “We review a trial court’s ruling on a motion to suppress for abuse of discretion, considering only the evidence presented at the suppression hearing and viewing the facts in a light most favorable to sustaining the trial court’s ruling.” *State v. Adair*, 241 Ariz. 58, ¶ 9 (2016). To conduct an investigatory stop of a motor vehicle, an officer must have reasonable suspicion that the driver committed an offense. *State v. Duffy*,

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247 Ariz. 537, ¶ 39 (App. 2019); *see also* A.R.S. § 28-1594. Whether reasonable suspicion existed is a mixed question of fact and law that we review de novo, *State v. Kjolsrud*, 239 Ariz. 319, ¶ 8 (App. 2016), but we defer to the trial court's factual findings and the inferences drawn by the officers at the scene, *Duffy*, 247 Ariz. 537, ¶ 39.

¶5 At the suppression hearing on Alvarado's motion,¹ the Douglas police officer testified that he had observed a vehicle, in which Alvarado was the passenger, driving with "items hanging from the rearview mirror" that appeared to obstruct the driver's view. The officer testified that he contacted dispatch to check the license plate and was informed that it had been suspended. Based on those two traffic violations, *see* A.R.S. §§ 28-959.01(B), 28-2153(A), the officer conducted a traffic stop.

¶6 Alvarado maintains the officer lacked reasonable suspicion based on the items hanging from the rearview mirror because "it is not credible that a necklace hanging off a rear view mirror would constitute an 'obstruction.'" Section 28-959.01(B) proscribes a person from driving a vehicle 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 or side or rear windows."

¶7 Relying on *State v. Moreno*, 236 Ariz. 347 (App. 2014), Alvarado argues that the trial court erred by considering the rosary to be a potential obstruction to the driver's view. His argument misapprehends *Moreno*. In that case, a detective conducted a traffic stop of a vehicle that appeared to have illegal window tint and an object hanging from the rearview mirror. *Moreno*, 236 Ariz. 347, ¶ 3. *Moreno* moved to suppress evidence seized as a result of that stop, arguing that he had been stopped "for being in a vehicle that had a perfectly legal window tint and for having a rosary that was hanging from the rear view mirror." *Id.* ¶ 4. The trial court denied the motion to suppress, finding that the detective's mistake regarding the window tint was reasonable "and the objective facts established reasonable suspicion for an actual violation of the law." *Id.* ¶ 6. When *Moreno* sought clarification of the court's ruling, the court explained

¹ Alvarado filed an amended motion to suppress, additionally arguing that the Douglas police officers illegally prolonged the traffic stop to await the arrival of the canine unit, a claim he has not asserted on appeal. Accordingly, we deem it waived and do not address it further. *See State v. Bolton*, 182 Ariz. 290, 298 (1995) ("Failure to argue a claim on appeal constitutes waiver of that claim.").

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that “the other factors there are certainly not as strong as the window tint,” and “the ruling is based on the window tint.” *Id.*

¶8 On appeal, this court determined the trial court had not erred in finding the detective had a good-faith, reasonable basis for suspecting the window tint was illegal, which was sufficient to provide reasonable suspicion for the stop. *Id.* ¶ 18. And because the window tint was a sufficient basis for the stop, we declined to determine whether other factors also supported reasonable suspicion. *Id.* Thus, *Moreno* does not support Alvarado’s argument that items hanging from the rearview mirror cannot constitute reasonable suspicion.

¶9 More importantly, however, the trial court here found that “whether the rosaries were or were not hanging from the rearview mirror, or whether A.R.S. § 28-959.01 contemplates such a common adornment of a vehicle as violation of statute, is not important” because the vehicle’s registration being suspended constituted “sufficient grounds alone” for the stop. *See* § 28-2153(A) (prohibiting operation of vehicle unless it has been registered with motor vehicle department). Alvarado contends the evidence does not support that basis because the record of the officer’s call with dispatch “is inconsistent” and there were “consistent indications that the car’s title status was active.” His argument is not supported by the record.²

¶10 As discussed above, the officer testified he had asked the dispatcher to check the registration status of the vehicle before the traffic stop and the dispatcher had told him “the license plate was suspended.” The dispatcher also testified that the report she ran had showed the vehicle’s registration was “suspended.” Thus, the trial court did not abuse its discretion in denying Alvarado’s motion to suppress because the record supports the court’s finding that the dispatcher had “reported with certainty that the vehicle registration . . . was . . . ‘suspended.’”³

²The vehicle’s registration status, not its title status, was discussed at the suppression hearing.

³To the extent Alvarado contends the registration suspension was not a valid basis for the stop because it was premised on the windshield obstruction, we note performing a check of a vehicle’s license plate does not constitute a search or seizure under the Fourth Amendment and thus no articulable reason is necessary. *See United States v. Diaz-Castaneda*, 494 F.3d 1146, 1152 (9th Cir. 2007) (“[W]hen police officers see a license plate in plain

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Disposition

¶11 Alvarado's conviction and sentence are affirmed.

view, and then use that plate to access additional non-private information about the car and its owner, they do not conduct a Fourth Amendment search.").