

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

HAIDEE ASUSENA CRUZ,
Appellant.

No. 2 CA-CR 2022-0071
Filed October 7, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201602049
The Honorable Robert C. Olson, Judge

AFFIRMED

COUNSEL

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STATE v. CRUZ
Decision of the Court

MEMORANDUM DECISION

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

S T A R I N G, Vice Chief Judge:

¶1 Haidee Cruz appeals from her conviction and sentence for possession of a narcotic drug for sale. She argues her Fourth Amendment rights were violated during the traffic stop leading to her arrest and, consequently, evidence of the drugs found in her vehicle should have been suppressed. We affirm.

¶2 In July 2016, a Department of Public Safety trooper stopped a vehicle in which Cruz was a passenger. The trooper, with Cruz's and the driver's permission, had his dog check the outside of the vehicle. The dog alerted near the passenger door, and a search of the vehicle uncovered 275.6 grams of heroin under Cruz's seat. An additional 272.2 grams of heroin was also found inside of the car. Cruz admitted she was being paid to transport the drugs. Cruz was convicted of possession of a narcotic drug for sale, and the trial court imposed a four-year prison term. This appeal followed.

¶3 On appeal, Cruz asserts the search of the vehicle violated her Fourth Amendment rights because the trooper's use of the dog to check the vehicle improperly extended the stop, the trooper lacked reasonable suspicion to further detain her, and her consent to the search was invalid. But, as she acknowledges, she did not seek suppression below. Consequently, she "asks for review under the fundamental error standard."

¶4 In response, the state maintains we should find Cruz's arguments waived because she did not file a motion to suppress in the trial court. But our supreme court has directed that we review suppression issues raised for the first time on appeal for fundamental error, even when the defendant did not file a motion to suppress.¹ *State v. Allen*, 253 Ariz.

¹We are sympathetic to the state's position that fundamental error review might be an inadequate method to address unraised suppression issues on appeal. Such issues are often fact-intensive and, without them having been raised, the record simply may be insufficient to address the

STATE v. CRUZ
Decision of the Court

306, ¶ 15 (2022); *State v. Canez*, 202 Ariz. 133, ¶ 70 (2002); *see also State v. Newell*, 212 Ariz. 389, ¶ 34 (2006) (appeals court may “review a suppression argument that is raised for the first time on appeal for fundamental error”). Accordingly, we address Cruz’s arguments under that standard.

¶5 To obtain relief under fundamental error review, Cruz must first show error and additionally that the error was fundamental. *Allen*, 253 Ariz. 306, ¶ 13. Fundamental error goes to the foundation of the case, takes away a right essential to the defense, or is so egregious that the defendant could not have received a fair trial. *Id.* “Errors fitting into categories one or two require a separate showing of prejudice, but errors in category three are automatically prejudicial.” *Id.*

¶6 Cruz argues the trooper improperly extended the traffic stop when he asked for and received permission to and then directed his dog to check the vehicle. She asserts that the trooper had already obtained both occupants’ identification and had “ample time to issue the driver a citation” for following too closely – the basis of the stop.

¶7 “[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 th[e] mission’ of issuing a ticket for the violation.” *Rodriguez v. United States*, 575 U.S. 348, 350-51, 357 (2015) (alteration in *Caballes*) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). Thus, a law enforcement officer’s authority to continue the stop “ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.” *Id.* at 354.

¶8 But the lack of a developed factual record makes it impossible for Cruz to meet her burden of demonstrating error. There is no evidence of how long it could reasonably take a law enforcement officer to write a

argument. And our supreme court has arguably been unclear on this point. In *State v. Bush*, the defendant raised on appeal an analogous suppression issue – the voluntariness of a confession – after failing to raise the issue in the trial court. 244 Ariz. 575, ¶¶ 48-51 (2018). The supreme court determined the error was waived, without reviewing for fundamental error. *Id.* ¶¶ 51-52. But because Cruz has not demonstrated error, we need not reach the state’s argument that, in some circumstances, we may forgo fundamental error review. We agree that in many cases, the insufficient factual record will make it difficult or impossible for the defendant to demonstrate error in any event.

STATE v. CRUZ
Decision of the Court

citation in similar circumstances or whether the trooper here had already issued one. And as Cruz acknowledges, a law enforcement officer does not improperly extend a traffic stop when the officer takes time to check for warrants. *See id.* at 349, 354-55. There is no evidence whether that check had been completed or was underway at the time the trooper asked permission to have his dog check the vehicle.

¶9 Indeed, the information available in the record suggests the trooper was acting well within the reasonable time to complete the traffic stop because neither Cruz nor the driver were legally permitted to drive the vehicle. Cruz provided only an Arizona identification card, and, according to the presentence report, the driver’s driver license had been suspended – subjecting her to arrest in any event. *See* A.R.S. § 28-3473; *State v. Green*, 245 Ariz. 529, ¶¶ 8-9 (App. 2018) (police did not unlawfully prolong detention of person under arrest while investigating unrelated offenses), *vacated in part on other grounds*, 248 Ariz. 133, ¶ 24 (2020).

¶10 Cruz additionally argues her consent to the check of the vehicle was invalid because the trooper improperly extended the stop. *See State v. Kempton*, 166 Ariz. 392, 398 (App. 1990) (evidence resulting from consensual search subject to suppression “if the unconstitutional conduct in stopping the vehicle is not sufficiently attenuated from the subsequent seizure”). Because Cruz has not demonstrated the stop was improperly extended, this argument fails.

¶11 We affirm Cruz’s conviction and sentence.