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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. TAMMY IRENE SANCHEZ, Appellant.	2 CA-CR 2008-0397 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20080626

Honorable Michael J. Cruikshank, Judge

AFFIRMED

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E C K E R S T R O M, Presiding Judge.

¶1 After a jury trial, appellant Tammy Sanchez was convicted of transportation of marijuana for sale and sentenced to a mitigated term of four years' imprisonment. On appeal, she argues the trial court erred in denying her motion to suppress evidence because police lacked grounds to stop her car, detain her for further investigation, and search the trunk of her vehicle. She also contends the length of her detention was unreasonable. Finding no error, we affirm.

Factual and Procedural Background

¶2 In reviewing a trial court's ruling on a motion to suppress, we consider only the evidence presented at the suppression hearing, which we view in the light most favorable to sustaining the ruling. *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007). On January 30, 2008, Officer Kyle Todd of the United States Fish and Wildlife Service was on duty near Sasabe on State Highway 286. This paved, two-lane road stretches over rolling hills through a national wildlife refuge and is a known drug-smuggling corridor. At 1:20 p.m., Todd stopped a sedan driven by Sanchez after seeing it "abrupt[ly] jerk across the center" of the road for a few moments such that "half of [the] vehicle went across the center line" before returning to the proper lane.[1] Todd testified he saw no animals or potholes in the road explaining this abrupt deviation.

¶3 Sanchez stepped out of her car as the officer approached. According to Todd, she appeared nervous during the interaction that followed; her voice quivered and her hands

[1]Before activating his emergency lights, the officer also noticed Sanchez's vehicle had a cracked rear taillight cover with red tape on it. The trial court made no finding as to whether the condition of the taillight cover violated the law or justified stopping the vehicle.

shook. When Todd stated he had pulled her over for crossing the center line, Sanchez assured him she was not drunk and asked him to quickly issue any citation because her teenage daughter was in the car and needed to use a restroom. Although no one was in the backseat, the rear of the car sat lower than the front, suggesting the presence of a sizeable load in the trunk. There were also hand prints in the dust on the exterior of the trunk.

¶4 United States Border Patrol Agent Timothy Dorsey assisted Todd. When Dorsey asked Sanchez where she was coming from, she replied she had visited a friend in the town of Amado, which is also where Sanchez lived. Because this explanation did not account for her present location, Dorsey suspected Sanchez might be involved in smuggling and asked for consent to search the trunk of the car. When Sanchez refused, Dorsey called for a drug-detection dog to be brought to the scene.

¶5 Sanchez could not furnish proof of financial responsibility. It took Todd about fifteen minutes to determine whether her vehicle was properly insured and to resolve all other issues relating to the traffic stop. When he finished, Todd informed Sanchez he would mail her a citation but "told her that she needed to stay there because [the] border patrol still had questions for her." Dorsey had requested the canine approximately five to ten minutes after Todd initiated the stop, and an officer arrived with the dog between five and fifteen minutes later. When the drug-detection dog arrived, it alerted to the presence of illegal drugs in the trunk.

¶6 The two federal officials involved in the stop testified they had suspected Sanchez of smuggling based on the fact that she appeared more nervous than people typically

are during traffic stops; she got out of her vehicle when Todd approached it, which is unusual unless a driver is trying to keep an officer away from a vehicle; her car was "squatting" in the back, as though something heavy were in its trunk; dust and hand prints on the trunk suggested it might have been loaded in the desert; she was stopped in a known drug-smuggling corridor; and Sanchez's account of her travels appeared implausible. Sanchez testified, however, that she had said she was traveling to Tucson after visiting a friend in Arivaca, not Amado; she stated her car was not resting lower than normal in the back; she denied ever crossing the center line with her vehicle; and she claimed to have been detained for twenty to thirty minutes while waiting for the dog after the traffic stop had concluded.

¶7 The trial court expressly credited the officers' testimony and found they had in fact observed a violation of the lane-divider statute, A.R.S. § 28-729(1). The court based its ruling, in part, on the fact that there was "no apparent explanation or obvious reason why the sudden abrupt movement was made across the center line." The court further found Sanchez had been detained for a maximum of fifteen minutes while the officers waited for the dog, which the court determined was a reasonable period under the circumstances. The court therefore denied Sanchez's motion to suppress. Evidence seized from the trunk of her car was subsequently admitted at her trial, and the jury found her guilty of transporting 141.2 pounds of marijuana for sale. This appeal followed.

Discussion

¶8 As she did below, Sanchez argues she was stopped and detained in violation of the Fourth and Fourteenth Amendments of the United States Constitution as well as

article II, § 8 of the Arizona Constitution and that the trial court therefore erred by denying her motion to suppress the evidence seized from the trunk of her vehicle.

¶9 When examining a ruling on a motion to suppress, we review the trial court's factual findings for an abuse of discretion, but we review de novo the ultimate legal question whether the evidence was obtained in violation of the constitution. *State v. Davolt*, 207 Ariz. 191, ¶ 21, 84 P.3d 456, 467 (2004). As we previously stated, we consider only the evidence presented at the suppression hearing, *State v. Newell*, 212 Ariz. 389, ¶ 22, 132 P.3d 833, 840 (2006), which we view in the light most favorable to upholding the trial court's ruling. *Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d at 790. We defer to the trial court's findings of fact so long as they are supported by the evidence—even conflicting evidence—and are not clearly erroneous. *See State v. Ellison*, 213 Ariz. 116, ¶ 32, 140 P.3d 899, 911 (2006); *State v. Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d 303, 307 (App. 2000); *State v. Palmer*, 156 Ariz. 315, 316, 751 P.2d 975, 976 (App. 1987). We infer any findings necessary to affirm the trial court, provided such implicit findings are consistent with any express findings of fact the court made. *State v. Zamora*, 220 Ariz. 63, ¶ 7, 202 P.3d 528, 532 (App. 2009).

¶10 Outside the context of a dwelling, Arizona courts have never held article II, § 8 of the Arizona Constitution is broader than its federal counterpart, the Fourth Amendment.[2] *State v. Juarez*, 203 Ariz. 441, ¶ 14, 55 P.3d 784, 787-88 (App. 2002). Indeed, our supreme court has recognized the need for uniformity in the law relating to searches, seizures, and the

[2]Article II, § 8 provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

suppression of evidence, *State v. Bolt*, 142 Ariz. 260, 264, 268-69, 689 P.2d 519, 523, 527-28 (1984), and it observed long ago that article II, § 8 is "of the same general effect and purpose as the Fourth Amendment to the Constitution of the United States." *Turley v. State*, 48 Ariz. 61, 70, 59 P.2d 312, 316 (1936). We therefore apply Fourth Amendment jurisprudence when resolving issues relating to car stops, investigative detentions, and canine sniffs of the exterior of vehicles. *See State v. Teagle*, 217 Ariz. 17, n.3, 170 P.3d 266, 271 n.3 (App. 2007).

Traffic Stop

¶11 Sanchez first argues the stop of her automobile was unconstitutional because she did not violate Arizona's lane-divider statute, § 28-729(1). Traffic stops by law enforcement officers are seizures within the meaning of the Fourth Amendment. *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996). Therefore, an officer must have reasonable suspicion of unlawful activity in order to stop a motorist. *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). A violation of a traffic law generally provides sufficient ground to stop a vehicle. *Whren v. United States*, 517 U.S. 806, 810 (1996); *see also* A.R.S. § 28-1594 (officer may stop and detain person as reasonably necessary to investigate actual or suspected violation of traffic laws); *State v. Box*, 205 Ariz. 492, ¶ 12, 73 P.3d 623, 627 (App. 2003) (holding § 28-1594 consistent with state constitution).

¶12 Section 28-729(1) requires motorists on marked roadways to drive their vehicles entirely within one lane "as nearly as practicable." In *State v. Livingston*, 206 Ariz.

145, ¶¶ 8, 12, 75 P.3d 1103, 1105-06 (App. 2003), we affirmed a trial court's determination that a driver had not violated this statute by momentarily traversing a road's shoulder line on one occasion. In so doing, we accepted the trial court's implicit determination that Livingston had stayed within the lane as nearly as practicable given that the road in question was a curved, dangerous rural highway and, apart from straying several inches over the shoulder line, Livingston had otherwise driven safely at all times. *Id.* ¶¶ 5, 8, 12. We noted in particular that she had not abruptly corrected her vehicle after crossing the line, *id.* ¶ 5, which suggests the slight deviation resulted from the layout or conditions of the road rather than her own carelessness or impairment.

¶13 Here, by contrast, the road conditions were not established with any detail during the evidentiary hearing; Sanchez's abrupt deviation was wholly unaccounted for; and her violation was much more extensive than that in *Livingston*—half the width of a car as opposed to less than twelve inches. *See id.* ¶ 5. These are precisely the "seemingly small factual distinctions [that] can affect a court's conclusions as to the reasonableness of a stop." *Id.* n.1. The trial court therefore had ample factual support to conclude Sanchez had violated § 28-729(1) and, consequently, Todd had reasonable suspicion to stop Sanchez's vehicle.[3]

[3]Having concluded the trial court reached a legally correct result, we need not address whether the court properly distinguished *Livingston* in part on the ground that Sanchez had crossed the center line rather than the shoulder line of the road. *See State v. Cañez*, 202 Ariz. 133, ¶ 51, 42 P.3d 564, 582 (2002) (appellate court will affirm trial court's ruling whenever it reaches a correct result, even if based on incorrect reasoning). We likewise find no basis for disturbing the court's ruling merely because it mistakenly believed there was testimony about the road being straight. The court correctly noted there was no testimony the road was curved and, more importantly, it reasonably found there was no explanation for Sanchez's

Investigative Detention

¶14 Sanchez further argues her "prolonged detention was improper" because it exceeded the scope of the original traffic stop and was not justified by reasonable suspicion of criminal activity. The trial court did not err in denying the motion to suppress on this ground.

¶15 Sanchez is correct that, in general, police may not prolong a traffic stop beyond the time necessary to conduct inquiries related to the stop and issue a warning or ticket. *See Illinois v. Caballes*, 543 U.S. 405, 407-08 (2005). A separate detention therefore occurs when, as here, a traffic warning is issued and a motorist is forced to wait for a drug-detection dog. *See Teagle*, 217 Ariz. 17, ¶¶ 8, 25 & n.4, 170 P.3d at 270, 272 & n.4. In order for such a separate detention to be lawful, law enforcement officers must "have a particularized and objective basis for suspecting [the] person is engaged in criminal activity." *State v. O'Meara*, 198 Ariz. 294, ¶ 7, 9 P.3d 325, 326 (2000).

¶16 In determining whether officers have a sufficient basis for an investigative detention, a trial court must assess the surrounding circumstances in their entirety, looking at "the whole picture." *Id.* ¶ 9. In other words, a court may not single out and reject factors that, in isolation, may be viewed as potentially innocent. *Id.* ¶ 10. And a court will defer to a trained law enforcement officer's ability to distinguish innocent from suspicious behavior. *Teagle*, 217 Ariz. 17, ¶ 26, 170 P.3d at 273.

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sudden movement across the center line. Thus, the evidence was sufficient for the court to conclude Sanchez had violated § 28-729(1).

¶17 The evidence presented at the suppression hearing supported the trial court's implicit conclusion that the officers had reasonable suspicion Sanchez was transporting contraband. They testified she was traveling in a known corridor for illegal drugs; she appeared unusually nervous and got out of her vehicle to approach Todd, which he reported was typical behavior when drivers are trying to deceive police; her report of her travels did not account for her present location; and her vehicle squatted in the back and had dust prints on its trunk, which suggested it recently might have been loaded in a desert area. We therefore agree with the trial court's implicit determination that the officers had reasonable suspicion to briefly detain Sanchez for further investigation and await the arrival of a drug-detection dog. *Cf. Teagle*, 217 Ariz. 17, ¶¶ 28-29, 170 P.3d at 273-74 (factors giving reasonable suspicion of drug trafficking might include unusual travel plans, defendant's decision to leave vehicle and approach patrol car, and stop occurring in known drug corridor). Although Sanchez asserts there were innocent explanations for the factors the officers deemed relevant, when viewed together, as they must be, *see O'Meara*, 198 Ariz. 294, ¶ 10, 9 P.3d at 327, these circumstances created a particularized and objective basis for the law enforcement officers to suspect Sanchez was engaged in criminal activity.

¶18 For the first time on appeal, Sanchez argues that because "[t]he trial court made no findings at all concerning the reasonable suspicion of the officers to continue the detention" after the traffic stop, the court either "employed an erroneous legal standard" and "did not believe reasonable suspicion independent of the traffic violation was necessary," or

the court failed to make the proper findings, in which case a remand is necessary for a new evidentiary hearing. We disagree with both points.

¶19 Trial courts are presumed to know and correctly apply the law, *State v. Moody*, 208 Ariz. 424, ¶ 49, 94 P.3d 1119, 1138 (2004), and the failure of a court to make express findings on the record is not fundamental error. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300-01, 878 P.2d 657, 658-59 (1994). Moreover, as we pointed out earlier, we will infer the necessary findings to affirm the trial court's ruling when it is possible to do so. *Zamora*, 220 Ariz. 63, ¶ 7, 202 P.3d at 532. Here, no features of the court's ruling suggest it applied an improper legal standard in ruling on Sanchez's motion to suppress evidence. Because we have concluded reasonable suspicion supported this detention, Sanchez suffered neither fundamental error nor prejudice from the court's lack of express findings. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005) (absent objection below, defendant must show fundamental, prejudicial error to obtain appellate relief).

¶20 Sanchez also asserts the length of her detention was unreasonable. Due to her failure to develop and support an independent argument relating to the length of her detention in her opening brief, the issue is waived on appeal. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi) (opening brief must contain legal arguments with supporting authority); *State v. Cons*, 208 Ariz. 409, ¶ 18, 94 P.3d 609, 616 (App. 2004) (failure to develop argument results in waiver). Nonetheless, the trial court found Sanchez had been detained a maximum of fifteen minutes while waiting for the drug-detection dog to arrive, and the record does not suggest this was an unreasonably long period of time or the officers were dilatory in securing the

dog's presence. *See State v. O'Meara*, 197 Ariz. 328, ¶ 13, 4 P.3d 383, 387 (App. 1999) (police diligence in conducting investigation primarily determines whether length of detention reasonable), *aff'd*, 198 Ariz. 294, 9 P.3d 325 (2000); *cf. Teagle*, 217 Ariz. 17, ¶ 35, 170 P.3d at 275-76 (finding wait for dog of more than one and one-half hours reasonable under circumstances); *O'Meara*, 197 Ariz. 328, ¶¶ 5, 13-14, 4 P.3d at 385, 387 (forty-five minute detention for dog reasonable under circumstances).[4]

Probable Cause

¶21 Finally, Sanchez argues that the officers lacked probable cause to search the trunk of her vehicle because the officer who handled the dog did not offer testimony regarding the dog's specific training—whether it detected the scent of humans in addition to the odor of drugs—or to the dog's track record and percentage of false alerts. She therefore contends the warrantless search of her trunk was illegal. Sanchez acknowledges that because she did not raise this argument below, we review only for fundamental error. *See Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d at 607.

¶22 At the suppression hearing, the officer handling the dog testified only that the dog was trained to detect the scent of illegal drugs, including marijuana, and that the dog had

[4]We decline Sanchez's invitation to construe the right to privacy guaranteed by article II, § 8 of the Arizona Constitution as prohibiting a drug-detection dog from sniffing the exterior of a vehicle. As we have noted, our jurisprudence has interpreted this constitutional provision no more broadly than the Fourth Amendment, except in the limited context of the home, *Juarez*, 203 Ariz. 441, ¶ 14, 55 P.3d at 787-88, and dog sniffs of cars do not constitute searches under the Fourth Amendment. *See Caballes*, 543 U.S. at 408-09 (car sniff not search because only detects items in which people have no legitimate expectation of privacy, namely contraband).

alerted on Sanchez's vehicle. This evidence was sufficient to support a finding that police had probable cause to search the trunk for illegal drugs. *See State v. Box*, 205 Ariz. 492, ¶ 14, 73 P.3d 623, 627 (App. 2003) (drug-detection dog's alert provides probable cause to search car without warrant); *State v. Weinstein*, 190 Ariz. 306, 310-11, 947 P.2d 880, 884-85 (App. 1997) (same). Of course, Sanchez was free to cross-examine the dog handler about the dog's training and rate of false-positive alerts, and the answers to such questions could conceivably have demonstrated that the dog was so unreliable its alerts did not rise to the level of probable cause. *See United States v. Diaz*, 25 F.3d 392, 394 (6th Cir. 1994) (when evidence establishes dog generally certified in drug detection, "any other evidence, including the testimony of other experts, that may detract from the reliability of the dog's performance properly goes to the 'credibility' of the dog"). The potential for erroneously identifying scents, however, is not limited to dogs, and neither a quantified risk of error nor more exhaustive foundational testimony is required in order for information about the odor of drugs to support a probable cause determination. *Cf. United States v. Boxley*, 373 F.3d 759, 761 (6th Cir. 2004) ("[I]n order to admit evidence of a dog's alert to an aroma of drugs, it is not necessary to provide the dog's training and performance records, as it is similarly unnecessary to qualify a human expert in this way."); *State v. Warren*, 121 Ariz. 306, 309, 589 P.2d 1338, 1341 (App. 1978) (officer's avowal he smelled burnt marijuana in pipe and home and had been trained to detect it established probable cause to issue search warrant). Thus, the trial court did not err, fundamentally or otherwise, in denying the motion to suppress on this ground.

Disposition

¶23 For the foregoing reasons, we affirm the trial court's order denying Sanchez's motion to suppress the evidence obtained from the trunk of her vehicle. We therefore affirm her conviction and sentence.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge