

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 28 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	2 CA-CR 2010-0050
Appellee,)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
KARRI ANN HANSEN,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
)	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20090293

Honorable Peter J. Cahill, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Emily Danies

Tucson
Attorneys for Appellant

ESPINOSA, Judge.

¶1 After a bench trial, Karri Ann Hansen was convicted of aggravated driving under the influence of an intoxicant (DUI) and extreme aggravated DUI. She was placed

on three years' probation, ordered to serve a mandatory, four-month term of imprisonment, and required to pay certain fines and fees. On appeal, Hansen contends the trial court erred in denying her motion to suppress evidence. We affirm for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

¶2 “On appeal, we view the facts in the light most favorable to upholding the verdict and resolve all inferences against the defendant.” *State v. Klokic*, 219 Ariz. 241, n.1, 196 P.3d 844, 844 n.1 (App. 2008). Additionally, in reviewing the denial of a motion to suppress, we consider only the evidence presented at the suppression hearing. *State v. Box*, 205 Ariz. 492, ¶ 2, 73 P.3d 623, 624 (App. 2003). In November 2008, shortly after 2:00 a.m., an Arizona Department of Public Safety (DPS) officer responded to a police dispatch call regarding a single-car traffic collision on State Route 87. At the site of the accident, the officer spoke with the driver of the vehicle, Hansen. She admitted having consumed an unspecified quantity of alcohol and the officer noted evidence that she was intoxicated, which prompted him to conduct a horizontal gaze nystagmus (HGN) test. An ambulance then took Hansen to a hospital.

¶3 At the hospital, the officer requested that if hospital personnel drew Hansen's blood for any medical reason, they also retain a sample for DPS purposes. A hospital employee then drew blood from Hansen apparently using two needles, one for a blood draw ordered by the attending physician and the other to fill two vials provided by the officer. DPS analysis of the sample revealed a blood alcohol concentration of .207.

Hansen was later convicted and sentenced as specified above. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033(A)(1).

DISCUSSION

¶4 Hansen contends the trial court erred in denying her motion to suppress the results of her blood test, arguing the blood draw did not comport with A.R.S. § 28-1388(E) and violated her Fourth Amendment rights.¹ We review a trial court’s ruling on a motion to suppress evidence ““for an 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, 150 P.3d 787, 790 (App. 2007), quoting *State v. Booker*, 212 Ariz. 502, ¶ 10, 135 P.3d 57, 59 (App. 2006). We will affirm the court’s ruling “if legally correct for any reason” supported by the record. *State v. Cañez*, 202 Ariz. 133, ¶ 51, 42 P.3d 564, 582 (2002). “[B]ecause any forced extraction of blood by the State invades one’s expectation of privacy in bodily integrity, the intrusion is subject to the requirements of the Fourth Amendment.” *State v. Quinn*, 218 Ariz. 66, ¶ 6, 178 P.3d 1190, 1192 (App. 2008). “Under Arizona law, absent express consent, police may obtain a DUI suspect’s blood sample only pursuant to a valid search warrant, [the implied consent law], or the medical blood draw exception in [A.R.S.] § 28-1388(E).” *State v. Aleman*, 210 Ariz. 232, ¶ 11, 109 P.3d 571, 575 (App. 2005).

¹Hansen somewhat conflates her statutory and constitutional claims, applying arguments and authority pertaining to each interchangeably. To the extent possible, we address them separately.

A.R.S. § 28-1388(E)

¶5 Hansen first contends the trial court erred in determining the blood draw comported with § 28-1388(E), asserting the use of “an additional needle puncture” violated the statute and that the second puncture was not for medical purposes.² Initially, we reject her claim that two veinal punctures necessarily violates the statute. Neither § 28-1388(E) nor any case law interpreting it delineates procedures for conducting a medical blood draw nor limits the number of punctures allowed under the statute. *See* § 28-1388(E); *see also State v. Cocio*, 147 Ariz. 277, 709 P.2d 1336 (1985); *Lind v. Superior Court*, 191 Ariz. 233, 954 P.2d 1058 (App. 1998). Hansen’s reliance on *Lind* is unpersuasive. There, we explained that sampling already drawn blood is “preferable to a second needle puncture,” but we did not conclude a second puncture would be impermissible. 191 Ariz. 233, ¶ 18, 954 P.2d at 1062.

¶6 Hansen’s contention that the second puncture was not for a medical purpose is similarly unpersuasive both in view of our reasoning in *Lind* and the factual backdrop of this case. In *Lind*, hospital personnel drew a blood sample in excess of what

²Hansen also claims the officer lacked probable cause and that no exigent circumstances justified the warrantless taking of blood in violation of § 28-1388(E) (requiring probable cause, exigent circumstances, and medical purpose for draw). Because she cites no authority in support of her argument, the issue is waived. *See State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) (appellant’s failure to include arguments with citations to authorities relied on in opening brief constitutes abandonment and waiver of claim). In any event, it is well established that the evanescent nature of blood alcohol is an exigent circumstance in the context of a timely DUI investigation, *see Schmerber v. California*, 384 U.S. 757, 770-71 (1966), and nothing in the record supports or suggests that the officer lacked probable cause, *see State v. Organ*, 225 Ariz. 43, ¶ 10, 234 P.3d 611, 614 (App. 2010) (absent specific findings, appellate court will infer factual findings reasonably supported by record that are necessary to support trial court’s ruling).

was needed for medical purposes in order to set a portion aside for law enforcement use, in keeping with the hospital's established policy. *Id.* ¶¶ 3-7. We held that the entire sample was for medical purposes within the meaning of the statute, and stressed that the blood draw was not for a legal purpose until law enforcement requested and received the sample. *Id.* ¶ 19.

¶7 Here, the officer arrived at the hospital and requested a blood sample after an attending physician had already ordered a blood draw “for a CBC” (complete blood count), which the hospital's blood technician testified was solely for medical purposes. As in *Lind*, the officer did not initiate the blood draw but was provided a sample drawn in excess of what was drawn for medical purposes. Although the officer supplied two “gray-topped vials” for the sample, he had no role in the hospital employee's choosing to make two separate punctures; the evidence showed the employee did so according to his own or the hospital's preexisting protocol. And nothing in the record suggests the officer contemplated an additional puncture or was aware of the technician's methods. Because the record shows the officer had no control over the procedure chosen by medical personnel to comply with his request under the statute, and Hansen does not meaningfully challenge any other aspect of the blood draw procedure, the trial court did not err in concluding the blood draw did not violate § 28-1388. *Cf. Lind*, 191 Ariz. 233, ¶ 19, 954 P.2d at 1062 (hospital's custody and control of all blood drawn factor in concluding portion specifically set aside for police satisfied “medical purposes” requirement of statute).

Fourth Amendment

¶8 Hansen also claims the second needle puncture constituted an unconstitutional police intrusion, in violation of her Fourth Amendment rights, citing *Cocio*. We need not explore this issue, however, because under the circumstances of this case, even if the additional puncture raised constitutional concerns, suppression of the blood test evidence was not required. “A Fourth Amendment violation does not mandate reflexive exclusion of evidence.” *State v. Booker*, 212 Ariz. 502, ¶ 12, 135 P.3d 57, 59 (App. 2006). Instead, the primary purpose of the exclusionary rule is to deter police misconduct. *Id.* ¶ 13. The exclusionary rule is not a personal right and applies only as a last resort and when it will result in appreciable deterrence. *Herring v. United States*, ___ U.S. ___, ___, 129 S. Ct. 695, 700 (2009). And “the benefits of deterrence must outweigh the costs.” *Id.*

¶9 Here, as noted above, the officer simply requested a blood sample under the statute and nothing he did required the medical technician to make a separate puncture to comply. As already observed, the technician did so according to his own or the hospital’s protocol, and there was no evidence the officer had contemplated multiple punctures or was even aware of the technician’s practice. *Cf. State v. Chavez*, 208 Ariz. 606, ¶ 15, 96 P.3d 1093, 1097 (App. 2004) (exclusionary rule not applicable to evidence obtained through acts of private citizens). Indeed, Hansen raises no allegation of officer misconduct whatsoever. Because the purpose of the exclusionary rule would not be served by excluding the blood sample in this case, we conclude the trial court did not err

when it admitted the evidence, even assuming the Fourth Amendment and its protections were implicated by the second puncture.

DISPOSITION

¶10 For the foregoing reasons, Hansen's convictions and sentences are affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge