

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

WILLIAM LEON CORRAL,
Appellant.

No. 2 CA-CR 2012-0484
Filed April 17, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20110040001
The Honorable Christopher C. Browning, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial, William Corral was convicted of aggravated driving under the influence of an intoxicant (DUI) while his license was suspended, revoked, or restricted; aggravated driving with an alcohol concentration of .08 or more while his license was suspended, revoked, or restricted; and criminal damage. The trial court sentenced him to a combination of concurrent and consecutive, presumptive prison terms totaling fifteen years. On appeal, Corral argues the court erred by denying his motion to suppress evidence obtained from a blood draw because the state lacked probable cause to obtain a sample of his blood. For the reasons stated below, we vacate the criminal restitution order but otherwise affirm Corral's convictions and sentences.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining Corral's convictions. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). On an early morning in March 2010, D.G. was leaving work when he saw a black Ford Bronco veer off the street and onto a sidewalk, hit a mailbox and a light pole, and ultimately crash into a utility pole. After calling 9-1-1, D.G. approached the vehicle but was unable to see through its tinted windows or open the locked door. When paramedics arrived, D.G. watched as they broke the driver's side window and pulled Corral from the vehicle.

¶3 Corral suffered a laceration to his right jaw and a broken thumbnail. Paramedics transported him to a nearby hospital, where a phlebotomist drew his blood for medical purposes. Tucson Police Department Officer Angela Gist, who had

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interviewed Corral at the scene and followed the ambulance to the hospital, requested and received a sample of Corral's blood from the hospital. Subsequent testing of that sample confirmed a blood-alcohol concentration of .116. Further investigation also revealed that Corral was driving on a suspended driver license at the time of the accident.

¶4 A grand jury indicted Corral for aggravated DUI while his license was suspended, revoked, or restricted; aggravated driving with an alcohol concentration of .08 or more while his license was suspended, revoked, or restricted; and criminal damage. Before trial, Corral filed a motion to suppress "all blood evidence," arguing that the seizure of his blood had violated his constitutional rights. After a hearing, the trial court denied the motion, finding "the warrantless seizure of [Corral's] blood, initiated by medical personnel for medical purposes, was appropriate . . . and did not violate [his constitutional r]ights." Following a trial held in absentia, a jury found Corral guilty of all counts. The court sentenced him as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).¹

Motion to Suppress

¶5 Corral maintains "[t]he trial court erred in denying [his] motion to suppress because the state lacked probable cause to request a sample of his blood." We review the denial of a motion to suppress evidence for an abuse of discretion, *State v. Fikes*, 228 Ariz.

¹Section 13-4033(C) prohibits a defendant from appealing if "the defendant's absence prevents sentencing from occurring within ninety days after conviction"; here, Corral delayed his sentencing for more than a year. But § 13-4033(C) applies "only if the defendant has been informed he could forfeit the right to appeal if he voluntarily delays his sentencing for more than ninety days." *State v. Bolding*, 227 Ariz. 82, ¶ 20, 253 P.3d 279, 285 (App. 2011). Corral maintains "he was [not] advised that he would forfeit his right to appeal if he absented himself," and the state does not contend otherwise. Moreover, the trial court informed Corral at sentencing that he had a right to appeal. We therefore consider Corral's appeal.

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389, ¶ 3, 267 P.3d 1181, 1182 (App. 2011), ““considering only the evidence presented at the suppression hearing,”” *State v. Nelson*, 208 Ariz. 5, ¶ 4, 90 P.3d 206, 207 (App. 2004), quoting *State v. Schinzel*, 202 Ariz. 375, ¶ 12, 45 P.3d 1224, 1227 (App. 2002). We view this evidence in the light most favorable to upholding the trial court’s ruling, “[b]ut we review the court’s legal conclusions de novo.” *State v. Gay*, 214 Ariz. 214, ¶ 30, 150 P.3d 787, 796 (App. 2007).

¶6 “The drawing of blood is a bodily invasion and, thus, constitutes a search under the Fourth Amendment.” *State v. Estrada*, 209 Ariz. 287, ¶ 11, 100 P.3d 452, 455 (App. 2004). Accordingly, “absent express consent, police may obtain a DUI suspect’s blood sample only pursuant to a valid search warrant, Arizona’s implied consent law, A.R.S. § 28-1321, 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); see also *Estrada*, 209 Ariz. 287, ¶ 11, 100 P.3d at 455. Here, the state relied on the medical blood draw exception under § 28-1388(E) as the basis for obtaining Corral’s blood. Section 28-1388(E) provides:

Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated [A.R.S.] § 28-1381 and a sample of blood, urine or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes.²

¶7 Taking a blood sample from a DUI suspect pursuant to § 28-1388(E) is “constitutionally permissible if there is ‘probable cause . . . to believe the person has [been driving under the influence of an intoxicant], . . . exigent circumstances are present and, . . . the blood is drawn for medical purposes by medical personnel.’” *Aleman*, 210 Ariz. 232, ¶ 12, 109 P.3d at 576 (alterations in *Aleman*),

²Section 28-1381 prohibits and criminalizes driving under the influence of intoxicating substances.

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quoting *State v. Cocio*, 147 Ariz. 277, 284, 709 P.2d 1336, 1345 (1985) (interpreting former statute, A.R.S. § 28-692(M)). Although Corral disputed the existence of exigent circumstances and a medical purpose for the blood draw below, he has not raised these arguments on appeal. See *State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) (issue not raised on appeal waived). Instead, he solely challenges the existence of probable cause.

¶8 “A police officer has probable cause when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense.” *State v. Hoskins*, 199 Ariz. 127, 137-38, 14 P.3d 997, 1007-08 (2000); see also *State v. Howard*, 163 Ariz. 47, 50, 785 P.2d 1235, 1238 (App. 1989) (“Probable cause is something less than the proof needed to convict and something more than suspicions.”). “In the DUI context, ‘probable cause does not require law enforcement to show that the operator was in fact under the influence; [o]nly the probability and not a prima facie showing of intoxication is the standard for probable cause.’” *State v. Moran*, 232 Ariz. 528, ¶ 10, 307 P.3d 95, 99 (App. 2013), quoting *Aleman*, 210 Ariz. 232, ¶ 15, 109 P.3d at 576 (alteration in *Aleman*). Probable cause may be based on the collective knowledge of all the officers involved. *State v. Keener*, 206 Ariz. 29, ¶ 14, 75 P.3d 119, 122 (App. 2003).

¶9 Here, the trial court concluded the state “made an adequate showing” of probable cause that Corral had been driving under the influence of an intoxicant. Based on the testimony presented at the suppression hearing, the court cited several factors supporting its conclusion: paramedics and D.G. told officers that Corral “was in fact the driver and the sole occupant of the vehicle which ran into a light pole”; while interviewing Corral at the accident scene, Gist smelled an “odor of intoxicants’ emanating from [Corral’s] person” and noticed that “his speech was ‘confused,’” although he appeared to have suffered only “minor lacerations”; and Gist administered a horizontal gaze nystagmus (HGN) test, during which Corral exhibited “six of six” cues for intoxication.

¶10 On appeal, Corral takes issue with two of the trial court’s findings in determining probable cause existed. First, he

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contends his performance on the HGN test may have resulted from his injuries sustained in the accident, and, consequently, “it cannot provide probable cause to believe [he] was impaired over the legal limit.” Second, he argues “[a]n odor of alcohol does not quantify the amount of alcohol that may have been consumed to produce the odor,” and, “therefore, it is insufficient to provide probable cause that [he] was either impaired or had a[n alcohol concentration] over the legal limit.”

¶11 Even assuming Corral is correct that these two factors individually do not provide a sufficient basis for probable cause, his argument nevertheless fails. Probable cause is determined on a case-by-case basis given the totality of the circumstances. *See State v. Million*, 120 Ariz. 10, 15, 583 P.2d 897, 902 (1978); *State v. Peterson*, 171 Ariz. 333, 335, 830 P.2d 854, 856 (App. 1991). In considering the totality of the circumstances, “[o]ne cannot parse out each individual factor, categorize it as potentially innocent, and reject it.” *State v. O’Meara*, 198 Ariz. 294, ¶ 10, 9 P.3d 325, 327 (2000). “Instead, one must look at all of the factors . . . and examine them collectively.” *Id.*

¶12 Here, the totality of the circumstances supports the trial court’s finding of probable cause. *See Aleman*, 210 Ariz. 232, ¶ 15, 109 P.3d at 577. In addition to exhibiting six of six cues for intoxication on the HGN test and emitting an odor of intoxicants, Corral crashed his vehicle into a utility pole at around three o’clock in the morning, an accident he could not remember. D.G. reported that Corral had “[fallen] asleep and . . . collided into the poles.” During his interview with Gist, Corral used “confused speech.” And, while Gist administered the HGN test, Corral fell asleep, and she had to wake him and start the test over. This evidence, as a whole, could cause a reasonable person to believe Corral was driving while under the influence of an intoxicant. *See Howard*, 163 Ariz. at 49-50, 785 P.2d at 1237-38 (probable cause existed for blood draw where defendant rear-ended another vehicle and smelled of alcohol); *Moran*, 232 Ariz. 528, ¶ 11, 307 P.3d at 99 (probable cause existed for arrest where defendant smelled of intoxicants, was confused about basic information, and performed poorly on HGN). Accordingly, the court did not abuse its discretion by denying

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Corral's motion to suppress. *See Fikes*, 228 Ariz. 389, ¶ 3, 267 P.3d at 1182.

Criminal Restitution Order

¶13 Although Corral has not raised the issue on appeal, we find fundamental error in the sentencing minute entry, which states "all fines, fees, assessments and/or restitution are reduced to a Criminal Restitution Order" (CRO). *See State v. Fernandez*, 216 Ariz. 545, ¶ 32, 169 P.3d 641, 650 (App. 2007) ("Although we do not search the record for fundamental error, we will not ignore it when we find it."). "[T]he imposition of a CRO before the defendant's probation or sentence has expired 'constitutes an illegal sentence, which is necessarily fundamental, reversible error.'" *State v. Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d 909, 910 (App. 2013), quoting *State v. Lewandowski*, 220 Ariz. 531, ¶ 15, 207 P.3d 784, 789 (App. 2009). This is so even when, as here, the trial court delayed the accrual of interest. Nothing in A.R.S. § 13-805,³ which governs the imposition of CROs, "permits a court to delay or alter the accrual of interest when a CRO is 'recorded and enforced as any civil judgment' pursuant to § 13-805(C)." *Lopez*, 231 Ariz. 561, ¶ 5, 298 P.3d at 910.

Disposition

¶14 For the foregoing reasons, we vacate the CRO but otherwise affirm Corral's convictions and sentences.

³Section 13-805 was amended in 2012 to "permit a court to enter a CRO at sentencing in certain circumstances." *State v. Cota*, 234 Ariz. 180, ¶ 8, 319 P.3d 242, 245 (App. 2014) (amendment allowing CROs before completion of sentence relates only to restitution). But Corral committed these offenses and was sentenced before the effective date of the amendment. *See id.* n.4; 2012 Ariz. Sess. Laws, ch. 269, § 3.