

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-100961-001 DT

03/07/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

ANDREA L KEVER

v.

ARMANDO SANTIAGO GRILLO (001)

TAMARA D BROOKS-PRIMERA

MESA JUSTICE CT-WEST
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number TR 2011–100961.

Defendant-Appellant Armando Grillo (Defendant) was convicted in the West Mesa Justice Court of driving under the influence and driving under the extreme influence. Defendant contends the trial court erred in denying his Motion To Suppress, which alleged the officer did not have reasonable suspicion to stop his vehicle. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On December 31, 2010, Defendant was cited for driving under the influence, A.R.S. § 28–1381(A)(1) & (A)(2); driving under the extreme influence, A.R.S. § 28–1382(A)(1); and driving without lights at night, A.R.S. § 28–922. Prior to trial, Defendant filed a Motion To Suppress alleging the officer did not have reasonable suspicion to stop his vehicle.

At the hearing on Defendant’s motion, Officer Anthony Sandoval testified he was on duty on December 31, 2010, in the area of Indian School Road and Pima Road. (R.T. of Sep. 20, 2011, at 4–5.) At approximately 1:37 a.m., he saw a vehicle without its headlights on traveling east in the number 2 lane on Indian School Road. (*Id.* at 4–5, 6–7.) Once the vehicle passed his location, Officer Sandoval made a U-turn, got behind the vehicle, and turned on his emergency lights. (*Id.* at 5.) As he did this, the driver turned on the vehicle’s lights and slowed to a stop. (*Id.* at 5–6.) Officer Sandoval identified Defendant as the driver of the vehicle. (*Id.* at 6.)

Defendant then testified that the daytime running lights on either side of the grill of his vehicle come on whenever the engine is started. (R.T. of Sep. 20, 2011, at 9, 12–13, 16.) Officer Sandoval testified daytime running lights are not sufficient illumination for nighttime driving conditions. (*Id.* at 18.) He said, when he saw the vehicle without its headlights on, he initiated the traffic stop to tell the driver the headlights were not on. (*Id.* at 18–19.)

The attorneys then made their final arguments, and the trial court took the matter under advisement. (R.T. of Sep. 20, 2011, at 22, 27, 32.) The trial court later ruled as follows:

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A hearing was held. Testimony was taken from the officer and from the defendant. Officer testified that he saw the defendant driving at night without his lights on. Defendant introduced evidence to show that lights on his vehicle were on.

The State's position under ARS 13-3883B is that whether the head lights were on or not is irrelevant as the officer honestly believed that they were not and he articulated the "fact" that the lights were off.

Defense argues that the officer was wrong, and that evidence shows that lights were on and therefore the stop was improper under the 4th Amendment and evidence of DUI should be suppressed.

After reviewing the relevant case law such as *Terry vs. Ohio*, *United States vs. Cortez*, *State vs. Maldonado*, *United States vs. Twilley*, *United States vs. Sanders* and others, the court returns to ARS 13-3925.

In ARS 13-3925c, the state statute states, "The trial court shall not suppress evidence that is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation."

In addition, "good faith mistake" is defined in section F1 this way: "good faith mistake" means a reasonable judgmental error concerning the existence of facts that if true would be sufficient to constitute probable cause.

Therefore, the court finds that Officer Sandoval committed a "good faith error" in perceiving the headlights of the defendant's car to be off. On this base, the court DENIES the defendant's motion to suppress.

(Minute Entry, dated Sep. 21, 2011.) On December 21, 2011, the parties submitted the matter on the record, which included a report showing Defendant had BAC readings of 0.190 and 0.199. The trial court found Defendant guilty of the DUI charges, and not responsible for the civil traffic violation. (Minute Entry, dated Dec. 23, 2011.) On January 19, 2012, the trial court imposed sentence. On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUE: DID THE TRIAL COURT ABUSE ITS DISCRETION IN FINDING THE OFFICER HAD REASONABLE SUSPICION TO STOP DEFENDANT'S VEHICLE.

Defendant contends the trial court abused its discretion in finding the officer had reasonable suspicion to stop his vehicle. In reviewing a trial court's ruling on a motion to suppress, an appellate court is to defer to the trial court's factual determinations, including findings based on a witness's credibility and the reasonableness of inferences the witness drew, but is to review de novo the trial court's legal conclusions. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 75, 81 (2004); *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Olm*, 223 Ariz. 429, 224 P.3d 245, ¶ 7 (Ct. App. 2010). For reasonable suspicion, the Arizona Supreme Court has said:

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Police officers may briefly detain an individual who they have reasonable suspicion to believe is involved in a crime. In assessing the reasonableness of a *Terry* stop, we examine “(1) whether the facts warranted the intrusion on the individual’s Fourth Amendment rights, and (2) whether the scope of the intrusion was reasonably related to the circumstances which justified the interference in the first place.”

. . . Reasonable suspicion requires “a particularized and objective basis for suspecting that a person is engaged in criminal activity.” Officers [may not] act on a mere hunch, but seemingly innocent behavior [may] form the basis for reasonable suspicion if an officer, based on training and experience, can “perceive and articulate meaning in given conduct[,] which would be wholly innocent to the untrained observer.” The totality of the circumstances, not each factor in isolation, determines whether reasonable suspicion exists. (Noting that *Terry* forbids a “divide-and-conquer analysis”).

State v. Boteo-Flores, 230 Ariz. 105, 280 P.3d 1239, ¶¶ 11–12 (2012) (citations omitted), *accord*, *State v. Lawson*, 144 Ariz. 547, 551, 698 P.2d 1266, 1270 (1985) (police officer has reasonable suspicion to detain person if there are articulable facts for officer to suspect person is involved in criminal activity or commission of a traffic offense). The Arizona statutes provide that a peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer’s presence. A.R.S. § 28–1594; A.R.S. § 13–3883(B). In this context, the Arizona Supreme Court has said:

The fourth amendment to the United States Constitution guarantees the right to be secure against unreasonable search and seizure. This guarantee requires arrests to be based on probable cause and permits limited investigatory stops based only on an articulable reasonable suspicion of criminal activity. Such stops are permitted although they constitute seizures under the fourth amendment. Officer Hohn testified that he stopped Blake because Blake’s car had been weaving in its lane, and he suspected the driver to be under the influence of alcohol. We find that Blake’s weaving was a specific and articulable fact which justified an investigative stop.

State v. Superior Court (Blake), 149 Ariz. 269, 273, 718 P.2d 171, 175 (1986) (citations omitted). The Arizona Court of Appeals has held a traffic violation provides sufficient grounds to stop a vehicle. *State v. Orendain*, 185 Ariz. 348, 352, 916 P.2d 1064, 1068 (Ct. App. 1996); *State v. Acosta*, 166 Ariz. 254, 257, 801 P.2d 489, 492 (Ct. App. 1990), *quoting United States v. Garcia*, 897 F.2d 1413, 1419 (7th Cir. 1990). Thus, in order for a trial court to find that an officer was legally justified in stopping a suspect, it must find the officer (1) knew of articulable facts that (2) raised a reasonable suspicion of criminal activity or a traffic violation.

In the present case, Officer Sandoval cited Defendant for driving without lights at night, which is described as follows:

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At any time from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead, a vehicle on a highway in this state shall display lighted lamps and illuminating devices as required by this article for different classes of vehicles, subject to exceptions for parked vehicles as provided in this article.

A.R.S. § 28-922. In the present case, Officer Sandoval testified Defendant did not have his headlights on. Defendant testified his vehicle was such that the daytime running lights came on any time the engine was on. Officer Sandoval testified, however, the daytime running lights were not sufficient to provide the requisite amount of light at night. This would have provided Officer Sandoval with reason to suspect Defendant had violated A.R.S. § 28-922, and thus would have given Officer Sandoval legal authority under A.R.S. § 28-1594 and A.R.S. § 13-3883(B) to stop and detain Defendant.

Although the trial court did not make a specific finding whether the lights on the front of Defendant's vehicle provided sufficient illumination to satisfy the requirements of A.R.S. § 28-922, it apparently found Officer Sandoval believed they were not sufficient to satisfy the requirements of that statute, and that Officer Sandoval was reasonable in that belief. The trial court thus relied on the "good faith exception," which provides as follows:

C. The trial court shall not suppress evidence that is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.

....
....

F. For the purposes of this section:

1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts that if true would be sufficient to constitute probable cause.

A.R.S. § 13-3925(C) & (F)(1). The trial court thus reasoned as follows: (1) Not having sufficient illumination would be a violation of A.R.S. § 28-922; (2) that fact would be sufficient to constitute probable cause, and thus reasonable suspicion; (3) Officer Sandoval believed Defendant's vehicle did not have sufficient illumination to satisfy the statute; (4) Officer Sandoval was reasonable in that belief; (5) to the extent Officer Sandoval was wrong in believing Defendant's vehicle did not have sufficient illumination to satisfy the statute, that was a reasonable judgment error and thus a "good faith mistake"; (6) the evidence seized by Officer Sandoval was the result of a good faith mistake; thus (7) the trial court was not permitted to suppress evidence. This Court concludes the record in this matter supports the trial court's ruling, thus the trial court did not abuse its discretion in denying Defendant's Motion To Suppress.

This Court notes the trial court ultimately found Defendant did not violate A.R.S. § 28-922. That would not, however, have negated Officer Sandoval's statutory right to stop and detain Defendant to investigate a *suspected* violation of the traffic laws, as stated by the Arizona Supreme Court:

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Moreover, when the police make an arrest based upon probable cause, it is not material that the person arrested may turn out to be innocent, and the arresting officer is not required to conduct a trial before determining whether or not to make the arrest.

Cullison v. City of Peoria, 120 Ariz. 165, 168, 584 P.2d 1156, 1159 (1978). As explained by the United States Supreme Court, this is because the level for reasonable suspicion for a stop and for probable cause for an arrest is considerably less than proof of wrongdoing by a preponderance of the evidence for a civil violation or beyond a reasonable doubt for a criminal conviction:

Although an officer's reliance on a mere "hunch" is insufficient to justify [an investigatory] stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.

United States v. Arvizu, 534 U.S. 266, 274 (2002) (citations omitted).

The officer, of course, must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch.'" The Fourth Amendment requires "some minimal level of objective justification" for making the stop. That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.

United States v. Soloway, 490 U.S. 1, 7 (1989) (citations omitted); *accord, Illinois v. Wardlaw*, 528 U.S. 119, 123 (2000). Thus, the trial court's determination that Defendant did not violate A.R.S. § 28-922 did not negate Officer Sandoval's reasonable suspicion that Defendant did violate the traffic law.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court did not abuse its discretion in denying Defendant's Motion To Suppress.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the West Mesa Justice Court.

IT IS FURTHER ORDERED remanding this matter to the West Mesa Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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