

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2012-000502-001 DT

03/26/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

J. Eaton

Deputy

STATE OF ARIZONA

BRIAN W ROCK

v.

JASON A SHICK (001)

JASON A SHICK

12628 W OCOTILLO RD

GLENDALE AZ 85307

PHX MUNICIPAL CT

REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

**Lower Court Case Number 14319007-01.**

Defendant-Appellant Jason A. Shick (Defendant) was convicted in Phoenix Municipal Court of failing to stop at a traffic signal. Defendant contends the trial court erred in not following the discovery rules and failing to make a determination that the evidence presented had probative value, and further contends the evidence did not support the trial court's determination. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

May 8, 2012, Defendant was cited for failure to stop at a traffic signal, A.R.S. § 28-645(A)(3)(a). At the trial in this matter, there was no prosecutor appearing for the State. (R.T. of Jun. 27, 2012, at 2.)

On direct examination, Officer Steven Colburn testified he was on duty on May 8, 2012, when he was sent to investigate a two-vehicle collision at 43<sup>rd</sup> Avenue and Glendale Avenue. (R.T. of Jun. 27, 2012, at 3.) An officer from the Glendale Police Department had initially investigated the matter, and by the time Officer Colburn arrived, both drivers and the witness had left the scene, so he obtained the information from the Glendale officer. (*Id.* at 4.)

Officer Colburn contacted by telephone Larry Sather, a witness who saw the collision. (R.T. of Jun. 27, 2012, at 4.) Sather told Officer Colburn he was westbound on Glendale Avenue when he stopped for a red light at the intersection with 43<sup>rd</sup> Avenue. (*Id.*) Prior to his arrival, a white Chevrolet pick-up truck (765 XEH), which was later determined to be driven by Leonard Strassner, had entered the intersection eastbound and was waiting for the intersection to clear so it could turn left. (*Id.*) Once the light turned red for Glendale Avenue, that truck proceeded to turn left onto northbound 43<sup>rd</sup> Avenue. (*Id.*) While that truck was in the process of turning, a second white Chevrolet pick-up truck (CD 64952), which was later determined to be driven by Defendant, entered the intersection "running the red light" and collided with Strassner's truck. (*Id.*)

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Officer Colburn then contacted Leonard Strassner. (R.T. of Jun. 27, 2012, at 5.) Strassner said he was eastbound on Glendale Avenue in the intersection waiting to turn left onto northbound 43<sup>rd</sup> Avenue. (*Id.*) Once the light turned red, he proceeded to complete that turn, and was struck by the truck driven by Defendant. (*Id.*)

The next day, Officer Colburn contacted Defendant. (R.T. of Jun. 27, 2012, at 5.) Defendant said he was westbound on Glendale Avenue proceeding through the intersection with 43<sup>rd</sup> Avenue, and entered the intersection on either a green or a yellow light, but was not sure. (*Id.*) Based on Sather's statement, Officer Colburn cited Defendant for failure to stop at a traffic signal. (*Id.* at 5–6.) Defendant did not cross-examine Officer Colburn. (*Id.* at 6.)

On direct examination, Larry Sather testified that, as he approached the intersection of 43<sup>rd</sup> Avenue and Burbank [*sic*] Avenue, the light “started to turn red and I stopped.” (R.T. of Jun. 27, 2012, at 7.) When he stopped, there was a white truck stopped in front of him that was going to make a left turn. (*Id.*) As he sat there for maybe 2 seconds, he heard a vehicle next to him “step on the gas” and enter the intersection. (*Id.*) That vehicle then collided with the truck that was in the process of turning left. (*Id.*)

Sather had brought with him three pictures and his report to the insurance company, which he then showed to Defendant. (R.T. of Jun. 27, 2012, at 7–9.) Sather used those pictures to help explain his testimony. (*Id.* at 8.) When the trial court asked Defendant if he had any objection to the admission of the pictures and the report, Defendant said he did not object. (*Id.* at 9.) The trial court then admitted them as Exhibits 4 through 8. (*Id.*) Defendant did not cross-examine Sather. (*Id.* at 10.)

On direct examination, Leonard Strassner testified he was eastbound and entered the intersection on a green light, and “when it was clear and the traffic was stopped, I started to make a left-hand turn, which time I was hit.” (R.T. of Jun. 27, 2012, at 11.) Strassner also brought with him pictures, which he then showed to Defendant. (*Id.* at 11–12.) When the trial court asked Defendant if he had any objection to the admission of these pictures, Defendant said he did not object. (*Id.* at 12.) The trial court then admitted them as Exhibits 1 through 3. (*Id.*) On cross-examination, Strassner said he was rolling through the intersection while he was waiting for the light to turn red. (*Id.*)

Defendant testified he was westbound on Glendale Avenue in the curb lane, and when he was about 80 feet from the intersection with 43<sup>rd</sup> Avenue, the light was green. (R.T. of Jun. 27, 2012, at 13.) He remembered there was another vehicle in front of him in the turn lane, but that was the last thing he remembered. (*Id.*) He did not remember what the light was when he entered the intersection. (*Id.* at 14.) He testified he returned to the intersection and timed the lights, and gave his opinion that he should have had enough time to enter the intersection before the light turned red. (*Id.* at 14–16.)

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After Defendant testified, Officer Colburn said he thought Defendant's calculation of how long it would take to clear the intersection was incorrect. (R.T. of Jun. 27, 2012, at 16.) Defendant asked Officer Colburn if he was confident about the time between lights switching, and Officer Colburn said he had not timed them, so he did not know. (*Id.* at 17.)

Sather then testified, when he was stopped for the red light, the oncoming vehicle started to turn, and once that vehicle was turning, Defendant "hit the cross lanes at red." (R.T. of Jun. 27, 2012, at 17.) He said he had to stop because the light was turning red. (*Id.* at 18.) On cross-examination, Sather said he stopped because the light turned yellow and "I knew I couldn't get through it so I stopped because it was red." (*Id.*) He then said:

I had already stopped. I stopped just as it was—it started to turn yellow and I stopped because it was going to be red before I got there.

(R.T. of Jun. 27, 2012, at 18–19.) He acknowledged he was at a complete stop on the yellow light. (*Id.* at 19.) He gave his opinion that Strassner could not see Defendant because "my car was in the way." (*Id.*) He again said Defendant "did run a red light." (*Id.*) He said there was no doubt in his mind that Defendant crossed the intersection line when the light was red. (*Id.* at 20.)

After hearing all the testimony, the trial court said both Strassner and Defendant had an interest in the matter, but he would consider their testimony. (R.T. of Jun. 27, 2012, at 21–22.) It said Sather had "no horse in this race . . . no ax to grind," so he was an independent witness. (*Id.* at 22.) Thus, based on the evidence and what the witnesses said, and placing weight on Sather's testimony because he was an independent witness, the trial court found Defendant responsible for the civil traffic violation. (*Id.* at 23.) The trial court then imposed a fine on Defendant. (*Id.* at 23–24.)

On July 9, 2012, 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. ISSUES.

A. *Did the trial court follow the discovery rules.*

Defendant contends the trial court erred in not following Rule 13(b) of the Arizona Rules of Procedure in Civil Traffic and Civil Boating Violation Cases, which provides as follows:

Immediately prior to the hearing, both parties shall produce for inspection any pre-prepared exhibits and written or recorded statements of any witness. Failure to comply with this rule may result, in the court's discretion, in the sanction of granting a recess or continuance to permit such inspecting or denying admission of the evidence not so exchanged.

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Rule 13(b), ARIZ. R. PROC. CIV. TRAF. AND CIV. BOAT. VIO. CASES. Absent fundamental error, failure to raise an issue at trial waives the right to raise the issue on appeal. *State v. Gendron*, 168 Ariz. 153, 154–55, 812 P.2d 626, 627–28 (1991); *State v. Gatliff*, 209 Ariz. 362, 102 P.3d 981, ¶ 9 (Ct. App. 2004). Fundamental error is limited to those rare cases that involve error going to the foundation of the defendant’s case, error that takes from the defendant a right essential to the defendant’s defense, and error of such magnitude that the defendant could not possibly have received a fair trial, and places the burden on the defendant to show both that error existed and that the defendant was prejudiced by the error. *State v. Soliz*, 223 Ariz. 116, 219 P.3d 1045, ¶ 11 (2009). In the present case, Defendant did not object when the trial court admitted the exhibits. (R.T. of Jun. 27, 2012, at 9, 12.) Thus, in order to obtain relief on appeal, Defendant would have to show (1) the trial court erred, (2) the error was fundamental, and (3) Defendant was prejudiced. This Court concludes there was no error, fundamental or otherwise.

In the present case, there was no prosecutor, and instead, the officer presented the case. To the extent the officer would be construed as a “party,” the exhibits were not the officer’s exhibits. Exhibits 1 through 3 were provided by Strassner, who was the victim in this case and therefore not considered to be a “party.” Exhibits 4 through 8 were provided by Sather, who was a witness in this case and therefore was not a “party” either. Further, there was no showing the officer even knew those two witnesses would bring exhibits. Thus, there was no “party” who failed to comply with Rule 13(b), so there was no error, fundamental or otherwise.

Moreover, Defendant has failed to prove prejudice. If Defendant had objected, the trial court could have granted a recess or continuance to permit Defendant to inspect those exhibits. Further, Defendant makes no claim those exhibits did not accurately reflect the area in question, thus there is no reason the trial court would not have admitted those exhibits. Defendant has therefore failed to prove prejudice.

B. *Was the trial court required to make a finding that each item of evidence had probative value before admitting it.*

Defendant contends the trial court erred in not determining the evidence admitted had probative value. Again, Defendant made no objection at trial, thus he would have to show fundamental error in order to obtain relief on appeal. Again, this Court concludes there was no error, fundamental or otherwise.

Rule 402 of the Arizona Rules of Evidence provides all relevant evidence is admissible unless some constitutional provision, statute, or rule excludes the evidence, and irrelevant evidence is not admissible. Further, a trial judge is presumed to know the law and to apply it in making decisions. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 49, 81 (2004). Thus, this Court must presume all the evidence the trial court admitted was relevant. Moreover, there is no requirement that a trial court state each item of evidence is admissible before considering that evidence. And finally, Defendant does not contend any of the evidence the trial court admitted was not relevant. Thus, there was no error, fundamental or otherwise.

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C. *Was there sufficient evidence to support the trial court's determination.*

Defendant contends the evidence was not sufficient to support the trial court's decision. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said:

We review a sufficiency of the evidence claim by determining "whether substantial evidence supports the jury's finding, viewing the facts in the light most favorable to sustaining the jury verdict." Substantial evidence is proof that "reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilt beyond a reasonable doubt." We resolve any conflicting evidence "in favor of sustaining the verdict."

*State v. Bearup*, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). In the present matter, Officer Colburn testified Strassner told him he was in the intersection waiting for traffic to clear, and once the light turned red, he proceeded to turn left and was struck by the truck driven by Defendant. (R.T. of Jun. 27, 2012, at 5.) Officer Colburn testified Sather told him he was stopped at the red light, and Defendant ran the red light and collided with the truck turning left. (R.T. of Jun. 27, 2012, at 4.) And Officer Colburn testified Defendant said he thought the light was green or yellow, but was not sure. (*Id.* at 5.)

Strassner testified he entered on a green light, and "when it was clear and the traffic was stopped, I started to make a left-hand turn, which time I was hit." (R.T. of Jun. 27, 2012, at 11.) On cross-examination, he said he did not come to a complete stop within the intersection while he was waiting for the light to turn red, but was "rolling" through the intersection. (*Id.* at 12.)

Sather testified the light was red when Defendant entered the intersection. (R.T. of Jun. 27, 2012, at 7, 17, 18, 19.) When questioned by the trial court, Sather said "there was no doubt" in his mind that the light was red when Defendant crossed the intersection line. (*Id.* at 20.) This Court concludes this was sufficient evidence to support the trial court's determination that Defendant had violated the statute.

Defendant contends the evidence was convoluted and contradictory. In addressing the role of an appellate court in reviewing conflicting testimony, the Arizona Supreme Court has said:

Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

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*State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Because this issue involves “an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge” rather than a “question . . . of law or logic,” it is not appropriate for this Court to “substitute [its] judgment for that of the trial judge.”

Defendant notes the trial court said, “When the light turned yellow [Defendant] should have stopped.” (R.T. of Jun. 27, 2012, at 22.) From this, Defendant contends the trial court was under the impression a driver may not enter an intersection on a yellow light and is instead required to stop on the yellow light. The trial court’s full statement is as follows:

And [Sather] says, I came up, the light is yellow, I came to a complete stop, the light turns red. Mr. Shick enters the intersection on the red light just as Mr. Strassner is making the left turn to go northbound on 43<sup>rd</sup> Avenue. And the reason for the accident was Mr. Shick running the red light. When the light turned yellow he should have stopped. He gave all the reasons why he didn’t.

(R.T. of Jun. 27, 2012, at 22.) In the context within which the trial court made that statement, this Court concludes the trial court meant Defendant was far enough away from the intersection when the light turned yellow that Defendant could have stopped in time before entering the intersection, and because Defendant could have stopped in time, Defendant should have stopped rather than taking the chance that he could enter the intersection before the light turned red.

III. CONCLUSION.

Based on the foregoing, this Court concludes Defendant has failed to show any error in the compliance with the discovery rules and the trial court’s admission of evidence. Further, this Court concludes the evidence was sufficient to support the trial court’s determination.

**IT IS THEREFORE ORDERED** affirming the judgment and sentence of the Phoenix Municipal Court.

**IT IS FURTHER ORDERED** remanding this matter to the Phoenix Municipal 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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