

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000079-001 DT

04/10/2006

COMM. LISA ANN VANDENBERG

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 04/11/2006

STATE OF ARIZONA

LAUREL M CANHAM

v.

RANDALL C WILLIAMS (001)

DAVID BURNELL SMITH

PHX MUNICIPAL CT
REMAND DESK-LCA-CCC

LOWER COURT REVERSED / REMAND FOR DISMISSAL

Lower Court Case No. 0088084-01

This appeal, previously assigned to Judge Margaret H. Downie, was reassigned to Commissioner Lisa Ann Vandenberg for determination.

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, section 16, and A.R.S. § 12-124 (A). The court has considered the record of the proceedings from the trial court, the exhibits made of record, and the memoranda submitted.

On March 21, 2005, at approximately 2:06 p.m., a photo radar system detected a traffic violation of a vehicle registered to Appellant Randall C. Williams at or near the intersection of McDowell Road and 35th Avenue in the city of Phoenix, Arizona.

Thereafter, Officer Ganez Jr. of Phoenix Police cited the Appellant for the civil traffic violation, "Failure to Stop and / or Remain Stopped for a red Signal," in violation of A.R.S. § 28-645 (A) (3) (a), which states in relevant part: "Vehicular traffic facing a steady red signal alone shall stop before entering the intersection and shall remain standing until an indication to proceed is shown."

Prior to the initial appearance on this matter, counsel for the Appellant filed a written plea of "Not Responsible" and the matter was then set for a hearing on a Motion to Quash Service.

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That hearing was held on September 15, 2005, in which counsel presented testimony from the Appellant's daughter.¹ The trial court ruled service was satisfied and set the matter for trial.

A trial was held on November 9, 2005², after which the trial court found the Appellant responsible for the civic traffic violation. Appellant, having filed a timely notice of appeal, now brings this matter before this court.

The Appellant first argues that service was not effective. While this court finds it unfortunate that the Affidavit of Service seemingly mischaracterizes the recipient to whom the summons was delivered³, pursuant to the sworn testimony of the recipient, the trial court acted appropriately in finding proper service.

The Appellant also argues on appeal that the trial court lacked sufficient evidence to support the trial court's finding of responsibility. When reviewing the sufficiency of the evidence, an appellate court does not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.⁴ All evidence is viewed in a light most favorable to sustaining a judgment, and all reasonable inferences are resolved against the Appellant.⁵ If conflicts in evidence exist, the appellate court resolves such conflicts in favor of sustaining the judgment and against the Appellant.⁶

With regard to evidence of identity, this court notes that the only testimony for the State was presented by Officer Ganez Jr. Officer Ganez stated on the record that he was unable to state whether the Appellant was the driver of the vehicle depicted in the photographs taken by the photo radar equipment. Further, this court notes that while some of the exhibited photographs may have been able to allow for in-court identification, the trial court allowed the Appellant to absent himself through the entire proceeding before the court.

In other words, the evidence of record simply suggests that the Appellant was issued the citation through a computer-generated process that identified the name of Randall C. Williams as the last known registered owner of a vehicle with the license plate in question. This court notes, in *State v. Johnson*⁷, our appellate court indicated that in using computer-generated citations there must be some human involvement in determining that the right person is being cited. In the case at hand, without the Appellant present for an in-court identification or some testimony

¹ Defendant did not appear in person but through counsel.

² Again this court notes, Defendant did not appear in person but through counsel.

³ Affidavit of Shane Lawson describes the Defendant's 13 year old daughter as the Defendant's roommate of the approximate age of 18.

⁴ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

⁵ *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882 (1982).

⁶ *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244 (1984).

⁷ 184 Ariz. 521, 911 P.2d 527 (App. 1994).

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describing identification of the individual depicted in the photo radar photographs, the record lacks substantial competent evidence to support the action of the lower court.

IT IS THEREFORE ORDERED reversing the finding of responsibility and fine imposed by the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court with direction to dismiss with prejudice the traffic complaint against Appellant.