

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2012-000573-001 DT

04/22/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT  
J. Eaton  
Deputy

STATE OF ARIZONA

JAMES M RICHTER

v.

MATTHEW KELLEY SHREEVE (001)

THEODORE A AGNICK

GILBERT MUNICIPAL COURT  
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

**Lower Court Case Number 2011-CT-0005478.**

Defendant-Appellant Matthew Kelley Shreeve (Defendant) was convicted in Gilbert Municipal Court of driving under the 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 April 29, 2011, Defendant was cited for driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2). 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 Prather testified he was on duty on April 29, 2011, working as a DUI enforcement officer operating a motorcycle. (R.T. of Apr. 18, 2012, at 5.) At about 1:23 a.m., he was traveling south on Higley Road approaching Guadalupe Road when he saw Defendant's vehicle traveling north on Higley Road "at a high rate of speed." (*Id.* at 6-8.) He saw Defendant's vehicle make "a very rapid [right-hand] turn" to go east on Guadalupe Road, so he turned onto Guadalupe Road to follow that vehicle. (*Id.* at 8, 12, 13, 14-16.) At that point, the speed limit on Guadalupe Road is 45 miles per hour. (*Id.* at 16.) When Officer Prather turned onto Guadalupe Road, Defendant's vehicle was 40 to 50 yards in front of him. (*Id.* at 18-19.) At some point while Officer Prather was following Defendant's vehicle, he looked at his speedometer, and it read 60 to 65 miles per hour. (*Id.* at 20-21, 51, 54.) At that point, Defendant's vehicle was pulling away from him. (*Id.* at 21-26, 40-42, 55.) Defendant's vehicle then made a right turn to go south on Arroyo Road. (*Id.* at 24.) Once Officer Prather turned onto Arroyo Road, he activated his emergency lights to make a traffic stop. (*Id.*) Officer Prather spoke to Defendant, who said he was sorry for speeding and was in a hurry to get home. (*Id.* at 43-44.)

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Officer Prather described his experience and training, which included radar and lidar training. (R.T. of Apr. 18, 2012, at 27–28.) Part of his radar and lidar training included making visual speed estimates of vehicles. (*Id.* at 30, 47–50.) Based on his training, experience, and observation of Defendant’s vehicle, he estimated Defendant was traveling more than 60 miles per hour. (*Id.* at 30–31.) Although Officer Prather did not know when the motorcycle’s speedometer had been calibrated, he said it appeared to be accurate based on the readings it gave when he was traveling in traffic with other vehicles and the times he went through radar zones with flashing signs that gave the vehicle’s speed. (*Id.* at 36–39.)

Defendant presented the testimony of Jeff Cibik, a licensed private investigator who had retired from law enforcement after 20 years. (R.T. of Apr. 18, 2012, at 57–58.) Based on his criticism of Officer Prather’s conduct in estimating Defendant’s speed, he gave his opinion that it was not reasonable for Officer Prather to believe Defendant’s vehicle was speeding in excess of 60 miles per hour. (*Id.* at 72–73.) He did say that, if he were in a 45 miles per hour zone and he knew his speed was 60 miles per hour and he saw a vehicle pulling away from him, he would stop that vehicle under those conditions. (*Id.* at 84.)

After hearing arguments from the attorneys, the trial court took the matter under advisement. (R.T. of Apr. 18, 2012, at 93.) The trial court subsequently issued its Minute Entry denying Defendant’s Motion To Suppress:

After both parties have offered testimony, the facts leading to the stop of the Defendant do not appear to be in dispute. On 4.29.11 at 1:23 a.m., Officer Prather observed the Defendant’s vehicle make a right turn onto eastbound Guadalupe from Higley. Officer Prather believed that the Defendant’s vehicle made the turn fast and tight. Subsequently, Officer Prather made a left turn and attempted to follow the Defendant’s vehicle. Officer Prather was 40–50 yards behind the Defendant and looked at his speedometer, which indicated the Officer’s speed was 60 going to 65 miles per hour. Officer Prather made the observation that the Defendant’s vehicle was pulling away from him at the time. There is no dispute that Officer Prather never conducted a pace and was unable to set the Defendant’s speed. It is also undisputed that Officer Prather believed that his speed was at least 60 and accelerating to 65 miles per hour in a posted 45 mile per hour zone. Furthermore, in this short time that the Officer believed that the Defendant’s vehicle was pulling away from him. [*sic*] Officer Prather’s testimony and the facts of this case have convinced this Court that Officer Prather reasonably believed that the Defendant committed a civil traffic violation. *State v. Ossana*, 199 Ariz. 459 (App. Div. 2, 2001).

(Minute Entry of Apr. 19, 2012.) Defendant later agreed to submit the matter on the record, which included a report showing Defendant had a BAC of 0.117. (Forensic Examination Report dated May 12, 2011.) On April 24, 2012, the trial court found Defendant guilty of both counts and 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).

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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:

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). 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). As stated by the Arizona Court of Appeals:

It is uncontestable that traveling at any speed over the posted speed limit is a traffic offense and a trooper is justified in stopping a vehicle for the offense.

*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 (7<sup>th</sup> Cir. 1990). Thus, if Defendant had in fact been going 60 miles per hour in a 45 mile-per-hour zone, Officer Prather would have had the legal authority to stop Defendant's vehicle.

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Defendant does not contest the proposition that, if he in fact had been going 60 miles per hour in a 45 mile-per-hour zone, his conduct would have given Officer Prather reasonable suspicion to stop his vehicle. His contention is instead that it was not reasonable for Officer Prather to believe he had been going 60 miles per hour. Officer Prather testified and presented the facts upon which he believed Defendant had been going 60 miles per hour, and Defendant presented the testimony of Jeff Cibik, who gave his opinion that it was not reasonable for Officer Prather to believe Defendant was going 60 miles per hour. This presented a credibility question for the trial court to resolve, and in addressing the role of an appellate court in reviewing conflicting evidence and testimony, the Arizona Supreme Court has said the following:

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.

*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.”

III. CONCLUSION.

Based on the foregoing, this Court concludes the evidence presented supported the trial court’s finding that Officer Prather had reasonable suspicion to believe Defendant was committing a traffic violation.

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

**IT IS FURTHER ORDERED** remanding this matter to the Gilbert 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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