

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000788-001 DT

05/07/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

THOMAS D TAYLOR

v.

CHARLES TYLER CEDERSTROM (001)

SIMONE ANNE ATKINSON

GILBERT MUNICIPAL COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 2010-CT-0016942.

Defendant-Appellant Charles Tyler Cederstrom (Defendant) was convicted in Gilbert Municipal Court of driving under the influence and driving under the extreme influence. Defendant contends the trial court erred in denying his Motions To Suppress, which alleged the officer did not have reasonable suspicion to stop his vehicle, and did not have probable cause to arrest him. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On September 10, 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); failure to comply with police officer, A.R.S. § 28-622(A); speed not reasonable and prudent, A.R.S. § 28-701(A); failure to drive in one lane, A.R.S. § 28-729(1); and making a right turn not in safety, A.R.S. § 28-754(A). Prior to trial, Defendant filed a Motion To Suppress alleging the officer did not have reasonable suspicion to stop his vehicle, and a Motion To Suppress alleging the officer did not have probable cause to arrest him. During the hearings on the various motions to continue the trial, Defendant's attorney (Mr. Phillips) had said he would file a motion to compel production of Officer Madueno's personnel records, but he never did so. (R.T. of May 4, 2011, at 4-5.) On the day of the hearing on Defendant's Motions To Suppress, when the prosecutor realized Defendant's attorney had never filed the a motion to compel, the prosecutor spoke with another of Defendant's attorneys (Mr. Penrod), who agreed the prosecutor could give a copy of the records to the trial court for an *in camera* review. (*Id.* at 5.) Defendant's current attorney (Ms. Atkinson) acknowledged Mr. Phillips did not file a motion to compel, and agreed it would be acceptable for the trial court to review the records *in camera*. (*Id.* at 5-6.)

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The trial court stated it had reviewed the records, and found nothing calling into question Officer Madueno's voracity [*sic*], and nothing to substantiate a claim that Officer Madueno had used excessive force in the past. (R.T. of May 4, 2011, at 7–8.) It therefore ruled Officer Madueno's file did not contain anything subject to discovery. (*Id.* at 8.) Defendant's attorney continued arguing, saying she understood the voracity [*sic*] issue, but contending information showing Officer Madueno used excessive force on prior occasions was admissible to prove he had the character for acting with excessive force, and as such that evidence would be admissible to prove Officer Madueno acted in conformity with that character and used excessive force in the present case. (*Id.* at 7, 8–11, 12–13, 14, 15.) After Defendant's attorney argued further, the prosecutor noted Defendant's other attorney had said the issue was Officer Madueno's truth or voracity [*sic*], and this claim based on prior acts was a new claim. (*Id.* at 16.) The trial court said it would like to hear the testimony about the reasonable suspicion for the stop and then make a determination whether anything it had read in the file was relevant. (*Id.* at 16–17.) After further discussion about whether what Officer Madueno had done in the past had any relevance to the question of reasonable suspicion, Ms. Atkinson said she though it definitely went to his credibility. (*Id.* at 19.) After more discussion, the trial court stated it would hear the testimony on the motions to suppress and then make a ruling whether anything it had read was relevant. (*Id.* at 21.)

The trial court then proceeded to take testimony on Defendant's Motions To Suppress. (R.T. of May 4, 2011, at 22.) Officer Jacob Madueno testified he was on duty on September 10, 2010, heading south on McQueen Road just south of Warner Road, driving a fully-marked motorcycle. (*Id.* at 25, 29.) At 1:42 a.m., he saw a vehicle in front of him in the number 1 lane drift into the number 2 lane. (*Id.* at 25–26, 34.) The vehicle turned left onto Highland Drive, and then turned left onto Abalone Drive without signaling. (*Id.* at 26, 36.) Before making this turn onto Abalone Drive, the vehicle waited several seconds even though there was no oncoming traffic on Highland Drive. (*Id.* at 26–27.) The vehicle next turned left onto Shellfish Drive, again without signaling. (*Id.* at 27, 37.) At that point, Officer Madueno activated his emergency lights to make the vehicle stop, but the vehicle did not do so, and instead continued at 35 mph in what was a 25 mph zone. (*Id.* at 27, 37–38.) The vehicle turned right onto Lobster Trap Drive, so Officer Madueno gave a short blast with his siren. (*Id.* at 27.) The vehicle then turned right into a driveway at 1521 West Lobster Trap Drive. (*Id.* at 27.)

Officer Madueno testified he was in uniform, which included badges on his vest and helmet, and the emergency lights on his motorcycle were still activated. (R.T. of May 4, 2011, at 28–29.) Once the other vehicle stopped, the driver, whom he identified as Defendant, got out, turned toward him, and then started walking toward the house. (*Id.* at 25, 28–29, 38.) Officer Madueno identified himself as a Gilbert Police Officer and told Defendant to stop, but Defendant did not do so, so Officer Madueno again told him to stop. (*Id.* at 28, 30.) When Defendant did not stop, Officer Madueno grabbed his left arm and took him to the ground. (*Id.* at 29–30.) Officer Madueno saw Defendant's face was flushed and he smelled the odor of alcohol coming from him, so he believed Defendant might be under the influence of alcohol. (*Id.* at 31, 45.) Officer Madueno told Defendant he was under arrest for failing to obey an officer and for DUI. (*Id.* at 41.)

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Defendant then testified and gave his version of what happened. (R.T. of May 4, 2011, at 50–69.) Defendant acknowledged the result of his blood test showed he had a BAC of 0.195. (*Id.* at 63.) After hearing arguments from the attorneys, the trial court found Defendant’s traffic violations gave Officer Madueno reasonable suspicion to stop Defendant. (*Id.* at 85.) The trial court further found Officer Madueno had probable cause to arrest Defendant for failure to obey an officer and for DUI. (*Id.* at 86–92.) The trial court therefore denied both of Defendant’s Motions To Suppress. (*Id.* at 92.)

Defendant submitted the matter on the record, and the trial court found Defendant guilty of all three DUI offenses and failure to comply with police officer, and responsible for failure to drive in one lane and making a right turn not in safety. On July 26, 2011, the trial court imposed sentence, and 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. ISSUES:

- A. *Did the trial court abuse its discretion in finding Officer Madueno’s internal affairs records were not relevant.*

Defendant contends the trial court abuse its discretion, when it made its rulings, in not considering Officer Madueno’s internal affairs records, which contained allegations of use of excessive force. Defendant first contends that information was relevant in assessing Officer Madueno’s truth and veracity. At the time of the hearing in this matter, the Arizona Rules of Evidence provided as follows:

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness’ character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 608(b), ARIZ. R. EVID. In the present matter, Defendant has failed to show how use of excessive force is probative of truthfulness or untruthfulness. Further, even if specific instances of conduct are probative of truthfulness or untruthfulness, the trial court still has discretion to allow admission of that evidence. The record here shows the trial court carefully considered Officer Madueno’s internal affairs records, and considered the officer’s testimony and Defendant’s testimony. Thus, Defendant has failed to show how the trial court abused its discretion in not considering the proposed evidence in assessing Officer Madueno’s truth and veracity.

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Defendant next contends the trial court should have considered the allegations of use of excessive force in determining whether Officer Madueno used excessive force in arresting Defendant. This contention fails for two reasons. First, the issue the trial court had to determine was whether Officer Madueno had probable cause to make the arrest, which was not dependent on how much force Officer Madueno may or may not have used to effectuate the arrest. Second, the Arizona Rules of Evidence provided as follows:

(b) Other crimes, wrongs, or acts. [E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. . . .

Rule 404(b), ARIZ. R. EVID. Thus, assuming Officer Madueno had used excessive force in the past, evidence of those other acts would not be admissible to prove Officer Madueno's character for the purpose of showing Officer Madueno acted in conformity with that character in the present case. Thus, Officer Madueno use of force in the past would not have been relevant and would not have been admissible.

B. *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). A police officer has reasonable suspicion to detain a person if there are articulable facts for the officer to suspect the person is involved in criminal activity or the commission of a traffic offense. *State v. Lawson*, 144 Ariz. 547, 551, 698 P.2d 1266, 1270 (1985). 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.

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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, Defendant failed to drive in one lane, a potential violation of A.R.S. § 28-729(1); made numerous turns without signaling, potential violations of A.R.S. § 28-754(A); and drove above the posted speed limit, a potential violation of A.R.S. § 28-701(A). Because Officer Madueno knew of articulable facts that raised a reasonable suspicion of numerous traffic violations, the trial court properly denied Defendant's Motion To Suppress.

C. *Did the trial court abuse its discretion in finding the officer had probable cause to arrest Defendant.*

Defendant contends the trial court abused its discretion in finding the officer had probable cause to arrest him. 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. *Moody* at ¶¶ 75, 81; *Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778; *Olm* at ¶ 7. A police officer has probable cause for an arrest if the officer has reasonable grounds to believe the person arrested has committed or is committing an offense. *Lawson*, 144 Ariz. at 553, 698 P.2d at 1272. In the present case, the evidence showed Officer Madueno was in full police uniform and was driving a fully-marked motorcycle with its emergency lights activated. Further, Defendant looked at Officer Madueno, and Officer Madueno told Defendant he was a police officer and Defendant should stop, which Defendant did not do. The evidence therefore showed Defendant was committing a criminal act by failing to obey an order of a police officer, thus the trial court properly denied Defendant's Motion To Suppress.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court properly denied Defendant's Motions To Suppress.

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