

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000793-001 DT

05/18/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

WILLIAM B BURKE

v.

EFRAIN CERVANTES (001)

SIMONE ANNE ATKINSON

MESA MUNICIPAL COURT - COURT
ADMINISTRATOR
MESA MUNICIPAL COURT -
PRESIDING JUDGE
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 2010-082325.

Defendant-Appellant Efrain Cervantes (Defendant) was convicted in Mesa 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 October 10, 2010, Defendant was cited for driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2) and failure to drive in one lane, A.R.S. § 28-729(1). 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 Bradley Withrow testified he was on duty on October 10, 2010. (R.T. of Apr. 7, 2011, at 2.) At 12:45 a.m., he saw two trucks traveling north on Power Road in the number 2 lane approaching US 60. (*Id.* at 3-4, 9.) The two trucks slowed approaching Main Street, and as they were almost stopped, the truck in back made an abrupt turn to the west and pulled into the number 1 westbound turn lane. (*Id.* at 4-5, 11-12.) When the light turned green, that truck turned left onto Main Street, turning into the proper number 1 lane. (*Id.* at 5, 13.) Officer Withrow followed that truck, and as it traveled west, it swayed back and forth within its lane for the entire distance from Power Road to Recker Road, a distance of 1 mile. (*Id.* at 5, 7-8, 13.) At one point, the right side tires of the truck crossed over the lane line so they

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000793-001 DT

05/18/2012

went 1 foot into the number 2 lane, and remained in the number 2 lane for 1 or 2 seconds. (*Id.* at 5–6, 8, 14, 17.) Officer Withrow activated his emergency lights, and the truck pulled into a parking lot and stopped. (*Id.* at 6, 15.)

Officer Withrow contacted the driver, whom he identified as Defendant. (R.T. of Apr. 7, 2011, at 6.) Officer Withrow smelled the odor of alcohol, and saw Defendant had bloodshot watery eyes. (*Id.* at 7.) Defendant said he had been at a softball tournament, and admitted consuming alcohol that evening. (*Id.* at 7.)

After hearing the testimony and the arguments of the attorneys, the trial court took the matter under advisement. (R.T. of Apr. 7, 2011, at 52.) On April 13, 2011, the trial court issued its Order denying Defendant’s Motion To Suppress. On May 9, 2011, Defendant submitted the matter on the record, which included blood test results showing Defendant had a BAC of 0.147. The trial court found Defendant guilty of both DUI offenses and responsible for the failure to drive in one lane, 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).

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). 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.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000793-001 DT

05/18/2012

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 matter, the trial court found Defendant had failed to drive in one lane, which is a violation of A.R.S. § 28-729(1). Further, Officer Withrow testified Defendant was swaying back and forth within his lane for a distance of 1 mile, which is similar to the weaving the court found justified an investigative stop in *Superior Court (Blake)*, 149 Ariz. at 273, 718 P.2d at 175. The trial court thus correctly found Officer Withrow had reasonable suspicion to stop Defendant's vehicle and therefore correctly denied Defendant's Motion To Suppress.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court correctly found Officer Withrow had reasonable suspicion to stop Defendant's vehicle and therefore correctly denied Defendant's Motion To Suppress.

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

IT IS FURTHER ORDERED remanding this matter to the Mesa 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

051720121020