

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000235-001 DT

06/15/2006

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 06/19/2006

STATE OF ARIZONA

CARON L CLOSE

v.

STEPHEN THOMAS PALERMO IV (001)

STEPHEN THOMAS PALERMO IV
4720 E CLEARWATER
PARADISE VALLEY AZ 85253

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

REMAND FOR DISMISSAL

Lower Court Case No. PR200528211

The Superior 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, exhibits made of record, and the memoranda submitted.

On May 29, 2005, a photo radar installment photographed a vehicle owned by Appellant Stephen Thomas Palermo IV traveling at a speed of 65 mph in a zone marked 45 mph, in violation of A.R.S. § 28-701(A) (speed not reasonable and prudent). A civil traffic hearing was held in Scottsdale City Court, and Appellant was found responsible for the charge. He thereafter filed a timely notice of appeal on October 28, 2005.

Appellant raises several issues on appeal. However, one argument is dispositive. The record reflects that the Complaint was not properly certified. As such, jurisdiction was not conferred on the trial court.

A.R.S. § 28-1561 states:

Uniform traffic complaint forms need not be sworn to if they contain a form of certification by the issuing officer in substance as follows: "I hereby certify that I

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have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law."

While the complaint at issue does contain the certification *language* required by the statute, Arizona's appellate courts have imposed restrictions on the use of computer-generated certifications:

While *Barckley* does suggest that a "pen-and-ink" signature may be superfluous, it is only in circumstances where some human involvement in the certification process can be inferred from the face of the document. Where, as here, the record is barren of facts from which we may infer that the intent to certify is contemporaneous with and unique to the production of the specific record and is independent of computer control, additional foundation is required to establish the requisite "human involvement"....

State v. Johnson, 184 Ariz. 521, 911 P.2d 527 (App. 1994).

In the case at bar, the certifier/complainant, Bill Harper, testified that he did not see the complaint before the computer signed it and that no one compared the photo from the photo radar camera with the photo on Appellant's driver's license. Harper testified, however, that he compared the photo-radar photo with Appellant's face when he walked into trial. Harper further testified that a Redflex¹ employee simply enters the offending vehicle's registration information obtained from the MVD into the system then prints the complaint with the computer-generated signature.

Under the system described by Harper, no one can certify with the slightest degree of accuracy or truthfulness that the person receiving the ticket is the actual driver. There is no human involvement in the certification process. The procedure clearly violated A.R.S. § 28-1561. As such, the traffic complaint failed to confer jurisdiction on the trial court. Based on this finding, the court does not reach Appellant's other contentions.

IT IS ORDERED reversing the finding of responsibility and the fine imposed by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court with directions to dismiss the traffic citation at issue.

¹ The company that operates the digital photo enforcement system for the Scottsdale Police Department.
Docket Code 511