

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2012-000090-001 DT

07/03/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT  
K. Waldner  
Deputy

STATE OF ARIZONA

KENNETH M FLINT

v.

CARON LYNN KEIM (001)

JEFFREY D ROSS

REMAND DESK-LCA-CCC  
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

**Lower Court Case Number M-751-TR-2010-033214.**

Defendant-Appellant Caron Lynn Keim (Defendant) was convicted in Scottsdale Municipal Court of driving under the influence. Defendant contends the trial court erred in denying her Motion To Suppress, which alleged the officer did not have reasonable suspicion to stop her vehicle. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On October 14, 2010, Defendant was cited for driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2); failure to drive in one lane, A.R.S. § 28-729(1); and improper right turn, A.R.S. § 28-751(1). The State filed an amended complaint charging Defendant with driving under the extreme influence, A.R.S. § 28-1382(A)(1). Prior to trial, Defendant filed a Motion To Suppress alleging the officer did not have reasonable suspicion to stop her vehicle.

At the hearing on Defendant's motion, Officer Steven Hash testified he was on duty on October 14, 2010, working patrol. (R.T. of Mar. 22, 2011, at 5.) At about 9:50 p.m. at Scottsdale Road and Frank Lloyd Wright Boulevard, he saw a vehicle driving north in the number 2 lane. (*Id.* at 5-6.) As he followed the vehicle, it drifted into the number 1 lane so  $\frac{1}{4}$  was in the number 1 lane and  $\frac{3}{4}$  was in the number 2 lane for about 2 seconds and then moved back into the number 2 lane. (*Id.* at 6, 8, 16, 18.) The vehicle then weaved within the number 2 lane. (*Id.* at 8, 17.) As the vehicle approached Princess Drive, it moved into the number 3 lane and then into the right-turn lane. (*Id.* at 8-9, 17.) The vehicle then turned right into the northern eastbound lane, and then moved into the southern eastbound lane. (*Id.* at 11-12, 17-18.) Defendant's attorney stipulated Defendant was the driver of the vehicle. (*Id.* at 9-10.) At the conclusion of the testimony, the trial court found Defendant had committed two traffic violations and also showed a nighttime cue of impairment, and therefore denied Defendant's Motion To Suppress. (*Id.* at 25.)

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Defendant subsequently went to trial, and Officer Hash testified consistently with his testimony at the hearing on her motion to suppress. (R.T. of July 20, 2011, at 40, 47–51.) The criminalist testified the test of Defendant's blood showed a BAC of 0.155 and 0.157. (*Id.* at 136.) After hearing the testimony and the arguments of counsel, the jurors found Defendant guilty of the 1381(A)(1) and (A)(2) charges, but could not reach a verdict on the 1382(A)(1) charge. (R.T. of July 21, 2011, at 177–78.) The trial court later found Defendant responsible for the improper right turn charge, and not responsible for the failure to drive in one lane charge. (R.T. of Sep. 20, 2011, at 182.) The trial court then imposed sentence. (*Id.* at 183–84.) 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 her 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.

*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). 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.

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In the present case, Defendant made an improper right turn, which alone was sufficient to give Officer Hash the legal authority to stop Defendant's vehicle. *State v. Bouck*, 225 Ariz. 527, 241 P.3d 524, ¶¶ 8, 15 (Ct. App. 2010). Additionally, Officer Hash testified that he stopped Defendant because her car had been weaving in its lane, and he suspected her to be under the influence of alcohol. Defendant's weaving was a specific and articulable fact that justified an investigative stop.

Defendant contends that, pursuant to *State v. Livingston*, 206 Ariz. 145, 75 P.3d 1103 (Ct. App. 2003), the evidence was not sufficient to give the officer reasonable suspicion to stop her vehicle. This Court concludes that *Livingston* is distinguishable for three reasons. First, in *Livingston*, the issue was whether the defendant had *in fact* violated a traffic law, and thus there was no discussion of the right of an officer to stop and detain a person when reasonably necessary to investigate an actual or a *suspected* violation of a traffic law under A.R.S. § 13-3883(B) and A.R.S. § 28-1594. Second, in *Livingston*, the officer's primary intent in stopping vehicles was to find violations of drug offenses, and was using an alleged traffic violation as the reason for the stop. In the present case, the officer's intent was to identify drivers who were driving under the influence. Third, in *Livingston*, the stop occurred on a rural, curved, and dangerous stretch of road, the driver was driving within the speed limit and did not weave or engage in any erratic driving, and the driver's right side tires crossed the white shoulder line on only one occasion. In the present case, Defendant was driving on an urban, straight, and non-dangerous stretch of road, her right side tires crossed over the white line so that ¼ of her vehicle was in the other lane, and she was weaving within the lane even after she made the correction. This gave Officer Hash reasons to suspect Defendant violated A.R.S. § 28-729(1) and thus reasonable suspicion to stop Defendant's vehicle.

The fact that the trial court ultimately found Defendant did not violate A.R.S. § 28-729(1) did not negate Officer Hash's statutory right to stop and detain Defendant to investigate either an actual or a *suspected* violation of the traffic laws. As stated by the Arizona Supreme Court:

Moreover, when the police make an arrest based upon probable cause, it is not material that the person arrested may turn out to be innocent, and the arresting officer is not required to conduct a trial before determining whether or not to make the arrest.

*Cullison v. City of Peoria*, 120 Ariz. 165, 168, 584 P.2d 1156, 1159 (1978). Thus, the trial court's determination that Defendant did not violate A.R.S. § 28-729(1) did not negate Officer Hash's reasonable suspicion that Defendant did violate the traffic law.

### III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court correctly denied defendant's Motion To Dismiss.

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

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