

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000597-001 DT

10/21/2005

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 10/25/2005

STATE OF ARIZONA

CARON L CLOSE

v.

CRAIG CAMERON GILLESPIE (001)

SUSAN J KAYLER

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

RECORD APPEAL RULE / REMAND

Lower Court Case No. PR200500555

The court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). It has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

The underlying facts are not in dispute. On December 28, 2004, Appellant Craig Gillespie was photographed by a photo radar machine as he traveled down Osborn Road at 40 mph. The posted speed limit was 25 mph. Appellant was mailed a computer-generated complaint alleging that he violated A.R.S. § 28-701(A) – driving at a speed greater than is reasonable and prudent. In the trial court, Appellant moved to dismiss the citation for lack of jurisdiction. His motion was denied. The trial court thereafter found Appellant responsible and imposed a fine. Appellant, having filed a timely notice of appeal, now brings the matter before this court.

Appellant first contends that because the traffic complaint was issued with only a computer-generated signature of a person who had no information concerning his name, the identity of the driver, or the alleged facts, it did not comport with A.R.S. § 28-1561(A). That provision 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 include the certification *language* required by the statute, our 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".... [emphasis added]

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

In the matter before this court, the certifier/complainant, Bill Harper, testified that he does not see the complaint before the computer signs it, and that no one compares the photo on the photo radar record with the photo on the putative defendant's driver's license. Harper stated that he does not compare the photos unless he is preparing for trial and that the only time the prosecutor's office will procure the driver's license photo for him to make a comparison is when an attorney has filed a notice of appearance. Harper further testified that in non-attorney trials, a defendant's driver's license photo is not obtained at all.

Under this system, 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 whatsoever. The procedure clearly violates A.R.S. § 28-1561. As such, the traffic complaint entered in this matter failed to confer jurisdiction on the trial court. Appellant's motion to dismiss should have been granted.

Based on this finding, the court need not address the other issues raised by Appellant.

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 complaint against Appellant.