

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2009-000408-001 DT

10/06/2009

COMMISSIONER EARTHA K. WASHINGTON

CLERK OF THE COURT  
T. Melius  
Deputy

STATE OF ARIZONA

ROBERT S HUBBARD

v.

DANIEL ARTHUR GUTENKAUF (001)

DANIEL ARTHUR GUTENKAUF  
1847 E APACHE BLVD #41  
TEMPE AZ 85281

REMAND DESK-LCA-CCC  
TEMPE CITY COURT

RECORD APPEAL RULE / REMAND

**Lower Court Appeal No. 08-157270-4**

This 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.

The appellant appeals the civil finding of responsibility in this case on several grounds. It is unnecessary to address each ground raised as the appeal can be decided by determining if the trial court abused its discretion when it denied the appellant's motion to dismiss on A.R.S. § 28-1561 grounds.

The appellant received a civil traffic ticket and complaint for allegedly violating A.R.S. § 28-701(A) on August 19, 2008. Officer Aaron Colombe of the Tempe Police Department issued the ticket and complaint on September 2, 2008. On the ticket the officer certified "upon reasonable grounds" he believed that the appellant committed the violation. A civil traffic hearing was held on February 17, 2009. Officer Colombe was not present to testify on behalf of

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the State instead an aide from the police department's traffic enforcement bureau testified. The aide told the trial court that the department follows a standard procedure before issuing traffic tickets and complaints for violations that are captured on the City's Traffic Enforcement System. The procedure followed entails receiving photos of violations from the City's service provider, Redflex, gathering registration information for the vehicle captured on the photos, and then determining if the person behind the wheel is the same sex as the registered owner of the vehicle; if those parameters are met in a case, the department will issue a ticket to the registered owner. No physical comparison is made between the owner of the vehicle's license photo and the photo of the person behind the wheel to determine if they match. In this case the aide admitted that the ticket issued by Officer Colombe did not contain any physical descriptors for the appellant; this fact showed that no comparison was done against any motor vehicle records of the appellant.

A.R.S. § 28-1561 states that traffic complaints need to contain a certification "by the issuing officer in substance as follows: 'I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law.'" The trial court in finding that the complaint was "properly issued" stated that Officer's Colombe's viewing the citation and doing "a match" was enough. "[T]he decision of whether to grant a defendant's motion for dismissal is within the sound discretion of the trial court. Absent an abuse of discretion, this Court will not disturb the denial of a motion to dismiss."<sup>1</sup> "A court abuses its discretion if it commits an error of law in reaching a discretionary conclusion, it reaches a conclusion without considering the evidence, it commits some other substantial error of law, or "the record fails to provide substantial evidence to support the trial court's finding." *Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456, 652 P.2d 507, 529 (1982)."<sup>2</sup> In this case the record fails to provide substantial evidence to support the trial court's finding that the officer properly issued the complaint. No reasonable grounds existed for Officer Colombe to issue the complaint to the appellant because the procedure followed by the police department does not provide an adequate basis of determining whether a registered owner was the actual driver at the time a violation is captured by the Traffic Enforcement System. "Reason" is defined by Merriam's Webster's On-line Dictionary as : **b** : a rational ground or motive <a good reason to act soon> **c** : a sufficient ground of explanation or of logical defense; *especially* : something (as a principle or law) that supports a conclusion or explains a fact <the reasons behind her client's action><sup>3</sup>; and "reasonable" is defined as being "in accordance with reason."<sup>4</sup> Officer Colombe had no idea what the appellant looked like and issued the ticket based on the

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<sup>1</sup> *State v. Hansen*, 156 Ariz. 291, 751 P.2d 951 (Ariz., 1988).

<sup>2</sup> *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 50, 156 P.3d 1149, 1155 (Ariz.App. Div. 2, 2007).

<sup>3</sup> reason. (2009). In *Merriam-Webster Online Dictionary*. Retrieved October 6, 2009, from <http://www.merriam-webster.com/dictionary/reason>.

<sup>4</sup> reasonable. (2009). In *Merriam-Webster Online Dictionary*. Retrieved October 6, 2009, from <http://www.merriam-webster.com/dictionary/reasonable>

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fact that he is the registered owner of the vehicle and because the person captured in the photo was male. Different variables can exist for a male other than the appellant to be driving the vehicle at the time of the violation; this fact was proven when the appellant showed that both he and his twin brother are listed on the insurance as persons covered to drive the vehicle. Because the procedure adopted by the department did not provide reasonable grounds to issue the ticket to the appellant, the trial court should have granted the appellant's motion to dismiss the case.

IT IS THEREFORE ORDERED reversing the finding of responsibility and the sanction imposed.

IT IS FURTHER ORDERED remanding this matter to the Tempe City Court for all further proceedings consistent with this decision.