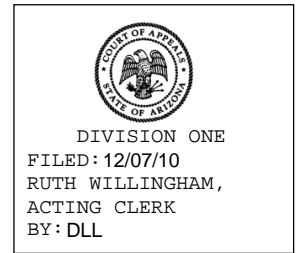


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0660
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ROBERT LEWIS TURNER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-173003-001 DT

The Honorable Christopher T. Whitten, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals Section/Capital Litigation Section
And Suzanne M. Nicholls, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Robert Lewis Turner (Defendant) appeals from his
convictions and the sentences imposed for misconduct involving

weapons and possession of drug paraphernalia. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against defendant. *State v. Vandever*, 211 Ariz. 206, 207 n.2, 119 P.3d 473, 474 n.2 (App. 2005).

¶3 Phoenix Police Officer B. stopped Defendant's vehicle for allegedly failing to signal 100 feet before changing lanes, and because he was unable to read the temporary license plate on Defendant's vehicle. After Officer B. approached Defendant's vehicle, he reported he saw two beer cans in the front console. Officer B. detained Defendant and his passenger and inspected the beer cans without a search warrant or the occupants' consent. During the inspection, Officer B. discovered a small bag that contained a substance similar to cocaine. Officer B. also found a glass pipe and handgun on the Defendant's person. Officer B. claimed the search of the vehicle and Defendant was "incident to [the] arrest" of Defendant for the open liquor containers found in the vehicle.

¶4 Defendant filed a motion to suppress the evidence obtained from the traffic stop and requested the matter be set for an evidentiary hearing. Defendant argued that Officer B. did not have reasonable suspicion to make the traffic stop and

therefore, the evidence discovered after the illegal stop should not be admitted at trial. Defendant claimed that his lane change did not require the use of a signal because there was minimal traffic in the area, and Officer B. "fail[ed] to articulate or otherwise explain how his ability to read the plate was allegedly compromised." Defendant additionally argued Officer B. only developed probable cause to arrest Defendant after making the warrantless seizure of the beer cans in the vehicle. Alternatively, Defendant argued Officer B.'s "search incident to arrest of the vehicle was unjustified because there was no risk of officer safety or the destruction of evidence."

¶15 The trial court denied Defendant's motion and request for an evidentiary hearing. The trial court assumed all the facts alleged in Defendant's motion were true and found the arresting officer had probable cause to arrest Defendant.¹

¶16 The jury found Defendant guilty of misconduct involving weapons with two prior felony convictions and possession of drug paraphernalia with two prior felony convictions. Defendant was given the presumptive term for each charge to be served concurrently and was given credit for his presentence incarceration. Defendant timely appealed. We have jurisdiction

¹ The trial court did not explicitly address Defendant's argument that Officer B. did not have reasonable suspicion to make the traffic stop.

pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031 (2010), and -4033.A. (2010).²

DISCUSSION

¶17 Defendant contends the trial court erred by: (1) denying his request for an evidentiary hearing on his Motion To Suppress; and (2) admitting evidence resulting from an illegal traffic stop.

Evidentiary hearing

¶18 We review a trial court's denial of an evidentiary hearing for an abuse of discretion. *See State v. Miller*, 178 Ariz. 555, 556, 875 P.2d 788, 789 (1994) (reviewing whether the trial court abused its discretion in denying an evidentiary hearing on defendant's claim of jury misconduct).

¶19 Because the trial court accepted Defendant's alleged facts as true, a hearing to weigh the presented evidence was unnecessary. By accepting Defendant's facts, the trial court presumably resolved all possible factual conflicts in Defendant's favor. Defendant does not have an "absolute right" to be heard. Ariz. R. Crim. P. 35.2 cmt. (2010). Instead, the trial court has broad discretion to determine what "will be most helpful to it in reaching a reasoned and expeditious decision on each issue." *Id.*

² We cite to the current versions of applicable statutes because no revisions material to this decision have since occurred.

Therefore, the trial court did not error or abuse its discretion in denying Defendant's request for an evidentiary hearing.

Reasonable Suspicion

¶10 The second issue Defendant presents is whether the stop of Defendant's vehicle was lawful. When reviewing a motion to suppress, "[w]e look only to the evidence presented at the suppression hearing." *State v. Moore*, 183 Ariz. 183, 186, 901 P.2d 1213, 1216 (App. 1995). We defer to the trial court's factual determinations, but we review de novo the legal application of the trial court's factual determinations. *State v. Box*, 205 Ariz. 492, 495, ¶ 7, 73 P.3d 623, 626 (App. 2003). Because the trial court assumed the facts stated in the Motion To Suppress were true, we look to those facts.

¶11 Defendant argues that Officer B. did not have reasonable suspicion to stop Defendant's vehicle. Officer B. reported that Defendant failed to signal when changing lanes. Defendant contends that failing to signal before a lane change is only a traffic violation if it affects traffic.³ Officer B. also reported that he could not read Defendant's temporary license plate, because "the plastic holder for the temporary plate was in

³ A.R.S. § 28-754.A (2003) (stating "[a] person shall not so turn any vehicle without giving an appropriate signal in the manner provided by this article in the event any other traffic may be affected by the movement.") (Emphasis added).

poor condition.”⁴ Defendant argued Officer B. “fail[ed] to articulate or otherwise explain how his ability to read the plate was allegedly compromised.”

¶12 The State does not have to prove an actual traffic violation occurred to justify a traffic stop by a police officer, because an “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. § 13-3883.B (2009). Furthermore, an officer is permitted to conduct an investigatory traffic stop if he or she “possess[es] a reasonable suspicion that the driver has committed an offense.” *State v. Livingston*, 206 Ariz. 145, 147, ¶ 9, 75 P.3d 1103, 1105 (App. 2003). Officer B. reported he could not read Defendant’s license plate and saw Defendant make an illegal lane change. This constituted sufficient grounds for Officer B. to make the traffic stop.

¶13 The prosecution is required to prove “by a preponderance of the evidence, the lawfulness in all respects of the acquisition of all evidence which the prosecutor will use at trial.” Ariz. R. Crim. P. 16.2.b (2010). However, this burden is only triggered if “the defendant has come forward with evidence of specific circumstances which establish a prima facie

⁴ A.R.S. § 28-2354.B (Supp. 2009) (stating “A person shall maintain each license plate so it is clearly legible.”).

case that the evidence taken should be suppressed." *Id.* Defendant did not allege the specific facts required to trigger the State's burden of proof. To counter Officer B.'s report that he possessed reasonable suspicion, Defendant did not claim that the license plate was legible or that Defendant used a traffic signal when changing lanes. However, even if Defendant had alleged sufficient facts, the preponderance of the evidence, as alleged in the motion to suppress clearly indicated Officer B. had a reasonable suspicion that Defendant committed a traffic violation, which would satisfy the State's burden of proof.

CONCLUSION

¶14 For the foregoing reasons, Defendant's convictions and sentences are affirmed.

PATRICIA A. OROZCO, Judge

CONCURRING:

MAURICE PORTLEY, Presiding Judge

MARGARET H. DOWNIE, Judge