

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

In re OTEL H.,	)	1 CA-SA 02-0153
	)	
Petitioner,	)	DEPARTMENT A
	)	
v.	)	
	)	
	)	<b>O P I N I O N</b>
THE HONORABLE JANET E. BARTON, Judge of)	)	
the SUPERIOR COURT OF THE STATE OF	)	Filed 1-30-03
ARIZONA, in and for the County of	)	
MARICOPA,	)	
	)	
Respondent Judge,	)	
	)	
THE STATE OF ARIZONA, ex rel., RICHARD )	)	
M. ROMLEY, Maricopa County Attorney,	)	
	)	
Real Party in Interest.	)	
	)	

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Petition for Special Action  
from the Maricopa County Superior Court

Cause No. JV-141613

Janet E. Barton, Judge

**JURISDICTION ACCEPTED; RELIEF DENIED SOLELY  
ON GROUNDS OF MOOTNESS**

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Maricopa County Public Defender	Phoenix
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By Linda Van Brakel, Deputy County Attorney	
Attorneys for Real Party in Interest	

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**N O Y E S**, Judge

¶1 A police officer issued Petitioner an Arizona Traffic Ticket and Complaint (the "citation") for "minor consumption alcohol," and released him on his promise to appear in court. The citation contained no description of facts or circumstances; it just contained the officer's signature below printed language stating, "I hereby certify that I have reasonable grounds to believe and do believe that the person cited herein committed the offense described herein contrary to law." The question is whether this certification by the officer, standing alone, supports a judicial finding of probable cause to believe that the accused committed the offense. The answer is "no."

¶2 At Petitioner's first court appearance, the State moved that he be taken into custody ("detained") pending his adjudication hearing. Petitioner objected, on grounds that the State had provided nothing from which the court could find probable cause to believe that Petitioner had committed the offense, and, therefore, the court could not legally detain him pending adjudication. The State argued that the court could find probable cause from the face of the citation.

¶3 The court found probable cause from the face of the citation, for these stated reasons:

Rule 23(d) of the Rules of Procedure for the Juvenile Court provides that if the charging document is an Arizona ticket and complaint form, which is what we have here, then the complaint shall also serve as an affidavit, so we have an affidavit here saying that the

minor consumed alcohol. Based upon those facts the Court finds that there is probable cause to believe that the juvenile committed the acts alleged in the June 10th petition.

After making some other findings that are required by Rule 23(D) and are not at issue in this petition for special action, the court ordered Petitioner detained pending his adjudication hearing, which was scheduled to occur in twenty-two days.

¶4 Petitioner filed a petition for special action, asking this court to determine whether the face of this Arizona Traffic Ticket and Complaint supports a judicial finding of probable cause to believe that the accused committed the named offense. Because Petitioner's adjudication hearing was on July 30, 2002, this pre-adjudication detention issue is moot as to him, but we nevertheless accept jurisdiction because the petition raises a constitutional question of statewide importance that is likely to recur, and to evade review, until it is resolved in a published opinion.

¶5 As relevant here, Rule 23(D) of the Arizona Rules of Procedure for the Juvenile Court provides as follows:

**D. Detention Hearing.** Probable cause may be based upon the allegations in a petition, complaint or referral filed by a law enforcement official, along with a properly executed affidavit or sworn testimony. If the charging document is an Arizona Ticket and Complaint form, the complaint shall also serve as an affidavit. The affidavit may serve as the oath before a magistrate for purposes of Rule 2.4, Ariz. R. Crim. P. . . . A juvenile shall be detained only if there is probable cause to believe that the juvenile committed the acts alleged in the referral, petition, or complaint. . . .

¶6 That Rule 23(D) requires a finding of "probable cause to believe that the juvenile committed the acts alleged" before the court can order pre-adjudication detention is consistent with well-settled constitutional law. For example, *Bell v. Superior Court*, 117 Ariz. 551, 554, 574 P.2d 39, 42 (App. 1977), held that "judicial determination of probable cause to believe that an alleged juvenile delinquent has committed an offense is constitutionally required before a juvenile may be detained pending the adjudicatory hearing." Probable cause requires "*facts and circumstances, 'sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.'*" *Id.* at 553-54, 574 P.2d at 41-42 (quoting *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975)) (emphasis added).

¶7 In its response to the petition, the State agrees that a judicial finding of probable cause must be both independent and based on sworn evidence, and it acknowledges that Rule 23(D) "obviously was modeled after *Bell* with respect to the probable cause determination." The State does not argue that the "shall also serve as an affidavit" language in Rule 23(D) is intended to lessen the probable cause requirement when the charging document is an Arizona Traffic Ticket and Complaint; the State asserts that this language

simply satisfies the requirement that allegations in the complaint be made under penalty of perjury. It is not a "rubber stamp." The juvenile court must *still* determine

whether probable cause exists from the face of the complaint and any accompanying narrative report.

We agree with the State's interpretation of Rule 23(D). We therefore conclude that the juvenile court plainly erred in finding probable cause from the face of this citation.

¶8 Petitioner's citation, a copy of which is appended to this opinion, contains nothing but an officer's asserted belief that the accused committed the named offense. Because a judicial finding of probable cause cannot be based on no more than an officer's asserted belief that the accused committed the offense, see *Aguilar v. Texas*, 378 U.S. 108, 112 (1964) ("Mere affirmance of belief or suspicion is not enough."), this citation was plainly insufficient to support a judicial finding of probable cause.

¶9 Although a citation may establish probable cause if it contains or is accompanied by sufficient sworn facts and circumstances for the court to make an independent finding of probable cause, the citation here was deficient in that regard, and no procedural rule can finesse that constitutional defect. "Whatever procedure a State may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty." *Gerstein*, 420 U.S. at 124-25.

¶10 Jurisdiction is accepted and relief is denied solely on the grounds of mootness.

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E. G. NOYES, JR., Judge

CONCURRING:

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SHELDON H. WEISBERG, Presiding Judge

**G A R B A R I N O**, Judge, dissenting.

¶1 The majority accepts jurisdiction and denies relief based on mootness. The adjudication hearing at issue was held prior to consideration of the Special Action Petition by this Court. I agree that the case is moot.

¶2 The majority, however, does not stop at that point, but goes on to analyze and conclude that the juvenile court erred by determining that it could find probable cause based solely upon an Arizona Traffic Ticket and Complaint (citation). I disagree. The juvenile court correctly interpreted Rule 23(D) and, in doing so, appropriately found probable cause to believe that Petitioner committed the act alleged in the citation. At this point, it must be reiterated that the juvenile is only questioning the court's finding of probable cause to believe that an offense has been committed.

¶3 Rule 23(D) is straightforward and is obviously designed to reduce the work load of an overburdened juvenile court staff.

The rule's practical effect is the elimination of the need for a formal petition in certain juvenile cases, replacing the petition with an officer-generated citation containing almost identical information.

¶4 Rule 23(D) provides that “[p]robable cause may be based upon the allegations in a petition, complaint or referral filed by a law enforcement official, along with a properly executed affidavit or sworn testimony.” In essence, Rule 23(D) requires a charging document and an affidavit or sworn testimony before the juvenile court may make a finding of probable cause. As the majority acknowledges, Rule 23(D) also provides that “[i]f the charging document is an Arizona Ticket and Complaint form, the complaint shall also serve as an affidavit. The affidavit may serve as the oath before a magistrate for purposes of Rule 2.4, Ariz. R. Crim. P.” (Emphasis added.) Under Rule 23(D), a citation can serve as both a charging document and an affidavit.

¶5 The majority concludes that a “bare bones” citation will not support the finding of probable cause necessary to believe Petitioner committed the act alleged in the citation. As did the juvenile court, I disagree. Indeed, a plain reading of Rule 23(D) mandates the opposite conclusion than that reached by the majority. As the State contends in its Response, and the juvenile court implicitly acknowledged throughout the proceeding, the information contained in a citation is not a “rubber stamp” for a finding of

probable cause. No one denies the juvenile court's continuing responsibility to carefully review each citation on a case-by-case basis, to determine whether probable cause has been established.

¶6 The citation issued in the instant case identifies Petitioner, the date, the time, the location, Petitioner's mode of transportation, Petitioner's age and address, and the alleged crime and relevant criminal statute. Although it is not as formal as a petition, it contains all of the pertinent information that would have been included in a petition. In addition, the citation is signed by both Petitioner and the issuing officer. The officer's signature appears below the affirmation of her belief that Petitioner "committed the offense described."

¶7 The majority also relies on *Bell* to argue that it takes more than the information set forth in a citation to support a judicial finding of probable cause. Rule 23(D) was not in existence at the time *Bell* was decided. Moreover, the fact remains that Rule 23(D) renders a citation both a charging document and an affidavit. Based on the clear language of the rule, I have no alternative but to conclude that the juvenile court did not err by finding probable cause to find that Petitioner committed the act alleged in the citation.

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WILLIAM F. GARBARINO, Judge