DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, ex rel. WILLIAM G. MONTGOMERY, Maricopa County Attorney, Petitioner, v. THE HONORABLE CRANE MCCLENNEN, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, Respondent Judge, KELSIE MCKINLEY, Real Party in Interest.	1 CA-SA 13-0206 DEPARTMENT E Maricopa County Superior Court No. LC2011-138448-001 **DECISION ORDER**

This special action came on regularly for conference on September 3, 2013, before Presiding Judge Samuel A. Thumma, Judge Jon W. Thompson, and Judge Kent E. Cattani. The State seeks special action review of the superior court's decision on appeal reversing the East Mesa Justice Court's denial of Real Party in Interest Kelsie McKinley's motion to suppress evidence and, therefore, reversing McKinley's conviction and sentence. For reasons that follow, we accept jurisdiction and grant relief.

A. Background.[1]

On the afternoon of July 4, 2011, McKinley drove into a blind S-curve on Bush Highway in Mesa. A law enforcement officer facing oncoming traffic observed McKinley drift left as she entered the initial right-hand portion of the curve until both front and rear driver's-side tires were on top of the double yellow center line. McKinley, moving at an estimated 40 miles per hour, rode the center line for approximately 40 to 50 feet over a period of between one-half and one second. After observing McKinley driving on the yellow line, the officer made a u-turn and initiated a traffic stop, which yielded evidence that McKinley was intoxicated.

The State charged McKinley in East Mesa Justice Court with one count of failure to drive on the right half of the roadway in violation of A.R.S. § 28-721(A) and two counts of driving under the influence ("DUI") under A.R.S. § 28-1381(A)(1) and (A)(2). McKinley moved to suppress evidence resulting from the traffic stop, arguing that the officer lacked reasonable suspicion of a traffic violation on which to base the stop. After an evidentiary hearing, the justice court denied the motion. The parties then submitted the case on a stipulated

[1] On review of a suppression ruling, we consider only evidence presented at the suppression hearing and view that evidence in the light most favorable to upholding the trial court's ruling. *State v. Butler*, 232 Ariz. 84, 87, ¶ 8, 302 P.3d 609, 612 (2013) (citation omitted).

record, and the justice court found McKinley guilty of failure to drive on the right half of the roadway and of one count of DUI (impaired to the slightest degree).

After sentencing, McKinley appealed the DUI conviction (but not the conviction under A.R.S. § 28-721(A)) to the superior court, arguing *inter alia* that the justice court had erred by denying her suppression motion. On review, the superior court concluded the evidence presented at the suppression hearing had not established reasonable suspicion for the stop, and accordingly reversed the justice court's judgment and sentence. This special action petition followed.

B. Jurisdiction.

Absent circumstances not present here, there is no right to appeal from the judgment of the superior court given in an action appealed from a justice of the peace or a police court. A.R.S. § 22—375(B). A petition for special action generally is the only avenue remaining for review of a city court's judgment appealed to the superior court. *State ex rel. McDougall v. Riddel*, 169 Ariz. 117, 817 P.2d 62 (App. 1991). In an exercise of our discretion, we accept special action jurisdiction. *See* Ariz. R.P. Spec. Act. 1(a) (special action jurisdiction may be appropriate where the petitioner has no equally plain, speedy, or adequate remedy by appeal).

C. Motion to Suppress.

A trial court's ruling on a motion to suppress is reviewed for an abuse of discretion, although the "ultimate legal determination of the propriety of a stop" is a mixed question of law and fact reviewed de novo. *State v. Livingston*, 206 Ariz. 145, 146, ¶ 3, 75 P.3d 1103, 1104 (App. 2003).

To justify an investigatory stop of a motor vehicle, an officer must have reasonable suspicion -- "a particularized and objective basis for suspecting" -- that the driver has committed an offense. *Id.* at 147, ¶ 9, 75 P.3d at 1105 (citation omitted); *see also* A.R.S. § 28-1594 (authorizing traffic stop "as is reasonably necessary to investigate an actual or suspected [traffic] violation"). Accordingly, the State establishes justification for an investigatory stop by showing either a violation of the law or "reasonable grounds to suspect the driver has committed an offense." *Livingston*, 206 Ariz. at 147, ¶ 9, 75 P.3d at 1105.

Subject to certain enumerated exceptions not relevant here, "a person shall drive a vehicle on the right half of the roadway." A.R.S. § 28-721(A). Here, the officer saw McKinley drift onto the center line, such that both driver's-side tires were on top of the double yellow line. Thus, there were reasonable grounds to suspect a violation of § 28-721(A).

The superior court concluded that the officer's observation could not provide reasonable suspicion that McKinley had failed to drive on the right half of the roadway because McKinley "did not cross the divider line and enter the left half" of the roadway. But by its terms, A.R.S. § 28-721(A) does not require a showing that a vehicle has veered entirely across a double yellow line running along the center of the roadway to constitute a violation, but rather that the vehicle has left the "right half" of the road. Construing the "right half" of the road to include the yellow line would lead to the conclusion that two cars driving in opposite directions could both be on top of the yellow line at the same time, obvious safety concerns notwithstanding.

The superior court noted that, under *State v. Livingston*, an isolated and minor breach of the confines of a single lane does not amount to conduct prohibited by statute. 206 Ariz. at 148, ¶ 10, 75 P.3d at 1106. But the statute at issue in *Livingston*, A.R.S. § 28-729(1), mandates driving "as nearly as practicable" within a "lane" and does not justify a departure from the requirement of § 28-721(A), that a motorist drive on the right half of the roadway.

Although the officer did not state how far onto the double yellow center line McKinley encroached, the officer's observation that McKinley's vehicle was on top of the line --

within at most inches of the midpoint of the road -- was sufficient to provide at least reasonable suspicion that McKinley had violated § 28-721(A). Therefore, upon consideration,

IT IS ORDERED accepting jurisdiction of the State's special action petition.

IT IS FURTHER ORDERED granting relief by vacating the superior court's July 19, 2013 order and remanding the case to the superior court for further proceedings consistent with this decision.

/S/
KENT E. CATTANI, Judge