

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



DIVISION ONE
FILED: 10-05-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0718
)
Appellee,) DEPARTMENT E
)
v.) MEMORANDUM DECISION
)
ROGER HUCKABY,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-007691-001 DT

The Honorable Pamela H. Svoboda, Judge Pro Tempore

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 Peg Green, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Roger Huckaby appeals the trial court's order finding him guilty of one count of possession or use of marijuana, a class one misdemeanor, and one count of misconduct involving weapons, a class one misdemeanor. For the following reasons, we affirm.

BACKGROUND

¶2 In October 2008, the Glendale Police Department filed a direct complaint against Huckaby, charging him with one count of possession or use of marijuana, a class six felony,¹ and one count of misconduct involving weapons, a class one misdemeanor, following a traffic stop. Huckaby subsequently filed a motion to suppress all evidence seized at the traffic stop, arguing that Glendale Police Officer D.L. made an illegal stop.

¶3 The trial court held a suppression hearing and Officer D.L. testified that on June 22, 2007 at 5:30 p.m., he had been patrolling an area in Glendale when he noticed a vehicle traveling at a higher speed than the twenty miles per hour posted speed limit. Officer D.L. then observed Huckaby, the driver of the vehicle, turn right onto 43rd Avenue. However, Huckaby did not turn into the lane closest to the curb, but into the lane next to the right lane. Officer D.L. then initiated a traffic stop due solely to Huckaby's failure to turn his vehicle into the proper lane, a violation of Arizona Revised Statutes

¹ This count was later reduced to a class one misdemeanor.

(A.R.S.) section 28-751(1) (2004). Officer D.L. further testified that there was no construction or obstruction in the road to prevent Huckaby from turning into the correct lane. Officer D.L. characterized Huckaby's vehicle as "[b]etween medium and small" in size and stated that he has "drive[n] armored vehicles that are five times bigger than [Huckaby's vehicle] and . . . can turn into the correct lane."

¶4 R.U., a defense investigator for the Maricopa County Public Defender's office, testified that although he was not certified as a reconstructionist or mechanic, and had not been formally trained in car dimensions, he did not believe it was possible to turn into the proper lane due to the size of Huckaby's vehicle, a Buick Riviera. Huckaby's attorney conceded that Huckaby did not turn into the proper, legal lane.

¶5 The court denied Huckaby's motion to suppress. The case proceeded to a bench trial and the court found Huckaby guilty of one count of possession or use of marijuana and one count of misconduct involving weapons, both class one misdemeanors. The court suspended imposition of the sentence and placed Huckaby on unsupervised probation for concurrent terms of eighteen months. Huckaby timely appealed and presented the sole issue on appeal of whether the trial court abused its discretion in denying Huckaby's motion to suppress.

DISCUSSION

¶16 When reviewing the trial court's denial of a motion to suppress, we review only the evidence presented at the suppression hearing and we view the evidence in the light most favorable to upholding the court's ruling. *State v. Gay*, 214 Ariz. 214, 217, ¶ 4, 150 P.3d 787, 790 (App. 2007) (citation omitted). We will not disturb on appeal a trial court's denial of a motion to suppress, unless there is an abuse of discretion. *State v. Organ*, 225 Ariz. 43, 46, ¶ 10, 234 P.3d 611, 614 (App. 2010).

¶17 Officer D.L. testified that he observed Huckaby make an illegal turn, pursuant to A.R.S. § 28-751(1), which states in relevant part that "[t]he driver of a vehicle intending to turn [right] shall . . . be made as close as practicable to the right-hand curb or edge of the roadway." Further, "[a] peace officer or duly authorized agent of a traffic enforcement agency may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this title." A.R.S. § 28-1594 (2004). Officer D.L. testified that there was no construction or obstruction in the road to prevent Huckaby from turning into the correct lane. Officer D.L. also stated that based on the size of Huckaby's vehicle, he should not have had any difficulty turning into the proper lane, contrary to R.U.'s testimony. We defer to the trial court's determination

of the credibility of witnesses and resolution of conflicts in testimony. *State v. Ossana*, 199 Ariz. 459, 461, ¶ 7, 18 P.3d 1258, 1260 (App. 2001); *State v. Ellison*, 213 Ariz. 116, 128, ¶ 32, 140 P.3d 899, 911 (2006).

¶18 Huckaby also asserts that Officer D.L. lacked reasonable suspicion to initiate a traffic stop. An investigatory stop of a vehicle for a traffic violation is a seizure pursuant to the Fourth Amendment. *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996). Police officers, however, need only possess a reasonable suspicion, and not probable cause, that a driver has committed an offense in order to properly conduct a traffic stop. *Id*; *State v. Livingston*, 206 Ariz. 145, 147, ¶ 9, 75 P.3d 1103, 1105 (App. 2003). "A traffic violation alone is sufficient to establish reasonable suspicion." *United States v. Choudry*, 461 F.3d 1097, 1100 (9th Cir. 2006) (citation omitted).

¶19 Huckaby relies on *Livingston* to argue that Officer D.L. lacked reasonable suspicion to legally stop Huckaby. *Livingston* held that the trial court properly granted the motion to suppress evidence because the police officer lacked reasonable suspicion to stop a vehicle when the driver's right side tires crossed the white shoulder line on one occasion on a rural, curved road with no traffic. 206 Ariz. at 147, 148, ¶¶ 4-5, 12, 75 P.3d at 1105, 1106. In this case, the court found

in its discretion that a credible witness concluded Huckaby could have made a proper right turn without difficulty. Thus, the circumstances here differ from those in *Livingston*, in which a minor deviation was difficult to avoid given the road conditions.

¶10 Because Huckaby did not dispute making an improper lane turn, and because Officer D.L.'s testimony and the aforementioned statutes adequately support his reasoning for stopping Huckaby, we hold that the trial court did not abuse its discretion in denying Huckaby's motion to suppress the evidence, nor were Huckaby's Fourth Amendment rights violated.

CONCLUSION

¶11 For the foregoing reasons, we affirm.

_____/s/_____
PHILIP HALL, Presiding Judge

CONCURRING:

_____/s/_____
SHELDON H. WEISBERG, Judge

_____/s/_____
PETER B. SWANN, Judge