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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: 01/6/11
RUTH WILLINGHAM,
ACTING CLERK
BY: DN

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0774
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
CHARLOTTE EYVONNE WELLS,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-116542-001 DT

The Honorable Edward O. Burke, Judge

AFFIRMED

Thomas Horne, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Angela C. Kebric, Assistant Attorney General
Attorneys for Appellee

Thomas A. Gorman Sedona
Attorney for Appellant

B A R K E R, Judge

¶1 Charlotte Wells ("Wells") appeals her convictions and sentences for one count of conspiracy to commit possession of marijuana for sale and one count of transportation of marijuana

for sale. Wells contends that the trial court erred in denying her motion to suppress evidence obtained in violation of the Fourth Amendment of the United States Constitution. For the following reasons, we affirm.

Facts and Procedural History

¶2 We consider only the evidence presented at the suppression hearing and view that evidence and reasonable inferences therefrom in the light most favorable to upholding the court's ruling. *State v. May*, 210 Ariz. 452, 454, ¶ 4, 112 P.3d 39, 41 (App. 2005). On March 5, 2009, Detective L. was conducting surveillance as part of a drug investigation. At approximately 8 p.m., Detective L. and other officers began following a car they suspected was carrying marijuana. Officers later discovered that Wells was the driver of the car. Detective L. followed Wells as she entered Interstate 10 just west of Dysart Road and traveled westbound.

¶3 Despite being surrounded by "a lot of traffic on the freeway," Wells changed lanes three different times without signaling. Upon observing this, Detective L. ordered a marked patrol unit to perform a traffic stop of Wells' vehicle. After the car was stopped, officers conducted a canine sniff of the car, which led to a search of the trunk. Officers found bales of marijuana and arrested Wells.

¶4 After being charged, Wells filed a motion to suppress

the marijuana recovered from her car, arguing that the traffic stop was unlawful because she did not violate any traffic laws. At a suppression hearing, the court found that Detective L. had in fact witnessed Wells commit three traffic violations and denied Wells' motion to suppress.

¶15 A jury found Wells guilty of one count of conspiracy to commit possession of marijuana for sale and one count of transportation of marijuana for sale. The court sentenced Wells to concurrent terms of 9.25 years' imprisonment. Wells timely appealed and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003) and 13-4031 (2010).

Discussion

¶16 Wells argues that the trial court committed reversible error by failing to suppress evidence obtained as a result of an unlawful traffic stop. Specifically, Wells contends that there was no evidence that her failure to signal may have affected other traffic - as the statute in question requires - and thus the initial stop exceeded the bounds of the Fourth Amendment.¹

¶17 The Fourth Amendment guarantees the right to be secure against unreasonable searches and seizures. U.S. Const. amend. IV. "[I]ts protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest."

¹ Wells does not assert on appeal any basis for relief other than the legitimacy of the initial stop.

United States v. Arvizu, 534 U.S. 266, 273 (2002) (citing *Terry v. Ohio*, 392 U.S. 1, 9 (1968)). Contrary to Wells' assertion that an investigatory stop requires probable cause of criminal activity, we have previously held that a police officer may make an investigative traffic stop on the basis of reasonable suspicion alone. See *State v. Starr*, 222 Ariz. 65, 69, ¶ 12, 213 P.3d 214, 218 (App. 2009). Because it is a mixed question of law and fact, we review de novo the ultimate question of whether an officer had an objective basis for reasonable suspicion that a traffic violation occurred. See *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996). We defer, however, to the trial court's underlying factual findings. *State v. Teagle*, 217 Ariz. 17, 22, ¶ 19, 170 P.3d 266, 271 (App. 2007).

¶18 The record demonstrates that Detective L. had an objective basis for suspecting that Wells had violated a traffic law by changing lanes without signaling. According to the applicable traffic statute, "[a] person shall not so turn any vehicle without giving an appropriate signal . . . in the event any other traffic may be affected by the movement." A.R.S. § 28-754 (2004). We have held that this statute requires a driver to signal whenever the driver's change of course might "enter[] into the decision-making calculus of a nearby driver" See *Starr*, 222 Ariz. at 72, ¶ 24, 213 P.3d at 221.

¶9 In this case, Wells does not dispute that she changed lanes three times without signaling. Instead, she argues that there was no evidence presented to prove that her failure to signal may have affected other traffic. We disagree. In addition to Detective L.'s statement that there was "other traffic" on the freeway, Wells herself admitted that "there was a lot of traffic on the freeway." (Emphasis added.)

¶10 Detective L. also testified that Wells was "driving fast enough where she was changing lanes so she could pass the vehicles that were in front of her." In response to this testimony, Wells argues that the vehicles she passed could not have been affected by her failure to signal because they were in front of her and would not have seen her signal. This argument fails for two reasons. First, drivers in front of Wells could indeed have seen Wells signaling in their side and rear-view mirrors. Second, as Wells approached slower drivers in her lane, those drivers would need to decide whether to change lanes and let Wells pass, or whether they could stay in their lane and wait for Wells to change lanes and pass them. Thus, Wells' decision to either change lanes or stay behind slower traffic may have entered into the slower drivers' decision-making calculus.

¶11 Wells relies on *United States v. Mariscal* from the Ninth Circuit to support her position. 285 F.3d 1127 (9th Cir.

2002). However, this is not a case where no other vehicles were traveling on the road, such as was the case in *Mariscal*. 285 F.3d at 1129-33 (finding no evidence of other traffic and noting that the patrol car could not have been affected because it was “parked at the side of the road looking for traffic violators”). This is a case more like *Starr*, 222 Ariz. at 72, ¶ 25, 213 P.3d at 221, in which other vehicles were present that may have been affected by Wells’ lane changes, and thus she was required to signal. Accordingly, the trial court did not commit error in finding that Detective L. reasonably suspected that a traffic violation had occurred. The initial stop did not violate the Fourth Amendment.

Conclusion

¶12 For the foregoing reasons, we affirm.

/S/

DANIEL A. BARKER, Presiding Judge

CONCURRING:

/S/

MARGARET H. DOWNIE, Judge

/S/

MICHAEL J. BROWN, Judge