

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

HECTOR EDUARDO GONZALEZ,  
*Appellant.*

No. 2 CA-CR 2016-0258  
Filed February 3, 2017

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

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Appeal from the Superior Court in Pima County  
No. CR20141589001  
The Honorable Charles V. Harrington, Judge

**AFFIRMED**

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COUNSEL

Mark Brnovich, Arizona Attorney General  
Joseph T. Maziarz, Section Chief Counsel, Phoenix  
By Diane Leigh Hunt, Assistant Attorney General, Tucson  
*Counsel for Appellee*

Steven R. Sonenberg, Pima County Public Defender  
By Michael J. Miller, Assistant Public Defender, Tucson  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Howard and Judge Vásquez concurred.

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ECKERSTROM, Chief Judge:

¶1 Following a jury trial, appellant Hector Gonzalez was convicted of possession of a deadly weapon by a prohibited possessor. The trial court sentenced Gonzalez to an enhanced, minimum term of three years in prison. Gonzalez argues on appeal that the court erred in denying his motion to suppress evidence obtained during a traffic stop. For the following reasons, we affirm.

¶2 In reviewing a trial court's ruling on a motion to suppress, "we consider only the evidence presented at the suppression hearing and view the facts in the light most favorable to sustaining the . . . ruling." *State v. Gonzalez*, 235 Ariz. 212, ¶ 2, 330 P.3d 969, 970 (App. 2014). We review a denial of a motion to suppress for an abuse of discretion, but review constitutional issues de novo. *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007). At approximately 12:45 a.m. on April 6, 2014, Tucson Police Officer Kyle Wilson conducted a traffic stop on the vehicle Gonzalez was driving because it "did not have a functioning license plate light." Based in part on Gonzalez's "obsessive movements with motioning towards his waistband," Officer Wilson conducted a pat-down search which revealed a handgun. Gonzalez was indicted, inter alia, for possession of a deadly weapon by a prohibited possessor.<sup>1</sup>

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<sup>1</sup>Pursuant to the state's motion, the other charges, which included possession of a dangerous drug, possession of a narcotic drug, possession of marijuana and possession of drug paraphernalia, were dismissed without prejudice.

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¶3 Before trial, Gonzalez moved to suppress the evidence seized, arguing there was no traffic violation or reasonable suspicion to stop the car he was driving because the license plate light “was always working” and, therefore, any evidence found during the traffic stop was obtained in violation of the Fourth Amendment and should be suppressed. Gonzalez attached to his motion a report prepared by defense investigator Ana Valencia, who testified at the suppression hearing that the plate light was “functioning” when she examined it on April 14, after Gonzalez’s family had retrieved the car from the police impoundment lot on April 9, and eight days after the April 6 traffic stop. Valencia also took photographs of the “functioning” light, which were admitted as exhibits at the suppression hearing.

¶4 Following a hearing, the trial court denied Gonzalez’s motion to suppress.<sup>2</sup> In its ruling, the court concluded that after “weighing the evidence,” it found “the testimony of [Officer Wilson] credible” and determined that the stop did not violate Gonzalez’s rights under the Fourth Amendment. The court noted that Officer Wilson had “testified that he conducted a stop of [Gonzalez’s] vehicle because he observed the license plate light not functioning,” which is a violation of Arizona law. The court also concluded that although Gonzalez had presented evidence that “the license plate light [was] functioning over a week [after the stop], after [Gonzalez’s] family had retrieved and used the vehicle,” Gonzalez had not submitted any evidence “to show that the light was

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<sup>2</sup>Gonzalez then filed a motion to reconsider the trial court’s denial of his motion to suppress, in which he accepted “[f]or purposes of [the] Motion . . . that . . . Officer Wilson had reasonable suspicion to stop the car driven by [Gonzalez] because the license plate light was not working,” and instead raised a new argument regarding the search conducted during the stop. A different judge conducted a supplemental hearing on the motion to reconsider, during which he permitted defense counsel to question Officer Wilson again. The court then denied the motion to reconsider, noting it found Officer Wilson’s testimony credible and the state had sustained its burden of proof.

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functioning at the time of the traffic stop or that [Officer Wilson's] suspicion that the light was not functioning was unreasonable."

¶5 On appeal, Gonzalez challenges the denial of his motion to suppress, arguing Officer Wilson lacked reasonable suspicion that he violated § 28-925(C) because "the license plate light was working properly when the car was retrieved from the police impound lot by [his] family." He also asserts there was "no evidence of frayed wires that would cause intermittent operation or evidence of replacement of the bulb," maintaining this is further proof the light was functioning at the time of the stop. Gonzalez thus concludes the trial court abused its discretion when it characterized as "reasonable" Officer Wilson's "subjective belief" that the light was not functioning when the stop occurred, arguing that "[o]bjective reality controls the decision."

¶6 Because a traffic stop is a seizure for purposes of the Fourth Amendment, *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996), to justify a stop on this ground the law enforcement officer effectuating the stop must have reasonable suspicion to believe the person he or she is stopping committed a traffic violation, *see State v. Livingston*, 206 Ariz. 145, ¶ 9, 75 P.3d 1103, 1105 (App. 2003); *see also* A.R.S. § 28-1594 (officer "may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of [Title 28]"). It is a traffic violation to drive a car at night unless it has a lamp, either separate or incorporated in a tail light, placed on vehicle "in a manner that illuminates with a white light the rear license plate and renders it clearly legible from a distance of fifty feet to the rear." *See* A.R.S. § 28-925(C).

¶7 At the suppression hearing, Officer Wilson testified he had stopped Gonzalez because he "noticed that the license plate light on [the vehicle Gonzalez was driving] wasn't functioning," and that he had no other reason to stop him. He also testified the light was not "just dim" or "flickering," but was not working "[a]t all." Gonzalez's sister, who drove the car regularly after her parents picked it up from the impound lot on April 9 until Valencia examined it on April 14, testified that no repairs were done on the

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car during this time period. Gonzalez's father testified that when he retrieved the car from the impound lot he did not check to see if the light was working, nor did he repair or replace it. Gonzalez's mother testified that she had not been informed of the reason for the traffic stop, and she did not know if the light was working when she and her husband retrieved the car, although did she did not believe anyone had repaired or replaced the light or checked the wiring on the car since that time.

¶8 And, although Valencia testified that she did not have to manipulate the wiring to make the light work on April 14, she nonetheless acknowledged that she had "no personal knowledge as to what happened" to the car between the traffic stop on April 6 and her investigation eight days later. Nor did Valencia check to see if the light was visible from a distance of fifty feet when she examined the car on "the morning" of April 14. When the state asked Valencia, "So as you sit here today, you can't say what the condition of the light was on the night that the defendant was stopped in that vehicle; can you?" she responded, "That's correct."

¶9 When we review a ruling on a motion to suppress, "we defer to the trial court's factual findings, including findings on credibility and the reasonableness of the inferences drawn by the officer." *State v. Moran*, 232 Ariz. 528, ¶ 5, 307 P.3d 95, 98 (App. 2013), quoting *State v. Teagle*, 217 Ariz. 17, ¶ 19, 170 P.3d 266, 271 (App. 2007). We therefore defer to the trial court's factual finding and credibility determination regarding Officer Wilson's testimony that the light was not working when he stopped Gonzalez, and we likewise defer to the court's finding that the officer's belief was reasonable.

¶10 Nor do we find persuasive Gonzalez's argument that the court abused its discretion because it did not make a "comparative credibility" determination, to wit, although it expressly found Officer Wilson's testimony credible, it did not specifically find the testimony of the family members or Valencia incredible. Based on the evidence before the court, including the fact that Officer Wilson's testimony was the only evidence presented regarding the condition of the light on the night of the stop, we do

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not agree the court was required to make a comparative credibility finding. *See State v. Moreno*, 236 Ariz. 347, ¶ 5, 340 P.3d 426 (App. 2014) (appellate court reviews mixed questions of law and fact de novo, considering whether totality of circumstances gave rise to reasonable suspicion to support investigative detention).

¶11 Citing Rule 16.2(b), Ariz. R. Crim. P., Gonzales further asserts that the trial court mistakenly believed he had the burden of proof and thus never “reach[ed] the true issue of whether the state had proved its case.” *See id.* (“the prosecutor’s burden of proof shall arise only after the defendant has come forward with evidence of specific circumstances which establish a prima facie case that the evidence taken should be suppressed”); *see also State v. Hyde*, 186 Ariz. 252, 266, 921 P.2d 655, 669 (1996) (state carries burden of persuasion in motion to suppress based on lawfulness of acquisition of evidence). Gonzalez maintains that when the court stated, “there has been no evidence submitted by [Gonzalez] to show that the light was functioning at the time of the traffic stop or that [Officer Wilson’s] suspicion that the light was not functioning was unreasonable,” it improperly shifted the burden of proof from the state to him. At the suppression hearing, defense counsel stated, “[W]e’ve met our burden of going forward in terms of presenting evidence. Then the burden shifts to the State in terms of burden of proof, and essentially the State hasn’t met its burden of proof.” The state then responded that it had met its burden of proof.

¶12 Taken in context, it appears that in its written order denying the motion to suppress, which contains the language Gonzalez now challenges, the trial court was referring to the credibility of Officer Wilson’s testimony and the value of the evidence Gonzalez offered in an attempt to controvert that testimony, rather than shifting the burden of proof. *See Moran*, 232 Ariz. 528, ¶ 5, 307 P.3d at 98. Moreover, the record is clear that the correct burden of proof was understood by the court and parties, and that the court considered the credibility of the witnesses when it ruled, as it was entitled to do. *See id.* ¶¶ 5-6. And, we presume trial courts know and follow the law. *State v. Williams*, 220 Ariz. 331, ¶ 9, 206 P.3d 780, 783 (App. 2008).

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¶13 For the foregoing reasons, we affirm Gonzalez's conviction and sentence.