State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-117

Complainant: No. 1317010840A

Judge: No. 1317010840B

ORDER

The complainant alleged that a superior court judge "rubber stamps" appeals from the justice court on traffic matters. After analyzing the allegations and the response from the judge, the commission found no evidence of ethical misconduct on the part of the judge. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: July 22, 2010.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed
to the complainant and the judge
on July 22, 2010.

This order may not be used as a basis for disqualification of a judge.

2010-117
Judicial Conduct Comm.
602-542-5200
1501 W. Wash. St #229
Phoenix

JUL 31 2009

FILED
PIMA COUNTY, ARIZONA
09 JUL 31 AM 10:50

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE: HON.

CASE NO.

COURT REPORTER: NONE

DATE: July 31, 2009

STATE OF ARIZONA,
Plaintiff,

v.

Defendants.

CIVIL TRAFFIC VIOLATION APPEAL
RULING

IN CHAMBERS RULING:

Appellant appeals in which he was found to have been responsible for violating A.R.S. § 28-855(B) (failing to stop for a stop sign). Judgment was entered in Tucson City Court on May 4, 2009. The appeal proceeds pursuant to 17C A.R.S. Traffic Violation Cases Civ. Proc. Rules, Rules 26-36.

Standard of Review

On an appeal from a civil traffic violation, the Superior Court acts as an appellate court, except as specifically provided in the Civil Traffic Violation rules or the Superior Court Rules of Appellate Procedure — Civil. This Court does not weigh the evidence to resolve questions of fact, but must limit its review to establish whether the facts presented are substantial and the evidence reasonably supports the trial court's judgment. *Whittemore v. Amator*, 148 Ariz. 173, 175, 713 P.2d 1231, 1233 (1986).

Judicial Administrative Assistant

Where the appeal is based on findings of fact, the appellate court shall not weigh credibility of witnesses or exhibits, but must defer to findings of fact made by the trial court. *Nutter v. Bechtel*, 6 Ariz.App. 501, 505-506, 433 P.2d 993, 997-998 (1967); *see also Viliborghi v. Prescott School District No. 1*, 55 Ariz. 230, 231, 100 P.2d 178, 179 (1940)(generally, findings of trial court that are based on conflicting testimony must remain undisturbed by reviewing court).

Issues On Appeal

1) Whether the Tucson City Court's ruling is reasonably supported by evidence presented at trial.

Background

On March 9, 2009, Tucson Police Department Officer Ives cited Appellant for failing to stop at a stop sign, in violation of A.R.S. § 28-855(B). Appellant requested a hearing, which commenced in Tucson City Court on May 4, 2009. At the hearing, Officer Ives testified on behalf of the State and Appellant presented his case.

Officer Ives told the trial court that on March 9, 2009, he had been within the Tucson city limits, driving east on Speedway Boulevard before making a right turn onto Alvernon Way, heading south. Officer Ives testified that as he drove down Alvernon, he had an unobstructed view of Appellant making a right turn onto Alvernon from 1st Street without stopping at the stop sign located at the Alvernon-1st Street intersection. Officer Ives stopped Appellant's vehicle and identified Appellant by his Arizona

Driver's License. According to Ives, Appellant admitted to the officer that he had seen the stop sign, but decided not to stop because there was no traffic. Officer Ives then cited Appellant for failure to stop at the stop sign.

At the lower court hearing, Appellant declined to cross-examine Officer Ives before presenting his case. Appellant testified that he had not told Officer Ives that he had intentionally failed to stop at the stop sign, but rather that he had stopped, and then proceeded after seeing that there was no traffic. Appellant further testified that Officer Ives' view of the Alvernon-1st Street intersection was obstructed because the officer had not fully made his turn onto Alvernon from Speedway. Appellant presented three pictures he had taken of the location in question, and these pictures were examined by the trial court and Officer Ives. In response to the pictures presented by Appellant, Officer Ives testified that none of the photos correctly depicted his position when he observed Appellant's violation.

At the hearing's conclusion, the trial court stated that it was satisfied that Officer Ives' view was unobstructed at the time he observed Appellant's violation. Appellant was found responsible by a preponderance of the evidence. The same day of the hearing (May 4, 2009), Appellant filed his notice of appeal from the Tucson City Court's ruling. Appellant filed a memorandum and the State filed a responsive memorandum. In his memorandum, Appellant reasserted that Officer Ives' view was obstructed, stated that the officer's testimony did not supersede that of Appellant, and contended that the State failed to meet its burden of proof.

Judicial Administrative Assistant

Discussion

1) Is the lower court's ruling supported by sufficient evidence?

In addressing Appellant's challenges to the Tucson City Court's decision, the central issue is whether or not that court's ruling was sufficiently supported by the evidence presented at trial.

When an appeal is based on disputed findings of fact, an appellate court does not re-weigh conflicting evidence. *Whittemore*, 148 Ariz. at 175, 713 P.2d at 1233. Due to the first-hand observational opportunities available to the trial court, determinations of witness and exhibit credibility are within that court's discretion and are not disturbed by a reviewing court. *Nutter*, 6 Ariz.App. at 505-506, 433 P.2d at 997-998; *Van Emden v. Becker*, 6 Ariz. App. 274, 275, 431 P.2d 915, 916 (1967). An appellate court simply examines the record to determine whether sufficient evidence exists to reasonably support the decision of the lower court. *Whittemore*, 148 Ariz. at 175, 713 P.2d at 1233. Evidence is viewed in the light most favorable to sustaining the verdict. *See Curlee v. Morris*, 72 Ariz. 125, 127, 231 P.2d 752, 753 (1951); *Stallcup v. Coscarart*, 79 Ariz. 42, 45, 282 P.2d 791, 793 (1955).

Appellant's principal argument is that there were two witnesses, each of whom disagreed with the other. Appellant reasons that if there are two witnesses who come to opposite conclusions, the State cannot prove its case by a preponderance of the evidence. In fact, in this circumstance the trial court must decide between the two versions.

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MAY 07 2010

ORDER

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Ample evidence was presented at the May 4 hearing to reasonably support the lower court's finding that Appellant violated A.R.S. § 28-855(B). Officer Ives testified that he had fully made his turn onto Alvernon and had a clear view of Appellant failing to stop at the stop sign at the Alvernon-1st Street intersection. Officer Ives presented further testimony that Appellant admitted to the traffic violation. Appellant presented testimony in direct conflict to that of Officer Ives, contending that the officer's view was obstructed and denying that he had admitted the violation to Officer Ives. Additionally, Appellant presented photographs of the area where the violation took place. The trial court examined the evidence and made credibility determinations. At the hearing's conclusion, the trial court decided that Appellant was responsible for violating A.R.S. § 28-855(B) by a preponderance of the evidence. Though Appellant disagrees with the trial court's ruling, it is a ruling that was supported by findings of fact within the trial court's discretion. This Court will not disturb those findings of fact.

Conclusion

For the foregoing reasons, it is ordered ***affirming*** the decision of the trial court.

Dated this 31 day of July 2009

Distribution list only on page six

I have reason to believe Judge and Judicial Admin. Assistant, Lynne Booth, rubber stamp all appeals by always affirming the decision of the trial court.

Judicial Administrative Assist

5-5-2010