

2018 WL 1895687

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NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)
(1); Ariz. R. Crim. P. 31.19(e).
Court of Appeals of Arizona,
Division 2.

The STATE of Arizona, Appellee,
v.

Nathaniel Christian ROMERO, Appellant.

No. 2 CA–CR 2017–0242

|
Filed April 20, 2018

Appeal from the Superior Court in Pima County; No. CR20162692001; The Honorable [Jane L. Eikleberry](#), Judge. **AFFIRMED**

Attorneys and Law Firms

[Mark Brnovich](#), Arizona Attorney General, By Joseph T. Maziarz, Chief Counsel, and, Jameson Rammell, a student certified pursuant to Rule 38(d), Ariz. R. Sup. Ct., Phoenix, Counsel for Appellee

[James L. Fullin](#), Pima County Legal Defender, By Robb P. Holmes, Assistant Legal Defender, Tucson, Counsel for Appellant

Presiding Judge [Staring](#) authored the decision of the Court, in which Chief Judge [Eckerstrom](#) and Judge [Brearcliffe](#) concurred.

MEMORANDUM DECISION

STARING, Presiding Judge:

*1 ¶ 1 Nathaniel Romero was convicted of two counts of aggravated **driving under the influence** (DUI) with a suspended, revoked, or restricted license, and two counts of aggravated DUI having been convicted of two or more prior DUI offenses. On appeal, he argues the trial court erred in denying his motion to suppress evidence seized

during the traffic stop that culminated in his arrest. For the reasons that follow, we affirm.

Factual and Procedural Background

¶ 2 On May 29, 2016, at 2:10 a.m., a Marana Police Department officer observed a car travelling ten to fifteen miles per hour below the posted speed limit. The officer followed the car and observed it straddling the fog line and swerving from one lane line to another while staying within the same lane. The car was moving at varying speeds but remaining under the speed limit. The officer also saw it come to a stop at an intersection, at a point abnormally short of the stop line. When the car resumed travel, it nearly collided with the median but “jerked back” before hitting it. The car proceeded to stop at another intersection, but, again, abnormally short of the stop line. At that intersection, it made a wide left turn, but otherwise stayed in its designated lane without crossing the fog line or the bicycle lane. After completing the turn, however, the car began to make “drastic moves ... like an S,” crossing the fog line and into the painted median. There was no traffic or any other obstruction in the roadway.

¶ 3 The officer then activated his emergency lights in order to make a traffic stop. The car did not stop for another quarter of a mile, however, despite having several opportunities to stop safely. And, when it came to a stop, it did so suddenly, with half of the car still in the roadway. The officer spoke to the driver, Romero, and observed “signs and symptoms of alcohol consumption.” After conducting an investigation, the officer arrested Romero for DUI.

¶ 4 The state charged Romero with two counts of aggravated DUI with a suspended, revoked, or restricted license, and two counts of aggravated DUI having been convicted of two or more prior DUI offenses. Before trial, he moved to suppress the evidence seized as a result of the stop, arguing the officer had lacked reasonable suspicion to stop the car. After an evidentiary hearing, the trial court denied the motion.

¶ 5 Romero was convicted as charged, and the trial court sentenced him to four concurrent terms of four months' imprisonment with three years of probation. This appeal followed. We have jurisdiction pursuant to [A.R.S. §§ 12–120.21\(A\)\(1\), 13–4031, and 13–4033\(A\)\(1\)](#).

Discussion

¶ 6 On appeal, Romero argues the trial court erred in denying his motion to suppress because the officer lacked reasonable suspicion to conduct an investigatory stop. When reviewing the denial of a motion to suppress, we view the facts in the light most favorable to upholding the trial court's ruling, considering only the evidence presented at the suppression hearing. *State v. Moreno*, 236 Ariz. 347, ¶ 2 (App. 2014); *State v. Moran*, 232 Ariz. 528, ¶ 5 (App. 2013) (deference given to trial court's factual findings when reviewing denial of motion to suppress). Whether an officer was legally justified in conducting an investigatory stop is a mixed question of fact and law we review de novo. *State v. Rogers*, 186 Ariz. 508, 510 (1996). We are obligated to uphold the court's ruling if legally correct for any reason supported by the record. *Moreno*, 236 Ariz. 347, ¶ 5.

*2 ¶ 7 The Fourth Amendment prohibits the government from engaging in unreasonable searches and seizures. U.S. Const. amend. IV. “Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ ” under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809–10 (1996). “[B]ut because such stops are less intrusive than arrests, they do not require the probable cause necessary to issue an arrest warrant.” *State v. Gonzalez–Gutierrez*, 187 Ariz. 116, 118 (1996). “Rather, they need only possess a reasonable suspicion that the driver has committed an offense.” *State v. Livingston*, 206 Ariz. 145, ¶ 9 (App. 2003). That is, “the ‘totality of the circumstances’ must provide ‘a particularized and objective basis for suspecting the particular person stopped of criminal activity.’ ” *Gonzalez–Gutierrez*, 187 Ariz. at 118, quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981). “[A]n officer who has witnessed a traffic violation may initiate a stop.” *State v. Kjolsrud*, 239 Ariz. 319, ¶ 9 (App. 2016).

¶ 8 Here, the officer stopped Romero on suspicion he had violated A.R.S. § 28–729. Section 28–729 provides:

If a roadway is divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this section apply:

1. A person shall drive a vehicle as nearly as practicable entirely within a single lane and shall not move the vehicle from that lane until the driver has first ascertained that the movement can be made with safety.

Relying on *Livingston*, Romero argues there was no violation of § 28–729 because his crossing the lines bordering the median and curb were only “minor, momentary deviations” and not enough to “support a reasonable suspicion for failing to maintain one's lane.” We disagree.

¶ 9 In *Livingston*, the driver, Livingston, while driving within the speed limit and without weaving, crossed over the white shoulder line on a stretch of highway characterized as “rural, curved, and dangerous.” 206 Ariz. 145, ¶¶ 4–5. Although Livingston did not jerk or over-correct after crossing the line, the officer initiated a traffic stop for an alleged lane-usage violation. *Id.* ¶¶ 5–6. The trial court granted Livingston's motion to suppress, finding the officer had not observed any true legal violation, and we agreed. *Id.* ¶¶ 8, 10.

¶ 10 In affirming the trial court's ruling, we concluded § 28–729's language, “as nearly as practicable,” expressed a “legislative intent to avoid penalizing brief, momentary, and minor deviations outside the marked lines.” *Id.* ¶ 10. Thus, because “Livingston otherwise drove safely on a dangerous, curved road apart from the alleged isolated and minor breach of the shoulder line” we affirmed the trial court's conclusion “that the officer lacked a reasonable basis for the stop.” *Id.* ¶ 12.

¶ 11 Here, in contrast, the officer observed Romero drive at varying speeds ten to fifteen miles per hour under the posted speed limit, swerve within his lane, stop abnormally short at two intersections, nearly hit a median before jerking quickly away, make a wide turn, and drive in an S-shaped pattern as he separately crossed the lines bordering the median and curb. Further, there was no testimony that any conditions existed requiring Romero to drive as he did. *See id.* ¶ 5. Accordingly, we conclude the totality of the circumstances provided a particularized and objective ground for the officer to conduct a traffic stop for a suspected violation of § 28–729. *See Gonzalez–Gutierrez*, 187 Ariz. at 118; *State v. Superior Court (Blake)*, 149 Ariz. 269, 273 (1986) (weaving within lane a “specific and articulable fact” justifying investigative stop); *State v. Acosta*, 166 Ariz. 254, 257

(App. 1990) (reasonable suspicion to stop when vehicle crossed dividing line “numerous times”); *State v. Winter*, 146 Ariz. 461, 466–67 (App. 1985) (reasonable suspicion when vehicle drove close to median barrier and weaved within lane), *abrogated on other grounds by State v. Kamai*, 184 Ariz. 620, 623 (App. 1995).

Disposition

*3 ¶ 12 For the foregoing reasons, we affirm Romero's convictions and sentences.

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