

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-008

Complainant: No. 1275510443A

Judge: No. 1275510443B

ORDER

An initial review of the complaint filed in this matter reveals that the issues raised are either legal or appellate in nature and do not involve allegations of ethical misconduct.

The complainant alleges that the judge wrongfully ruled against her based on faulty evidence, that the citing officer was not put under oath, and that the court violated her appeal rights. The court record reflects that there was an avowal that the witness was under oath when he testified. The complainant admits missing the filing deadline for an appeal. The remaining issues are all interpretations of the facts that are within the judge's discretion.

It is clear on the face of the complaint that the complainant is seeking to overturn the judge's ruling. Because the commission is not an appellate court and cannot change a judge's decisions, the complaint is dismissed pursuant to Rule 16(a).

Dated: February 14, 2006.

For the Commission

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on February 14, 2006.

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

STATEMENT OF FACTS **CJC-06-008**

Instructions: Please use this form or plain paper of the same size to explain your complaint. In your own words, describe specifically what the judge did that you believe is misconduct. You should provide all of the important names, dates, times and places related to your complaint, but you do not need to cite the applicable canons of judicial conduct. Although you may attach additional pages, do not write on the back of any page. You may attach copies of any documents you feel will help us understand your complaint.

Your name: Judge's name: Date: 09 JAN 06

*I THINK THAT JUDGE TREATED ME UNFAIRLY. (SEE
ADDITIONAL SHEETS.)*

(Attach additional sheets as needed)

COMPLAINT:

CJC-00-008

I think that Judge [] treated me unfairly - acting outside of general principle Numbers 1 and 3 of the Arizona Code of Judicial Conduct. In my opinion, she 1) failed to be diligent in carefully studying the facts in my case, 2) made mistakes in procedure, 3) demonstrated partiality by favoring local resident males, 4) and therefore, failed to uphold the integrity and independence of the Arizona judiciary as a [] court judge in [] Arizona.

SUMMARY

NOTE: I am not an attorney. I present the following summary/account without legal representation, to the best of my ability and understanding of the legal issues involved, to the best of my ability, by expressing my sincere, personal views and opinions.

Police Officer [] failed to cite [] according to Arizona's safe backing law, [] [] who admitted backing from the diagonal parking space in front of the [] Arizona [] I called 911 to get help, since I thought the driver, in doing such an irresponsible thing as to back directly into my path, could have been drinking. But, upon responding to the scene, Officer [] ticketed me instead. [] carried no proof of current insurance which Judge [] also failed to acknowledge.

Judge [] did not allow my attorney to cross examine Officer [] during the telephonic hearing, notice of which she had not provided to my attorney, but he waived objection. She allowed Officer [] to speak from hearsay, rather than from personal knowledge and the state to proceed without filing any written controverting factual affidavit or Opposition to a Motion, according to my attorney, noting that the officer was not sworn in. The alleged witness, that the officer based some of his account upon, failed to appear at the hearing in []

Though Judge [] stated "it is the state's burden of proof to convince the Court by a preponderance of evidence that the traffic violation has been committed" P. 3, AV TRONICS, INC. Transcript [] the hearing revealed conflicting information, both in testimony and in Officer [] written reports. He not only contradicted himself, but [] the driver who backed into my path, as well. Further, [] contradicted Officer []

Prosecutor [] presented that there was both a stop sign and a stop light at [] Avenue during the hearing. [] agreed with her on both.

Judge [] judged me responsible for an accident and put three points on my license, supporting [] Police Officer [] speeding ticket (20 in a 25 zone - "failure to control to avoid an accident"). I estimated 10 - 15, which I told him, but he did not write that down, but wrote down 20, still under the speed limit) and Admission, instead - though I did not tell him that. NOTE: I have reported this issue to the [] Police Department and am awaiting response.

The judge made an error initially preventing me from making an appeal when she judged me responsible, as the Superior Court of [] County noted

From the very beginning, my Arizona attorney, [redacted] noted bias against me in Judge [redacted] Court, [redacted] AZ, [redacted] County, located in the [redacted] [redacted]

I was in [redacted] by myself, unfortunately, to do an interview at the [redacted] part of my producing a film about illegal immigration in [redacted] County. I wonder if my being a [redacted] outsider contributed to my unfair treatment, since there was newspaper publicity.

I offer my notes accompanying the Arizona Traffic Ticket and Complaint (A), the Arizona Traffic Accident Report (B) and the enclosed transcript (C). I trust these will be sufficient for you to see why I could think that Judge [redacted] treated me unfairly. I have also included certified copies of my Arizona Driving Record (D). I had a spotless record until this.

I would like to begin by pointing out Officer [redacted] contradictions between his Accident Report, Ticket and Court testimony. Also, you will see that the truck's driver, [redacted] who backed into my path, contradicts Officer [redacted] - more than once in the transcript.

====WAS THE DRIVER [redacted] BACKING OUT OR GOING NORTHBOUND?

Officer [redacted] wrote in his Arizona Traffic Accident Report (B) DESCRIBE WHAT HAPPENED:

VEH. # 1 [redacted] WAS BACKING FROM A PARKING POSITION AT THE [redacted] AVENUE AT WHICH TIME IT WAS STRUCK BY VEH. # 2 WHICH WAS TRAVELING NORTHBOUND ON [redacted]

VEH. #2 [redacted] WHICH WAS TRAVELING NORTHBOUND ON [redacted]

VEH. #1 [redacted] SUSTAINED DAMAGE TO THE LEFT REAR BUMPER/CORNER AREA.

VEH. #2 [redacted] SUSTAINED DAMAGE TO THE RT. FRONT FENDER/CORNER AREA.

But, did Officer [redacted] 1) contradict his own written accident report at the hearing; 2) contradict Mr. [redacted] testimony (or visa versa); and 3) contradict my testimony? Yes

1) (Officer [redacted] "After speaking to both individuals, I determined that one of the vehicles had, which was driven by [redacted] had backed up from a parking space and was in the process of proceeding Northbound on the avenue." P. 7, AV TRONICS, INC. Transcript [redacted]

2) (Officer [redacted] "Based on, again, my investigation of the vehicle driven by [redacted] was on the roadway and in a Northbound direction." P. 10, AV TRONICS, INC. Transcript [redacted]

3) (Officer [redacted] "I determined that [redacted] had, in fact, backed out of a parking position and was in the process of going forward Northbound on [redacted] and that [redacted] came from behind and struck the vehicle." P. 11, AV TRONICS, INC. Transcript, [redacted]

Further:

"The damage was to the left rear corner of [redacted] vehicle. The damage was to the left rear corner of [redacted] vehicle. The damage was to the left rear corner of [redacted] vehicle. The damage to [redacted] vehicle was to the right front corner, (4) therefore coinciding with the statements made by both drivers and by the witness that [redacted] had, in fact, already backed up and was in the process of going forward and had not backed up and struck [redacted] vehicle." P. 13, AV TRONICS, INC Transcript [redacted]

However, [redacted] contradicted both Officer [redacted] and me, during the hearing:

1) [redacted]

"I was already out here, almost out... I was almost going towards [redacted] when she came out of here and hit me on the left hand side of my truck." P. 21, AV TRONICS, INC. Transcript [redacted]

2) And a second time [redacted] continued testifying contradicting Officer [redacted]

[redacted]

Q [redacted] "Prior to the accident, where was your vehicle? A [redacted] "I was coming out from in the parking (indiscernible)." P. 20, AV TRONICS, INC. Transcript [redacted]

NOTE: At no time did I ever tell Officer [redacted] that [redacted] had "already backed up and was in the process of going forward". See: his written Arizona Traffic Accident Report (B): "VEH. # 1 [redacted] WAS BACKING FROM A PARKING POSITION".

That was my testimony.

[redacted] "Suddenly a car, [redacted] truck began pulling out suddenly. And, I slammed on the brakes as hard as I could to avoid collision, but he kept coming, and, because it was so close, there was no way that I could stop in time, as he was backing out." P. 25 AV TRONICS, INC, Transcript [redacted]

=====WHAT WAS THE TIME OF THE ACCIDENT?=====

1) Officer [redacted] wrote in the time section of the Arizona Traffic Ticket: 1138. He circled PM in the AM/PM box.

Yet, during his testimony in Judge [redacted] court, Officer [redacted] stated that he was on the day shift. P. 6, AV TRONICS, INC. Transcript [redacted]

=====WAS I GOING NORTHBOUND OR PARKED ON [redacted]?=====

Did [redacted] and Prosecutor [redacted] forget that Officer [redacted] testified that I was traveling Northbound on [redacted]?

Officer [redacted]

[redacted] vehicle was behind the vehicle, opposite to the (indiscernible) of the vehicle driven by [redacted] also in a Northbound direction." P. 10, AV TRONICS, INC. Transcript [redacted]

Officer [redacted] testified again: "She was traveling on [redacted] from the 600 block of [redacted] in a Northbound direction." P. 20, AV TRONICS, INC. Transcript [redacted]

Officer [redacted] also wrote in the accident report: "VEH #2 WHICH WAS TRAVELING NORTHBOUND ON [redacted]"

However, the driver of the truck who backed into my path, [redacted] testified that I was elsewhere:

"She was parked over there when I was coming out. Q [redacted] Where was she parked? A (indiscernible she was gonna turn into me.. Q She was parked, you mean, stopped at the light or parked? A Yes. Q She was stopped. A She was stopped. I saw her there. Q Is there a stop sign

at that - A Yes. Q You saw her stop at the stop sign? A Yes. P. 21, AV TRONICS, INC. Transcript [redacted]

=====A LIGHT OR A STOP SIGN?

Prosecutor [redacted] did not know if there were a stop sign or a light at the corner of [redacted]. She referred to the actual "stop sign" as a light and [redacted] agreed, but then she changed to a "light" and [redacted] also agreed to that.

"Q [redacted] She was parked, you mean, stopped at the light or parked?" A [redacted] Yes. Q She was stopped. A She was stopped. I saw her there. Q Is there a stop sign at that - A Yes. Q You saw her stop at the stop sign? A Yes." P. 25, AV TRONICS, INC. Transcript [redacted]

=====WAS OFFICER [redacted] AN EXPERT WITNESS?

[redacted] (my attorney): Q Officer, are you qualified as an accident reconstruction expert? Q Yes, I am. Q And, has your testimony been accepted in any Superior Court in the State? A Not to my recollection. [redacted] I object to the lack of foundation for this testimony in that case, Your Honor." P. 9, AV TRONICS, INC. Transcript [redacted]

But, the court allowed him to continue to testify.

THE COURT: -- give his report. You may proceed, P. 10, AV TRONICS, INC. Transcript [redacted]

=====WAS THERE ONE WITNESS - OR MORE THAN ONE WITNESS - OR NO WITNESS?

Officer [redacted] refers to one witness first, but later to "the witnesses": NOTE: There was no witness. I immediately looked for a witness and there was nobody in sight. I protested on the spot after receiving the ticket, but the officer did not note my protestations in his report or in court.)

(Officer [redacted] "There was a pedestrian by the name of [redacted] that I had spoken to that stated he had observed the collision. Q [redacted] Okay. Was there anyone else that you discussed, talked to or interviewed as part of your investigation on the scene? A No. Other than those three individuals." P. 8, AV TRONICS, INC. Transcript [redacted]

NOTE [redacted] never came to testify at court, though there was a paper ordering him to come.

NOTE: "THE WITNESS", center P. 10, OFFICER [redacted] speaking:

Officer [redacted] again contradicting himself:

"... and upon speaking to the witnesses and both drivers of the vehicles." P. 10, AV TRONICS, INC. Transcript [redacted]

=====WHERE WAS [redacted] PARKED?

Officer [redacted] testified that [redacted] was parked in the second diagonal space near [redacted] [redacted] on the North corner.

Officer [redacted]

"He [redacted] was coming out of the second space." P. 14 AV TRONICS, INC. Transcript [redacted]

But, [redacted] contradicted Officer [redacted] testifying that he was parked in "the first one here"

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[redacted]

"I was coming out from in the parking (indiscernible) Q. Okay. Now, can you point to were the vehicle was? A My vehicle was here, I was coming out of - Q Which parking space were you in? A The first one here." P. 20, AV TRONICS, INC. Transcript [redacted]

Officer [redacted] was not there. How can Judge [redacted] be diligent and impartial and not question these contradicting testimonies in her court?

====WAS THERE A [redacted] NO INSURANCE VIOLATION/BEHAVIOR CITATION OR NOT?

Officer [redacted] marked an X for [redacted] VEH #1 in the Accident Report (B) NO IMPROPER ACTION. Section 28 - VIOLATIONS/BEHAVIOR.

But, in testimony, Officer [redacted] stated that he did not fail to show that he issued a ticket to [redacted]

"Q [redacted] "isn't it true that you failed to show that you issued a ticket to [redacted] A (Officer [redacted] No. That is not." P. 15, AV TRONICS, INC. Transcript [redacted]

NOTE: I did not see either officer issue a ticket to [redacted] - nor did I see anyone present a copy of the alleged [redacted] citation(s) during the hearing or any other time.

Did Officer [redacted] testify that he issued [redacted] a citation at the trial [redacted]?

Officer [redacted]

"Yes, I did." P. 13, AV TRONICS, INC. Transcript [redacted]

But, [redacted] contradicted Officer [redacted] He answered, "No," when Prosecutor [redacted] asked him if he had gotten a citation. Unfortunately the transcript on Page 22 indicates "Indiscernible" for his answer. But, ask my attorney and my husband, both witnesses.

Q [redacted] As a result of this accident, were you issued a citation? A [redacted] (Indiscernible) P. 13, AV TRONICS, INC. Transcript [redacted]

My attorney, [redacted] said "Asked and answered, Your Honor. Leading," when [redacted] asked him the question again. THE COURT: Sustained.

====WAS THE IMPACT INTERSECTION RELATED OR NOT?

Officer [redacted] marked an X in the NO box of Section 20 in his accident report. See ARIZONA TRAFFIC ACCIDENT REPORT: See Section 20 - INTERSECTION RELATED.

But, [redacted] indicated on the diagram in the court that I was parked on the corner of [redacted] Street. NOTE: [redacted] are at an intersection.

[redacted]

A "Well, when I came out, I saw her parked here on [redacted] Street."

Prosecutor [redacted] stated in her closing:

"This accident was caused because she either didn't see him or because she was traveling too fast to avoid the collision." P. 26, AV TRONICS, INC. Transcript [redacted]

I ask you to call upon your logic. How could I get up to the 20 miles that Officer [redacted] wrote down on my speeding ticket turning left from the intersection, after being stopped at the intersection of [redacted] per [redacted] who contradicted Officer [redacted] who said that I was traveling Northbound, in broad daylight?

If I were parked on [redacted] Street at the intersection of [redacted] with the driver of the truck backing from the first space, as [redacted] himself testified - again contradicting Officer [redacted] isn't it impossible for a car to get up to 20 MPH in the few feet from the intersection corner to [redacted] truck, who testified that I was parked at [redacted]?

Officer [redacted] wrote on the Arizona Traffic Ticket and Complaint (A), citing me for FAILURE TO CONTROL TO AVOID AN ACCIDENT

How could I fail to control my vehicle in the space of a few feet in the intersection turning left - per [redacted] testimony - before the collision?

=====HOW FAST WAS I TRAVELING?

You can see on my Arizona Traffic Ticket and Complaint that the SPEED box is marked Approx. 20 and that 25 is in the Posted box.

I told the officer that I was going app. 10 - 15. That I was traveling north on [redacted] But, he wrote down 20, and in the next box, Speed Measurement Device "Admission". He wrote this right in front of me on the bench in front of the [redacted] bar where he asked me to sit down with him as he filled out the ticket.

I froze when I saw him do that. I didn't know what to do or say. So, I just froze when I saw him write that. I had called 911 trusting that I could get help, but instead of getting help, I felt violated and threatened.

=====THE DIAGRAM

The diagram (on the easel in the court) as well as the diagram in Officer [redacted] accident report visually shows that [redacted] truck was not yet out of the parking space:



"Your Honor, if you'll take even a cursory look at the diagram, the collision occurred right at the top of the parking space where [redacted] said he was parked. So, he didn't back out and get turned. He backed out into the defendant's vehicle." P. 227-28, AV TRONICS, INC. Transcript [redacted]



=====THE COURT:

"...it is the State's burden of proof to convince the Court by a preponderance of the evidence that the traffic violation has been committed." P. 3, AV TRONICS, INC. Transcript [redacted]

Where was the "preponderance of evidence that the traffic violation has been committed" based upon the trial transcript, the accident report and the speeding ticket? It was not there.

What about Arizona's backing law that puts the responsibility on drivers backing out to do so in a safe manner? Was it fair, impartial and diligent for Judge [redacted] to have ignored this law, that my attorney pointed out to her? No.

In closing, these are some of the glaring reasons that have led me to believe that Judge [redacted] treated me unfairly.

Costs to continue fighting this unfairness toward me skyrocketed. Ultimately, I tried filing an appeal on my own, but missed the filing date by three days because I did not realize that in court, calendar days included weekends. Though I asked Judge [redacted] office personnel to ask her to allow the late filing, Judge [redacted] denied my late filing.

I have suffered emotionally, to the point of waking at all hours with my mind racing about this. I feel violated and victimized. I believe that what happened to me in her court is illogical, unreasonable and irresponsible.

My driving record shows that since 1958 when I started driving as a teen, I have never caused an accident, and I didn't cause this one.

I hesitated a long time before bringing this to your attention because of possible consequences here in [redacted] County. Certainly, I will never be able to go to [redacted] AZ again and feel safe. I used to enjoy going shopping there and [redacted] but I will not go there now.

Whether the root cause of her unfair treatment was intentional or because of a lack of legal education, diligence, integrity and the ability to be impartial given the facts, I do not know. But, I do know that her actions have caused me continuing loss of time, deep emotional and financial stress – as well as loss of trust and confidence in her judiciary service and local police.

I am sorry to have to report such a thing to you, but I feel that it is necessary for citizens to speak out when we suffer because of the unjust actions of those in authority, whom we should be able to trust. I sincerely hope that nobody else in [redacted] Court has to suffer the agony that I have gone through, and continue to go through.

Thank you for your time and diligence in reviewing this serious matter.

