

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Arnaz T. Whitelaw, Jr.,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

March 22, 2022

Court of Appeals Case No.
21A-CR-1917

Appeal from the Elkhart Superior
Court

The Honorable Teresa L. Cataldo,
Judge

Trial Court Cause No.
20D03-1808-F4-52

Bradford, Chief Judge.

Case Summary

[1] On August 4, 2018, Arnaz Whitelaw, Jr. was a passenger in a vehicle being driven by Tyreck Smith. A police officer initiated a traffic stop after she observed Smith commit a violation. Although Smith complied with the officer's instructions during the stop, Whitelaw did not, behaving in a manner that made the officer suspicious and concerned for her safety. Various drugs were eventually recovered from Whitelaw's person and the area of both Smith's vehicle and the officer's police-issued vehicle where Whitelaw had been sitting. The State eventually charged Whitelaw with Level 4 felony possession of methamphetamine and Class B misdemeanor possession of marijuana. A jury found him guilty of these charges. Whitelaw contends on appeal that the trial court abused its discretion in admitting the drug evidence recovered as a result of the traffic stop, arguing that the stop was pretextual and the resulting search violated his constitutional rights. Concluding otherwise, we affirm.

Facts and Procedural History

[2] In August of 2018, Smith was dating Myriah Grant. On August 4, 2018, Grant allowed Smith to use her white Pontiac while she was at work. There were no drugs in the car when Grant lent her vehicle to Smith and Smith did not have any drugs in his possession on that day. At some point after dropping Grant off at work, Smith picked up Whitelaw.

- [3] Elkhart City Police Officer Crisha Bishop was patrolling near the 1200 block of South Main Street in Elkhart on the afternoon of August 4, 2018, when she observed Smith commit a traffic infraction, *i.e.*, fail to use his turn signal 200 feet prior to turning. After making this observation, Officer Bishop activated her emergency lights and initiated a traffic stop.
- [4] When Officer Bishop pulled the car over, Smith was in the driver's seat and Whitelaw was in the passenger seat. Officer Bishop observed movement inside the vehicle, so she instructed Smith and Whitelaw to "put their hands up to where [she] could see them." Tr. Vol. II p. 21. Smith complied, but Whitelaw did not and instead kept reaching towards the floorboard of the vehicle. Officer Bishop repeatedly instructed Whitelaw to stop moving and show his hands, but he failed to comply with Officer Bishop's instructions.
- [5] At some point, Whitelaw got out of the vehicle and reached for his waistband, after which Officer Bishop drew her service weapon and again instructed Whitelaw to "put his hands up." Tr. Vol. II p. 23. Whitelaw did not comply with Officer Bishop's instructions. He then "briefly got back in the vehicle and then he got back out of the vehicle. And then when he got back out of the vehicle, he started reaching towards his ankles and like spinning in circles." Tr. Vol. II p. 23. Whitelaw, who was wearing "multiple pairs of pants" then "took his tank top off and threw it on top of the car." Tr. Vol. II p. 23. Officer Bishop continued to give Defendant commands to stop moving. Whitelaw eventually complied with her instruction to walk away from the vehicle and towards her.

[6] Corporal Jesse Morgenthaler (“Corp. Morgenthaler”) arrived to back up Officer Bishop while Whitelaw was refusing to comply with Officer Bishop’s commands. When Whitelaw eventually complied with Officer Bishop’s instructions, Corp. Morgenthaler handcuffed Whitelaw. Corp. Morgenthaler then patted down Whitelaw for weapons and placed Whitelaw in the backseat of Officer Bishop’s patrol vehicle. During the entire episode, Smith remained in the driver’s seat of the vehicle “with his hands out [of] the window.” Tr. Vol. II p. 26.

[7] When Officer Bishop reapproached the vehicle, she smelled the odor of raw marijuana emanating from inside the vehicle, an odor that she had smelled “[h]undreds of times” before. Tr. Vol. II p. 28. Officer Bishop then searched the vehicle. While she did not find anything on the driver’s side, on the passenger side she “located several pill bottles on the floorboard area” and a “small clear plastic baggie that had a crystal-like substance inside of it.” Tr. Vol. II p. 29. Based on her experience as a police officer, Officer Bishop suspected that the crystal-like substance was methamphetamine. Officer Bishop also found “a green, leafy substance on the floorboard area of the passenger compartment” that again, based on her experience as a police officer, she recognized as “marijuana shake.”¹ Tr. Vol. II p. 32.

¹ Officer Bishop testified that marijuana shake is little pieces of marijuana, describing it as the excess when you take a marijuana bud and you grind it down to put it in a joint or to smoke it; it’s when you roll a joint, or something, usually “shake” is like what’s gonna fall

[8] Officer Bishop then transported Whitelaw to the Elkhart City Police Department Detention Center. At some point during the short ride to the Detention Center, Whitelaw, who had been the only passenger in Officer Bishop’s vehicle that day, told Officer Bishop that he was hot and asked her to roll down her window. When she did so, Whitelaw tried “to spit something out of the window”; which turned out to be a clear plastic baggie containing suspected marijuana. Tr. Vol. II p. 36.

[9] Upon arriving at the station, Officer Bishop searched her vehicle and discovered a clear plastic bag on the backseat under where Whitelaw was sitting containing “a crystal-like substance in several of the baggies, and there was a white powdery substance in another baggie and, then, a large quantity of orange circular pills.” Tr. Vol. II p. 38. During the booking process, a corrections officer found a pocketful of green leafy substance, which, based on the officer’s training and experience, he identified as marijuana. Forensic testing subsequently revealed that the crystal-like substance found in the baggies was methamphetamine, with a combined weight of over eleven grams.

[10] On August 8, 2018, the State charged Whitelaw with five counts: Count I – Level 4 felony possession of cocaine, Count II – Level 4 felony possession of methamphetamine, Count III – Level 6 felony possession of a legend drug,

out of the joint as you’re rolling it. So it could be -- it’s a loose part of like the marijuana that’s already been broken down; so it can scatter.

Tr. Vol. II p. 32.

Count IV – Class A misdemeanor possession of a controlled substance, and Count V – Class B misdemeanor possession of marijuana. The State amended the charging information on or about June 27, 2019, in which it charged Whitelaw with four counts.² On July 14, 2021, the State moved to dismiss the following charges: Counts II – Level 6 felony unlawful possession of a legend drug and Count III – Class A misdemeanor possession of a controlled substance. Also on July 14, 2021, the trial court granted the State’s motion to dismiss.

[11] Following trial, the jury found Whitelaw guilty of the only two remaining charges, *i.e.*, Level 4 felony possession of methamphetamine and Class B misdemeanor possession of marijuana. On August 19, 2021, the trial court sentenced Whitelaw to ten years for Level 4 felony possession of methamphetamine and 180 days for Class B misdemeanor possession of marijuana. The trial court ordered that the sentences to be served consecutively and suspended the last three years of the sentence to probation.

Discussion and Decision

[12] Whitelaw contends that the trial court abused its discretion in admitting the evidence recovered following the initiation of the traffic stop.

² We note that the parties did not include a copy of the amended charging information in the record on appeal. However, based on other documents in the record, it appears that the State omitted the Level 4 felony possession of cocaine charge from the amended charging information.

Generally, a trial court's ruling on the admission of evidence is accorded a great deal of deference on appeal. Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion and only reverse if a ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights.

Hall v. State, 36 N.E.3d 459, 466 (Ind. 2015) (internal quotations omitted).

- [13] Whitelaw claims that the trial court abused its discretion in admitting the drug evidence because the stop was an unconstitutional pre-textual stop. The State argues that Whitelaw waived this claim because he did not object to its admission at trial. Specifically, the State argues that Whitelaw “made zero objections to the admission of drug evidence on grounds that the stop was pre-textual and therefore unconstitutional.” Appellee’s Br. p. 12. “To preserve a claim for review, counsel must object to the trial court’s ruling and state the reasons for that objection.” *Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018). “A party’s failure to object to an alleged error at trial results in waiver[.]” *Id.* “Grounds for objection must be specific and any grounds not raised in the trial court are not available on appeal.” *Grace v. State*, 731 N.E.2d 442, 444 (Ind. 2000). Given that Whitelaw did not object at trial to the admission of the evidence on the grounds advanced on appeal, we conclude that he has waived this claim on appeal. We further conclude that Whitelaw has waived any claim that admission of the challenged evidence constituted fundamental error because he did not argue fundamental error in his appellate brief. *See Curtis v.*

State, 948 N.E.2d 1143, 1148 (Ind. 2011) (“Because Curtis failed to allege fundamental error in his principal appellate brief, the issue is waived.”).

[14] Waiver notwithstanding, Whitelaw’s claim fails on its merits. As Whitelaw acknowledges, a stop is valid if there is an observable traffic violation.

Police officers may stop a vehicle when they observe minor traffic violations. A stop is lawful if there is an objectively justifiable reason for it, and a stop may be justified on less than probable cause. If there is an objectively justifiable reason, then the stop is valid whether or not the police officer would have otherwise made the stop but for ulterior suspicions or motives.

Santana v. State, 10 N.E.3d 76, 78 (Ind. Ct. App. 2014) (internal citation omitted).

[15] Officer Bishop testified that she initiated the traffic stop after she observed Smith commit a traffic infraction, *i.e.*, fail to use his turn signal 200 feet prior to turning. Indiana Code section 9-21-8-25 provides that “[a] signal of intention to turn right or left shall be given continuously during not less than the last two hundred (200) feet traveled by a vehicle before turning or changing lanes.” While Officer Bishop did not testify to the exact number of feet there were before Smith turned, she clearly testified that she observed Smith fail to use his turn signal at least 200 feet prior to turning. The stop, therefore, was valid. *See generally, Farris v. State*, 144 N.E.3d 814, 821 (Ind. Ct. App. 2020) (upholding a traffic stop for failure to use a turn signal for 200 feet despite the fact that the initiating officer did not testify to exactly how many feet there were between when the driver first used his turn signal and when he turned); *Quintanilla v.*

State, 146 N.E.3d 982, 986 (Ind. Ct. App. 2020) (upholding the validity of a traffic stop based on a turn-signal violation); *Santana*, 10 N.E.3d at 78 (concluding that an officer’s testimony that the driver did not signal for the proper distance before turning is sufficient to support a conclusion that the driver committed a traffic violation that would permit a lawful traffic stop). As a result, the trial court did not abuse its discretion in admitting the challenged evidence.

[16] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.