

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

State of Indiana,
Appellant-Plaintiff

v.

Joseph S. Ray,
Appellee-Defendant



March 11, 2024

Court of Appeals Case No.
23A-CR-1300

Appeal from the Lawrence Superior Court
The Honorable Robert R. Cline, Judge

Trial Court Cause No.
47D02-2303-CM-452

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] Joseph S. Ray was stopped after police, while driving behind him, could not read the license plate on his car. Ray was charged with two misdemeanor operating while intoxicated offenses, and he moved to suppress evidence arising out of the stop. The trial court granted the motion, finding that, although the officer had reasonable suspicion to stop Ray, the Bureau of Motor Vehicles (BMV) was to blame for the situation by issuing temporary plates with a plastic covering. The State appeals,¹ arguing that the stop was valid and there was no evidence presented to support the court’s determination about the BMV.

[2] We reverse and remand.

Facts & Procedural History

[3] At around 1:40 a.m. on March 19, 2023, Bedford Police Department Officer Nicholas Crulo initiated a traffic stop of Ray’s car because Officer Crulo was “unable to clearly read the license plate,” which was a temporary plate. *Transcript* at 29. Officer Crulo thought there was “tape or something” over it and also saw that only one of two license plate lights was illuminated. *Id.* at 54. Officer Crulo drove nearer to Ray’s vehicle in the passing lane but was still not

¹ The State may appeal “[f]rom an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution.” Ind. Code § 35-38-4-2(5).

able to read the license plate. Normally, Officer Crulo calls in a license plate number to dispatch before initiating a stop but was unable to do so.

[4] Once stopped, Officer Crulo walked up to driver's side of the car and explained to Ray that he stopped him because he could not read the license plate. He then asked for Ray's license and registration. While sorting through papers for his registration, Ray mentioned that he had just recently "got this car licensed." *State's Exhibit 1*. Officer Crulo smelled alcohol on Ray's breath and observed that he had glassy, bloodshot eyes and exhibited poor dexterity. Officer Crulo also saw a bottle of alcohol on the passenger seat. At some point, another officer arrived on the scene, and Ray performed field sobriety tests.

[5] The next day, the State charged Ray with Class A misdemeanor operating a vehicle while intoxicated endangering a person and Class C misdemeanor operating a vehicle while intoxicated. In April 2023, Ray filed a motion to suppress, seeking suppression of all of the evidence "resulting from the unlawful traffic stop," which he claimed was not supported by reasonable suspicion. *Appendix* at 43.

[6] At the suppression hearing, Officer Crulo testified that he was not able to read Ray's license plate from a distance of fifty feet. He stated that, even after stopping Ray's car, he still could not read the plate until he was walking toward it "from an off angle" and then, from around six feet, could only partially read it. *Transcript* at 29, 32. He described that the plate appeared to be covered by "a plastic bag" or "a plastic covering of some sort." *Id.* at 44, 45.

[7] A video from Officer Crulo's body camera was admitted and played at the suppression hearing. Officer Crulo's police vehicle was parked behind Ray's car. At times, Ray's license plate was included briefly in the frame of Officer Crulo's body camera as he walked to and from his police vehicle at the scene. The area was illuminated by the headlights of the police vehicle.

[8] Following cross-examination, the trial court questioned Officer Crulo. Their exchange included:

Q: Was the license plate [] on the vehicle, . . . was there anything over it that's not issued by the BMV?

A: There was a plastic, I'll call it a plastic bag. I'm not entirely sure what it was. There was a plastic cover over the license plate, yes sir Your Honor.

Q: Well have you been, have you been to the BMV and received a paper plate?

A: Not in some time Your Honor.

Q: . . . Okay, well I won't go there. But um but there was one functioning license plate light?

A: Yes Your Honor.

Id. at 49.

[9] The State argued that Indiana statutes require that a license plate on a vehicle be maintained free from foreign materials and in a condition to be clearly

legible from a distance of at least fifty feet, which Ray's plate was not, and, further, that as long as the officer's on-the-spot evaluation reasonably suggests that a violation has occurred, the stop is valid. Ray maintained that the stop was improper because Officer Crulo's view of the plate while driving was "very brief and over a very short distance," such that he did not give himself sufficient time to view the plate and the traffic stop of Ray was "premature." *Id.* at 51.

[10] At the conclusion of the hearing, the trial court granted Ray's motion to suppress. The trial court stated, in part:

I believe Officer Crulo and all of his testimony. The real issue here and the real blame in this matter is with the BMV because they have went from issuing regular license plates that are proper. They do issue them with this . . . clear plastic thing over them to put on your license um and that makes it hard to see. But that's not necessarily [Ray's] fault. . . I will note I believe everything Officer Crulo says. The real issue though rests with the BMV. If they provide people a paper plate with a plastic cover on them that renders this Officer unable to see the plates then that's the BMV doing that and that's improper . . . I think if Mr. Ray had put something over the plate to obscure it or prevent someone from reading it I would have a problem with that but in this particular case I'm gonna lay the blame squarely where it belongs and it's with the BMV. I have no problem with what the Officer did. I'm gonna be clear on the record that he did everything right in my opinion and testified completely truthfully. I don't have a problem with how fast he made the stop. I don't have a problem with his entire actions all together . . . I believe that the BMV [ha]s placed him in a basically [] impossible situation by providing this[.] . . . It makes it hard to see from the side but that's not Mr. Ray's problem. The BMV did that, so I believe I have no other recourse but to uh suppress the stop in this case. . . . [T]he BMV needs to fix this problem[.]

Id. at 52-54. The State now appeals. Additional facts will be supplied as necessary.

Discussion & Decision

- [11] Where, as here, the State appeals from a negative judgment, it must show that the trial court's ruling on the suppression motion was contrary to law. *State v. Brown*, 70 N.E.3d 331, 335 (Ind. 2017) (quotations omitted). We evaluate the trial court's findings of fact deferentially, neither reweighing the evidence nor reassessing the credibility of the witnesses. *Id.*; *State v. Washington*, 898 N.E.2d 1200, 1203 (Ind. 2008). We will affirm if we find within the record substantial evidence of probative value to support the judgment. *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). We review the trial court's conclusions of law, including determinations of reasonable suspicion, de novo. *State v. Keck*, 4 N.E.3d 1180, 1183 (Ind. 2014).
- [12] The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution protect citizens from unreasonable searches and seizures. *Combs v. State*, 878 N.E.2d 1285, 1288 (Ind. Ct. App. 2008). A police officer may stop a vehicle when he observes a minor traffic violation. *Id.* Such a stop does not run afoul of either constitutional provision. *Id.* The State has the burden of demonstrating that the measures it used to seize evidence were constitutional. *State v. Davis*, 770 N.E.2d 338, 340 (Ind. Ct. App. 2022).

[13] Ind. Code § 9-18.1-4-4, governing license plate display, requires, among other things, that a license plate be “maintained free from foreign materials and in a condition to be clearly legible.” I.C. § 9-18.1-4-4(b). Temporary license plates issued by the BMV are “subject to” those requirements. *See* I.C. § 9-18.1-4-4(c) (stating interim plates issued or used by dealer may be displayed on rear of vehicle or in the back left window and are “subject to subsection (b)”), -4(d) (stating temporary plates from BMV must be displayed in the same manner as an interim plate). A person who violates I.C. § 9-18.1-4-4 commits a Class C infraction. I.C. § 9-18.1-4-4(f). Another statute provides that a rear registration plate must be illuminated with a white light and make the plate clearly legible from a distance of fifty feet to the rear. Ind. Code § 9-19-6-4. When an officer believes in good faith that a person has committed an infraction, the officer may detain the person for a time sufficient to inform them of the allegation and obtain the person’s identifying information. Ind. Code § 34-28-5-3.

[14] In urging affirmance of the trial court’s suppression order, Ray asserts, among other things, that the trial court “correctly found that the State failed to show there was reasonable suspicion to support the traffic stop.” *Appellee’s Brief* at 6. The trial court, however, did not determine that the State failed to show reasonable suspicion. To the contrary, the trial court repeatedly stated that it fully believed Officer Crulo’s testimony – which included testimony that he could not read the plate when driving behind Ray’s car at a distance of fifty feet or less and that the license plate had some sort of plastic covering on it.

Further, the court expressly found that Officer Crulo “did everything right” in terms of the stop. *Transcript* at 53.

[15] Despite finding that it had not “a single issue with what the Officer did,” and stating that Officer Crulo “did his job and did it the right way,” the trial court determined that it had “no other recourse” than to suppress the evidence because the BMV – an arm of the government– was to blame because it had issued the temporary plate with a plastic covering that was hard to read. *Id.* We must agree with the State that there was “no evidence” supporting the trial court’s finding that the BMV issued Ray a plate in a bag or with a plastic covering. *Appellant’s Brief* at 10. Indeed, there was no evidence about the BMV whatsoever. Rather, the trial court unilaterally made the factual leap that the plate displayed on Ray’s car had been received in that condition from the BMV.²

[16] On this record, where the court’s decision to suppress the evidence was premised on “an unsupported assumption” about the BMV’s issuance of temporary plates, *Reply Brief* at 4, we cannot say that there is substantial evidence of probative value to support the judgment. *See Quirk*, 842 N.E.2d at 340. Accordingly, we reverse the trial court’s suppression order and remand for further proceedings.

² We do not address the effect, if any, on the validity of the stop if Ray were to establish at trial that the plate displayed on his vehicle was in the same condition as received from the BMV.

[17] Judgment reversed and remanded.

Weissmann, J. and Kenworthy, J., concur.

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