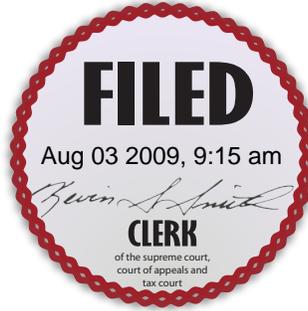


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)
)
 Appellant-Plaintiff,)
)
 vs.) No. 19A05-0903-CR-147
)
 JONATHAN DANT,)
)
 Appellee-Defendant.)

APPEAL FROM THE DUBOIS SUPERIOR COURT
The Honorable Donald G. Hendrickson, Senior Judge
Cause No. 19D01-0801-CM-33

August 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

The State appeals the trial court's ruling granting Johnathan Dant's motion to suppress. We reverse.

Issue

The State raises one issue on appeal, which we restate as whether the trial court's order granting Dant's motion to suppress was contrary to law.

Facts

While on patrol on January 13, 2008, Officer Alan Foy of the Jasper Police Department observed Dant make a "wide and fast" left hand turn. Tr. p. 5. Although Foy did not initiate a traffic stop, the nature of the turn prompted him to follow Dant. Dant properly performed two additional turns but failed to properly signal a subsequent turn into a Circle A gas station. Using that failure as probable cause, Foy activated his lights, followed Dant into the gas station, and parked immediately behind him. After approaching Dant, Foy detected the odor of alcohol, prompting him to initiate an operating while intoxicated ("OWI") investigation. Foy conducted three field sobriety tests and administered a portable breath test ("PBT"). Dant failed two of the three field tests and tested at .095 on the PBT. Foy advised Dant of his implied consent rights and placed him under arrest. During a search of Dant's person, Foy found a rolled marijuana cigarette and a plastic bag containing marijuana inside a cigarette pack. Dant later tested at .08 on a Data Master.

Dant was charged with Class A misdemeanor operating a vehicle while intoxicated, two counts of Class C misdemeanor operating a vehicle while intoxicated, and Class C misdemeanor possession of marijuana. Dant moved to suppress all the evidence, alleging that the traffic stop was illegal. After conducting a hearing, the trial court granted Dant's motion. The State now appeals.

Analysis

The State argues that the trial court's order granting Dant's motion to suppress is contrary to law. When appealing from a suppression motion, the State is appealing from a negative judgment. State v. Lefevers, 844 N.E.2d 508, 512 (Ind. Ct. App. 2006). "The State, therefore, must show that the trial court's ruling on the suppression motion was contrary to law." Id. When reviewing a trial court's ruling suppressing evidence, we determine "whether the record discloses 'substantial evidence of probative value that supports the trial court's decision.'" State v. Washington, 898 N.E.2d 1200, 1203 (Ind. 2008) (quoting State v. Quirk, 842 N.E.2d 334, 340 (Ind. 2006)). We will not reverse unless the "evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court." Lefevers, 844 N.E.2d at 512. "We neither reweigh the evidence nor judge the credibility of witnesses and must consider only the evidence most favorable to the judgment." Id.

The State argues that Foy's traffic stop was lawful. We agree. The uncontroverted evidence shows that Dant failed to signal before turning into the gas station. A driver's duty to properly signal before commencing a turn is statutorily

imposed. See Ind. Code § 9-21-8-25. “A signal of intention to turn right or left shall be given continuously . . . before turning or changing lanes.” Id. Law enforcement officers are justified in initiating a traffic stop if a driver fails to properly signal before turning. Peck v. State, 712 N.E.2d 951, 951 (Ind. 1999). Because Dant failed to signal before turning into the gas station, Foy’s traffic stop was justified and lawful.

Dant argues, however, that Foy’s decision to follow him after observing his “wide and fast” turn was improper. Tr. p. 5. He contends that no evidence justified such an investigation because there was no evidence of intoxication until after the stop and no allegations that he created a traffic hazard. According to Dant, therefore, “[t]here was no reasonable cause for [the] lengthy pursuit.” Appellee’s Br. p. 4. Dant, however, raises this argument for the first time on appeal. Therefore, the argument is waived. See Babinchak v. Town of Charleston, 598 N.E.2d 1099, 1103 (Ind. Ct. App. 1992) (“First, we do not consider arguments raised for the first time on appeal.”).

Waiver notwithstanding, we note that Foy’s decision to follow Dant was not baseless; it was premised on the suspect turn made by Dant. Moreover, Dant was not seized as a result of the suspect turn; rather, the turn merely prompted Foy to investigate what he considered suspicious. Law enforcement officers are authorized to investigate suspicious acts – that is what they do. See Bentley v. State, 846 N.E.2d 300, 308 (Ind. Ct. App. 2006), trans. denied. Foy’s decision to follow Dant was not unreasonable.

The State next argues that there was reasonable suspicion justifying Foy’s OWI investigation after he stopped Dant. We review the ultimate determination of reasonable

suspicion de novo. Lefevers, 844 N.E.2d at 515. “Reasonable suspicion exists where the facts known to the officer and the reasonable inferences therefrom would cause an ordinarily prudent person to believe that criminal activity has or is about to occur.” Id. Reasonable suspicion requires more than inchoate and unparticularized hunches; however, it is a less demanding standard than probable cause and requires considerably less proof than that required to establish wrongdoing by a preponderance of the evidence. Id. “Reasonable suspicion is determined on a case-by-case basis by looking at the totality of the circumstances.” Id.

After initiating the traffic stop, Foy detected an alcoholic odor emanating from Dant. Dant argues that the odor, alone, was insufficient to justify further detention. This court, however, has held that the odor of alcohol provides the requisite reasonable suspicion sufficient to justify an OWI investigation. See State v. Whitney, 889 N.E.2d 823, 829 (Ind. Ct. App. 2008). After detecting the alcoholic odor, Foy detained Dant and commenced an OWI investigation. Thus, we conclude there was reasonable suspicion sufficient to justify the investigation.

Conclusion

The traffic stop initiated by Foy was lawful. There was reasonable suspicion justifying Foy’s OWI investigation. The trial court’s ruling ordering the suppression of evidence was contrary to law. We reverse.

Reversed.

NAJAM, J., and KIRSCH, J., concur.