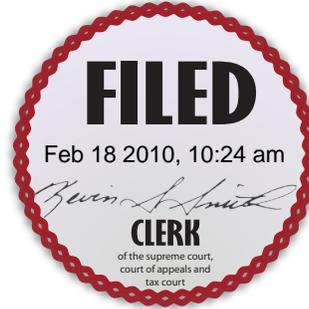


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARK K. PHILLIPS
Boonville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAVID JAMES NEWTON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 87A01-0907-CR-340

APPEAL FROM THE WARRICK SUPERIOR COURT
The Honorable Robert R. Aylsworth, Judge
Cause No.87D02-0712-CM-652

February 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

David James Newton appeals his conviction for operating a vehicle while intoxicated as a class A misdemeanor. We affirm.¹

Issue

Newton raises one issue, which we restate as whether the police officer had reasonable suspicion to stop Newton.

Facts

On December 16, 2008, Indiana State Police Trooper John Puskas was assisting another officer on a traffic stop in Vanderburgh County when Newton drove his vehicle very close to the stopped vehicles. As soon as Newton's vehicle passed by, Trooper Puskas saw the vehicle go "across into the emergency lane and correct[] back onto the road in an abrupt fashion." Tr. p. 7. Trooper Puskas followed Newton into Warrick County and saw him cross into the emergency lane three times and "correct back into the driving portion of the highway." *Id.* at 8. Trooper Puskas activated his emergency lights and stopped Newton on S.R. 66, which is a six-lane highway. While talking to Newton, Trooper Puskas smelled alcohol, and Newton admitted to having a few beers. Trooper Puskas asked Newton to get out of his vehicle, and Newton complied. Newton was staggering and failed the horizontal gaze nystagmus test. Newton refused to take a certified breath test at the police station.

¹ The State did not file an appellee's brief in this case. "A less stringent standard of review applies and an appellant need only establish prima facie error to win a reversal when the appellee fails to file a brief." *Ferrell v. State*, 656 N.E.2d 839, 840 (Ind. Ct. App. 1995).

The State charged Newton with operating a vehicle while intoxicated as a Class C misdemeanor, operating a vehicle while intoxicated as a Class A misdemeanor, failure to signal lane change as a Class C infraction, and seat belt violation as a Class D infraction. After a bench trial, the trial court found Newton guilty of operating a vehicle while intoxicated as a Class A misdemeanor, dismissed the charge of operating a vehicle while intoxicated as a Class C misdemeanor, and entered judgment in favor of Newton on the two alleged infractions. The trial court sentenced Newton to one year with all except twenty days suspended to probation.

Analysis

Newton argues that Trooper Puskas did not have reasonable suspicion to initiate the traffic stop and that “[t]he trial court should have suppressed all evidence obtained as a result of the stop.” Appellant’s Br. p. 14. We first note that Newton did not request that the trial court suppress the evidence from the traffic stop and did not object at trial to Trooper Puskas’s testimony on this basis. The failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error upon appeal. Jackson v. State, 735 N.E.2d 1146, 1152 (Ind. 2000). In addition, a defendant waives his suppression claim if he “makes only a general objection, or objects only on other grounds.” Benberry v. State, 742 N.E.2d 532, 535 (Ind. Ct. App. 2001). The trial court admitted the evidence regarding the traffic stop without objection from Newton or over an objection made on other grounds. Newton has waived this issue.

Waiver notwithstanding, Newton’s argument fails. Under Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968), an officer is permitted to “stop and briefly detain a

person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” Armfield v. State, 918 N.E.2d 316, 319 (Ind. 2009) (quoting United States v. Sokolow, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585 (1989)). We review trial court determinations of reasonable suspicion de novo. Id. The United States Supreme Court has also directed reviewing courts to “make reasonable-suspicion determinations by look[ing] at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” Id. (quoting State v. Bulington, 802 N.E.2d 435, 438 (Ind. 2004)).

Newton argues that Trooper Puskas did not have reasonable suspicion to stop his vehicle because, according to Newton, Trooper Puskas mistakenly thought that Newton violated Indiana Code Section 9-21-8-24² by repeatedly crossing the white line into the emergency lane. According to Newton, Indiana Code Section 9-21-8-24 concerns only movement between traffic lanes rather than the emergency lane.

Newton ignores the totality of the circumstances here. The question before us is whether the facts known to Trooper Puskas at the time he stopped Newton’s car were sufficient to support the belief, in a person of reasonable caution, that an investigation was appropriate. See Hartman v. State, 615 N.E.2d 455, 462 (Ind. Ct. App. 1993). Newton passed Trooper Puskas as he and another officer had a vehicle stopped. Newton

² Indiana Code Section 9-21-8-24 provides, in part: “A person may not: . . . (3) change from one (1) traffic lane to another; unless the movement can be made with reasonable safety. Before making a movement described in this section, a person shall give . . . an appropriate stop or turn signal in the manner provided in sections 27 through 28 of this chapter if any other vehicle may be affected by the movement.”

drove very close to the parked vehicles and crossed over the white line into the emergency lane just after passing the vehicles. Newton then repeatedly crossed the white line and drove into the emergency lane. It is well settled in Indiana that police may stop a vehicle for erratic driving alone. Id. The evidence in this case is clearly enough to justify Trooper Puskas's stop.

Conclusion

We conclude that Newton has waived his argument. Waiver notwithstanding, Trooper Puskas had reasonable suspicion to stop Newton. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.