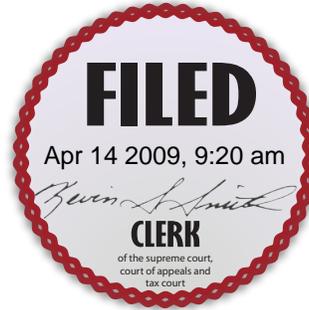


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SHAFT JONES,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 02A03-0811-CR-538

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Marcia L. Linsky Magistrate
Cause No. 02D04-0610-CM-7149

April 14, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Shaft Jones appeals his convictions for Carrying a Handgun without a License,¹ a class A misdemeanor, and Possession of a Police Radio,² a class B misdemeanor. Specifically, Jones argues that the trial court erred by denying his motion to set aside inconsistent verdicts after the jury found him not guilty of failure to use headlights, a class C infraction. In addition, Jones contends that the trial court abused its discretion by failing to strike portions of trial testimony and admonishing the jury, or, in the alternative, denying his motion for a mistrial on the ground that the testimony allowed the jury to infer that Jones had committed a prior criminal act. Finding no error, we affirm the judgment of the trial court.

FACTS

On October 27, 2006, a Fort Wayne police officer, John Drummer, was on patrol when he thought he saw Jones driving a vehicle without the headlights turned on. When Officer Drummer stopped the vehicle, the headlights were turned on, and Jones informed him that he had a handgun in his possession and a valid license to carry it.

Sergeant Berning, who had arrived to assist, took control of and secured Jones's handgun. Officer Drummer checked Jones's handgun license and discovered that it had been revoked by the Indiana State Police. Jones was arrested and, pursuant to departmental policy, a pre-tow inventory search of his vehicle was conducted, which revealed the presence of a police scanner capable of receiving emergency and nonemergency police broadcasts.

¹ Ind. Code § 35-47-2-1.

² Ind. Code § 35-44-3-12.

On October 27, 2006, the State charged Jones with Count I, carrying a handgun without a license, a class A misdemeanor; Count II, possession of a police radio, a class B misdemeanor; and Count III, failure to use headlights, a class C infraction. At Jones's trial, which commenced on May 28, 2008, the State called Major Douglas Shelton of the Indiana State Police. Major Shelton's responsibilities included serving as commander of the central repository for all criminal history records, including firearms, permit licensing, and vehicle crash records. Major Shelton testified that Jones had been issued a four-year handgun license on October 17, 2002, but that his license had been revoked in January 2004 when "we became aware, under Indiana law, that something ha[d] occurred that would no longer make you be eligible to have that permit--." Tr. p. 124. Defense counsel immediately objected.

During a sidebar conference, defense counsel explained that his objection was based on the State's own motion in limine and that Major Shelton's statement would allow the jury to speculate that Jones had done something wrong to get his license revoked. Defense counsel then stated, "So, I'll either ask to have the jury instructed to be admonished to strike that last portion of his answer or move for a mis-trial." Id. at 125. The trial court overruled the objection, and defense counsel immediately requested a mistrial, which was also denied. The trial court explained that the issue was validity of the license, and that if the defense did not want any further questioning on the issue, it would have to stipulate that the license was not valid, which the defense declined to do.

At the end of Major Shelton's testimony, the jury submitted a question to him regarding the circumstances in which a handgun license could be revoked. After

reviewing the question, the parties and the trial court agreed that the question should not be posed to Major Shelton. Defense counsel again requested a mistrial, pointing out that the jury question was evidence that it had been tainted by Major Shelton's testimony regarding Jones's license revocation and that his requests that portions of the testimony be stricken and the jury admonished had both been refused. The trial court noted that defense counsel had never requested an admonishment, but offered to give one at that time. Defense counsel refused, stating that it was too late and again requested a mistrial. The trial court denied the motion for a mistrial and determined that the jury's question would not be asked.

The jury found Jones guilty of carrying a handgun without a license, a class A misdemeanor, and possession of a police radio, a class B misdemeanor. However, the jury found Jones not guilty of failure to use headlights, a class C infraction. During Jones's sentencing hearing, which commenced on May 28, 2008, the trial court sentenced Jones to 270 days imprisonment for carrying a handgun without a license and 180 days for possession of a police radio. The sentences were to run concurrently for an aggregate term of 270 days imprisonment. Jones now appeals.

DISCUSSION AND DECISION

I. Inconsistent Jury Verdicts

Jones argues that the verdicts are inconsistent because the jury found him not guilty of failure to use headlights, while finding him guilty of carrying a handgun without a license and possession of a police radio.

Our Supreme Court has held that “[v]erdicts may be so extremely contradictory and irreconcilable as to require corrective action.” Jackson v. State, 540 N.E.2d 1232, 1234 (Ind. 1989). However, “perfect logical consistency is not required and only extremely contradictory and irreconcilable verdicts warrant corrective action.” Parks v. State, 734 N.E.2d 694, 700 (Ind. Ct. App. 2000). In addition, where a defendant is acquitted of some charges and convicted of others, the results will survive a claim of inconsistency where the evidence is sufficient to support the verdicts. Id. In resolving a claim of inconsistent verdicts, this court will not engage in speculation about the jury’s thought processes or motivation, and the jury is free to believe certain portions of a witness’s testimony and not others. Jackson, 540 N.E.2d at 1234.

In the instant case, Officer Drummer testified that Jones admitted to having a handgun in the vehicle when he was stopped. Tr. p. 94. In addition, Major Shelton testified that Jones’s license for the handgun had been revoked, id. at 124, and Jones admitted that he possessed a police radio, id. at 178. Moreover, Jones testified that his headlights could not have been off because they turned on automatically. Id. at 176-77. Therefore, we cannot conclude that there was insufficient evidence to support the jury’s verdicts finding Jones guilty of carrying a handgun without a license and possessing a police radio, and finding Jones not guilty of failure to use headlights. Thus, the verdicts are not inconsistent.

Nevertheless, Jones maintains that because the jury found him not guilty of failure to use headlights, there was no factual basis for the initial traffic stop, and if the stop was

improper, then Officer Drummer was not justified in asking for Jones's handgun license³ and searching the vehicle, which ultimately led the police to the police scanner.

A police officer may stop a vehicle when he observes a minor traffic violation. Ransom v. State, 741 N.E.2d 419, 421 (Ind. Ct. App. 2000). The stop may be justified on less than probable cause, and an officer's good faith belief that a person has committed a violation will justify a stop. Ind. Code § 34-28-5-3; Ransom, 741 N.E. 2d at 421-22.

By contrast, a jury may not render a guilty verdict on a good faith belief that the infraction occurred, but must find that the State proved by a preponderance of the evidence that the defendant committed the infraction. See Slate v. State, 798 N.E.2d 510, 520 (Ind. Ct. App. 2003) (observing that traffic infractions are civil and, therefore, the State must prove the commission of the infraction by a preponderance of the evidence). Thus, the jury's verdict of not guilty for failure to use headlights does render Officer Drummer's stop of Jones's vehicle improper.

Moreover, we note that this argument appears to be an attempt to make an end run around Jones's failure to move to suppress the revoked handgun license and the police scanner, or to object to their admission on the ground that the police stop was improper.

Our Supreme Court has held that:

[t]o preserve a suppression claim a defendant must make a contemporaneous objection that is sufficiently specific to alert the trial judge fully of the legal issue. Where a defendant fails to object to the

³ Jones cites this court's opinion in Lockett v. State, 720 N.E.2d 762 (Ind. Ct. App. 1999), to support his argument that it is improper for a police officer to ask about the presence of weapons when making a traffic stop. We caution counsel that this court's opinion in Lockett was vacated by our Supreme Court in Lockett v. State, 747 N.E.2d 539, 543 (Ind. 2001) (holding that safety concerns justified a police officer asking about the presence of weapons when making a traffic stop). Therefore, it was inappropriate for counsel to cite this court's decision in Lockett.

introduction of evidence, makes only a general objection, or objects only on other grounds, the defendant waives the suppression claim.

Moore v. State, 669 N.E.2d 733, 742 (Ind. 1996) (citations omitted) (emphasis in original). Thus, Jones's failure to bring a motion to suppress or to object at trial is not cured by arguing on appeal that the verdicts are inconsistent.

II. Evidence of Other Crimes

Jones asserts that the trial court abused its discretion when it failed to strike portions of Major Shelton's testimony and admonish the jury, or, in the alternative, to grant his motion for a mistrial. Specifically, Jones maintains that Major Shelton's testimony was improper because it allowed the jury to infer that Jones's handgun license had been revoked because he had committed some other crime.

The decision whether to admit evidence is within the sound discretion of the trial court and will be reversed only for an abuse of discretion. Sallee v. State, 777 N.E.2d 1204, 1210 (Ind. Ct. App. 2002). An abuse of discretion occurs when the trial court makes a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id.

Indiana Evidence Rule 404(b) provides that, in general, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, Rule 404(b) provides a nonexhaustive list of exceptions, and "extrinsic act evidence may be admitted for any purpose not specified in rule 404(b) unless precluded by the first sentence of Rule 404(b)." Thompson v. State, 728 N.E.2d 155, 160 (Ind. 2000). Moreover, a vague reference to

other conduct is not sufficient to trigger Rule 404(b). See Dixson v. State, 865 N.E.2d 704, 712 (Ind. Ct. App. 2007) (stating that “evidence which creates a mere inference of prior bad conduct does not fall within the purview of Evidence Rule 404(b)”).

Here, when Major Shelton was asked about the status of Jones’s handgun license, he answered that the license had been suspended, explaining that “[w]hen we become aware, under Indiana law, that something has occurred that would no longer make you be eligible to have that permit--.” Tr. p. 124. Major Shelton’s explanation was cut short by defense counsel’s objection. This statement, at most, “creates a mere inference of prior bad conduct,” Dixson, 865 N.E.2d at 712, and consequently, does not fall within the purview of Rule 404(b). Because the testimony did not trigger Rule 404(b), the trial court properly overruled defense counsel’s objection and did not err by not admonishing the jury or granting Jones’s motion for a mistrial.

Even assuming solely for argument’s sake that the statement did trigger Rule 404(b), the testimony was not offered for the prohibited purpose of showing that Jones acted in conformity with prior bad conduct. The State bore the burden of proving beyond a reasonable doubt that Jones had carried a handgun away from his dwelling or business. Ind. Code § 35-47-2-1; Harris v. State, 716 N.E.2d 406, 411 (Ind. 1999). Once the State had proved those elements, the burden was on Jones to prove that he possessed a valid license to carry the handgun. I.C. § 35-47-2-24; Harris, 716 N.E.2d at 411. Therefore, Major Shelton’s testimony was necessary for the State to rebut any evidence that Jones might offer to show that he possessed a valid license. Consequently, even if Rule 404(b)

had been triggered, the testimony would have fallen under the exceptions to the rule, and this argument fails.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.