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FILED
Jun 18 2009, 9:56 am
CLERK
of the supreme court, court of appeals and tax court

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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| CHARLES THOMPSON, | ) | |
| | ) | |
| Appellant/Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A05-0811-CR-674 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee/Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William J. Nelson, Judge
Cause No. 49F07-0808-CM-202690

**June 18, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant/Defendant Charles Thompson appeals from his conviction for Class A misdemeanor Marijuana Possession,[1] contending that the search that yielded the contraband was improper. We affirm.

## FACTS AND PROCEDURAL HISTORY

At approximately 5:50 p.m. on August 28, 2008, Indianapolis Metropolitan Police Sergeant Sandra Storkman noticed Thompson's car southbound on Adams Street. (Tr. 4). Sergeant Storkman could not read the temporary plate in Thompson's rear window due to its "slant[,]" so she stopped the car. Tr. p. 4. As Sergeant Storkman approached, she noticed that the date on the temporary plate had been altered. Sergeant Storkman determined that Thompson had purchased the car on "July 15th or 18th" and told him that she would have to have the car towed because it was not properly plated. While waiting for a wrecker, Sergeant Storkman conducted an inventory search of the car. Sergeant Storkman detected the odor of marijuana when she began the search and found a plastic bag containing a leafy green substance in the center console. The plastic bag was later determined to contain 0.92 grams of marijuana.

On August 29, 2008, the State charged Thompson with Class A misdemeanor marijuana possession. On October 23, 2008, the trial court found Thompson guilty as charged. On that day, the trial court sentenced Thompson to one year of incarceration with 267 days suspended.

## DISCUSSION AND DECISION

[1] Ind. Code § 35-48-4-11 (2008).

Thompson contends that the trial court abused its discretion in admitting any evidence regarding the marijuana found in his car because it was not discovered during a valid inventory search. Although Thompson frames the issue as a challenge to the denial of a motion to suppress evidence, he actually appeals from the allegedly erroneous admission of evidence at trial. The admissibility of evidence is within the sound discretion of the trial court. *Curley v. State*, 777 N.E.2d 58, 60 (Ind. Ct. App. 2002), *trans denied*. We will reverse a trial court's decision on the admissibility of evidence only upon a showing of an abuse of that discretion. *Id*. An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id*. The Court of Appeals may affirm the trial court's ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court. *Moore v. State*, 839 N.E.2d 178, 182 (Ind. Ct. App. 2005), *trans. denied*. We do not reweigh the evidence, and consider the evidence most favorable to the trial court's ruling. *Hirsey v. State*, 852 N.E.2d 1008, 1012 (Ind. Ct. App. 2006), *trans. denied*.

The Fourth Amendment, as applied to the States through the Fourteenth Amendment,[2] generally requires a warrant for a search to be considered reasonable. *Taylor v. State*, 842 N.E.2d 327, 331 (Ind. 2006). There are exceptions to this requirement, and the State bears the burden of proving that one of them applies. *Id*. One well-recognized exception to the warrant requirement is a valid inventory search. *Id*. The underlying rationales for the

[2] Although Thompson mentions Article 1, Section 11 of the Indiana Constitution, he does not develop a separate argument based on its provisions.

inventory exception are (1) protection of private property in police custody, (2) protection of police against claims of lost or stolen property, and (3) protection of police from possible danger. *Id*. at 330-31. The threshold question in determining the propriety of an inventory search is whether the impoundment itself was proper. *Id*. at 331. An impoundment is proper when it is either part of the routine administrative caretaking functions of the police or when it is authorized by statute. *Id*.

**A. Whether the Impoundment was Proper**

Here, the impoundment of Thompson's car was authorized by Indiana Code section 9-18-2-43(a) (2008), which provides in relevant part as follows:

> [A] law enforcement officer authorized to enforce motor vehicle laws who discovers a vehicle required to be registered under this article that does not have the proper certificate of registration or license plate:
> (1) shall take the vehicle into the officer's custody; and
> (2) may cause the vehicle to be taken to and stored in a suitable place until:
> (A) the legal owner of the vehicle can be found; or
> (B) the proper certificate of registration and license plates have been procured.

Sergeant Storkman testified that Thompson's car bore an expired temporary license plate that had been altered. The fact that Thompson told Sergeant Storkman that the seller had given him the plate in that condition is immaterial, as our standard of review demands that we view conflicting evidence which is most favorable to the trial court's ruling. In the end, there was evidence that the license plate on the car was invalid, and the controlling statute authorized, if not required, Sergeant Storkman to impound the car. *See Widduck v. State*, 861 N.E.2d 1267, 1270 (Ind. Ct. App. 2007) (concluding that Indiana Code section 9-18-2-43(a) required police to take into custody vehicle which had neither license plate nor

registration).

Thompson seems to argue on appeal, as he did below, that the impoundment was improper because he was not actually charged with the crime of altering a temporary license plate and the allegedly altered plates were not introduced at his trial. *See* Ind. Code § 9-18-26-13 (2008). Thompson, however, provides us with no authority that a subsequent decision not to charge a defendant with the crime or infraction giving rise to an impoundment renders the impoundment invalid, and we are aware of none. We conclude that Sergeant Storkman's impoundment of Thompson's car was proper on the basis that it was not properly plated.

**B. Whether the Inventory Search was Proper**

Even if, as here, there is a proper and lawful custodial impoundment of the vehicle, the constitutional requirement of reasonableness requires that the inventory search itself must be conducted pursuant to standard police procedures. *Combs v. State*, 878 N.E.2d 1285, 1290 (Ind. Ct. App. 2008). This requirement ensures that the inventory search is not a pretext for a general rummaging in order to discover incriminating evidence. *Id*.

> In order to perform this function, the procedures must be rationally designed to meet the objectives that justify the search in the first place, and must sufficiently limit the discretion of the officer in the field. Searches in conformity with such regulations are reasonable under the Fourth Amendment. Thus, to defeat a charge of pretext the State must establish the existence of sufficient regulations and that the search at issue was conducted in conformity with them.

*Fair v. State*, 627 N.E.2d 427, 435 (Ind. 1993) (citations omitted).

Although Thompson contends on appeal that the State failed to establish that the search was conducted in conformity with sufficient regulations, he failed to object on this

basis below.

> To 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. *Smith v. State*, 565 N.E.2d 1059 (Ind. 1991). Where a defendant fails to object to the introduction of evidence, *see Lindsey v. State*, 485 N.E.2d 102 (Ind. 1985), makes only a general objection, *see Riley v. State*, 427 N.E.2d 1074 (Ind. 1981), or objects only on other grounds, *see Schweitzer v. State*, 531 N.E.2d 1386 (Ind. 1989), the defendant waives the suppression claim.

*Moore v. State*, 669 N.E.2d 733, 742 (Ind. 1996).

Although Thompson made a contemporaneous and specific objection to the admission of the evidence seized from his car, it was only on the basis that the *impoundment*,[3] and not the subsequent inventory search, was improper. As previously mentioned, these are two completely different questions. *See Combs*, 878 N.E.2d at 1290. At no point did Thompson claim in the trial court that Sergeant Storkman failed to conform with sufficient regulations regarding inventory searches. Put another way, Thompson complains of this alleged deficiency only now, when it is too late for the State to cure it.

This scenario is analogous to the ones we addressed in two similar cases, *Rembusch v. State*, 836 N.E.2d 979 (Ind. Ct. App. 2005), *trans. denied*, and *Purifoy v. State*, 821 N.E.2d 409 (Ind. Ct. App. 2005), *trans. denied*. In *Rembusch*, the defendant claimed on appeal that the State had failed to lay the proper foundation for the admission of a breath test instrument certification document. *Rembusch*, 836 N.E.2d at 982. In concluding that Rembusch had

[3] We acknowledge that Thomson's trial counsel did argue that there "was no basis for an inventory search[,]" but only on the ground that "without the [charge for altering a temporary license plate] the basis for an inventory search does not exist." Tr. pp 9-10. This argument could speak only to the propriety of the impoundment and not the subsequent search.

waived the issue, we noted that his failure to object denied "the State [the] opportunity to cure any alleged deficiencies" and that he had "failed to show that the State could not have provided the required foundation had a proper objection been lodged." *Id*. at 983.

In *Purifoy*, the defendant failed to object at trial to testimony regarding a computerized pawnshop database that he claimed on appeal was hearsay and violated the "best evidence" rule. *Purifoy*, 821 N.E.2d at 412. We noted that "the purpose of the contemporaneous objection rule 'is to promote fair trial by precluding a party from sitting idly by and appearing to assent to an offer of evidence or ruling by the court only to cry foul when the outcome goes against him.'" *Id*. (quoting *Stewart v. State*, 567 N.E.2d 171, 174 (Ind. Ct. App. 1991)). "The rule requires parties to voice objections in time so that harmful error may be avoided or corrected and a fair and proper verdict will be secured." *Id*. In concluding that Purifoy had waived the issue, we noted that if he "had objected to this evidence at trial, the State might have been able to present sufficient preliminary evidence to satisfy an exception or exceptions to the hearsay rule or to produce a computer printout of the database" and that "[o]n appeal, the State has no opportunity to present such evidence." *Id*. at 412-13. We concluded that "[w]e are reluctant to say the State could not have satisfied the hearsay rules or the 'best evidence' rule when the State had no opportunity to litigate those issues before the trial court." *Id*. at 413.

Here, Thompson's failure to object on the ground that the inventory search was invalid for failing to satisfy sufficient standards denied the State the opportunity to litigate

the issue.[4] Thompson has not established that the State could not have satisfied this requirement had a proper objection been lodged, and, as in *Rembusch* and *Purifoy*, we are unprepared to penalize the State when it had no opportunity to litigate the question in the trial court. Because Thompson advances a different ground now than the one he argued below, we conclude that he has waived any challenges to the conduct of the inventory search for appellate review.

The judgment of the trial court is affirmed.

CRONE, J., and BROWN, J., concur.

[4] We recognize that in *Rembusch* and *Purifoy*, no objections were made on any basis to the allegedly inadmissible evidence. We conclude, however, that the logic of those cases applies with equal force where, as here, an objection was made, but on a different ground than that advanced on appeal. It seems to us that an objection made on a ground different than that advanced on appeal denies the opposing party the opportunity to litigate the issue to the same degree as no objection at all.