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IN THE
COURT OF APPEALS OF INDIANA

DAVID B. TYRA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 05A04-1012-CR-762
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Dean A. Young, Judge
Cause No. 05C01-0810-FC-52

June 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

David B. Tyra appeals his conviction following a bench trial for operating a motor vehicle while privileges are forfeited for life, a class C felony.[1]

We affirm.

ISSUE

Whether the trial court abused its discretion in admitting evidence.

FACTS

On the night of October 16, 2008, Blackford County Sheriff's Deputy Glenn Oliver observed Tyra driving a minivan south on Jefferson Street in Hartford City. Tyra continued to travel for two blocks with the brakes activated. Finding this unusual, as the vehicle did not appear to be coming to a stop, Deputy Oliver began to follow Tyra's vehicle in his patrol vehicle. As he did so, he asked dispatch to run the license plate. Dispatch informed Deputy Oliver that the license plate was "'[n]ot on file,'" meaning that "the Bureau of Motor Vehicles ha[d] no record of that being a valid plate in the State of Indiana." (Tr. 69). In Deputy Oliver's experience, this indicated that the license plate may have been "counterfeit or altered." (Tr. 70). Accordingly, Deputy Oliver initiated a traffic stop.

Deputy Oliver approached Tyra and requested his driver's license and registration, neither of which Tyra provided. Tyra, however, gave Deputy Oliver an Indiana identification card. Tyra then advised Deputy Oliver that "he knew he shouldn't be

[1] Ind. Code § 9-30-10-17.

driving" because "his driver's license status was HTV," meaning he was an habitual traffic violator. (Tr. 74). After Deputy Oliver verified Tyra's status as an "habitual traffic violator for life," he placed Tyra under arrest. (Tr. 75).

On October 20, 2008, the State charged Tyra with operating a motor vehicle while privileges are forfeited for life, a class C felony. On September 9, 2009, Tyra, by counsel, filed a motion to suppress. Following a hearing, the trial court denied Tyra's motion to suppress on November 20, 2009.

The trial court conducted a bench trial on October 20, 2010, during which Tyra objected to the admission of the evidence obtained as a result of the traffic stop. The trial court found Tyra guilty as charged. The trial court held a sentencing hearing on November 17, 2010, after which it sentenced Tyra to eight years.

DECISION

Tyra asserts that the traffic stop violated his rights under Fourth Amendment of the United States Constitution because Deputy Oliver lacked reasonable suspicion to conduct an investigatory stop.[2] Tyra's Br. at 6. Specifically, he argues that the report that his license plate was "not on file" did not support a belief that "the plate was invalid, expired, stolen, or on the wrong vehicle . . . ." Tyra's Br. at 9.

> We note that the admission or exclusion of evidence is within the sound discretion of the trial court, and we will reverse the trial court's determination only for an abuse of that discretion. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts

[2] Tyra concedes that "there was no violation of his rights in the officer checking his license plate before stopping [his] vehicle" because it did not constitute a search. S*ee, e.g., Maloney v. State*, 872 N.E.2d 647 (Ind. Ct. App. 2007).

> and circumstances before the trial court. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the appellant's favor. As a rule, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. In determining whether an evidentiary ruling affected a party's substantial rights, we assess the probable impact of the evidence on the trier of fact.

Redding v. State, 844 N.E.2d 1067, 1069 (Ind. Ct. App. 2006) (citations omitted).

> Because a traffic stop is a seizure under the Fourth Amendment, police may not initiate a stop for any conceivable reason, but must possess at least reasonable suspicion that a traffic law has been violated or that other criminal activity is taking place. An officer's decision to stop a vehicle is valid so long as his on-the-spot evaluation reasonably suggests that lawbreaking occurred. This discretion, however, does not extend to an officer's mistaken belief about what constitutes a violation as a matter of law.

Meredith v. State, 906 N.E.2d 867, 869-70 (Ind. 2009) (internal citations omitted).

Indiana Code section 9-18-2-27 provides that a vehicle required to be registered with the Bureau of Motor Vehicles may not be used or operated upon the highways if the motor vehicle displays a fictitious registration number. In this case, dispatch reported that the license plate number on Tyra's vehicle was "not on file" with the Bureau of Motor Vehicles, indicating that the license plate had been altered or was fraudulent. This gave Officer Oliver reasonable suspicion to initiate a traffic stop in order to investigate further. *See Smith v. State*, 713 N.E.2d 338, 342 (Ind. Ct. App. 1999) (finding the officer's traffic stop to be valid where the officer had reasonable suspicion to believe that a blue vehicle's license plate had been stolen or retagged when a computer check reported that the license plate had been registered to a yellow vehicle). Accordingly, we

find no violation of Tyra's rights under the Fourth Amendment of the United States Constitution.[3]

Affirmed.

RILEY, J., and BARNES, J., concur.

[3] Tyra does not argue on appeal that Officer Oliver violated his rights under the Indiana Constitution.