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:

BARBARA J. SIMMONS
Oldenburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

FILED
Aug 14 2009, 8:44 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

DARRYL YORK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0901-CR-15
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Louis Rosenberg, Judge Pro Tempore
Cause No. 49F10-0803-CM-60623

August 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Darryl York appeals his convictions for Driving While Suspended, as a Class A misdemeanor,[1] and Possession of Paraphernalia, as a Class A misdemeanor.[2] We affirm.

Issue

York raises one issue of whether the trial court abused its discretion in admitting evidence obtained during the traffic stop.

Facts and Procedural History

On March 15, 2008, Indianapolis Metropolitan Police Officer Charles Tice initiated a traffic stop after observing York drive in a parking lot and pull onto the street without stopping.[3] Officer Tice asked York for his driver's license and vehicle registration. When York told Officer Tice that he did not have a license, the officer asked if York's license was suspended or whether York had ever received a license. Eventually, York provided his Indiana identification card, and Officer Tice ran the information through the Bureau of Motor Vehicle records and determined that York's license was suspended. The record also indicated that York had a prior conviction for Driving While Suspended. Officer Tice placed York under arrest. During the search incident to arrest, Officer Tice discovered a glass pipe in York's coat pocket. Later tests indicated that the pipe contained cocaine-based residue.

---

[1] Ind. Code § 9-24-19-2.

[2] Ind. Code § 35-48-4-8.3.

[3] Ind. Code § 9-21-8-42 ("A person who drives a vehicle within a business or residence district that is emerging from an alley, a driveway, or a building shall stop the vehicle immediately before driving onto a sidewalk or into the sidewalk area extending across an alleyway or a private driveway.").

The next day the State charged York with Driving While Suspended, as a Class A misdemeanor, and Possession of Paraphernalia, as a Class A misdemeanor. During the bench trial, York, by counsel, moved to suppress any evidence from the point beyond which York admitted to not having a license because Officer Tice then questioned York about the status of his license without first reading the Miranda rights.[4] After taking the motion under advisement and finishing the trial, the trial court denied the motion and found York guilty as charged. York was sentenced to 365 days in the Marion County Jail, with 353 days suspended to probation, for the first count and 365 days, with 305 days suspended to probation, for the second count. The sentences were ordered to be served concurrently, and York's driver's license was suspended for 180 days.

York now appeals.

Discussion and Decision

York contends that the trial court abused its discretion in admitting all evidence from the traffic stop obtained after the point that he admitted that he did not have a driver's license because Officer Tice questioned York about the status of his license without York being read his Miranda rights. Specifically, York contends that this evidence should be suppressed based on Article 1, Section 11 of the Indiana Constitution. We find York's argument to be misplaced. The purpose of the Miranda warnings is to protect a person's Fifth Amendment

---

[4] See Miranda v. Arizona, 384 U.S. 436, 479 (1966) ("He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.").

rights under the Self-Incrimination Clause, to prevent an individual from being compelled to testify against himself. Hendricks v. State, 897 N.E.2d 1208, 1214 (Ind. Ct. App. 2008). York's challenge to exclude the evidence at trial was not based on a provision of the Indiana Constitution but rather on the premise of Miranda warnings that are based on the federal constitution.[5] Therefore, he has waived the issue. See Crafton v. State, 821 N.E.2d 907, 912 (Ind. Ct. App. 2005) ("As a general rule, a party may not present an argument or issue to an appellate court unless the party raised the same argument or issue before the trial court."). York does not challenge the trial court's decision based on federal constitutional provisions.

Affirmed.

DARDEN, J., concurs.

ROBB, J., concurs in result with opinion.

---

[5] York's objection and Memorandum in Support of Defendant's Motion to Suppress make no mention of the Indiana Constitution. Furthermore, the case used to support the argument involves only a federal constitutional law analysis. See State v. Linck, 708 N.E.2d 60 (Ind. Ct. App. 1999), trans. denied.

IN THE
COURT OF APPEALS OF INDIANA

DARRYL YORK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0901-CR-15
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

ROBB, Judge, concurring in result with opinion.

Because I believe the trial court did not err in admitting the disputed evidence but disagree with the majority's holding that York waived his issue on appeal, I concur in result.

Although York objected at trial on the basis of Miranda, the trial court admitted the evidence – after the fact, as the trial court took York's in-trial objections under advisement and ruled on them a month later – pursuant to the theory of inevitable discovery. York may not have raised a state constitutional issue at trial, but the trial court's ruling did. Under these circumstances, I would not say that York's argument is waived. Considering York's argument on its merits, he argues that the doctrine of inevitable discovery has never been

adopted in Indiana.[6] We may affirm the denial of a motion to suppress if it is sustainable on any legal grounds apparent in the record. Jones v. State, 866 N.E.2d 339, 342 (Ind. Ct. App. 2007), trans. denied. The Indiana Constitution requires suppression of evidence obtained as the result of an unconstitutional search. Grier v. State, 868 N.E.2d 443, 445 (Ind. 2007). A search is unconstitutional if it is unreasonable under the totality of the circumstances. Litchfield v. State, 824 N.E.2d 356, 359 (Ind. 2005). Here, Officer Tice observed York commit a traffic violation and initiated a traffic stop. When York could offer only an identification card, Officer Tice ran York's information and discovered that his driver's license was suspended. Having cause to arrest York for driving while suspended, Officer Tice conducted a search incident to arrest and discovered drug paraphernalia in York's pocket. Under the totality of these circumstances, the search was reasonable, and I would affirm the trial court's denial of York's motion to suppress and its admission of the evidence.

I also note that it is well-settled that a law enforcement officer does not have to give Miranda warnings before asking for identifying information. Hatcher v. State, 274 Ind. 230, 410 N.E.2d 1187, 1189 (1980) ("An officer may ask routine questions for the purpose of obtaining basic identifying information without giving Miranda warnings."). Officer Tice may have asked York if his license was suspended, but he did not testify to York's answer. Rather, he testified that after York gave him York's identification card, he ran the information through BMV records and discovered that York's driver's license had been

[6] In this regard, I disagree with the majority's characterization of York's issue as raising a Miranda violation under the state constitution.

suspended. Thus, the "incriminating evidence" was not discovered as a result of any Miranda violation, and there was no error in admitting the evidence even under the theory advanced by York at trial.

Accordingly, I concur in the result that York's conviction should be affirmed.