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IN THE
COURT OF APPEALS OF INDIANA

MARK KOERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1105-CR-243
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William J. Nelson, Judge
Cause No. 49F07-1011-CM-84494

December 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Mark Koers brings this interlocutory appeal from the trial court's denial of his motion to suppress evidence. We affirm.

Issue

The sole issue presented for our review is whether the trial court erred when it denied Koers' motion to suppress.

Facts

On November 6, 2010, Marion County Sheriff's Deputy Kisu Daswani was driving south on Interstate 65 when a vehicle driven by Koers nearly hit his vehicle as it swerved between lanes. Deputy Daswani was driving an unmarked police vehicle. At the time, he was off-duty and working at his part-time employment. He was wearing khaki pants and a sweatshirt with a star on the front and the word "Sheriff" on the star and arms. The words "Law Enforcement" were printed below the star. He also wore his badge, gun, and radio on his belt.

Koers continued to drive at erratic speeds, slowing down and speeding up between forty-five and sixty-five miles per hour. The posted speed limit in the area was fifty miles per hour. Koers swerved from the far right lane to the far left lane and back. He also made an abrupt lane change and appeared to hit the curb as he got off the interstate.

Based on Deputy Daswani's observations of Koers' driving, he reported his location and called uniformed officers to respond. Deputy Daswani did not conduct a traffic stop because he was not in a marked police car or full uniform. Instead, he

followed Koers, staying four to five car lengths behind Koers's vehicle, and provided location updates to guide the responding officers.

Koers pulled into the driveway of his brother's house and drove his car "all the way back behind the house and parked." Tr. pp. 12-13. Deputy Daswani parked his car in the driveway, but toward the front of the house so it would be visible to the responding officers. He also turned on his red and blue rear lights to indicate his location to the responding officers. Deputy Daswani stepped out of his vehicle and, when Koers stepped out of his own car, Deputy Daswani asked him to come toward his vehicle. The spotlight on Deputy Daswani's vehicle was on and facing Koers for safety reasons.

Koers approached Deputy Daswani's car and appeared to be walking unsteadily. Koers fumbled as he tried to put his keys in his pocket and remove cigarettes. Deputy Daswani never approached Koers. When Koers reached Deputy Daswani, Deputy Daswani asked Koers if he was all right because he was concerned he may need medical assistance. Deputy Daswani smelled alcohol on Koers' breath and person.

Deputy Daswani then asked Koers for identification. Koers removed his identification from his wallet. A uniformed officer arrived within approximately two minutes after Koers provided his identification to Deputy Daswani.

On November 6, 2010, the State charged Koers with operating a vehicle while intoxicated, a class A misdemeanor, operating a vehicle with a blood alcohol level of at least 0.15, a class A misdemeanor, and public intoxication, a class B misdemeanor. On March 11, 2011, Koers filed a motion to suppress. Following a hearing, the trial court

denied Koers' motion. The trial court granted Koers's request to pursue an interlocutory appeal, and we have accepted jurisdiction.

Analysis

We review the denial of a motion to suppress in a manner similar to other sufficiency matters. Taylor v. State, 689 N.E.2d 699, 702 (Ind. 1997). We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. Id. We must also consider any uncontested evidence favorable to the defendant. Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000), trans. denied.

Koers argues that Deputy Daswani's actions were contrary to Indiana Code Section 9-30-2-2 and, therefore, the evidence obtained as a result of the alleged illegal arrest should be suppressed. Indiana Code Section 9-30-2-2 states:

> A law enforcement officer may not arrest or issue a traffic information and summons to a person for a violation of an Indiana law regulating the use and operation of a motor vehicle on an Indiana highway or an ordinance of a city or town regulating the use and operation of a motor vehicle on an Indiana highway unless at the time of the arrest the officer is:
>
> (1) wearing a distinctive uniform and a badge of authority; or
>
> (2) operating a motor vehicle that is clearly marked as a police vehicle;
>
> that will clearly show the officer or the officer's vehicle to casual observations to be an officer or a police vehicle. This section does not apply to an officer making an arrest when there is a uniformed officer present at the time of the arrest.

Koers argues that Deputy Daswani arrested him in violation of this statute because Deputy Daswani was in an unmarked police vehicle, was not in full uniform, limited Koers' ability to leave the scene by blocking the driveway, shined a spotlight on him, activated his vehicle's rear red and blue lights, ordered Koers to approach his vehicle, and requested Koers' identification. We have previously "held that the issue in cases involving Ind. Code § 9-30-2-2 is not whether an officer is justified in 'detaining' a defendant, but whether the 'detention' constitutes an 'arrest.'" State v. Williamson, 852 N.E.2d 962, 965 (Ind. Ct. App. 2006). Therefore, the issue is whether Koers's encounter with Deputy Daswani constituted an "arrest".[1]

An arrest occurs when police officers "interrupt the freedom of an accused and restrict the liberty of movement." Id. The test to determine whether a citizen is arrested "is how a reasonable person in the defendant's circumstances would understand the situation." Id. at 965-66. A defendant's knowledge that the person speaking to them is a police officer does not establish that an arrest has occurred. Id. In addition, a police officer's unarticulated intent is not sufficient to establish that an arrest has occurred. Id. at 966. The intent of the officer is only relevant if it is conveyed through words or actions to the citizen being questioned. Id.

In this case, Deputy Daswani did not stop Koers's vehicle. Koers had already stopped his vehicle when he pulled into his brother's driveway and parked. Deputy Daswani parked his vehicle twenty-five to thirty feet away from Koers's vehicle and only

[1] The State does not argue that Deputy Daswani was in uniform when he encountered Koers or that he was driving a marked police vehicle.

turned on his rear lights so that he would be visible to the responding officers. After Koers voluntarily exited his vehicle, Deputy Daswani asked him "to come towards [his] vehicle." Tr. pp. 13, 17. Deputy Daswani never approached Koers.

Deputy Daswani first inquired if Koers was okay because Koers had an unsteady walk, was fumbling with his keys, and Deputy Daswani knew that "sometimes there are people with medical conditions such as diabetics sometimes can drive like that . . . just certain medical conditions." Id. at 14. Even if Deputy Daswani wanted to speak with Koers to determine if he was intoxicated, his internal thoughts or intentions are irrelevant because he did not communicate that purpose to Koers. See Williamson, 852 N.E.2d at 966. After Koers approached him, Deputy Daswani observed signs of intoxication, specifically that Koers was staggering and smelled of alcohol. At this point, Deputy Daswani asked Koers for identification, and Koers had a "hard time getting it out of his wallet." Tr. 15.

Koers relies in part on Bentley v. State, 779 N.E.2d 70, 76 (Ind. Ct. App. 2002), where we determined that the defendant was effectively restrained due to the circumstances of the stop, which included the activation of lights, the position of the vehicle, and the number of officers present. However, this argument is misplaced because it ignores an important distinguishing fact. In Bentley, the defendant was "merely a pedestrian standing in the street" when the officers approached him. Id. Furthermore, in Bentley, two officers were present and both approached the defendant. Id.

The Bentley opinion found the facts in that case distinguishable from those in Overstreet, where we held that an arrest did not occur because the defendant "had been driving a vehicle and stopped on his own accord." Id. Here, as in Overstreet, Koers was driving a vehicle, pulled into his brother's driveway, and parked the vehicle on his own accord. See Overstreet, 724 N.E.2d at 663-64. Also, unlike in Bentley, in this case Deputy Daswani never approached the defendant and there was only one officer present during the alleged arrest.[2]

Koers also argues that the encounter with Deputy Daswani was an arrest because Deputy Daswani requested identification. However, we have found in other cases that a request for identification combined with the other facts of the case does not necessarily equate to an arrest, but rather a consensual encounter. See Bentley v. State, 846 N.E.2d 300, 306-07 (Ind. Ct. App. 2006) (finding only a consensual encounter where the officer approached a parked car and asked the occupants questions even though he also asked for identification and told the occupants to keep their hands visible), trans. denied; Overstreet, 724 N.E.2d at 663-64 (finding only a consensual encounter where the defendant pulled into a gas station and stopped his vehicle when the police officer then pulled his marked police vehicle behind the defendant's, got out, approached the defendant, asked him questions, and asked for his identification). Indiana Code Section 9-30-2-2 by its express terms only prohibits traffic arrests or the issuance of traffic summonses by a non-uniformed officer; it does not prohibit all contact between a non-

[2] Koers's reliance on Dowdell v. State, 747 N.E.2d 564 (Ind. Ct. App. 2001), trans. denied, also ignores the fact that the defendant in that case was not driving a vehicle and was not stopped on his own accord, but was instead a pedestrian standing on the sidewalk when approached by the police officer.

uniformed officer and citizens. There is sufficient evidence to find that a reasonable person would understand that Koers's encounter with Deputy Daswani was consensual, and, accordingly, Deputy Daswani did not "arrest" Koers within the meaning of Indiana Code Section 9-30-2-2.

Conclusion

The trial court properly denied Koers's motion to suppress. We affirm.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.