

BAKER, Judge

Appellant-defendant Barbara R. Ball appeals her convictions for Resisting Law Enforcement,¹ a class D felony, and Dealing in Marijuana,² a class D felony. Specifically, Ball argues that the convictions must be set aside because a police officer impermissibly stopped her vehicle in violation of the Fourth Amendment to the United States Constitution and Article I section 11 of the Indiana Constitution. Thus, Ball asserts that all evidence seized following the stop was improperly admitted at trial. Finally, Ball asserts that her convictions must be reversed because the deputy prosecutor committed misconduct during voir dire and at closing argument.

We conclude that Ball's right to be free from unreasonable search and seizure was not violated when the police officer stopped her vehicle. Thus, the evidence was properly admitted at trial. Moreover, we find that the deputy prosecutor did not engage in misconduct. As a result, we affirm the judgment of the trial court.

FACTS

On January 14, 2010, at approximately 2:48 a.m., Indiana State Trooper John Wilson was checking vehicle registrations while patrolling in St. Joseph County. More specifically, Trooper Wilson was "running" license plate numbers in an effort to locate stolen vehicles, suspended drivers, or vehicle owners with outstanding warrants. Tr. p. 95.

¹ Ind. Code § 35-44-3-3.

² Ind. Code § 35-48-4-10.

At some point, Trooper Wilson observed a Chrysler 300 on the roadway, but he was unable to read the plate number because a dark, tinted cover was obscuring the license plate. When Trooper Wilson pulled beside the vehicle, he was still unable to see the plate numbers. Thus, Trooper Wilson activated his lights and decided to initiate a traffic stop. Even though the vehicle stopped initially, the driver sped away when Trooper Wilson approached the rear of the car.

Trooper Wilson gave chase and radioed for assistance. The driver, who was subsequently identified as Ball, was traveling nearly 75 miles per hour and she ultimately crashed into a snow bank. Thereafter, Trooper Wilson exited his police cruiser and drew his weapon. When the other officers arrived, Ball was removed from the vehicle and handcuffed. Ball explained that she fled because there was marijuana in the vehicle. Indeed, Trooper Wilson detected the odor of marijuana emanating from Ball and the vehicle. Trooper Wilson arrested Ball, searched her purse, and found approximately fifty grams of marijuana in four clear plastic baggies and \$884 in small bills.

After Ball expressly waived her Miranda³ rights, she admitted to the officers that she had been selling marijuana earlier in the day. Ball's video statement was entered into evidence and published to the jury. It was also determined that the license plate was registered to a black Cadillac passenger car, rather than the white Chrysler that Ball was driving.

³ Miranda v. Arizona, 384 U.S. 436 (1966).

As a result of the incident, Ball was charged with dealing in marijuana and resisting and fleeing. At Ball's jury trial that commenced on April 29, 2010, the deputy prosecutor asked the jurors on voir dire whether they drove to court "knowing" it was possible to be in an accident on the way. Tr. p. 47-48. The deputy prosecutor stated that the jurors made the decision based on a reasonable doubt standard and not with any degree of "certainty" that they would not be involved in an accident. Id. The jurors acknowledged that the State had to prove its case beyond a reasonable doubt.

When the deputy prosecutor questioned Trooper Wilson at trial as to what action he took after the vehicle finally came to a stop, Ball objected "on the grounds that there is not a legal traffic stop, a legal reason for the stop." Tr. p. 96. The trial court then overruled Ball's objection. As a result, all of the evidence that was seized following the stop was admitted into evidence.

During final argument, the deputy prosecutor made the following comments:

We also have the interview. You heard the defendant say that she was given marijuana as she was supposed to sell it and pay back the individual that she got it from. And she was going to do this, and she could pay back what the marijuana was worth, then she would have a little extra money. And we know that there was some other marijuana that was sold prior, and that's why she had this marijuana.

Id. at 146-47. Ball did not object to the deputy prosecutor's comments that were made during voir dire or at closing argument. Ball was found guilty as charged and sentenced to eighteen months on each count, with the sentences to run concurrently. Ball now appeals.

DISCUSSION AND DECISION

I. Admission of Evidence

Ball argues that her convictions must be reversed because Trooper Wilson illegally stopped her vehicle in violation of the Fourth Amendment to the United States Constitution and Article I, section 11 of the Indiana Constitution. Thus, Ball maintains that the trial court abused its discretion in admitting all of the evidence that was seized following the stop because Trooper Wilson's alleged improper stop of her vehicle violated her right to be free from unreasonable search and seizure.

We initially observe that the admission of evidence is within the sound discretion of the trial court, and we review the court's decision only for an abuse of that discretion. Rogers v. State, 897 N.E.2d 955, 959 (Ind. Ct. App. 2008), trans. denied. The trial court abuses its discretion if its 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.

Both the Fourth Amendment to the U.S. Constitution and Article I, Section 11 of the Indiana Constitution provide "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures[.]" U.S. Const. Amend. IV; Ind. Const., art. I § 11. Created to protect the right to privacy, this protection against unreasonable state-sponsored searches and seizures is "a principal mode of discouraging lawless police conduct." Jones v. State, 655 N.E.2d 49, 54 (Ind. 1995) (quoting Terry v. Ohio, 392 U.S. 1, 12 (1968)).

A traffic stop is considered valid under the Fourth Amendment if a police officer possesses a “reasonable suspicion . . . that . . . criminal activity is taking place.” Meredith v. State, 906 N.E.2d 867, 869 (Ind. 2009). Moreover, an officer’s decision to stop a vehicle is valid when his on-the-spot evaluation reasonably suggests that lawbreaking has occurred. Id. at 870. When determining if reasonable suspicion exists, we examine the totality of the circumstances of each case to determine whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing. United States v. Arvizu, 534 U.S. 266, 273 (2002). Such a process permits officers to draw on their own training and experience to make inferences from and deductions about all information available to them that may not be apparent to the untrained person. Id.

In this case, Ball asserts that because she did not violate any traffic laws, Trooper Wilson did not have a basis for stopping her vehicle. Notwithstanding this claim, a traffic violation is not a condition precedent to an investigatory stop. Potter v. State, 912 N.E.2d 905, 907 (Ind. Ct. App. 2009). A police officer may conduct a traffic stop to investigate other offenses as long as the officer has a reasonable, articulable suspicion that a crime has been committed. Id. Brief traffic stops permit the officer to make the “inquiry necessary to confirm or dispel [his] suspicions.” Id. Even if a driver is doing nothing illegal, a traffic stop may be justified when the circumstances before the officer indicate that “further investigation [is] warranted.” See Baran v. State, 639 N.E.2d 642, 644 (Ind. 1994) (finding a valid traffic stop where the officer observed a vehicle weaving from lane to lane on an interstate highway); Sell v. State, 496 N.E.2d 799, 800 (Ind. Ct.

App. 1986) (finding a valid traffic stop where the officer observed a vehicle traveling fifteen to twenty miles per hour under the posted speed limit for approximately three minutes).

In this case, Trooper Wilson's reasonable suspicion of criminal activity stemmed from the appearance of Ball's vehicle plate. More specifically, Trooper Wilson was not able to see the letters or numbers on the plate because of the tinted plate cover. Tr. p. 95-96. Therefore, Trooper Wilson was unable to determine whether or not the plate may have been expired. In light of these circumstances, it is apparent to us that the trial court made a reasonable determination that Trooper Wilson had a good faith reason to believe that Ball violated Indiana Code section 9-18-2-7(d),⁴ which prohibits the operation of a motor vehicle with an expired license plate. Moreover, Indiana Code section 9-18-2-26(b) requires a license plate to be displayed "(3) in a place and position that are clearly visible; (4) maintained free from foreign materials and in a condition to be clearly legible; and (5) not obstructed or obscured by . . . opaque objects." See Houston v. State, 898 N.E.2d 358 (Ind. Ct. App. 2008) (holding that non-compliance with statutory requirements concerning placement, secure attachment, illumination and legibility of a license plate may serve as a basis for reasonable suspicion for law enforcement officers to

(d) Except as provided in IC 9-18-12-2.5, a person who owns or operates a vehicle may not operate or permit the operation of a vehicle that:

- (1) is required to be registered under this chapter; and
- (2) has expired license plates.

make a traffic stop to ascertain whether the display fully complies with all statutory requirements), trans. denied.

In short, Trooper Wilson's initial stop of Ball's vehicle was justified. Thus, the trial court did not abuse its discretion in admitting the evidence that was seized following the stop and Ball cannot successfully complain that her right to be free from unreasonable search and seizure was violated in this instance.

II. Prosecutorial Misconduct

As noted above, Ball claims that her convictions must be reversed because the deputy prosecutor committed misconduct during voir dire and in closing argument. In reviewing a claim of prosecutorial misconduct, we employ a two-step analysis. Reynolds v. State, 797 N.E.2d 864, 868 (Ind. Ct. App. 2003). First, we consider whether the prosecutor engaged in misconduct. Id. If so, we will consider whether, given all of the circumstances, the misconduct placed the defendant in a position of grave peril to which he should not have been subjected. The gravity of the peril is determined by considering the probable persuasive effect of the misconduct on the jury's decision, rather than the degree of the impropriety of the conduct. Id.

In this case, Ball did not object to the comments that the deputy prosecutor made during voir dire or at closing argument. To preserve a claim of prosecutorial misconduct, the defendant must not only object to the alleged misconduct but must also request an admonishment and move for a mistrial. Booher v. State, 773 N.E.2d 814, 817 (Ind. Ct. App. 2003). The failure to object to alleged prosecutorial misconduct at trial waives the

issue on appeal. Id. Because Ball did not object to the alleged misconduct and request an admonishment, she has waived the issue. Id.

In an effort to avoid waiver, Ball claims that the deputy prosecutor's comments during voir dire and at closing argument amounted to fundamental error. For conduct to rise to that level, it must constitute "clearly blatant violations of basic and elementary principles of due process" and the "harm or potential for harm must be substantial." Brown v. State, 799 N.E.2d 1064, 1067 (Ind. 2003). In other words, the error must be so prejudicial to the rights of the defendant as to make a fair trial impossible. Id.

During voir dire, the deputy prosecutor asked the jurors whether they drove to court, knowing that it was "possible" to be in an accident on the way. Tr. p. 47-48. The deputy prosecutor stated that the jurors made the decision based on a reasonable doubt standard, and not with "certainty" that they would not be involved in an accident. Id. The jurors then indicated that they agreed that the State had to prove its case against Ball beyond a reasonable doubt. Id.

We need not determine whether the prosecutor's questions were appropriate or not because the trial court specifically and correctly instructed the jurors during the preliminary and final instructions as to the State's burden of proof and the reasonable doubt standard. Appellant's App. p. 76-77, 156-57. As a result, Ball has failed to show that the deputy prosecutor's remarks during voir dire violated her due process rights and the right to a fair trial. See Adcock v. State, 933 N.E.2d 21, 28 (Ind. Ct. App. 2010) (observing that the defendant failed to show that his right to a fair trial was violated on

the basis of alleged prosecutorial misconduct when, among other things, the trial court instructed the jury on the definition of reasonable doubt following voir dire and after the parties' closing arguments), trans. denied.

We also note that during final argument, a prosecutor may state and discuss the evidence and the reasonable inferences that are derived therefrom so long as there is no implication of personal knowledge that is independent of the evidence. Hobson v. State, 675 N.E.2d 1090, 1096 (Ind. 1996). Moreover, it is not improper for counsel to state a conclusion, as long as he does not imply that he has personal knowledge of an accused's guilt or innocence. Swope v. State, 263 Ind. 148, 155, 325 N.E.2d 193, 196 (1975). Finally, a prosecutor's statement should be considered in the context of the argument as a whole. Id. at 155, 325 N.E.2d at 196.

When Trooper Wilson interviewed Ball, she explained that she had sold marijuana earlier in the day. Ex. 1. Ball also told Trooper Wilson that another individual "fronted" her approximately six ounces of marijuana two days before her arrest and that she was supposed to pay \$600 to \$700 for the marijuana after she sold it. Id. Given these circumstances, it is apparent that the deputy prosecutor's remarks about Ball's possession of marijuana with intent to deliver were based on Ball's own statements that were admitted into evidence. As a result, we conclude that Ball has failed to show that the deputy prosecutor engaged in misconduct.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.

