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IN THE
COURT OF APPEALS OF INDIANA

PAMELA J. MUNDELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0611-CR-1021
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Clem, Judge
Cause No. 48E02-0410-FC-458

July 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

SESTATEMENT OF THE CASE

Pamela J. Mundell ("Mundell") brings this interlocutory appeal of the trial court's denial of her motion to suppress.

We affirm.

ISSUE

Whether the trial court erred when it denied Mundell's motion to suppress.

FACTS

At approximately 10:30 p.m. on July 30, 2004, Anderson Police Officer Chad Boynton was in his police car, patrolling the parking lot of a nightclub, when he observed a vehicle turn into the parking lot. Approximately five minutes later, as Officer Boynton circled the parking lot, he observed the same vehicle parked in the nightclub's lot. While the vehicle's headlights had been turned off, the engine was running. Officer Boynton observed two individuals sitting in the front seats.

The individuals "were kind of slumped down, . . . sitting low in their seats, leaning toward one another toward the area of the center console." (Tr. 11). As Officer Boynton passed the vehicle, the individuals "both very suddenly and, as if they were surprised or shocked, sat in kind of a bolt upright manner. They then both again directed their attention back toward the area of the center console. Both of them were making movements with their hands and arms . . . ." (Tr. 11-12).

Officer Boynton approached the vehicle and asked the driver his name. The driver identified himself as Alan Mundell ("Alan"). Officer Boynton later identified the passenger as Mundell.

As Officer Boynton attempted to identify Alan and get his name, he noticed that Alan "appeared to be very nervous" and was slurring his words. Officer Boynton also smelled "a slight odor of alcoholic beverage emitting from his breath as he spoke." (Tr. 13). Officer Boynton asked Alan to exit the vehicle because Officer Boynton believed that Alan had been drinking and driving and because the "furtive movements . . . that had been made inside the vehicle" raised suspicions. (Tr. 14-15). After Alan exited the vehicle, he gave Officer Boynton permission to pat him down for weapons.

While Officer Boynton was checking for weapons, Alan "placed his right hand in his right front trouser pocket," then "removed an item very quickly and threw it or discarded it on the ground." (Tr. 17). Officer Boynton handcuffed Alan and retrieved the object, which appeared to be "a crack pipe or a pipe used to ingest crack cocaine." (Tr. 18). Officer Boynton placed Alan under arrest.

After placing Alan under arrest, Officer Boynton approached Mundell, who had remained in the vehicle. Mundell "had questions and concerns regarding the arrest of [Alan]." (Tr. 19). Officer Boynton "explained to her some of what had taken place." (Tr. 19). Officer Boynton then requested that Mundell exit the vehicle as he "believed that she was also possibly intoxicated" because she was exhibiting signs of impairment and also because she had been making furtive "movements inside the vehicle." (Tr. 19). After a cursory search for weapons, Officer Boynton advised Mundell of her Miranda rights. Mundell indicated that she understood her rights and that she was willing to speak with Officer Boynton.

Mundell explained to Officer Boynton that she and Alan were married but separated. In response to Officer Boynton's questions, Mundell told him that "she and her husband had been smoking crack cocaine . . . within approximately an hour before . . . ." (Tr. 21-22). When asked about the crack pipe, which Alan had discarded, Mundell "stated that was the specific item . . . that they had smoked the cocaine through and that she was completely aware that [Alan] had that in his pocket . . . ." (Tr. 22). Officer Boynton then placed Mundell under arrest.

After arresting the Mundells, Officer Boynton called a tow truck to have the Mundells' vehicle towed because "all of the occupants of the vehicle had been arrested, [and he] did not want to leave [the vehicle] in the parking lot of a business and take a chance on impeding business." (Tr. 24). Pursuant to Anderson Police Department policy, Officer Boynton conducted an inventory search of the Mundells' vehicle prior to having it towed.

During the search, Officer Boynton observed a "crumpled up five dollar bill" lying on the center console, between the driver's seat and the front-passenger's seat. (Tr. 25). Officer Boynton "could see from one side of the bill that there was a portion of a plastic bag extending through one of the . . . crevasses [sic] created by the crumpling. In addition, there was a small portion of brass Brillo pad or wire, copper wire." (Tr. 26). After Officer Boynton smoothed out the five-dollar bill, he discovered that "a clear plastic bag," with "a small amount of a white powdery substance" in it, had been wrapped in the five-dollar bill. (Tr. 26). Officer Boynton conducted a field test on the white substance, which tested positive for cocaine. Upon further questioning by Officer

Boynton, Mundell admitted to having smoked some cocaine that had been in the plastic bag.

On August 23, 2004, the State charged Mundell with public intoxication, a class B misdemeanor, and possession of cocaine, as a class D felony. The State subsequently filed an information against Mundell, alleging her to be an habitual substance offender.

On April 5, 2006, Mundell filed a motion to suppress, arguing that her statements to Officer Boynton and the evidence seized from the vehicle should be suppressed because "the interview was improper and in violation of *Miranda v. Arizona*"; the "search of the vehicle was improper"; and "there was no probable cause for the stop to begin with." (App. 107-08). The trial court held a hearing on the motion to suppress on August 29, 2006. Following the hearing, the trial court ordered the State to provide Mundell with a copy of the Anderson Police Department's policy regarding impounding vehicles. On September 6, 2006, the State filed a notice of compliance with the trial court's order, along with a copy of the Anderson Police Department's policy.

On October 6, 2006, the trial court denied Mundell's motion to suppress. Mundell filed a petition for interlocutory appeal, and we accepted jurisdiction pursuant to Indiana Appellate Rule 14(B) on December 27, 2006.

Additional facts will be provided as necessary.

DECISION

Mundell contends that the trial court erred when it denied her motion to suppress. Specifically, Mundell asserts that the cocaine should be suppressed because Officer

Boynton lacked reasonable suspicion to conduct an investigatory stop and that the subsequent inventory search was improper.[1]

The trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will reverse a denial of a motion to suppress only upon a showing of an abuse of discretion. *Mast v. State*, 809 N.E.2d 415, 418 (Ind. Ct. App. 2004), *trans. denied*. A trial court's decision to deny a motion to suppress is reviewed as a matter of sufficiency. *Id*. Accordingly, we will consider the evidence most favorable to the judgment of the trial court and will neither reweigh the evidence nor judge the credibility of witnesses. *Id*. If there is sufficient evidence of probative value to support the denial of the motion to suppress, the trial court's decision will be upheld. *Id*. at 419.

1. Investigatory Stop

Mundell contends that the seizure of the cocaine resulted from a detention that violated the Fourth Amendment to the United States Constitution.[2] The Fourth Amendment to the United States Constitution protects the privacy and possessory interests of individuals by prohibiting unreasonable searches and seizures. *Bentley v.*

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[1] Mundell only "challenges the constitutionality of the initial detention" and the subsequent search of the vehicle. Mundell's Br. 13. A review of Mundell's brief indicates that by "initial detention," she is referring to Officer Boynton's approach of the vehicle in which she and Alan were sitting. *See* Mundell's Br. at 11, 12 (arguing the "search and seizure is illegal" because "[t]here is no evidence that anyone from the [nightclub] called complaining about the four (4) to five (5) minutes [Mundell] and her driver were in the parking lot"; and "there was no report to dispatch about 'suspicious' people" in the parking lot).

[2] Mundell also argues that the detention violated Article 1, Section 11 of the Indiana Constitution. Mundell, however, failed to develop a cogent argument and provide citation to authority regarding the Indiana Constitution. Thus, Mundell has waived this issue. *See Bonner v. State*, 776 N.E.2d 1244, 1251 (Ind. Ct. App. 2002) (stating that a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record), *trans. denied*.

State, 846 N.E.2d 300, 305 (Ind. Ct. App. 2006), *trans. denied*. This protection also governs detention or "'seizures' of the person." *Terry v. Ohio*, 392 U.S. 1, 16 (1968).

A seizure, however, does not occur "simply because a police officer approaches a person, asks questions, or requests identification." *Bentley*, 846 N.E.2d at 305. An encounter may become a seizure when a police officer orders a person to "freeze" or exit a vehicle. *Id.*

In this case, Alan parked the vehicle, in which Mundell was riding, in a parking lot. After the vehicle had been at a stop for approximately five minutes, Officer Boynton approached it to ask its occupants about their presence in the parking lot.

Given these facts, we do not find that Officer Boynton's approach and initial contact with Alan amounted to a seizure under the Fourth Amendment as the vehicle already was stopped, and Officer Boynton gave no indication that Alan and Mundell were not free to leave. *See Huey v. State*, 503 N.E.2d 623, 625 (Ind. Ct. App. 1987) (finding no "seizure which required specific, articulable facts indicating a crime had been committed or was about to be committed" where the defendant was in his own car, the officer did not stop the defendant and the officer's initial question did not accuse the defendant of a crime); *see also Overstreet v. State*, 724 N.E.2d 661, 664 (Ind. Ct. App. 2000) (discussing examples of circumstances under which a reasonable person would have believed he was not free to leave, including "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled"), *trans. denied*. Because the initial encounter did

not constitute an investigatory stop, we need not address whether Officer Boynton had the requisite reasonable suspicion required under *Terry* to conduct an investigatory stop.

2. Inventory Search

Mundell also contends that the trial court erred when it denied her motion to suppress cocaine evidence discovered during an alleged unlawful inventory search.

> In general, the Fourth Amendment prohibits warrantless searches. If the search is conducted without a warrant, the burden is upon the State to prove that, at the time of the search, an exception to the warrant requirement existed. An inventory search of a vehicle is one such recognized exception.
>
> The threshold question in inventory searches is whether the impoundment was proper. In order to establish that an impoundment was proper, the State must demonstrate: 1) the belief that the vehicle posed some threat or harm to the community or that it was itself imperiled was consistent with objective standards of sound policing, and 2) the decision to combat that threat by impoundment was in keeping with established departmental routine or regulation. An appellate court may determine that a threat or harm to the community is implicated when: 1) the arrest of the driver has left his car unattended on a highway; 2) where the owner of the vehicle cannot be located; and 3) where the vehicle is left on private property and the owner of the property has requested removal.

Edwards v. State, 762 N.E.2d 128, 132 (Ind. Ct. App. 2002) (internal citations omitted), *trans. denied*.

Here, Officer Boynton testified during the suppression hearing that the policy of the Anderson Police Department is to tow vehicles from businesses' parking lots at the request of the businesses and that personnel from the nightclub had requested that vehicles be towed from its parking lot. Officer Boynton further testified that he had the vehicle towed because "all of the occupants of the vehicle had been arrested," and he "did

not want to leave [the vehicle] in the parking lot of a business and take a chance on impeding business." (Tr. 24).

Given the facts presented, we find that Officer Boynton's decision to impound the vehicle was justified. We must now therefore determine whether the inventory search was lawful. "To pass constitutional muster, the search itself must be performed pursuant to standard police procedures." *Woodford v. State*, 752 N.E.2d 1278, 1282 (Ind. 2001), *cert. denied*, 535 U.S. 999 (2002).

During the suppression hearing, Officer Boynton testified that the Anderson Police Department has a policy regarding searching impounded vehicles. Officer Boynton explained that the policy "requires all officers that are taking a vehicle into their possession, whether that's based upon an arrest, traffic impediment or community safekeeping," to inventory the vehicle's passenger compartment and trunk. (Tr. 25). Officer Boynton also testified that, although he believed the police department's policy allowed vehicles to be inventoried either at the scene or after having been towed, conducting inventories prior to towing "is definitely the regular, ordinary procedure." (Tr. 44-45). Officer Boynton further testified that he inventoried the vehicle pursuant to the police department's policy and that he completed an inventory form.

We find the inventory search of the vehicle was proper as Officer Boynton was justified in impounding the vehicle and followed police procedures for searching an impounded vehicle. *See Woodford*, 752 N.E.2d at 1282 (finding search performed pursuant to standard police procedures where the officer testified that he followed written

department policy in conducting the search). Accordingly, we find that the trial court properly denied Mundell's motion to suppress.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.