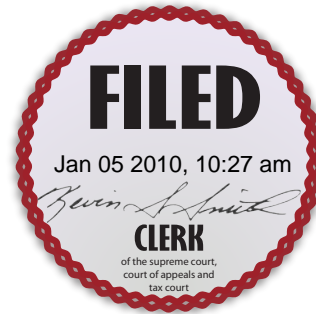


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL MITCHELL and LEONARD LOVE,)
)
Appellants-Plaintiffs,)

vs.)

No. 45A04-0812-CV-736

NATHAN ABBOTT, STATE OF INDIANA and)
INDIANA STATE POLICE,)
)
Appellees-Defendants.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable William E. Davis, Judge
Cause No. 45D05-0503-CT-59

JANUARY 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellants Michael Mitchell and Leonard Love appeal from the trial court's grant of summary judgment to Appellees Nathan Abbott, the State of Indiana, and the Indiana State Police (collectively, "the State"). We reverse and remand.

ISSUE

Mitchell and Love raise several issues for review, one of which we find dispositive: whether the trial court's grant of summary judgment to the State pursuant to Indiana Code § 34-28-5-3 was correct.

FACTS

Pursuant to our standard of review, we state the following facts in the light most favorable to Mitchell and Love, the non-movants. *See T.R. Bulger, Inc. v. Indiana Ins. Co.*, 901 N.E.2d 1110, 1114 (Ind. App. 2009).

On June 9, 2004, at between 8:00 a.m. and 8:30 a.m., Mitchell and Love were traveling on the Indiana Tollway in Lake County. Mitchell was driving. Abbott, an Indiana State Trooper, stopped them. Abbott asserts that he stopped Mitchell for failing to display his turn signal for 300 feet or more before making a lane change, but Mitchell states that he did not change lanes for over a mile before being pulled over by Abbott.

Mitchell gave Abbott his license, registration and proof of insurance. After checking Mitchell's information and speaking with Mitchell and Love, Abbott returned Mitchell's documents and gave him a warning for the lane change violation.

Next, Abbott asked if he could search the car, and Mitchell gave consent. Abbott had Mitchell and Love step out of the vehicle, and he patted them down. Abbott searched the vehicle and found nothing. He told Mitchell and Love that they could go, and as they returned to their vehicle to leave, another state trooper arrived. At that point, the troopers advised Mitchell that he was under arrest for an outstanding bench warrant. Mitchell was handcuffed and placed in a police car, Love was ordered out of Mitchell's vehicle, and the troopers searched the vehicle again. Ten or fifteen minutes later, a police officer arrived with a dog and searched the car. Afterwards, the officers took Mitchell to jail, and they permitted Love to drive away in Mitchell's vehicle.

Mitchell and Love filed this lawsuit, in which they present claims of false arrest and false imprisonment. The parties filed cross-motions for summary judgment. The trial court denied Mitchell and Love's motion for summary judgment but granted summary judgment to the State, determining that "there is no genuine issue of material fact that the Defendants are entitled to the qualified privilege of I.C. 34-28-5-3." Appellant's Appendix, p. 15.

DISCUSSION AND DECISION

I. STANDARD OF REVIEW

Summary judgment is appropriate when the designated evidence demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Indiana Trial Rule 56(C). The purpose of summary judgment is to terminate litigation about which there can be no material factual dispute

and which can be resolved as a matter of law. *Indiana Dep't of Env'tl. Mgmt. v. Construction Mgmt. Assoc., LLC*, 890 N.E.2d 107, 112 (Ind. App. 2008).

When reviewing summary judgment, this court views the same matters and issues that were before the trial court and follows the same process. *DLZ Indiana, LLC v. Greene County*, 902 N.E.2d 323, 327 (Ind. Ct. App. 2009), *reh'g den.* The party appealing a summary judgment ruling has the burden of persuading this Court that the grant or denial of summary judgment was erroneous. *Ind. Dep't of Env'tl. Mgmt.*, 890 N.E.2d at 112. We do not reweigh the evidence. *T.R. Bulger, Inc.*, 901 N.E.2d at 1114. Rather, we must accept as true those facts alleged by the nonmoving party, construing the evidence and resolving all doubts in favor of the nonmoving party. *Id.* Where material facts conflict, or undisputed facts lead to conflicting material inferences, summary judgment is inappropriate. *Butler v. City of Indianapolis*, 668 N.E.2d 1227, 1228 (Ind. 1996).

II. APPLICATION OF INDIANA CODE § 34-28-5-3

The statute at issue provides:

Whenever a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, the law enforcement officer may detain that person for a time sufficient to:

- (1) inform the person of the allegation;
- (2) obtain the person's:
 - (A) name, address, and date of birth; or
 - (B) driver's license, if in the person's possession; and

(3) allow the person to execute a notice to appear.

Ind. Code § 34-28-5-3.

This statute is subject to specific constitutional limitations. An officer may detain an individual pursuant to this statute if the officer “reasonably suspects that the individual is engaged in, or about to engage in, illegal activity.” *Baldwin v. Reagan*, 715 N.E.2d 332, 340 (Ind. 1999). “The reasonable suspicion requirement is satisfied where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur.” *See id.*

In this case, Abbott stopped Mitchell and Love for changing lanes without signaling, which would be a class C infraction and would justify a traffic stop. *See* Indiana Code §§ 9-21-8-24, 9-21-8-49. However, viewing the facts in the light most favorable to the non-movant, there is a material dispute of fact as to whether Mitchell changed lanes. If, according to our standard of review, Mitchell did not change lanes, then no ordinarily prudent person would believe that criminal activity had occurred. In the absence of reasonable suspicion, Ind. Code § 34-28-5-3 does not justify Abbott’s stop of Mitchell and Love. *See Baldwin*, 715 N.E.2d at 332. Accordingly, the trial court’s grant of summary judgment to the State was improper.

Reversed and remanded.

FRIEDLANDER, J., dissenting with separate opinion.

CRONE, J., concurs.

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Appellees-Defendants.)	
)	

FRIEDLANDER, Judge, dissenting

I respectfully dissent from the decision to reverse the grant of summary judgment in favor of Abbott. The Majority concludes that summary judgment is inappropriate because there remains a question of material fact as to whether Mitchell did, in fact, change lanes. Indeed, Abbott’s and Mitchell’s testimonies disagree on that point, or at least would appear to. In my view, however, that question is not material to the resolution of the summary judgment motion.

As the trial court noted and as Mitchell acknowledges, Ind. Code Ann. § 34-38-5-3 (West, PREMISE through 2009 1st Regular Sess.) codifies Indiana’s good-faith defense to an action for false arrest or false imprisonment. Mitchell contends, however, that the defense is not applicable here, or at least that there remains a question of fact concerning its applicability. In support of this argument, Mitchell colorfully invokes the specter of the world depicted in the movie *Judge Dredd* – a cautionary tale in which the law is what a police officer says it is. According to Mitchell, if I.C. § 34-38-5-3 applies here as a defense to his action, such would

“confer absolute immunity from liability on law enforcement officers in general[.]” *Appellant’s Brief* at 13. I believe that Mitchell himself dispels the notion of such a draconian outcome in this or any case when he observes that “[t]he protection of the Good Faith Belief Act does not extend unless the law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation in his presence.” *Id.* I agree with this statement. In fact, this illustrates the point upon which I depart with my colleagues on the majority. That is, I believe that Officer Abbott’s good-faith belief is not a function of what Mitchell claimed he did or did not do, nor is it a function of what he did, in fact, do. If Officer Abbott believed in good faith that Mitchell executed an improper lane change, I.C. § 34-38-5-3 applies, regardless of whether Mitchell operated his vehicle in that manner, and certainly regardless of whether Mitchell denied changing lanes improperly. In short, Mitchell’s claim that he did not change lanes at all in the mile before he was stopped does not, for purposes of I.C. § 34-38-5-3, negate Officer Abbott’s claim that he believed in good faith that he witnessed Mitchell execute such a maneuver.

I would affirm the trial court.