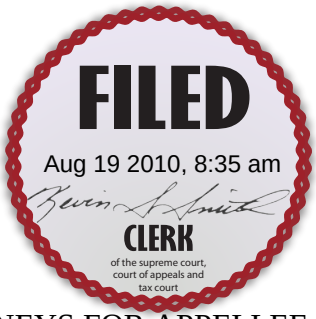

ATTORNEY FOR APPELLANT:

BARBARA J. SIMMONS
Oldenburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

GRANTE FICKLIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1001-CR-18
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
The Honorable Israel N. Cruz, Commissioner
Cause No. 49F10-0907-CM-68564

August 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Grante Ficklin appeals her conviction for class A misdemeanor resisting law enforcement. The sole issue presented for our review is whether the trial court abused its discretion when it admitted evidence of Ficklin's flight from law enforcement following a traffic stop. We affirm.

Facts and Procedural History

On July 30, 2009, Indianapolis Metropolitan Police Officer Phillip Malicoat was driving his fully marked police vehicle on routine patrol in Marion County. As Officer Malicoat approached an intersection, he noticed that the vehicle in front of him had a temporary paper license plate. He observed that the two screw holes on the top of the paper plate were torn open. He also observed that although the paper was quite faded and appeared older, the numbers on the plate looked as if they had been freshly darkened with a black marker. Based upon his training and experience, Officer Malicoat believed that these anomalies in the condition of the paper license plate could indicate that the plate had been stolen from a different car.

Officer Malicoat activated the emergency lights of his police vehicle and attempted to initiate a traffic stop of the vehicle. The driver of the vehicle, Ficklin, pulled to the side of the road and immediately got out of the car. Officer Malicoat ordered Ficklin several times to remain in her vehicle, but instead she took off running. Officer Malicoat pursued Ficklin on foot while continuing to order her to stop. He eventually lost track of her. A K9 unit located Ficklin inside a garage approximately five to ten minutes later. Officers returned

with Ficklin to the vehicle she had abandoned. A check of the vehicle's identification number revealed that the vehicle had been stolen. During a search of Ficklin's person incident to arrest, officers discovered a glass pipe in Ficklin's pocket.

The State charged Ficklin with class A misdemeanor resisting law enforcement and class A misdemeanor possession of paraphernalia. A bench trial was held on December 14, 2009. During trial, Ficklin moved to suppress the testimony of Officer Malicoat regarding her flight following the attempted traffic stop. The trial court denied Ficklin's motion to suppress. At the conclusion of trial, the court found Ficklin guilty of class A misdemeanor resisting law enforcement and not guilty of possession of paraphernalia. This appeal ensued.

Discussion and Decision

Ficklin challenges the trial court's denial of her motion to suppress Officer Malicoat's testimony regarding her flight from law enforcement. Because Ficklin appeals following a completed trial, the issue is more properly framed as whether the trial court abused its discretion when it admitted the evidence at trial. *Widduck v. State*, 861 N.E.2d 1267, 1269 (Ind. Ct. App. 2007). Our standard of review for rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by an objection at trial. *Ackerman v. State*, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), *trans. denied*. We do not reweigh the evidence, and we consider only evidence most favorable to the trial court's ruling along with any uncontroverted evidence to the contrary. *Gooch v. State*, 834 N.E.2d 1052, 1053 (Ind. Ct. App. 2005), *trans. denied*.

Ficklin contends that evidence of her flight from law enforcement was obtained as a result of an invalid traffic stop and seizure in violation of her Fourth Amendment rights.[1] We disagree. The Fourth Amendment to the United States Constitution reads in part: "The right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated[.]" This protection against unreasonable seizures includes seizure of the person. *California v. Hodari D.*, 499 U.S. 621, 624-26 (1991). While a full-blown arrest or a detention that lasts for more than a short period must be justified by probable cause, a brief investigative stop may be justified by reasonable suspicion that the person detained is involved in criminal activity. *Terry v. Ohio,* 392 U.S. 1, 31 (1968). Reasonable suspicion is satisfied where the facts known to the officer at the moment of the stop, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to occur. *Lyons v. State,* 735 N.E.2d 1179, 1183-84 (Ind. Ct. App. 2000), *trans. denied.*

However, it is well settled that "not every encounter between a police officer and a citizen amounts to a seizure requiring objective justification." *Overstreet v. State,* 724 N.E.2d 661, 663 (Ind.Ct.App.2000), *trans. denied.* Under the Fourth Amendment, a seizure of the individual does not occur until "the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Terry*, 392 U.S. at 20 n. 16. Moreover, the United States Supreme Court has subsequently interpreted that requirement in

[1] Ficklin neither mentions nor makes a separate argument pursuant to Article 1, Section 11 of the Indiana Constitution. Therefore, we will apply only Fourth Amendment search and seizure law in the instant case. *See Crabtree v. State*, 762 N.E.2d 217, 220 (Ind. Ct. App. 2002) (failure to develop separate state constitutional argument results in waiver of claim).

Terry to mean that a seizure does not occur when the suspect fails to yield to law enforcement authority. *Hodari D.*, 499 U.S. at 624-26.

Here, Officer Malicoat's attempted stop of Ficklin's vehicle did not implicate the Fourth Amendment because there was no physical seizure of Ficklin and Ficklin failed to submit to law enforcement authority. The record indicates that Ficklin stopped her car, not in compliance with Officer Malicoat's attempt to initiate a brief investigatory stop, but instead in order to get out and run. Thereafter, an unsuccessful foot pursuit of Ficklin ensued. While Officer Malicoat's pursuit constituted an assertion of police authority, the pursuit did not cause Ficklin to stop or to submit to the show of authority. There is nothing in the record to indicate that Ficklin at any time during the brief chase succumbed or intended to succumb to the show of police authority. Thus, there was no seizure for Fourth Amendment purposes. *See Murphy v. State*, 747 N.E.2d 557, 552 (Ind. 2001) (Fourth Amendment seizure did not occur when there was no physical seizure of the fleeing defendant and defendant failed to yield to law enforcement authority). At the point when assisting officers finally apprehended Ficklin, officers clearly had both reasonable suspicion and probable cause to stop and seize Ficklin for resisting law enforcement.[2]

Even assuming that Officer Malicoat's initial encounter with Ficklin amounted to a seizure for Fourth Amendment purposes, Officer Malicoat had the requisite reasonable suspicion pursuant to *Terry*. Ficklin's sole assertion on appeal is that Officer Malicoat

[2] An individual may not flee from a police officer who has ordered the person to stop, regardless of the apparent or ultimate lawfulness of the order. *Yowler v. State*, 894 N.E.2d 1000, 1004 (Ind. Ct. App. 2008); *see also* Ind. Code § 35-44-3-3(a)(3).

lacked reasonable suspicion to initiate a traffic stop of her vehicle because there is no evidence that she had committed a traffic violation. We have held that a traffic violation is not a condition precedent to a stop otherwise supported by the facts. *Potter v. State*, 912 N.E.2d 905, 908 (Ind. Ct. App. 2009) (citing *State v. Campbell*, 905 N.E.2d 51, 55 (Ind. Ct. App. 2009), *trans. denied*). Instead, an officer may make a *Terry* stop of a vehicle to investigate an offense other than a traffic violation, as long as the officer has reasonable articulable suspicion that a crime is being or has been committed. *Id*. Reasonable suspicion is determined on a case-by-case basis, in light of the totality of the circumstances. *State v. Ritter*, 801 N.E.2d 689, 691 (Ind. Ct. App. 2004), *trans. denied*. Although the trial court's decision to admit evidence is reviewed for an abuse of discretion, we review the determination of reasonable suspicion de novo. *Id*.

Officer Malicoat testified that the paper license plate on Ficklin's vehicle was torn at the top at both screw holes and, although the paper looked old and faded, the numbers on the plate appeared to have been recently darkened with a black marker. He testified that he had learned from his law enforcement training and experience that paper license plates are often stolen off vehicles by being ripped and torn at those screw holes. He also testified that his training led him to question why the older and faded condition of the paper did not match the newly darkened numbers. These articulable facts support a reasonable suspicion that Ficklin had stolen the temporary license plate, and such circumstances warranted a brief traffic stop to confirm or dispel Officer Malicoat's suspicions.

We conclude that Ficklin was not seized for Fourth Amendment purposes and that, even if she was, Officer Malicoat had reasonable suspicion to initiate a *Terry* investigatory stop. The trial court did not abuse its discretion when it admitted testimony regarding her flight from law enforcement.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.