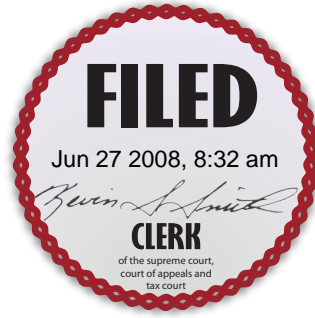


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**IN THE
COURT OF APPEALS OF INDIANA**

ERIC B. BANNISTER,)
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Appellant-Defendant,)
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STATE OF INDIANA,)
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))
Appellee-Plaintiff.)

No. 03A04-0712-CR-749

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT NO. 2
The Honorable Roderick D. McGillivray, Judge
Cause No. 03D02-0701-FC-91

June 27, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Defendant-Appellant, Eric D. Bannister (Bannister), appeals his conviction for operating a motor vehicle while privileges are forfeited for life, a Class C felony, Ind. Code § 9-30-10-17.

We affirm.

ISSUE

Bannister raises one issue on appeal, which we restate as: Whether the trial court properly admitted evidence derived from a traffic stop when the only information that could be confirmed, prior to the traffic stop, was that the registered owner was suspended as a habitual traffic offender.

FACTS AND PROCEDURAL HISTORY

On January 3, 2007, at approximately 10:30 p.m., Officer James Myers of the City of Columbus Police Department (Officer Myers) was stationary in a fully marked police car and in uniform facing east on Spear Street at State Road 11 in Bartholomew County, Indiana. A gray 1993 Chevrolet S-10 pickup truck, driving northbound on State Road 11, passed in front of Officer Myers, and he pulled out behind him. Officer Myers conducted a license plate check on the Chevrolet, and the computer automatically produced a check of the driver's license registered to the vehicle as well. The license check revealed that the registered owner was Bannister, described as a male, around 5'11", 165 pounds with brown hair. Moreover, the check disclosed that the owner's driver's license was suspended for life because he was a habitual traffic violator. Based on this information, Officer Myers stopped the vehicle and

asked the driver for his driver's license and registration. It was at this time that Bannister handed Officer Myers an Indiana identification card, identified himself, and admitted that his operator's license was suspended.

On January 11, 2007, the State filed an Information charging Bannister with "Count I, operating a motor vehicle after forfeiture of license for life, a Class C felony, I.C. § 9-30-10-17. On March 22, 2007, Bannister filed a motion to suppress the evidence resulting from the traffic stop. On June 14, 2007, the trial court held a hearing on the motion to suppress and denied the motion. On June 16, 2007, Bannister requested certification of an interlocutory appeal of the suppression motion, which was denied by the trial court on June 18, 2007. On August 22, 2007, Bannister filed a motion for reconsideration of the motion to suppress. On August 27, 2007, the trial court denied Bannister's motion. On October 22, 2007, a jury trial was held, and at the close of the evidence, Bannister was found guilty as charged. On November 19, 2007, the trial court sentenced Bannister to "six years to the Indiana Department of Correction all suspended except for two years to be served as a direct placement with community corrections." (Appellant's App. p. 6).

Bannister now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Bannister contends that the trial court abused its discretion in denying his motion to suppress because Officer Myers' stop of his vehicle violated his Fourth Amendment rights protecting against unlawful searches and seizure. However, because Bannister is appealing following a conviction, the issue is more appropriately framed as whether the trial court

properly admitted the evidence at trial. A trial court has broad discretion in ruling on the admissibility of evidence. *Fentress v. State*, 863 N.E.2d 420, 422-23 (Ind. Ct. App. 2007). Accordingly, we will reverse an evidentiary ruling only when the trial court abuses that discretion. *Id.* An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

The Fourth Amendment to the United States Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST. Amend. IV; *Parker v. State*, 697 N.E.2d 1265, 1267 (Ind. Ct. App. 1998). An exception to this is an investigatory stop where a police officer observes unusual conduct, which leads him reasonably to conclude in light of his experience that criminal activity may be afoot. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). An investigatory stop is proper if the facts known to the police officer at the time of the stop is such that a man of reasonable caution would believe that the action taken by the officer was appropriate. *Bovie v. State*, 760 N.E.2d 1195, 1198 (Ind. Ct. App. 2002). Reasonable suspicion is determined on a case-by-case basis. *Id.*

Bannister now specifically contends that the sole reason his vehicle was stopped was because the license and registration check revealed that the owner of the vehicle was a habitual traffic violator whose license was suspended for life. Bannister argues that there was no reasonable suspicion of criminal activity because the officer did not compare a physical description of the registered owner of the car to the driver prior to the stop. Without a requirement to do so, a vehicle may be stopped at any time simply because the owner’s

license has been suspended. He argues that although it is legal to own a vehicle and have a suspended license, one does not give up his right to be free from illegal searches and seizures when one's license is suspended.

In support of his argument, he relies on *Wilkinson v. State*, 743 N.E.2d 1267, 1269 (Ind. Ct. App. 2001), *trans. denied*. In *Wilkinson*, a Fishers police officer saw Wilkinson's truck pull into a convenience store parking lot. *Id.* The officer, who randomly entered license plate numbers through his shift as standard operating procedure, ran a check of Wilkinson's license plates. *Id.* The check revealed that the truck was registered to Wilkinson, gave his physical description, and stated that he was a habitual traffic violator. *Id.* As the officer witnessed Wilkinson leave the store, the officer matched him with the computer description. *Id.* Although the officer did not see him commit a traffic violation, he subsequently stopped Wilkinson and arrested him. *Id.* Wilkinson argued that the evidence obtained as a result of the police officer's random license plate check should have been suppressed because it resulted from a random search carried out without any reasonable suspicion of a violation of the law. *Id.* The *Wilkinson* court held that the police officer's random checks of license plates were not a search, and that the officer had reasonable suspicion to stop Wilkinson because the license check disclosed both his suspended license and the description of Wilkinson—a description the driver matched. *Id.* at 1270, 1271. In a footnote, the court further observed:

We note that had the officer not obtained a physical description or other information indicating Wilkinson was the driver of the car, we would find the stop impermissible for the same reason as did the court in *People v. Brand*. *Cf. Smith [v. State]*, 713 N.E.2d 338 (Ind. Ct. App. 1999), *trans. denied*], where the

violation was a license plate that did not match the car. There, our supreme court [sic] found the stop valid even though the officer apparently did not know who was driving the car. Here, by contrast, the violation did not involve irregularities in the registration or licensure of the vehicle, but of the driver.

Id. at 1271 n.2.

However, in *State v. Ritter*, 801 N.E.2d 689, 692-93 (Ind. Ct. App. 2004), *trans. denied*, we observed that the *Wilkinson* footnote conflicts with *Kenworthy v. State*, 738 N.E.2d 329 (Ind. Ct. App. 2000), *trans. denied*. In *Kenworthy*, as in *Ritter*, the police officer knew that the registered owner of the vehicle in question had a suspended license. Both cases hold that even though the officer could not see the person driving the vehicle, and thus could not verify whether the driver matched the description obtained through the computer check, the officer had reasonable suspicion to make a stop. *Ritter*, 801 N.E.2d at 693; *Kenworthy*, 738 N.E.2d at 331. In *Ritter*, we cautioned that had the officer been able to see the driver and been able to discern that the driver did not match the description, the result might be different. *Ritter*, 801 N.E.2d at 693. We concur with the holdings in *Kenworthy* and *Ritter*, and we hold that Officer Myers had reasonable suspicion to make the stop.

Moreover, Officer Myers was not completely without guidance as to whether the driver could possibly be Bannister. Our examination of the transcript discloses that, after Officer Myers obtained a description of Bannister from the license plate check, he was able to discern enough information from examining the driver to have a reasonable suspicion that Bannister was driving the car. Specifically, he stated:

[PROSECUTOR]: Could you tell if it was a male or female driving?

[OFFICER MYERS]: It was, I could definitely tell that it was a male.

...

[DEFENSE COUNSEL]: How could you tell that it was a male driving the vehicle?

[OFFICER MYERS]: By his short hair and then his stature and the way that he looked. It appeared to be a male that was driving the vehicle.

...

[DEFENSE COUNSEL]: Were you able to tell what color his hair underneath the hat if he had a hat on?

[OFFICER MYERS]: I knew it wasn't blonde. It was brownish. I could tell that he had brown hair as he went in front of me because my headlights were on him.

(Transcript. pp. 5, 8, 11).

Therefore, Officer Myers not only had information that the owner of the vehicle had a suspended license, but he also was provided with articulable facts from which he had a reasonable suspicion to believe that the driver of the vehicle was the registered owner whose license was suspended. Thus, we hold that the stop was not a violation of Bannister's rights under the Fourth Amendment to the U.S. Constitution.¹

CONCLUSION

Based on the foregoing, we conclude that the trial court's admission of evidence derived from the stop of Bannister's vehicle was proper.

¹ In *Holly v. State*, --- N.E.2d --- (Ind. Ct. App. June 17, 2007), another panel of this court determined that "a police officer's knowledge that the registered owner of a vehicle lacks a valid license *by itself*, is insufficient to provide the officer with reasonable suspicion to permit an investigatory stop. Slip op. pp. 8-9 (emphasis added). However, while in *Holly*, the police officer acted solely based on the information he received from the license plate check, here, Officer Myers was not completely without guidance as to whether the driver could possibly be Bannister. The record clearly established that, prior to the stop, Officer Myers noticed a

Affirmed.

BAKER, C.J., and ROBB, J., concur.

driver whose description matched Bannister's. The different facts in *Bannister* and *Holly* consequently support a different result.