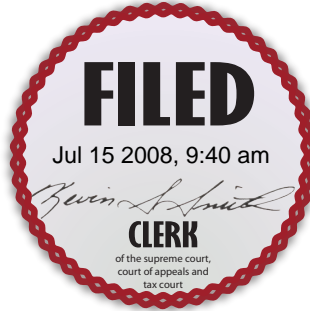


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)
)
 Appellant-Plaintiff,)
)
 vs.) No. 49A02-0801-CR-69
)
 WILLIE DUMES,)
)
 Appellee-Defendant.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Jones, Judge Pro Tempore
Cause No. 49G05-0706-FC-112116

July 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

The State appeals the trial court's grant of Willie Dumes' motion to suppress evidence. The State raises two issues for our review:

1. Whether the trial court erred in granting Dumes' motion to suppress evidence because reasonable suspicion existed to stop Dumes' vehicle based on the vehicle's cracked windshield.
2. Whether the placement of a temporary license plate in a rear window created reasonable suspicion for initiating the traffic stop.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 16, 2007, Officer Matthew Lynch of the Indianapolis Metropolitan Police Department stopped a vehicle because he noticed a crack in the windshield and a temporary license plate in the vehicle's rear window. Officer Lynch approached the vehicle and asked for identification. Willie Dumes, the driver of the vehicle, stated that he did not have his license with him. After Dumes orally identified himself, Officer Lynch learned that Dumes was a habitual traffic violator and arrested him. Officer Lynch confirmed that Dumes' passenger, Sarah Cade, had a valid driver's license and allowed her to take possession of the vehicle. Officer Lynch did not issue a citation for the cracked windshield or placement of the temporary license plate.

The State charged Dumes with Operating A Vehicle After License Forfeited For Life, a Class C felony. At a bench trial, Dumes moved to suppress the evidence because Officer Lynch lacked reasonable suspicion to conduct the traffic stop. The trial court granted the motion, stating that, assuming Officer Lynch could see the crack in the windshield, Officer Lynch had authority only to investigate the crack during the traffic

stop. And the trial court stated that Officer Lynch was mistaken in his belief that he had authority to stop Dumes based upon the placement of the temporary license plate. This appeal ensued.

DISCUSSION AND DECISION

Standard of Review

The State contends that the trial court erred in granting the motion to suppress. The State appeals from a negative judgment; thus, the State must show that the trial court's judgment was contrary to law. State v. Fridy, 842 N.E.2d 835, 838 (Ind. Ct. App. 2006) (citing State v. Estep, 753 N.E.2d 22, 24-25 (Ind. Ct. App. 2001)). We will not reweigh the evidence or judge the credibility of the witnesses. Id. "This Court will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court." Id.

According to the State, the trial court's judgment is contrary to law because Officer Lynch had reasonable suspicion for the traffic stop. "A police officer may stop a vehicle when he observes a minor traffic violation. A stop is lawful if there is an objectively justifiable reason for it, and the stop may be justified on less than probable cause." Ransom v. State, 741 N.E.2d 419, 421 (Ind. Ct. App. 2000) (citation omitted), trans. denied. "It is the requirement of reasonable suspicion which strikes the balance between the government's legitimate interest in traffic safety and an individual's reasonable expectation of privacy." Cash v. State, 593 N.E.2d 1267, 1268-69 (Ind. Ct. App. 1992) (citation omitted). Reasonable suspicion exists 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 a violation has or is about to occur. Id. Reasonable suspicion is determined by looking at the totality of the circumstances. Person v. State, 764 N.E.2d 743, 748 (Ind. Ct. App. 2002).

Issue One: Cracked Windshield

The State first contends that the trial court ruling was contrary to law because the stop was in accordance with Indiana Code Section 9-21-7-1, which requires vehicles driven on the highway be maintained in good working order. In particular, the State asserts that that Section of the Indiana Code justified stopping Dumes' vehicle because it had a cracked windshield. On these facts, we cannot agree.

In support of its position, the State cites T.D. v. State, 873 N.E.2d 184, 186-87 (Ind. Ct. App. 2007), and State v. Pease, 531 N.E.2d 1207, 1211 (Ind. Ct. App. 1988). In T.D., we held that an officer's observation that the driver's windshield was cracked provided the officer with reasonable suspicion for a traffic stop. 873 N.E.2d at 186-87. The T.D. trial court came to that determination after viewing photo evidence of the crack and hearing the officer's testimony. Id. Because the trial court's decision was not clearly against the logic and effect of the facts and circumstances before it, we did not reverse.

In Pease, there was extensive damage to the windshield:

The main break [was] comprised of three or four long, parallel cracks with a star-shaped focal point at each end. Each focal point [had] multiple cracks radiating from it, the smaller being approximately four to five inches in diameter. The third photograph [appeared] to have been taken from the rear of the driver's side from the perspective of a driver of a second vehicle safety [sic] stopped behind [the] vehicle. At this angle, damage to the passenger side of the windshield [appeared] more extensive, with many focal points and several large cracks, suggesting the possibility of chipping glass and obscured vision through the passenger's side.

531 N.E.2d at 1210-11. Thus, we inferred that an ordinarily prudent person would believe that the vehicle created a dangerous condition to pedestrians and merging vehicles because the driver's peripheral vision was obscured. Id. We held that the officer had reasonable suspicion for the stop. Id.

Similar to T.D., Dumes offered the trial court photographic evidence of his windshield and Officer Lynch provided testimony. Therefore, the trial court considered and weighed the photographs and the officer's testimony. However, unlike the trial court in T.D., the trial court here found the evidence unpersuasive in demonstrating reasonable suspicion and granted Dumes' motion to suppress. The State's request on appeal is for this court to reweigh that evidence, which we will not do. See Fridy, 842 N.E.2d at 838.

Further, Dumes' cracked windshield can be distinguished from the cracked windshield in Pease because the crack in Dumes' windshield is less severe and obtrusive. Dumes' windshield contained a single crack, unlike the four, long parallel cracks in Pease. From the pictures, there are neither star-shaped focal points at the ends of the crack nor a risk of chipping glass. Thus, Dumes' direct view and peripheral vision were not dangerously obscured, and an ordinarily prudent person would not necessarily believe that the vehicle created an unsafe condition. That is further evident from the fact that Officer Lynch allowed Cade to take possession of the vehicle after arresting Dumes. Insofar as the State requests that we adopt a per se rule allowing traffic stops in all cases for cracked windows, we decline to do so.

In reviewing the totality of the circumstances, the traffic stop of the vehicle driven by Dumes can be distinguished from the traffic stop in both T.D. and Pease. After

weighing the conflicting evidence, the trial court held that the cracked windshield here did not provide reasonable suspicion for the traffic stop. We cannot say that that determination is contrary to law. Since the traffic stop itself was invalid, Officer Lynch had no right to request Dumes' license and registration. Therefore, we must affirm the trial court's ruling with respect to the cracked windshield.

Issue Two: Temporary License Plate

Next, the State contends that the trial court ruling was contrary to law because Dumes' temporary license plate was placed in his vehicle's rear window rather than on the rear of the vehicle. But that argument is contrary to recent decisions of this court. See Meredith v. State, 878 N.E.2d 453 (Ind. Ct. App. 2007), clarified in relevant part, 886 N.E.2d 79 (Ind. Ct. App. 2008); Young v. State, 886 N.E.2d 636 (Ind. Ct. App. 2008) (holding that the display of a temporary tag in the rear window of the vehicle did not constitute a traffic violation). Officer Lynch was mistaken in his belief that he had reasonable suspicion to stop Dumes based on the placement of the temporary license plate. An officer's mistaken belief about what constitutes a violation does not amount to good faith and is not constitutionally permissible. Ransom, 741 N.E.2d at 422 (citing Cash, 593 N.E.2d at 1269). Therefore, the trial court's ruling regarding the temporary license plate was not contrary to law, and the court did not err in granting Dumes' motion to suppress.

Affirmed.

DARDEN, J., and BROWN, J., concur.