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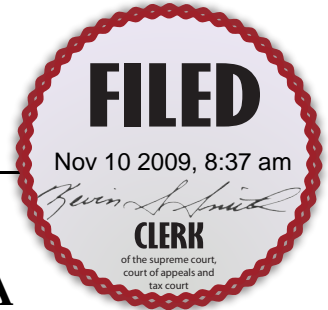
ATTORNEYS FOR APPELLANT:

GREGORY F. ZOELLER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

BRETT M. HAYS
Hays Law Office
Seymour, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)
)
Appellant-Plaintiff,)
)
vs.)
)
EVAN VON HENDRIX,)
)
Appellee-Defendant.)

No. 36A01-0903-CR-102

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause No. 36C01-0810-FD-366

November 10, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Plaintiff, State of Indiana, appeals the trial court's suppression of evidence obtained during a traffic stop.

We affirm.

ISSUE

The State presents one issue, which we restate as: Whether the trial court erred when it suppressed evidence gathered during a traffic stop.

FACTS AND PROCEDURAL HISTORY

On October 12, 2008, Seymour Police Officer Brandon White (Officer White) stopped a vehicle driven by Evan Von Hendrix (Hendrix) at approximately 3:00 a.m. At the time, Hendrix was traveling southbound on O'Brien Street, which is for two-way traffic, but contains no markers dividing the northbound and southbound lanes. Officer White pulled Hendrix's vehicle over and, when he approached Hendrix, he noticed signs that he was intoxicated.

On October 14, 2008, the State charged Hendrix with Count I, operating a vehicle while intoxicated, endangering a person, a Class D felony, Ind. Code §§ 9-30-5-2 and 3, and Count II, operating a vehicle with a blood alcohol content of more than .15 percent, a Class A misdemeanor, I.C. § 9-30-5-1. On December 4, 2008, Hendrix filed a motion to suppress the evidence discovered as a result of the stop of his vehicle. On February 12, 2009, the trial court conducted a hearing. Officer White testified that he stopped Hendrix's vehicle because it "had entered almost approximately into the entire opposite lane of traffic." (Transcript p.

7). The trial court took the matter under advisement, and agreed to watch a video of the traffic stop prior to rendering a decision. The State alleged that the video confirmed Officer White's testimony that the vehicle crossed almost entirely into the opposite lane of traffic. On February 24, 2009, the trial court issued a notice simply stating: "The Defendant's Motion to Suppress is granted." (Appellant's App. p. 8).

The State now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

The State argues that the trial court abused its discretion by granting Hendrix's motion to suppress because an officer may stop a vehicle when the officer observes a single traffic violation. Where the State appeals the trial court's grant of a motion to suppress, the State appeals a negative judgment and must show that the trial court's ruling was contrary to law. *State v. Estep*, 753 N.E.2d 22, 24-25 (Ind. Ct. App. 2001). We will reverse the judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that reached by the trial court. *Id.* at 25. We consider only the evidence most favorable to the trial court's decision to suppress and will neither reweigh the evidence nor judge the credibility of the witnesses. *Id.*

Indiana Code section 34-28-5-3 provides that:

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.

“Police officers may stop a vehicle when they observe minor traffic violations.” *Smith v. State*, 713 N.E.2d 338, 342 (Ind. Ct. App. 1999), *trans. denied*.¹ Indiana Code section 9-21-8-2 provides that vehicles shall be driven upon the right half of the roadway except: (1) when passing another vehicle; (2) when the right side of the roadway is closed; (3) when a roadway is divided into three lanes; or (4) when driving upon a one-way road.

By stating that Hendrix’s vehicle crossed almost entirely into the opposite lane of traffic, Officer White’s testimony described a minor traffic violation by Hendrix. Therefore, if Officer White’s testimony was the only evidence regarding the path of travel of Hendrix’s vehicle just prior to the stop, then we would have to agree with the State. However, the State also introduced as evidence a video of Hendrix’s vehicle as it traveled down O’Brien Street. We have reviewed the video, and fail to see where Hendrix’s vehicle crosses almost entirely into the opposite lane of traffic as Officer White testified. For that matter, we cannot discern clearly where Hendrix’s vehicle may have partially crossed into the opposite lane of traffic.

¹ The State mistakenly refers to this decision as “Ransom v. State.” (Appellant’s Br. p. 4).

As such, the evidence is not without conflict and does not require a conclusion opposite that of the trial court. Therefore, we cannot reverse the judgment of the trial court.

CONCLUSION

Based on the foregoing, we conclude that trial court's grant of the motion to suppress was not contrary to law.

Affirmed.

BAKER, C.J., and FRIEDLANDER, J., concur.