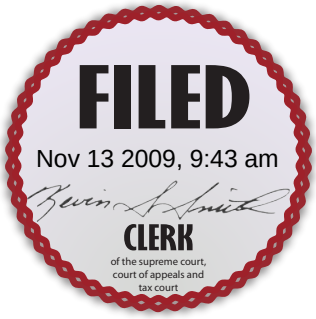

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IN THE
COURT OF APPEALS OF INDIANA

STATE OF INDIANA,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 84A05-0901-CR-24
	)	
CLAY CRICK and JEFFREY K. WATTS,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael J. Lewis, Judge
Cause No. 84D06-0710-FC-3326
Cause No. 84D06-0710-FC-3327

November 13, 2009

MEMORANDUM DECISION ON REHEARING—NOT FOR PUBLICATION

BAILEY, Judge

We issued our memorandum decision in August 2009. State v. Crick, 910 N.E.2d 1288 (Ind. Ct. App. 2009). The State filed a petition for rehearing, arguing that this Court erroneously affirmed the grant of Clay Crick's ("Crick") and Jeffrey K. Watts' ("Watts") motions to suppress evidence obtained in a vehicle search. We affirm our original opinion in its entirety and grant the State's petition for the limited purpose of clarifying the record.

Indiana State Police Trooper Timothy Denny stopped the vehicle in which Crick and Watts were riding based upon traffic infractions, but primarily in response to information obtained from the U.S. Drug Enforcement Administration. However, Trooper Denny did not reference the DEA information in either his Indiana State Police Case Report or his probable cause affidavit. Apparently as a sanction for a discovery violation, the trial court did not allow the State to call a DEA agent as a witness at the suppression hearing.

On rehearing, the State first argues that other evidence regarding the DEA's information was admitted. As noted in the memorandum decision, the State's first witness, Trooper Denny, testified that he understood from the DEA investigation that the vehicle contained marijuana. When the State later sought to call a DEA agent to testify, the trial court cited the discovery violation and refused the testimony.

The State's final witness, Detective Todd McComas, also referred to information obtained from the DEA. Watts objected, arguing that this constituted the State's attempt to offer "multiple hearsay" through "the back door." Transcript at 147-48. The trial court stated, "I'll sustain that objection with regard to what [the DEA agent] says." Id. at 148. Watts' attorney began to voice a motion to strike, but allowed the State to interrupt. Later,

the State asked Det. McComas:

> Now as far as, I don't want you to get into, the Court's already ruled as far as the, we can't get into the DEA and their investigation. Do you know, in this case, whether it was an investigation which continued past this time?

Id. at 152 (emphasis added). Thus, during the hearing, the State acknowledged that the trial court had ruled to exclude all information relating to the DEA's investigation.

Second, the State asserts that we incorrectly concluded that there was no evidence that Crick or Watts lied to Trooper Denny. To the contrary, we concluded that the defendants had not made any deceptive statements before being advised that they were free to leave. As was clear in our memorandum decision, the defendants were unable to name the airline they had flown just days before. Also, their statements differed as to which day they had flown to Denver. However, the probable cause affidavit, admitted during the suppression hearing as Defendant's Exhibit A, stated clearly that these statements were not made until after Trooper Denny told Watts that he was free to leave. Thus, we addressed the dispositive issue whether, under Article 1, Section of 11 of the Indiana Constitution, it was reasonable under the totality of the circumstances for Trooper Denny to detain Crick and Watts after giving Watts a traffic ticket and advising him that he was free to leave. The record most favorable to the ruling indicated that, as of that time, the defendants had appeared nervous, but had not yet offered any deceptive statements.

The State's confusion on this point may derive from its exclusive reliance on evidence favorable to its case in preparing the Statement of Facts in its Appellant's Brief – namely, its exhibits and the testimony of its witnesses – rather than the evidence most favorable to the

ruling. See Holder v. State, 847 N.E.2d 930, 935 (Ind. 2006). Trooper Denny's testimony regarding the timing of the deceptive statements was vague, but suggested that one or both of the statements was made during the thirty-five-second conversation before he went to prepare the ticket. Tr. at 21-22. In contrast, the probable cause affidavit stated clearly that each deceptive statement was made after Trooper Denny told Watts that he was free to leave. Defendant's Exhibit A.

We remind the State that we consider the evidence most favorable to the ruling, as well as substantial uncontradicted evidence to the contrary. Holder, 847 N.E.2d at 935. "The facts [in the State's Appellant's Brief] shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed." Ind. Appellate Rule 46(A)(6)(b).

Finally, the State cites three cases for the proposition that "nervousness when combined with other factors like deceptive responses and implausible explanations do give rise to reasonable suspicion." Petition for Reh'g at 8. As noted above, however, these cases are inapplicable because the probable cause affidavit prepared by Trooper Denny clearly stated that the deceptive statements were made after Watts was free to leave.

The State has failed to show that the trial court's rulings on the motions to suppress were contrary to law. See State v. Washington, 898 N.E.2d 1200, 1203 (Ind. 2008), reh'g denied.

Our original opinion is affirmed in its entirety.

DARDEN, J., and ROBB, J., concur.