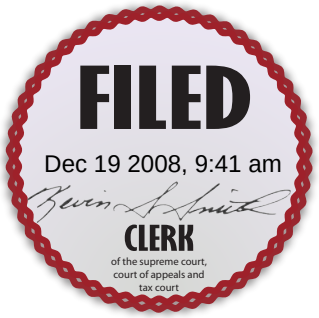

ATTORNEY FOR APPELLANT:

DEBORAH K. SMITH
Thorntown, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DAVID R. RUCKLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 06A04-0806-CR-319
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BOONE SUPERIOR COURT
The Honorable Rebecca S. McClure, Judge
Cause No. 06D02-0608-FC-725

December 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

David R. Ruckle appeals his conviction for operating a motor vehicle while privileges are forfeited for life, a class C felony.[1]

We affirm.

ISSUES

1. Whether the trial court abused its discretion in admitting evidence.
2. Whether the evidence was sufficient to support the conviction.
3. Whether Ruckle received ineffective assistance of counsel.

FACTS

At approximately 12:15 p.m. on July 22, 2006, Thorntown Police Officer Duane Lewellen observed a blue van being driven eastbound on 300 North U.S. 52. Officer Lewellen knew that the van belonged to Ruckle and recognized the driver to be Ruckle, someone he knew "on a personal" and "first name basis[.]" (Tr. 30, 32). He therefore was aware that Ruckle "was a Habitual Traffic Violator, that his driver's license w[as] suspended for life." (Tr. 30). He also confirmed through a computer check that the van was registered to Ruckle.

Officer Lewellen followed Ruckle until he turned into a driveway. Officer Lewellen drove "approximately an eighth of a mile" before turning around and initiating a traffic stop. (Tr. 31). Ruckle then exited the van and told Officer Lewellen that he knew his driver's license was suspended and that he should not be driving, but he had "to

[1] Ind. Code § 9-30-10-17.

pick up a relative and there was nobody else to do it." (Tr. 32). Officer Lewellen did not observe anyone else in the van.

Officer Lewellen attempted to verify Ruckle's status as a habitual traffic violator ("HTV") but could not because "the computer had locked up." (Tr. 32). He therefore advised Ruckle to "call somebody to come and get him . . . ." *Id.* Later that afternoon, Officer Lewellen confirmed that Ruckle's driving privileges had been forfeited and "generated a case report through the Thorntown Police Department . . . ." (Tr. 33).

The State charged Ruckle with operating a motor vehicle while driving privileges are forfeited for life. The trial court commenced a jury trial on January 8, 2008. Officer Lewellen testified to the foregoing facts. Cecil Ruckle, Ruckle's brother, testified that he had been driving Ruckle's van on July 22, 2006. He testified that he had pulled into the driveway of a farm, exited the van and then "went to the back of . . . the barn lot . . . ." (Tr. 80). He further testified that he had seen a police vehicle following him on 300 North U.S. 52 but the vehicle did not stop. The jury found Ruckle guilty as charged. The trial court sentenced Ruckle to six years, with two years suspended.

Additional facts will be provided as necessary.

DECISION

1. Admission of Evidence

Ruckle asserts that the trial court abused its discretion in admitting evidence obtained from the police stop and in admitting portions of his driving record. The admission of evidence is a matter left to the sound discretion of the trial court, and a

reviewing court will reverse only upon an abuse of that discretion. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* "We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling." *Lundquist v. State*, 834 N.E.2d 1061, 1067 (Ind. Ct. App. 2005). "However, we must also consider the uncontested evidence favorable to the defendant." *Id.*

a. *Traffic Stop*

Ruckle contends that Officer Lewellen lacked reasonable suspicion to conduct an investigatory stop because he could not be certain that Ruckle was driving the van. We disagree.

Both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution protect the privacy and possessory interests of individuals by prohibiting unreasonable searches and seizures. *Barfield v. State*, 776 N.E.2d 404, 406 (Ind. Ct. App. 2002). The police may stop an individual for investigatory purposes if, based on specific, articulable facts, the officer has a reasonable suspicion that criminal activity is afoot. *Finger v. State*, 799 N.E.2d 528, 532 (Ind. 2003) (quoting *Terry v. Ohio*, 392 U.S. 1, 16 (1968)).

> Whether a particular fact situation justifies an investigatory stop is determined on a case-by-case basis. The "reasonable suspicion" requirement of the Fourth Amendment is satisfied if the facts known to the officer at the moment of the stop are such that a person "of reasonable caution" would believe that the "action taken was appropriate." In other

> words, the requirement is satisfied 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 criminal activity has occurred or is about to occur. Reasonable suspicion entails something more than an inchoate and unparticularized suspicion or hunch, but considerably less than proof of wrongdoing by a preponderance of the evidence. Consideration of the totality of the circumstances necessarily includes a determination of whether the defendant's own actions were suspicious.

Crabtree v. State, 762 N.E.2d 241, 246 (Ind. Ct. App. 2002) (internal citations omitted).

Here, Officer Lewellen testified that he had observed Ruckle driving, and in fact, "made eye contact with Mr. Ruckle[.]" (Tr. 30). He also testified that he personally knew Ruckle and knew that his driving privileges had been forfeited. Officer Lewellen followed Ruckle until he turned into a driveway, at which point Officer Lewellen continued driving for a short distance before turning around and driving back toward the van. As he approached the van, he "observed [Ruckle] . . . pulling out onto 300." (Tr. 31). Officer Lewellen then initiated a traffic stop.

Given the totality of the circumstances, we find that Officer Lewellen had reasonable suspicion to stop and investigate Ruckle. The trial court did not abuse its discretion in admitting any evidence obtained as a result of the stop of Ruckle's vehicle.

b. *Driving Record*

Ruckle contends that the trial court abused its discretion in admitting certain Bureau of Motor Vehicle ("BMV") documents that "reflected his previous convictions for Operating While Intoxicated." Ruckle's Br. at 9. Specifically, Ruckle argues that as the trial court had admitted into evidence a copy of Ruckle's agreement to plead guilty to

the offense of operating a motor vehicle while privileges are suspended, as well as a copy of the judgment of conviction for that offense, "the additional showing of the convictions which led to Ruckle being declared a habitual traffic violator was unnecessary and highly prejudicial." Ruckle's Br. at 10.

Indiana Evidence Rule 404(b) provides in pertinent part: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." The purpose of this rule is "to prevent the jury from assessing the defendant's guilt in the present case on the basis of his past propensities." *Bryant v. State*, 802 N.E.2d 486, 498-99 (Ind. Ct. App. 2004), *trans. denied*. Thus, the State may not admit evidence of prior bad acts where it offers the evidence for the sole purpose of creating a forbidden inference that the defendant's present charged conduct is in conformity with his prior bad conduct. *Id*. at 499.

When a defendant objects to the admission of evidence on the grounds that it violates Evidence Rule 404(b), we must: (1) determine whether the evidence is relevant to a matter at issue other than the defendant's propensity to commit the charged act; and (2) balance the probative value of such evidence against its prejudicial effect. *Wertz v. State*, 771 N.E.2d 677, 683-84 (Ind. Ct. App. 2002). We will affirm the trial court's admission of evidence of prior bad acts or misconduct if it is sustainable on any basis in the record. *Bryant*, 802 N.E.2d at 499.

Here, the State sought to introduce the BMV documents—including notices of suspension—to prove that Ruckle's driving privileges had been suspended for life; the

basis for his status as an HTV; and that he knew his driving privileges had been suspended when he drove his van on July 22, 2006. The trial court admitted the documents into evidence and admonished the jury as follows:

> The evidence is . . . to be received by you solely for the purpose of determining whether the State has proved the status of [Ruckle's] driver's license on the day of the arrest or the . . . charge in this case. You are not to consider it for any other purpose and the Court wants to make sure that we're clear that you understand that it's a limited purpose for which this evidence is being admitted and that is to support the State's proposition that [Ruckle] was in fact Habitual Traffic Violator suspended for life on the day of the charge in this case.

(Tr. 76-77).

The BMV documents were relevant to proving that Ruckle's driver's license had been suspended and that he knew or should have known of that status; the probative value of the evidence outweighed any prejudice, particularly given the trial court's admonishment. Thus, we find no abuse of discretion. *See Carpenter v. State*, 743 N.E.2d 326, 329 (Ind. Ct. App. 2001) (finding that the defendant's convictions related to his HTV status, and thus, were admissible in prosecuting him for operating a motor vehicle while his license was suspended as an HTV), *trans. denied*.

2. Sufficiency of the Evidence

Ruckle asserts that the evidence was insufficient to support his conviction. Specifically, he argues that Officer Lewellen did not observe him driving on a public roadway, and Cecil had been driving the van.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and

> reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

In this case, the State was required to prove that Ruckle operated a motor vehicle after his driving privileges had been forfeited for life under Indiana Code section 9-30-10-16. The State therefore presented Officer Lewellen's testimony that he had observed Ruckle driving on 300 North U.S. 52. The State also presented evidence that Ruckle's driving privileges had been forfeited for life and that he was aware of that status.

Ruckle's arguments on appeal amount to an invitation to reweigh the evidence and assess witness credibility, which we will not do. We find the evidence is sufficient to sustain his conviction.

4. Ineffective Assistance of Counsel

Ruckle asserts that his trial counsel was ineffective for failing to contest whether he knew his driving privileges had been forfeited; and failing "to develop the nature of [Officer Lewellen's] testimony" regarding "his location or how long he had been working or whether fatigue was a factor" through "pre-trial depositions or discovery . . . ." Ruckle's Br. at 14. We disagree.

We evaluate claims concerning denial of the Sixth Amendment right to effective assistance of counsel using the two-part test articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), *reh'g denied*; *Cooper v. State*, 687 N.E.2d 350, 353 (Ind. 1997). A defendant must show that his counsel's performance fell below an objective standard of reasonableness, and that the deficiencies in the counsel's performance were prejudicial to the defense. *Id*. As to counsel's performance, we presume that counsel provided adequate representation. *Sims v. State*, 771 N.E.2d 734, 741 (Ind. Ct. App. 2002), *trans. denied*. "Counsel is afforded considerable discretion in choosing strategy and tactics, and we will accord that decision deference." *Id*. Furthermore, a defendant must show more than isolated poor strategy, bad tactics, a mistake, carelessness or inexperience. *Law v. State*, 797 N.E.2d 1157, 1162 (Ind. Ct. App. 2003) (discussing post-conviction remedy for ineffective assistance of counsel). As to prejudice, "there must be a showing of a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. "It is not necessary to determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Id.*

The State presented evidence that Ruckle had signed a plea agreement, whereby he pleaded guilty to operating a motor vehicle while privileges were suspended. The State also presented evidence that on March 22, 2002, the BMV had sent a notice of suspension to Ruckle, advising him that his license had been suspended for life due to his

conviction pursuant to Indiana Code section 9-30-10-16. Furthermore, Officer Lewellen testified that after being stopped, Ruckle "exited his van . . . and said Duane I know my license are [sic] suspended, I'm not supposed to be driving . . . ." (Tr. 32). Thus, as to the failure of Ruckle's counsel to contest Ruckle's knowledge that his license had been suspended, we cannot say that Ruckle was prejudiced by this alleged deficiency. *Cf. State v. Jackson*, 889 N.E.2d 819, 822 (Ind. 2008) ("The defendant's statement to police that his license was suspended provided direct proof of the knowledge element for the offense of driving while suspended as an HTV . . . .").

Regarding the alleged failure of Ruckle's counsel to conduct adequate pretrial investigation and preparation, it is "well established that this court should resist judging an attorney's performance with the benefit of hindsight." *Badelle v. State*, 754 N.E.2d 510, 538 (Ind. Ct. App. 2001), *trans. denied*. "Counsel's failure to interview or depose State's witnesses does not, standing alone, show deficient performance." *Williams v. State*, 771 N.E.2d 70, 74 (Ind. 2002). "The question is what additional information may have been gained from further investigation and how the absence of that information prejudiced his case." *Id.*

Ruckle does not indicate what new information could have been made available or how the failure to elicit additional information or testimony impaired his case. We therefore cannot find that Ruckle was prejudiced by his counsel's conduct.

Affirmed.

RILEY, J., and VAIDIK, J., concur.