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IN THE COURT OF APPEALS OF INDIANA

JOHNATHON CHANDLER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 16A04-1102-CR-105
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE DECATUR SUPERIOR COURT
The Honorable Matthew Bailey, Judge
Cause No. 16D01-1009-CM-360

November 4, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Johnathon Chandler ("Chandler") was convicted in Decatur Superior Court of Class A misdemeanor carrying a handgun without a license and Class C infraction operating a vehicle with expired license plates. On appeal, Chandler argues that the trial court abused its discretion in admitting into evidence a handgun seized from his vehicle during a traffic stop. Concluding that Chandler has waived appellate review of this issue, we affirm.

Facts and Procedural History

On August 31, 2010, Greensburg Police Department Lieutenant Larry Dance ("Lieutenant Dance") was conducting traffic patrol duties when he observed a vehicle traveling northbound on State Road 3 that appeared to have expired license plates. After contacting dispatch to confirm that the plates were expired, Lieutenant Dance initiated a traffic stop. Lieutenant Dance made contact with Chandler, the driver of the vehicle, and wrote him a traffic citation. Lieutenant Dance then informed Chandler the vehicle was being impounded and that he was free to remove his personal items from the vehicle beforehand. At that point, Chandler handed Lieutenant Dance a handgun magazine and informed him that there was a handgun in the vehicle. Lieutenant Dance asked Chandler to step out of the vehicle and then retrieved the handgun. Chandler told Lieutenant Dance that he had a permit to carry the handgun, but when Lieutenant Dance contacted dispatch to confirm Chandler's permit status, he discovered that Chandler's permit had expired in 2007.

As a result of these events, Chandler was charged with Class A misdemeanor carrying a handgun without a license and Class C infraction operating a vehicle with expired license plates. A bench trial was held on December 22, 2010, and Chandler was found guilty as charged. Chandler now appeals.

Discussion and Decision

Chandler argues that the trial court abused its discretion by admitting the handgun seized from his vehicle into evidence at trial. The State argues that Chandler waived this argument by failing to make a proper objection at trial. It is well settled that in order to preserve a claim regarding the admission of evidence, the defendant "'must make a contemporaneous objection that is sufficiently specific to alert the trial judge fully of the legal issue. When a defendant fails to object to the introduction of the evidence, makes only a general objection, or objects only on other grounds, the defendant waives the suppression claim.'" Robinson v. State, 730 N.E.2d 185, 192-92 (Ind. Ct. App. 2000) (quoting Moore v. State, 669 N.E.2d 733, 742 (Ind. 1996)) (emphasis omitted).

Here, when the State moved to admit the handgun into evidence, Chandler's counsel made the following objection: "Uh, Your Honor, we would probably object uh, on the grounds, not sure that the search and seizure was reasonable, under the circumstances." Tr. p. 9. This objection did not identify whether Chandler's counsel was objecting on the basis of the federal constitution, the state constitution, statute, or some other source of law. Nor did the objection identify which of Lieutenant Dance's actions were allegedly unlawful—the initial traffic stop, the seizure of the gun, or the

impoundment of the vehicle. Thus, the objection was general and insufficient to fully alert the trial court to the legal issue upon which the objection was based. Accordingly, Chandler has waived appellate review of the trial court's admission of the handgun into evidence.[1]

Waiver notwithstanding, we cannot conclude that the trial court abused its discretion in admitting the handgun into evidence. The admission of evidence is within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. Rogers v. State, 897 N.E.2d 955, 959 (Ind. Ct. App. 2008), trans. denied. A trial court abuses its discretion if its decision is clearly against the logic and the effect of the facts and circumstances before the court, or if the court has misinterpreted the law. Id. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling, but we also consider the uncontested evidence favorable to the defendant. Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied.

We first observe that Chandler does not dispute the validity of the initial traffic stop. Indeed, "'[i]t is well settled that a police officer may briefly detain a person whom the officer believes has committed an infraction or an ordinance violation." Goens v. State, 943 N.E.2d 829, 832 (Ind. Ct. App. 2011) (quoting Datzek v. State, 838 N.E.2d 1149, 1154 (Ind. Ct. App. 2005), trans. denied). It is a Class C infraction to operate a

[1] In an attempt to avoid waiver, Chandler raises the issue of fundamental error for the first time in his reply brief. But, as our supreme court recently noted, "parties may not raise an issue, such as fundamental error, for the first time in a reply brief." Curtis v. State, 948 N.E.2d 1143, 1148 (Ind. 2011). Because Chandler failed to allege fundamental error in his principal appellate brief, the issue is waived.

motor vehicle with expired license plates. Ind. Code § 9-18-2-40 (2004). The initial stop was therefore valid.

Rather, Chandler contends that the gun was inadmissible because it was the product of an unlawful impoundment of his vehicle. As an initial matter, we note that the handgun was not discovered during an inventory search following the impoundment of Chandler's vehicle. Rather, the handgun was recovered prior to the vehicle's impoundment, when Chandler informed Lieutenant Dance about the gun and its location. Nevertheless, Chandler argues that the seizure of the gun is attributable to the impoundment because he only told Lieutenant Dance about the gun after Lieutenant Dance began the impoundment process by instructing Chandler to exit the vehicle so it could be impounded.

Even if we attribute the seizure of the gun to the impoundment, we find no error. Indiana Code section 9-18-2-43(a) (2004) provides that:

> a law enforcement officer authorized to enforce motor vehicle laws who discovers a vehicle required to be registered under this article that does not have the proper certificate of registration or license plate:
> (1) shall take the vehicle into the officer's custody; and
> (2) may cause the vehicle to be taken to and stored in a suitable place until:
> (A) the legal owner of the vehicle can be found; or
> (B) the proper certificate of registration and license plates have been procured.

Thus, the statute *requires* an officer to take a vehicle lacking a proper license plate into his or her custody. Widduck v. State, 861 N.E.2d 1267, 1270 (Ind. Ct. App. 2007).

On appeal, Chandler does not dispute that his license plate was expired; rather, he argues that an expired license plate is "proper" under the statute. Chandler essentially

contends that an expired plate is still proper because impoundment "is an expensive and invasive action by the State[,]" driving with an expired plate is only an infraction, and a vehicle owner can easily renew an expired plate. Appellant's App. p. 11. We disagree. This court has repeatedly concluded that an expired plate is an improper license plate subjecting a vehicle to impoundment under the statute. Jackson v. State, 890 N.E.2d 11, 17-18 (Ind. Ct. App. 2008) (concluding that, because a vehicle's license plate was expired, "the controlling statute authorized, if not required, the police decision to impound the vehicle"); Edwards v. State, 762 N.E.2d 128, 132-33 (Ind. Ct. App. 2002) (concluding that I.C. § 9-18-2-43 required impoundment of a vehicle with expired plates); Lewis v. State, 755 N.E.2d 1116, 1124 (Ind. Ct. App. 2001) (concluding that officer was authorized by statute to impound a vehicle with expired plates because it could not be legally driven). We agree with these cases and hold that Indiana Code section 9-18-2-43 authorized, if not required, Lieutenant Dance to impound Chandler's vehicle because it had an expired license plate.

Chandler also argues that the impoundment was prohibited by the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Again, we disagree. An impoundment is proper under the Fourth Amendment "when it is part of 'routine administrative caretaking functions' of the police *or when it is authorized by statute.*" Taylor v. State, 842 N.E.2d 327, 331 (Ind. 2006) (quoting Woodford v. State, 752 N.E.2d 1278, 1281 (Ind. 2001)) (emphasis added). As we explained above, the impoundment was at least authorized, if not required, by Indiana

Code section 9-18-2-43(a). Accordingly, the impoundment did not violate Chandler's Fourth Amendment rights.

Nor can we conclude that the impoundment violated Chandler's rights under Article 1, Section 11 of the Indiana Constitution. Although the search and seizure provision found in Article 1, Section 11 of the Indiana Constitution tracks the language of the Fourth Amendment, our jurisprudence has focused on whether the actions of the government were "reasonable" under "the totality of the circumstances." Shotts v. State, 925 N.E.2d 719, 726 (Ind. 2010).

Here, Chandler's vehicle was stopped alongside a public roadway, and it was not legally operable due to its expired license plate. Had the vehicle not been impounded, Chandler, who was not arrested, could have driven his vehicle away once Lieutenant Dance left the scene, thereby committing another infraction. And even if Chandler chose not to drive his vehicle, it would have been subject to theft or vandalism if left unattended. But most importantly, the impoundment was at least authorized, if not required, by Indiana Code section 9-18-2-43, and in keeping with ordinary police procedures and regulation. We therefore conclude that the impoundment was not unreasonable under Article 1, Section 11 of the Indiana Constitution.

For all of these reasons, the trial court did not abuse its discretion in admitting the handgun into evidence.

Affirmed.

BAILEY, J., and CRONE, J., concur.