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**IN THE
COURT OF APPEALS OF INDIANA**

KERRY M. ADKINS,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-0603-CR-200
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marc Rothenberg, Judge
Cause No. 49F13-0509-IF-166130

December 27, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Kerry Adkins appeals the trial court's judgment finding that he committed speeding, an infraction. Adkins raises one issue, which we revise and restate as whether the trial court erred by instructing Adkins that he did not have the right to remain silent. We affirm.

The relevant facts follow. On September 8, 2005, Beech Grove Police Officer Scott Ferrer noticed Adkins's car traveling faster than the twenty-five mile per hour speed limit. Officer Ferrer's radar indicated that Adkins's vehicle was traveling at forty-two miles per hour. Officer Ferrer stopped Adkins and issued a traffic ticket for speeding in a school zone. At the bench trial, Adkins stated that he was not going to be a witness, and the prosecutor indicated that she was going to call Adkins as a witness. The trial court informed Adkins, "This is a civil matter. This is not a criminal matter. You don't have the right to remain silent in this particular matter." Transcript at 5. The prosecutor called Adkins to testify, and Adkins stated that he was stopped for speeding but did not know how fast he was going that day. The trial court entered a decision in favor of the State and ordered Adkins to pay fines and court costs in the amount of \$310.00.

The sole issue is whether the trial court erred by instructing Adkins that he did not have the right to remain silent. Adkins appears to argue that the trial court committed an error by allowing Adkins to testify because the privilege against self-incrimination and Ind. Const. Article I, Section 14 are applicable. Even assuming, without deciding, that the right to remain silent is applicable in this case, we find Adkins waived any error. By answering the prosecutor's questions without objection, Adkins waived any privilege to

remain silent. See Lykins v. State, 726 N.E.2d 1265, 1276 (Ind. Ct. App. 2000) (holding that the defendant waived his Fifth Amendment privilege to remain silent by choosing to answer questions without objection); Hilliard v. State, 609 N.E.2d 1167, 1169 (Ind. Ct. App. 1993) (holding that defendant waived the issue because he failed to object to the comment at the time it was made).

Waiver notwithstanding, we find any error to be harmless. Because a defendant's decision to invoke his Fifth Amendment privilege against compulsory self-incrimination is of a constitutional dimension, the State must satisfy the federal harmless error test in order to sustain Adkins's conviction. Herron v. State, 801 N.E.2d 761, 766 (Ind. Ct. App. 2004) (relying on Moore v. State, 669 N.E.2d 733, 736 (Ind. 1996)). Under federal harmless error, we must presume that reversal is necessary until the State proves beyond a reasonable doubt that the error was harmless. Id.

The following exchange occurred between the prosecutor and Adkins:

- Q Are you the one that was stopped that day?
A I'm sorry?
Q Are you the one who was stopped for Speeding that day?
A Yes, I was.
Q Did you know how fast you were going that day?
A No.

Transcript at 13. The record reveals that Officer Ferrer testified that Adkins's vehicle appeared to be traveling faster than the posted twenty-five miles per hour speed limit and his radar indicated that Adkins's vehicle was traveling at forty-two miles per hour. Based on the record, any error in the admission of Adkins's testimony is harmless. See, e.g.,

Porter v. State, 743 N.E.2d 1260, 1265-1266 (Ind. Ct. App. 2001) (holding that the erroneous admission of evidence was harmless beyond a reasonable doubt).

For the foregoing reasons, we affirm the trial court's judgment finding that Adkins committed speeding, an infraction.

Affirmed.

KIRSCH, C. J. and MATHIAS, J. concur