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**IN THE
COURT OF APPEALS OF INDIANA**

BARRY D. MCATEE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0706-CR-302

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 9
The Honorable Heather Welch, Judge
Cause No. 49F09-0406-FD-105767

December 31, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

Appellant-Defendant, Barry D. McAtee (McAtee), appeals his conviction for Count I, operating a vehicle while a habitual traffic violator, a Class D felony, Ind. Code § 9-30-10-16, and Count III, public intoxication, a Class B misdemeanor, I.C. § 7.1-5-1-3.

We affirm.

ISSUE

McAtee raises one issue on appeal, which we restate as follows: Whether the trial court properly admitted evidence obtained from a police officer's traffic stop of McAtee because his license plate light was not working.

FACTS AND PROCEDURAL HISTORY

On June 12, 2004, Officer Michael Clark (Officer Clark) of the Cumberland Police Department noticed a vehicle without a working license plate light. Officer Clark stopped the vehicle. The sole occupant in the vehicle was McAtee. Officer Clark asked for his driver's license and registration. McAtee identified himself as Steven Hill and told him he was driving his friend's car and did not have the registration in the vehicle. Officer Clark could not accurately identify McAtee until his girlfriend arrived in a separate vehicle and spoke to Officer Clark. Then, Officer Clark ran McAtee's name through the computer system and discovered that McAtee was a habitual traffic violator. Officer Clark placed McAtee under arrest and searched the vehicle. He found an open bottle of gin in the back seat. After that, Officer Clark observed that after turning off all his lights there was an "extremely dim light" above the license plate. (Tr. p. 44).

On June 12, 2004, the State filed an Information charging McAtee with Count I, operating a motor vehicle while a habitual traffic violator, a Class D felony, I.C. § 9-30-10-16; Count II, operating a vehicle while intoxicated, a Class D felony, I.C. § 9-30-5-3; and Count III, public intoxication, a Class B misdemeanor, I.C. § 7.1-5-1-3.

On February 20, 2007, McAtee filed a motion to suppress the evidence collected after the traffic stop. Following a hearing, the motion was denied. On May 2, 2007, a bench trial was held, and McAtee was found guilty of operating a motor vehicle while a habitual traffic violator and public intoxication. On the same day he was sentenced to five hundred forty-five days, with three hundred sixty-five days suspended to home detention.

McAtee now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

McAtee claims that the evidence obtained to prove the State's charges should not have been admitted at trial because the traffic stop violated his rights under the Fourth Amendment of the U.S. Constitution. In particular, he alleges that the trial court had an improper reading of the statute and should not have presumed that a traffic infraction had been committed. We disagree.

The admission or exclusion of evidence is a determination entrusted to the discretion of the trial court. *Edwards v. State*, 862 N.E.2d 1254, 1259 (Ind. Ct. App. 2007), *trans. denied*. We will reverse the trial court's decision only for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court's action is clearly erroneous and against the logic and effect of the facts and circumstances before it. *Id.* We will not reweigh the

evidence or judge the credibility of the witness. *McHenry v. State*, 820 N.E. 2d. 124, 126 (Ind. Ct. App. 2005).

Initially, we note that McAtee did not object to the Officer's testimony regarding the contested traffic stop at trial, thereby, waiving his right to appeal the admission of the evidence. The trial court's denial of a motion to suppress is insufficient to preserve error for appeal. *Swanson v. State*, 730 N.E.2d 205, 208 (Ind. Ct. App. 2000), *trans. denied*. A defendant must reassert his objection at trial contemporaneously with the introduction of the evidence to preserve the error for appeal. *Carter v. State*, 754 N.E.2d 877, 881 (Ind. 2001). Nevertheless, we will review McAtee's claim on its merits.

I.C. § 9-19-6-4 (e) sets forth the following condition for illuminating the license plate of motor vehicles:

Either a tail lamp or a separate lamp must be placed and constructed so as to illuminate the rear registration plate with a white light and make the plate clearly legible from a distance of fifty (50) feet to the rear. A tail lamp or tail lamps, together with a separate lamp for illuminating the rear registration plate, must be wired so as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

Non-compliance with the Indiana statutory requirements concerning placement, secure attachment, illumination and legibility "may serve as a basis for reasonable suspicion for law enforcement officers to make a traffic stop to ascertain whether the display fully complies with all statutory requirements." *Merritt v. State*, 829 N.E.2d 472, 476 (Ind. 2005). Moreover, an officer's interest in investigating his reasonable suspicion, based on specific and articulable facts, may outweigh the Fourth Amendment interest of the occupant. *Cash v. State*, 593 N.E.2d 1267, 1268 (Ind. Ct. App. 1992).

Although McAtee is claiming that the light above the plate on his vehicle was working, it was working improperly under the requirements of the statute. It is clear from the statutory language that the functioning condition of the tail lamp or separate lamp above the plate should be such as to illuminate the plate from the distance of fifty feet. During the trial proceeding, Officer Clark gave the following testimony:

[State]: Officer, how was your attention first drawn to the Defendant.

[Officer Clark]: I had noticed the vehicle did not have any working license plate lights.

[State]: And what did you do when you noticed that there was a vehicle without a working license plate light.

[Officer Clark]: I got in close within fifty feet of the vehicle, and turned my headlights off to confirm it and I did not see a working license plate light.

[State]: And is that a traffic infraction?

[Officer Clark]: Yes, it is.

(Tr. p. 37)

Additionally, during the suppression hearing, the Officer added that there was an extremely dim light. Thus, the light above McAtee's license plate could be recognized only when the Officer de-activated all his lights and approached close to the vehicle. We conclude that McAtee's failure to comply with the illumination requirement of the statute served as a basis for reasonable suspicion for Officer Clark to make a traffic stop and ascertain whether McAtee's vehicle fully complied with all statutory requirements. Therefore, the traffic stop was not illegal and McAtee's Fourth Amendment rights were not violated.

CONCLUSION

Based on foregoing, we find that the trial court properly admitted the evidence of the traffic stop.

Affirmed.

KIRSCH, J., and MAY, J., concur.