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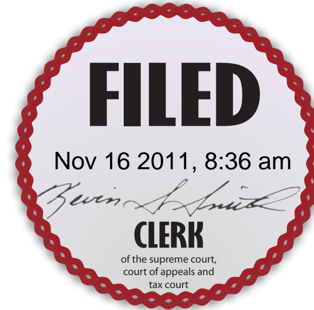

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IN THE
COURT OF APPEALS OF INDIANA

WILLIE ANDREW ALSANDERS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

No. 71A03-1104-CR-136

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-1009-FC-219

November 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Willie Alsanders was convicted of Class C felony Operating a Motor Vehicle After Lifetime Suspension of Driving Privileges,[1] for which he received a two-year sentence in the Department of Correction and a lifetime license suspension. Upon appeal, Alsanders challenges certain evidence admitted against him. We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 1:30 a.m., on September 11, 2010, Indiana State Troopers John Wilson and Alan Wiegand, who were standing in a parking lot next to Adams Street in St. Joseph County, observed that the backseat passenger of a vehicle traveling south on Adams Street was not wearing her seat belt. Two other persons were in the vehicle: the driver, later identified to be Alsanders, and his passenger. The troopers followed the vehicle in their police car until it pulled over to park, at which point Trooper Wilson activated his emergency lights and spotlight. Upon doing so, Trooper Wilson observed Alsanders unfasten his seat belt and move to the center of the front bench seat. Alsanders's act of moving inside his vehicle placed Trooper Wilson on alert for possible weapons or contraband.

Troopers Wilson and Wiegand approached the vehicle and ordered the occupants, including Alsanders, to step out. Upon stepping out, Alsanders, who smelled of alcohol, claimed to the officers that he had not been driving the vehicle, which was contrary to their observations. Officers handcuffed Alsanders and patted him down, during which time Alsanders admitted, in response to the officers' inquiry, that his license was

[1] Ind. Code § 9-30-10-17 (2010).

suspended. During the pat down, officers discovered and removed Alsanders's identification card from one of his pockets. Upon checking it, they determined that he was a habitual traffic violator. Upon searching the vehicle, officers discovered open containers of alcohol. Trooper Wilson issued Alsanders citations for operating a vehicle as a habitual traffic violator and operating a vehicle while intoxicated.[2] He also issued the backseat passenger a citation for the seat belt violation.

On September 14, 2010, the State charged Alsanders with Class C felony operating a motor vehicle after lifetime suspension of driving privileges. On December 16, 2010, Alsanders moved to suppress evidence relating to the traffic stop, which the trial court denied. At the July 1, 2011 trial, Alsanders objected to any evidence resulting from actions by the officers after they had conducted a safety check of the vehicle and its passengers. The trial court denied the objection, and, following introduction of evidence indicating that Alsanders had a lifetime license suspension at the time of his arrest (Exh. 1A), the jury found Alsanders guilty as charged. The trial court entered judgment of conviction and sentenced Alsanders to two years in the Department of Correction. It also imposed a lifetime license suspension. This appeal follows.

DISCUSSION AND DECISION

Upon appeal, Alsanders challenges the trial court's admitting evidence resulting from the traffic stop on the grounds that it violated Indiana Code section 9-19-10-3.1 (2010). Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial

[2] Ultimately, Alsanders was not charged with operating a vehicle while intoxicated.

objection. *Ackerman v. State*, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), *trans. denied*. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*. However, we must also consider the uncontested evidence favorable to the defendant. *Id.*

Indiana Code section 9-19-10-3.1 provides as follows: "[A] vehicle may be stopped to determine compliance with this chapter.[3] However, a vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this chapter."

In upholding the above statute against claims that it unconstitutionally provides authority for entirely pretextual traffic stops, the Supreme Court has reasoned that the statute permits law enforcement officers to stop motorists only where they have reasonable suspicion that a seat belt violation has occurred. *State v. Richardson*, 927 N.E.2d 379, 382 (Ind. 2010). "'[T]he statute requires that when a stop to determine seat belt law compliance is made, the police are strictly prohibited from determining anything else, even if other law would permit.'" *Id.* (quoting *Baldwin v. Reagan*, 715 N.E.2d 332, 339 (Ind. 1999)). The Supreme Court has further observed that the statute could be read to prohibit a police officer making a seat belt stop from even asking the driver for consent to search the vehicle or its occupants. *Id.*

At the same time, when circumstances warrant, "police are not ousted of authority to investigate further." *Id.* "'[A] brief police detention of an individual during

[3] Indiana Code chapter 9-19-10 governs passenger restraint systems in motor vehicles.

investigation is reasonable if the officer reasonably suspects that the individual is engaged in, or about to engage in, illegal activity.'" *Id.* (quoting *Baldwin*, 715 N.E.2d at 337). The State has the burden to show that under the totality of the circumstances the intrusion was reasonable. *Id.*

An officer may conduct a limited search or inquiry concerning weapons without obtaining a search warrant if the officer reasonably believes that he or others may be in danger. *Id.* at 383-84. "'Reasonable suspicion exists 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 or is about to occur.'" *Id.* (quoting *Baldwin*, 715 N.E.2d at 337). Officers are not permitted to "fish" for evidence of other crimes, but they are permitted to make follow-up inquiries if the facts support reasonable suspicion that a crime has or is about to occur. *See id.* at 383-84; *see Morris v. State*, 732 N.E.2d 224, 228 (Ind. Ct. App. 2000) (finding an independent basis for further inquiry beyond seat belt violation, where defendant failed to produce a valid license, and a computer check revealed that his license was suspended).

Applying these principles, the *Richardson* court held that an officer's inquiry into an "unusual bulge" in a driver's pocket during a traffic stop for a seat belt violation contravened section 9-19-10-3.1 because the bulge was inadequate to establish reasonable suspicion of other crimes. 927 N.E.2d at 384. This was especially so given the driver's full cooperation with the officer and the officer's history of peaceful exchanges with this driver. *Id.* In reaching its holding, the *Richardson* court acknowledged that other circumstances or conditions could support follow-up

investigation, such as suspicious behavior by the driver, *see Trigg v. State*, 725 N.E.2d 446 (Ind. 2000), or personal knowledge of the driver and his propensity for violence, *see Pearson v. State*, 870 N.E.2d 1061, 1066 (Ind. Ct. App. 2007), *trans. denied*, leading to officer safety concerns. *Richardson*, 927 N.E.2d at 383.

Here, officers initially extended their investigation beyond the seat belt violation based in part upon fear for their safety. Given the late hour and the unpredictable nature of Alsanders's actions, the officers were justified in patting Alsanders down and searching his vehicle for safety purposes.

Alsanders does not contest the officers' justification in conducting these initial safety searches. Instead, he disputes their authority to subsequently question him and "gather information" about his driving status. During the course of Alsanders's pat down, officers asked him if his license was suspended, which he admitted, and they took his identification from one of his pockets. Upon running Alsanders's identification through dispatch, officers learned that he was a habitual traffic offender. Alsanders suggests this was beyond the scope of their safety search.

Pearson provides guidance under these facts. In *Pearson*, this court initially concluded, based upon officer safety concerns, that officers had reasonable suspicion during the course of a seat belt traffic stop to conduct a pat down search of the driver. 870 N.E.2d at 1066. But because the contraband ultimately discovered on the driver resulted from a "fishing" inquiry during the pat down search rather than from the search

itself,[4] this court concluded that evidence resulting from that inquiry was inadmissible. *Id.* at 1068.

It is apparent from *Pearson* that officers stopping vehicles for seat belt violations may not make random inquiries in an attempt to fish for evidence of possible crimes, even if they are doing so in the course of a legitimate pat down search for officer safety. But here, unlike in *Pearson*, the officers' inquiry did not constitute a fishing expedition. Alsanders smelled of alcohol; he had claimed that he was not the vehicle's driver, which Trooper Wilson knew to be untrue; and he had changed positions in his vehicle, supporting reasonable suspicion that he was engaged in driving while intoxicated and/or some other driving offense. Given these facts establishing reasonable suspicion of criminal activity unrelated to the facts of the seat belt violation, the officers were justified in making an inquiry. Alsanders then volunteered that his driver's license was suspended. *See* State's Exhibit 2. At this point, officers had probable cause to arrest him for driving with a suspended license and search him incident to that arrest,[5] which yielded the identification card used to confirm his habitual traffic violator status.[6] *See Fentress v. State*, 863 N.E.2d 420, 423-24 (Ind. Ct. App. 2007) (holding that search

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[4] The officer asked the driver if he had anything on his person, to which the driver responded that he had marijuana. *Pearson*, 870 N.E.2d at 1063.

[5] So long as probable cause exists, the fact that a suspect is not formally placed under arrest does not invalidate a search, and a police officer's subjective belief about whether probable cause exists has no legal effect. *Sebastian v. State*, 726 N.E.2d 827, 830 (Ind. Ct. App. 2000), *trans. denied*.

[6] Officers took Alsanders's identification card from his pocket during their pat down search. While officers were already entitled to pat Alsanders down for safety purposes, the State makes no argument that they seized the identification because it had an immediately apparent criminal nature. *See Burkett v. State*, 785 N.E.2d 276, 278 (Ind. Ct. App. 2003).

incident to lawful arrest allows the arresting officer to conduct a warrantless search of the arrestee's person). We find no Indiana Code section 9-19-10-3.1 violation.

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.