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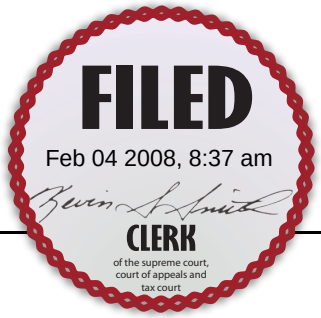

IN THE
COURT OF APPEALS OF INDIANA

STATE OF INDIANA,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 66A03-0706-CR-264
	)	
MARK K. REED,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE PULASKI CIRCUIT COURT
The Honorable Michael Anthony Shurn, Judge
Cause No. 66C01-0605-FC-008

FEBRUARY 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Under the authority of Ind. Code §35-38-4-2(5), the Plaintiff-Appellant State ("State") appeals from the trial court's ruling granting Defendant-Appellee Mark K. Reed's ("Reed") motion to suppress evidence of his driver's license suspension.

We affirm.

ISSUE

The issue presented for our review is: whether the trial court correctly concluded that the police officer mistakenly believed that Reed had committed an infraction which served as the probable cause or reasonable suspicion for the traffic stop leading to the discovery of Reed's driver's license status.

FACTS AND PROCEDURAL HISTORY

Deputy Sheriff Lendermon noticed Reed's truck, which was traveling on a county road in Pulaski County, had a faulty brake light. The passenger side brake light worked which, according to Lendermon, made the non-working driver's side brake light "stand out." Tr. 13. Lendermon turned his vehicle into Reed's lane of travel and, without activating his emergency's lights, began following Reed's vehicle. Lendermon noticed that after accelerating to a speed of more than 60 miles-per-hour, in a 55 miles-per-hour speed limit zone, his vehicle was not able to catch up with Reed's truck. Lendermon eventually made the traffic stop.

Reed supplied Lendermon with his identifying information, after which Lendermon ran a computer check. Lendermon discovered that Reed's driving privileges had been forfeited for life. Reed admitted his license was suspended.

A reserve deputy was riding along with Lendermon. Lendermon had the reserve deputy depress the brake pedal to demonstrate to Reed that his truck's brake light did not operate. When the reserve deputy depressed the brake pedal the brake light worked.

The State filed an information against Reed charging him with operating a motor vehicle after forfeiture for life, a Class C felony. Reed filed a motion to suppress. Lendermon was the only witness at the suppression hearing. After a hearing, arguments, and the filing of briefs, the trial court ruled in favor of Reed. This appeal follows.

Additional facts will be added as needed.

DISCUSSION AND DECISION

On appeal from an order granting a motion to suppress, the State appeals from a negative judgment and must show that the trial court's ruling is contrary to law. *State v. Rucker*, 861 N.E.2d 1240, 1241 (Ind. Ct. App. 2007). We will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. *Id*. We will neither reweigh the evidence nor judge the credibility of the witnesses; rather, we will consider only the evidence most favorable to the judgment. *Id.*

Our standard of appellate review of a trial court's ruling on a motion to suppress is similar to other sufficiency issues. *See State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). The record must disclose substantial evidence of probative value that supports the trial court's decision. *Id*. We do not reweigh the evidence, and we consider conflicting evidence most favorably to the trial court's ruling. *Id*.

Reed was ticketed pursuant to Indiana Code §9-19-6-17 for having a faulty brake light on his vehicle. Ind. Code §9-19-6-17 provides as follows:

> A motor vehicle may be equipped, and when required under this chapter must be equipped, with a stop lamp or lamps on the rear of the vehicle that:
> (1) displays a red or an amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight;
> (2) will be actuated upon application of the service (foot) brake; and
> (3) may be incorporated with at least one (1) other rear lamp.

The State argues that the traffic stop in question was valid for either one of two reasons. First, the State argues that the officer was justified in making the stop because of the faulty equipment on Reed's truck. Second, the State argues that the officer was justified in making the stop because Reed was speeding.

Reed argues that even if the driver's side brake light was not functioning properly, it does not establish that he committed the infraction. Second, Reed argues that the officer did not cite Reed for speeding, but observed the speeding while attempting to make the traffic stop for the faulty brake light. Therefore, there is no probable cause or reasonable suspicion to validate the traffic stop.

Police officers may stop a vehicle when they observe minor traffic violations. Ind. Code §34-28-5-3. A traffic violation, however minor, creates probable cause to stop the driver of the vehicle. *Quirk*, 842 N.E.2d at 340. The determination of reasonable suspicion and probable cause requires *de novo* review on appeal. *Myers v. State*, 839 N.E.2d 1146, 1150 (Ind. 2005).

Ind. Code §9-19-6-6 states the following:

(a) Except as provided in subsection (b), a person may not:

> (1) sell; or
> (2) drive on the highways;
> in Indiana a motor vehicle, including a motorcycle or motor-driven cycle unless the vehicle is equipped with *at least one (1) stoplight* meeting the requirements of section 17 of this chapter (emphasis supplied).

Ind. Code §9-19-6-17 states in relevant part as follows about stop lamps:

> (a) A motor vehicle may be equipped, and when required under this chapter must be equipped, with *a stop lamp or lamps* on the rear of the vehicle that:
> (1) displays a red or an amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight;
> (2) will be actuated upon application of the service (foot) brake; and
> (3) may be incorporated with at least one (1) other rear lamp (emphasis supplied).

A violation of chapter 6 is a Class C infraction. Ind. Code §9-19-6-24.

The text of these statutes requires one working stop lamp. Deputy Lendermon's testimony was that the passenger side brake light was working, and that caused one to notice that the driver's side brake light was not functioning. Deputy Lendermon's testimony establishes that no violation of Ind. Code §9-19-6-1 *et seq*. occurred. At least one stop lamp was working.

The State had argued below that the language *a stop lamp or lamps* in Ind. Code §9-19-6-17 was the legislature's attempt to address both single stop lamp motorcycles and motor vehicles, presumably with two stop lamps, in one section. However, as Reed notes, there are specific subsections within the chapter that distinguish the requirements for motorcycles from those of other motor vehicles. *See e.g.* Ind. Code §§9-19-6-3 & 5. We do not address the State's position further here, because the State does not advance this argument on appeal.

Instead, the State argues that Deputy Lendermon was justified in his stop because the non-functioning driver's side brake light constituted faulty equipment. The State cites *Peete v. State*, 678 N.E.2d 415 (Ind. Ct. App. 1997) to support its position that Reed violated Ind. Code §9-21-7-1, thereby providing the probable cause or reasonable suspicion for the traffic stop.

It is a Class C infraction to operate a motor vehicle with equipment that is not in good working condition. Ind. Code §9-21-7-1. The vehicle must be in a safe mechanical condition that does not endanger the person who drives the vehicle, another occupant of the vehicle, or a person upon the highway. *Id*.

In *Peete*, the initial stop of the driver's vehicle was due to a failure to properly illuminate the license plate. The panel of this court in *Peete*, noted that it is a Class C infraction to operate a motor vehicle with equipment that is not in good working condition, citing Ind. Code §§9-21-7-1, 13. 678 N.E.2d at 419. Ind. Code §9-21-7-1 provides that a person may not drive or move on a highway a motor vehicle unless the equipment is in good working order as required in article 21, and the vehicle is in a safe mechanical condition that does not endanger the driver, another occupant of the vehicle, or a person upon the highway.

There was no testimony from Deputy Sheriff Lendermon at the suppression hearing that the truck was in an unsafe mechanical condition, such that Reed, another occupant of the vehicle, or anyone traveling on the county road, was endangered by the non-functioning brake light. Consequently, the only argument available under Ind. Code §9-21-7-1 is that the truck was not in good working order. As discussed above, good

working order according to Ind. Code §9-19-6-6 and Ind. Code §9-19-6-17, is for a vehicle to be equipped with at least one stop lamp--a stop lamp or lamps. Therefore, this cannot be the justification for the stop since Lendermon testified that one stop lamp was working.

It is clear from the record that Deputy Lendermon believed that Reed's vehicle was not working properly because he observed only one stop lamp, or brake light, functioning. Nevertheless, although a law enforcement officer's good faith belief that a person has committed a violation will justify a traffic stop, an officer's mistaken belief about what constitutes a violation does not amount to good faith. *Ransom v. State*, 741 N.E.2d 419, 422 (Ind. Ct. App. 2000).

Here, there was no infraction. Furthermore, Lendermon's own testimony was that he observed the driver's side brake light not functioning prior to the traffic stop. In addition he testified that when the reserve deputy who had accompanied Lendermon was asked to depress the brake pedal on Reed's truck, the driver's side brake light functioned properly. The evidence in this matter regarding the functioning of the brake light is conflicting, and does not lead to a result contrary to that reached by the trial court.

The State also argues here that Lendermon was justified in stopping Reed's vehicle because Reed was speeding. Still, Lendermon's testimony at the suppression hearing was that he was pursuing Reed because of the faulty brake light. Lendermon did not testify that he ever explained to Reed that he had been speeding, and no citation for speeding was issued. Lendermon's observations of Reed's speed of travel were made after he had begun to stop Reed for the brake light infraction. The record reflects that

Lendermon advised Reed that the faulty brake light was the reason for the stop. The observation that Reed was speeding, like the discovery of Reed's driver's license status, was discovered after the traffic stop had been initiated. There was no probable cause or reasonable suspicion for the traffic stop.

The trial court did not err by granting Reed's motion to suppress.

DARDEN, J., concurs.

MAY, J., dissenting with separate opinion.

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	)	
Appellee-Defendant.	)	
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MAY, Judge, dissenting.

Because I believe the trial court erred when it granted Reed's motion to dismiss, I would reverse and remand for trial. Therefore, I respectfully dissent.

Deputy Lendermon activated his emergency lights and siren only after he noticed Reed was traveling at more than 60 miles-per-hour in a 55 miles-per-hour zone. "A traffic violation, however minor, creates probable cause to stop the driver of the vehicle." *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). Deputy Lendermon had authority to stop Reed because he was speeding. *See Black v. State*, 621 N.E.2d 368, 370 (Ind. Ct. App. 1993) (officer's traffic stop of defendant was proper where evidence supported finding defendant was speeding).

That Deputy Lendermon began following Reed's truck because he thought one of Reed's brake lights was faulty is of no import. Following a defendant is not synonymous

with initiating a traffic stop. *See, e.g.*, *Moffitt v. State*, 817 N.E.2d 239, 246 (Ind. Ct. App. 2004) ("An arrest occurs when a police officer 'interrupts the freedom of the accused and restricts his liberty of movement.' *Sears v. State*, 668 N.E.2d 662, 667 (Ind. 1996)."), *trans. denied* 822 N.E.2d 980 (Ind. 2004). To the best of my knowledge, neither our state nor federal constitution requires a police officer to have reasonable suspicion to follow a citizen down the road without interrupting that citizen's freedom of movement.

Neither does it matter that Deputy Lendermon believed he was stopping Reed for a faulty brake light. *See Wells v. State*, 848 N.E.2d 1133, 1149 n.9 (Ind. Ct. App. 2006) ("subjective reasons for initiating a traffic stop are irrelevant so long as there is objective, reasonable suspicion that a driver has violated some provision of the traffic code"), *reh'g granted* 853 N.E.2d 143 (Ind. Ct. App. 2006) (correcting two factual misstatements, but affirming in all other respects), *trans. denied* 860 N.E.2d 595 (Ind. 2006), *cert. denied* 127 S. Ct. 1913 (2007); *Osborne v. State*, 805 N.E.2d 435, 439 (Ind. Ct. App. 2004) ("The subjective intentions of the officer play no role in determining the reasonableness of the stop under the Fourth Amendment.") (*citing Whren v. U.S.*, 517 U.S. 806, 813 (1996)), *trans. denied* 812 N.E.2d 808 (Ind. 2004); *Jackson v. State*, 785 N.E.2d 615, 619 (Ind. Ct. App. 2003) ("If there is an objectively justifiable reason for the stop, then the stop is valid whether or not the police officer would have otherwise made the stop but for ulterior suspicions or motives."), *trans. denied* 804 N.E.2d 749 (Ind. 2003).

Nor is it relevant to our analysis whether Reed received a ticket for speeding. *See Sears*, 668 N.E.2d at 667 n.10 ("The facts and circumstances of which the arresting

officer has knowledge that provide probable cause to believe a crime has been committed need not relate to the same crime with which the defendant is ultimately charged.").

For all these reasons, I would find proper Deputy Lendermon's stop of Reed, and I would reverse and remand for trial.