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IN THE
COURT OF APPEALS OF INDIANA

Pradeep Kumar Toppo,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 14, 2021

Court of Appeals Case No. 20A-CR-2099

Appeal from the Tippecanoe Superior Court

The Honorable Michael A. Morrissey, Judge

Trial Court Cause No. 79D06-1804-F6-534

Najam, Judge.

Statement of the Case

[1] Pradeep Toppo appeals his convictions following a bench trial for operating a vehicle while intoxicated, as a Level 6 felony, and driving left of center, as a Class C infraction. Toppo raises one issue for our review, namely, whether the

trial court erred when it admitted evidence that law enforcement had obtained following a traffic stop.

[2] We affirm.

Facts and Procedural History

[3] Shortly after noon on April 18, 2018, Deputy Jacob Minott with the Tippecanoe County Sheriff's Department received a report of a possible intoxicated driver. Dispatch informed Deputy Minott that the suspect driver was possibly Hispanic and that he was driving a red van with a license plate number that began with 491. Deputy Minott "conducted a U turn" and went toward the location of the alleged drunk driver. Tr. Vol. 2 at 60. He then located the vehicle and started following it. Deputy Minott observed the vehicle "weave[] off of the fog line several times," "tap[] its brakes several times for apparently no reason," and "snak[e]" down the road. Tr. at 61. Deputy Minott then observed the vehicle "cross[] the center line." *Id*. At that point, Deputy Minott initiated a traffic stop.

[4] Deputy Minott then made contact with the driver, Toppo. Toppo took a "long time" to figure out how to lower his window. *Id*. at 66. Toppo was "very slow and lethargic," his eyes "were blood shot and glossy," and he was "slurring his words." *Id*. at 67. Deputy Minott also smelled "the odor of alcohol" from the vehicle. *Id*. Toppo informed Deputy Minott that he had had "a lot" to drink that day. *Id*.

[5] Deputy Minott asked Toppo to step out of the car. Toppo complied, but he initially attempted to exit the vehicle while still wearing his seat belt. Once he removed his seat belt and exited the car, Toppo had to use the vehicle to support himself. Deputy Minott then administered two field sobriety tests, both of which Toppo failed.[1] After Toppo declined to consent to a breath test, Deputy Minott obtained a warrant for a blood draw. The results demonstrated that Toppo had a blood alcohol concentration of 0.245 gram of alcohol per 100 milliliters of blood. *See* Ex. at 8.

[6] The State charged Toppo with operating a vehicle while intoxicated, as a Class A misdemeanor (Count 1); operating a vehicle with an alcohol concentration equivalent to at least 0.15 gram of alcohol per 100 milliliters of blood, as a Class A misdemeanor (Count 2); operating a vehicle while intoxicated, as a Level 6 felony (Count 3); operating a vehicle with an alcohol concentration equivalent to at least 0.15 gram of alcohol per 100 milliliters of blood, as a Level 6 felony (Count 4); and driving left of center, as a Class C infraction (Count 5). Thereafter, Toppo filed a motion to suppress "any and all physical evidence discovered directly or indirectly" following the traffic stop. Appellant's App. Vol. 2 at 45. In particular, Toppo asserted that Deputy Minott did not have an "objectively justifiable reason" to stop his vehicle and, as such, the stop violated

[1] Deputy Minott offered to administer a third test, but Toppo indicated that he "could not do it." *Id*. at 71.

his rights under the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution. *Id*.

[7] The trial court held a hearing on Toppo's motion to suppress. At the hearing, Deputy Minott testified that, after he had located the suspect vehicle, he followed it for approximately one-half to one mile and then observed the driver, Toppo, commit a "traffic violation." Tr. at 7. Specifically, he testified that he had observed Toppo "cross[] over the yellow dividing line." *Id*. He further testified that the "driver's side tires crossed the line" such that they were "briefly" in the "opposite lane of travel." *Id*. at 7, 13. He then testified that he had initiated the traffic stop because of that traffic violation.

[8] At the conclusion of the hearing, the trial court found that the traffic stop was reasonable and denied Toppo's motion to suppress. Toppo then waived his right to a jury trial, and the court held a bench trial. Toppo objected to the introduction of any evidence seized as a result of the traffic stop, but the court overruled his objection. At the conclusion of the trial, the court found Toppo guilty as charged but only entered judgment of conviction on Counts 3 and 5. The court then sentenced Toppo to 545 days, with one year suspended and 180 days to be served on community corrections. This appeal ensued.

Discussion and Decision

[9] Toppo contends that the trial court erred under the Fourth Amendment when it admitted evidence that Deputy Minott had obtained following the traffic stop.[2] Toppo's argument that police violated his Fourth Amendment rights raises a question of law that we review *de novo*. *See Redfield v. State*, 78 N.E.3d 1104, 1106 (Ind. Ct. App. 2017), *trans. denied*. "[A]s a general matter[,] determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal," while "findings of historical fact" underlying those legal determinations are reviewed "only for clear error." *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

[10] Toppo asserts that Deputy Minott violated his Fourth Amendment rights because he did not have probable cause to initiate the traffic stop of Toppo's vehicle. The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures. U.S. Const. amend. IV. As a general matter, "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. U.S.*, 517 U.S. 806, 810 (1996). If an officer observes a driver commit

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[2] In his brief, Toppo asserts that the court also erred under Article 1, Section 11 of the Indiana Constitution when it admitted evidence obtained during the traffic stop. However, while Toppo appears to acknowledge that we interpret and apply that provision independently from the Fourth Amendment, he does not provide an independent analysis under that provision. Indeed, Toppo does not discuss *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005), nor does he provide any analysis of the factors outlined in that opinion. Accordingly, we conclude that Toppo has not preserved for appellate review any claim under Article 1, Section 11. *See Wilkins v. State*, 946 N.E.2d 1144, 1147 (Ind. 2011).

a traffic violation, he has probable cause to stop that driver. *See State v. Keck*, 4 N.E.3d 1180, 1184 (Ind. 2014).[3]

[11] At the hearing on Toppo's motion to suppress, Deputy Minott testified that he initiated the traffic stop of Toppo's vehicle after he had observed Toppo "cross[] over the yellow dividing line." Tr. at 7. While that infraction is often referred to as "driving left of center," those words do not appear in the statute. Rather, the statute requires that, "[u]pon all roadways of sufficient width, a vehicle *shall be driven upon the right half of the roadway*[,]" with some exceptions. Ind. Code § 9-21-8-2(a) (2020) (emphasis added). Failure to drive on the right half of the road without legal justification is a Class C traffic infraction. I.C. § 9-21-8-49; *see also Pridemore v. State*, 71 N.E.3d 70, 74 (Ind. Ct. App. 2017).

[12] Toppo contends that Deputy Minott lacked probable cause to initiate the traffic stop because "there is no violation under Indiana Code [S]ection 9-21-8-2(a) when an individual 'briefly' touches the middle yellow line, as was the case in this matter." Appellant's Br. at 13. However, Toppo mischaracterizes the evidence. He did not simply touch the yellow center line. Rather, Deputy Minott testified that Toppo "crossed" the yellow dividing line. Tr. at 7. More specifically, Deputy Minott stated that Toppo's driver's side tires crossed the

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[3] Moreover, under the Fourth Amendment, a traffic stop can rest on a reasonable mistake of law. *See Heien v. North Carolina*, 574 U.S. 54, 61 (2014). Thus, Toppo is incorrect when he asserts that a mistake of law cannot justify a search. Appellant's Br. at 14 (citing *Meredith v. State*, 906 N.E.2d 867, 870 (Ind. 2009)). To the extent Indiana cases have held that an officer's reasonable mistaken belief about the law cannot justify a search under the Fourth Amendment, "they have been overruled by *Heien*." *Pridemore v. State*, 71 N.E.3d 70, 74 n.3. (Ind. Ct. App. 2017). However, as we discuss below, there was no mistake of law in this case.

center line such that they were in the "opposite lane of travel." *Id*. at 13. Thus, contrary to Toppo's assertions, the evidence demonstrates that at least two of his tires completely crossed the center line and exited the right-hand lane.

[13] Still, Toppo asserts that his action of crossing the center line did not constitute an infraction because he only did so "briefly." *Id*. Toppo maintains that briefly touching the center line "cannot or should not be violative of the controlling statute" because the "statute is plainly focused on crossing the center roadway line and driving on the wrong side of the road, not 'briefly' touching or crossing the yellow line." Appellant's Br. at 13. But Toppo has not directed us to any authority, and we find none, to support his assertion that crossing the center line for only a brief period of time does not amount to an infraction under the statute.

[14] Rather, the statute provides that a vehicle *shall* be driven on the right half of the roadway. I.C. § 9-21-8-2(a). We interpret that statute to mean that a vehicle must always drive on the right side of the road unless one of the enumerated exceptions applies. In other words, a motorist is not "upon the right half" of the roadway if his driver's side tires are in the opposite lane of travel. *Id*. While the statute enumerates exceptions to the requirement that an individual drive in the right lane, the statute does not provide that a person can drive left of center for any amount of time, no matter how short, when none of the exceptions apply. Had the legislature intended to allow an individual to drive left of center for a brief period of time, it could have done so. *See, e.g.,* I.C. § 35-48-4-16(b)(1) (it is a defense for a person charged with delivery of cocaine or a narcotic drug

within five hundred feet of a school if a person was only "briefly" near the school). But the legislature did not allow that, and we decline to read language into the statute where it does not exist.

[15] In sum, if an officer observes an individual drive his vehicle left of center for any amount of time, that officer has observed the individual commit a traffic violation, and the officer has probable cause to conduct a traffic stop of that vehicle. Here, because Deputy Minott witnessed Toppo's vehicle cross the center line, the State presented sufficient evidence to support the trial court's conclusion that Deputy Minott had probable cause that Toppo had committed a traffic violation by driving outside the right-hand lane. *See Pridemore*, 71 N.E.3d at 74 (holding a traffic stop was justified under the Fourth Amendment where the evidence showed the police officer had a good faith belief that the defendant had driven left of center). As such, Deputy Minott's stop of Toppo's vehicle was lawful, and the trial court did not err under the Fourth Amendment to the United States Constitution when it admitted evidence Deputy Minott had seized following the traffic stop.

[16] We emphasize that this is a case where the officer initiated a traffic stop of Toppo after he had witnessed Toppo commit a traffic violation and, thus, had probable cause to stop Toppo. This is not a case where an officer initiated a traffic stop based on the officer's belief that a motorist had committed a crime, in which case the officer would need reasonable suspicion to initiate the traffic stop. *See, e.g., Kansas v. Glover*, --U.S.--, 140 S.Ct. 1183, 1187, 206 L.Ed.2d 412 (2020) (stating that the Fourth Amendment permits an officer to initiate a brief

investigative traffic stop when he has a particularized and objective basis for suspecting the person stopped of criminal activity). Because we hold that the traffic stop was lawful based on Toppo's traffic violation, we need not address the State's additional contention that the stop was also justified because the Deputy Minott had reasonable suspicion that Toppo was operating his vehicle while intoxicated.

[17] We therefore affirm Toppo's convictions.

[18] Affirmed.

Pyle, J., and Tavitas, J., concur.