

[REDACTED]

TO: Hon. [REDACTED]

FROM: [REDACTED]

RE: *State of Indiana v.* [REDACTED] (DUI)

INTRODUCTION

Our client, Defendant [REDACTED], through undersigned counsel, seeks to dismiss the DUI charges against him under the statute in the state of Indiana. The statute explains that the officer has no probable cause to initiate the initial stop and that the officer has no reasonable suspicion to prolong the traffic stop to conduct the breathalyzer tests.

STATEMENT OF FACTS

On [REDACTED] ("[REDACTED]") was driving southbound on [REDACTED] at 5:00 PM when an Indiana State Trooper pulled him over for not having his headlights on. According to reports, it was early evening, but it was not dark.

Once stopped, even though the Indiana State Trooper ("officer") did not smell alcohol, the officer asked [REDACTED] if he had been drinking, but [REDACTED] declined to answer. The officer went back to his squad car to presumably run [REDACTED] plates and check his criminal history for an active warrant. This check lasted 25 minutes.

Once the 25 minutes passed, the officer decided to administer field sobriety tests. The officer claimed that [REDACTED] behavior led the officer to administer the tests. Specifically, the officer alleges that [REDACTED] appeared agitated and "kept looking back" throughout the 25 minutes. The officer believed that [REDACTED]'s behavior supported his reasonable suspicion of criminal activity, operating a vehicle under the influence of alcohol.

[REDACTED] blew a .08. He was charged with DUI.

QUESTIONS PRESENTED

1. Whether the officer has probable cause to stop [REDACTED] ("[REDACTED]") vehicle.
2. Whether the officer has reasonable suspicion to prolong the traffic stop to conduct the breathalyzer tests.

ANSWER

1. No, the officer did not have probable cause to initiate the traffic stop.
2. No, the officer did not have reasonable suspicion to prolong the traffic stop to conduct a breathalyzer test.

SUMMARY OF THE ARGUMENT

██████████ (“██████████”) was stopped by an Indiana State Trooper (“Officer”) for not having his vehicle’s headlights on, even though, according to our reports, it was not dark.

The officer did not smell any alcohol but continued to ask if ██████████ had been drinking to which ██████████ declined to answer. The check lasted 25 minutes, after which the officer alleged that ██████████ behavior throughout those 25 minutes checked led him to believe that he had reasonable suspicion of criminal activity: operating a vehicle under the influence, and the officer then administered the tests. ██████████ was arrested and charged with a DUI.

- I. The officer did not have probable cause to stop ██████████ Indiana Code § 9-21-7-2 provides that unless the weather causes circumstances that could impair the ability of drivers to see another vehicle within 500 feet, or unless the day is unusually dark, impairing the vision of other drivers within 500 feet, before sunset, then drivers do not have to display their headlights.
- II. The officer did not have a reasonable suspicion to prolong the traffic stop to conduct the breathalyzer test. Standard Fourth Amendment principles reflected in *Terry v. Ohio* and many other decisions. Those principles apply even when an encounter is justified by probable cause (or, for that matter, even when the police are executing a warrant). These cannot be reconciled with the State’s submission that officers who have probable cause to stop a driver for speeding need no further justification to conduct a breathalyzer test designed to detect alcohol. Adopting this standard would be an open invitation to abuse.

Similarly, the Indiana Supreme Court held in *D.K. v. State*, 736 N.E.2d 758 (Ind. Ct. App. 2000) that the traffic stop did not give rise to reasonable suspicion. A person’s nervousness when stopped by the police is understandable. However, the officer in this matter did not have reasonable suspicion to detain Wilson after the traffic stop was concluded and until the arrival of a drug-sniffing dog that was summoned only after Wilson declined to consent to a search.

ARGUMENT

- I. THE STATE FAILED TO PROVE THAT THE OFFICER HAD A PROBABLE CAUSE TO INITIATE THE TRAFFIC STOP.

An officer may initiate a traffic stop if he has reasonable suspicion that a driver has committed a traffic violation. According to reports, it was early evening but was not dark.

According to Indiana Code § 9-21-7-2:

(1) between the time from sunset to sunrise; and

(2) at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not discernible at a distance of five hundred (500) feet ahead;

must display lighted headlamps and other illuminating devices as required for different classes of vehicles under this chapter.

(b) All lamp equipment required for vehicles described in IC 9-19-6, including each tail lamp required by law, shall be lighted at the times mentioned in subsection (a), except that clearance and side marker lamps are not required to be lighted on a vehicle when the vehicle is operated within a municipality if there is sufficient light to render discernible persons and vehicles on the highway at a distance of five hundred (500) feet.

Unless the weather causes circumstances that could impair the ability to see other vehicles within 500 feet, or unless the day is unusually dark, impairing the vision of other drivers within 500 feet- prior to sunset, then drivers do not have to display their headlight or other illuminating devices.

According to all reports, it was early evening yet not dark when [REDACTED] was pulled over at 5:00 pm on February 22nd. In fact, the sun did not set until after 5:00 pm. There were no reports of rain, snow, or other weather elements that would impair a driver's vision within five hundred feet on a highway. If so, then [REDACTED] was in compliance with the law when he was stopped by the officer. Anderson was lawfully operating his vehicle prior to the stop. The officer's initial stop of [REDACTED] vehicle was unlawful under the circumstances of this case; therefore, the court should suppress all evidence of criminal activity found after the stopped.

II. THE OFFICER DID NOT HAVE REASONABLE SUSPICION TO PROLONG THE TRAFFIC STOP FOR THE BREATHALYZER TESTS.

Reasons:

1. [REDACTED] was within his rights to decline to answer the officer's inquiries.
2. The officer did not smell alcohol at the initial stop.
3. [REDACTED]'s behavior between the time he was stopped and the time the breathalyzer occurred was not suspicious.

Assuming the officer did have probable cause to stop [REDACTED] for the headlights not being on, the officer still has no reason to keep [REDACTED] at the scene for 25 minutes and no reasonable suspicion to conduct the breathalyzer tests unrelated to the stop. The 25 minutes elapsed between the initial stop and the breathalyzer test.

In *State v. Washington*, 898 N.E.2d 1200, Washington was stopped by a police officer for repeatedly driving left of center because the officer suspected Washington was violating the helmet requirements for minor drivers under Indiana Code. Washington was briefly questioned during the traffic stop as to whether he had any weapons, drugs, or anything else that could harm the officer. Washington consented to the search. The court held that the officer's question, notwithstanding the absence of reasonable suspicion, was not a violation of Washington's fourth amendment rights under the U.S. Constitution or Article 1 § of the Indiana Constitution. Washington, at 1205, 1208.

Although our case differs from Washington's, Anderson exercised his right not to answer the officer's question. The court in Washington stated, "An officer making a traffic stop can ask questions of a detained motorist, but the detainee is not obligated to respond, and unless the detainee's answers provide

the officer with probable cause to arrest him, he must then be released.” Washington, 898 N.E.2d 1200, 1204 (Ind. 2008). The record supports the fact that the officer did not smell alcohol at the initial stop. Anderson’s refusal to answer whether he was drinking does not support probable cause for an arrest or reasonable suspicion to extend the search.

In *State v. Gray*, 997 N.E.2d 1147, the state failed to present sufficient evidence to support that the duration of the stop was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop. The officer in this matter did not have reasonable suspicion that Gray was engaged in criminal activity so as to justify prolonging the defendant’s detention.

Similarly, in *Bush v. State*, 925 N.E.2d 787, the state also failed to argue that the officers had reasonable suspicion of criminal activity on the part of the defendant. The state was unable to present sufficient evidence to support a finding “that the duration of the stop, in this case, was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop.” Caballes, 543 U.S. at 408.

In *State vs. Wilson*, 847 N.E.2d 1064, the court held that the circumstance of Wilson’s traffic stop did not give rise to reasonable suspicion. Also, the facts that the officer used to support his reasonable suspicion of Defendant’s criminal activity over the course of their confrontation include: (1) the defendant watching police activity on three separate occasions prior to the stop; (2) the defendant speeding off at a high rate of speed; (3) defendant’s shaking hands; (4) defendant’s prior offenses for a possession; (5) defendant’s contradictory answers when asked about possessing weapons; and (6) defendant posing \$4000.00 in cash at 2:00 am, are not the kind of behavior to support reasonable suspicion and did not authorize them to undertake an investigatory dog sniff prolonging the stop.

CONCLUSION

Under Indiana Code § 9-21-7-2, the officer did not have probable cause to initiate the initial stop. [REDACTED] behavior during the 25-minute stop did not give rise to reasonable suspicion to conduct the breathalyzer tests. In light of the foregoing legal authority and arguments, my client, [REDACTED], respectfully requests that this court dismiss the DUI charges against him.

Respectfully Submitted,

/s/ [REDACTED]
Attorney for the Defendant

DATED: [REDACTED]

[REDACTED]