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**IN THE  
COURT OF APPEALS OF INDIANA**

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DARCELL ANDRE MCCANTS, )

Appellant-Defendant, )

vs. )

No. 79A04-0812-CR-691

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Thomas H. Busch, Judge  
Cause No. 79D02-0607-FB-48

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**July 28, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Darcell McCants appeals his conviction of Dealing in Cocaine,<sup>1</sup> as a class A felony, as well as his adjudication as a Habitual Substance Offender.<sup>2</sup> He presents the following consolidated and restated issue for review: Did the admission of evidence obtained from two separate investigatory stops constitute fundamental error?

We affirm.

Around 2:30 a.m. on May 4, 2006, Officer Charles Wallace of the Lafayette Police Department observed McCants driving a vehicle. Based upon a recent encounter Wallace believed he had had with McCants, the officer thought McCants was operating without a license. Officer Wallace followed McCants and ran a computer check on the vehicle's license plate, which indicated that the plate was not linked to a driver's license. He then initiated a traffic stop. McCants provided Officer Wallace with an Illinois ID card, which indicated McCants was from Chicago. Although McCants claimed to have a license, just not with him, a computer check revealed otherwise. The officer returned to the vehicle and informed McCants that his license had expired in 2003. He then asked McCants where he was going and coming from. McCants indicated he was going to a specific Village Pantry, about three or four miles away, to purchase food. The officer found this odd, as there were many other closer locations to buy food. McCants indicated that the other places did not have what he wanted. When the officer inquired about his record of prior drug arrests, McCants indicated that he was no longer involved in that and offered to allow the officer to

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<sup>1</sup> Ind. Code Ann. § 35-48-4-1 (West, PREMISE through 2008 2nd Regular Sess.).

<sup>2</sup> Ind. Code Ann. § 35-50-2-10 (West, PREMISE through 2008 2nd Regular Sess.).

search his person and vehicle. Officer Wallace searched McCants's person<sup>3</sup> and discovered over \$800 in cash. McCants explained that he had business in town that he might need to take care of and that he was a barber, mostly paid in cash.

Officer Wallace's suspicions were heightened, and at that point he decided to let McCants go so that he could investigate further. Therefore, he gave McCants a warning for operating without a license and allowed him to drive away. Officer Wallace followed McCants from a distance with his headlights off. McCants passed the Village Pantry without stopping. When he eventually pulled over to the curb at the intersection of 27<sup>th</sup> and South Streets, Officer Wallace drove into a nearby alley and got out on foot to watch McCants. He then observed an individual run from a residence and lean into the passenger side of McCants's vehicle for about five to eight seconds. The individual then ran back to the residence, and McCants pulled away. Based upon his training and experience and the information he gained during the first stop, Officer Wallace believed he had just observed a hand-to-hand drug transaction.

McCants called for backup and promptly initiated a second stop of the vehicle driven by McCants. A canine unit responded shortly thereafter, and the dog alerted to the vehicle. McCants admitted that he had drugs on his person and eventually removed a small plastic baggie of crack cocaine from his mouth. There was a digital scale with a white powdery residue found in the vehicle's trunk. Further, upon counting the cash in McCants's pocket, Officer Wallace noted that there was more money and specifically that there was an

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<sup>3</sup> He did not search the vehicle.

additional \$50 bill that was not present at the first stop.

McCants was charged with three counts of dealing in cocaine, two as class B felonies and one as a class A felony, possession of cocaine as a class D felony, and maintaining a common nuisance as a class D felony. The State also alleged that he was a habitual substance offender. The jury found McCants guilty as charged. The trial court entered a conviction on the class A felony dealing charge and adjudicated McCants a habitual substance offender. The trial court subsequently sentenced McCants to thirty-five years in prison.

On appeal, McCants claims the evidence obtained during both stops should have been suppressed as resulting from unconstitutional searches and seizures. With respect to the first, he claims the stop “became unlawful when it exceeded the necessary and reasonable scope of the traffic stop.” *Appellant’s Brief* at 6. In essence, McCants argues that Officer Wallace should have ceased questioning him after it was determined that McCants was driving without a valid license and, particularly, that the officer could not question him about anything unrelated to the purpose of the traffic stop.<sup>4</sup> Regarding the second investigatory stop, McCants contends that the officer lacked reasonable suspicion.

McCants acknowledges that he did not seek to suppress the evidence obtained from these stops either in a pretrial motion to suppress or with an objection during trial. He further recognizes that this generally results in waiver of the issue of admissibility on appeal. *See*

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<sup>4</sup> We observe that McCants does not address a recent decision from our Supreme Court, *State v. Washington*, 898 N.E.2d 1200 (Ind. 2008), which appears directly at odds with his position. In *Washington*, the Court held that under the Fourth Amendment to the U.S. Constitution and article 1, section 11

*Kubsch v. State*, 784 N.E.2d 905 (Ind. 2003). In an attempt to avoid waiver, McCants appends to the end of his argument a perfunctory claim of fundamental error.<sup>5</sup> Our Supreme Court, however, has clearly held that the admission of evidence “obtained in violation of the defendant’s constitutional rights to be protected against unlawful searches and seizures does not elevate the issue to the status of fundamental error that may be raised for the first time on appeal.” *Swinehart v. State*, 268 Ind. 460, 466-67, 376 N.E.2d 486, 491 (1978). *See also Covelli v. State*, 579 N.E.2d 466 (Ind. Ct. App. 1991), *trans. denied*; *Jackson v. State*, 469 N.E.2d 753 (Ind. Ct. App. 1984). Therefore, we will not review the admission of the challenged evidence for fundamental error.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.

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of the Indiana Constitution, an officer, without reasonable suspicion, can briefly inquire as to possible further criminal activity, such as drug possession, when a motorist is stopped for a traffic infraction.

<sup>5</sup> “Fundamental error is an extremely narrow exception ‘and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process.’” *Baer v. State*, 866 N.E.2d 752, 764 (Ind. 2007) (quoting *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006)). “The mere fact that error occurred and that it was prejudicial will not satisfy the fundamental error rule.” *Absher v. State*, 866 N.E.2d 350, 355 (Ind. Ct. App. 2007). Further, “it is not enough, in order to invoke this doctrine, to urge that a constitutional right is implicated.” *Id.*