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**IN THE  
COURT OF APPEALS OF INDIANA**

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DOROTHY WOODS AND ALEX )  
WEIR b/n/f RICHARD WEIR, )  
 )  
Appellants-Plaintiffs, )  
 )  
vs. )  
 )  
CITY OF MUNCIE AND MUNICE )  
POLICE DEPARTMENT, )  
 )  
Appellees-Defendants. )

No. 18A04-1006-CT-358

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Marianne L. Vorhees, Judge  
Cause No. 18C01-0807-CT-22

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**March 10, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Dorothy Woods and Alex Weir appeal the trial court's ruling granting summary judgment in favor of the City of Muncie and the Muncie City Police Department (together, the "City"). Woods and Weir raise one issue, which we revise and restate as whether the trial court erred in granting the City's motion for summary judgment. We affirm.

The relevant facts follow. Prior to July 13, 2007, Muncie Police Department Sergeant Joseph Krejsa was aware that Anthony Young was suspected of being involved in a shootout on May 30, 2007 during which Daiwaun Walton was struck by a stray bullet causing his death. Charges had been filed against and an arrest warrant issued for Young on July 12, 2007. Sergeant Krejsa received information from a drug task force officer that Young was staying at Apartment D-2 of the Randy Court Apartments in Muncie, Indiana. Police considered Young to be dangerous, and Sergeant Krejsa and five backup police officers planned to serve Young with the arrest warrant at Apartment D-2.

On July 13, 2007, Woods, who lived at Apartment D-2, Weir, and Carolyn Rowette were sitting in lawn chairs on the porch in front of the apartment building containing Apartment D-2. Woods provided professional care for Weir, who was a teenager with autism. Sergeant Krejsa and other officers entered the Randy Court Apartments complex and stopped their patrol vehicles, with emergency lights activated, in front of the apartment building containing Apartment D-2. As Sergeant Krejsa parked his patrol vehicle, he saw the front door to Apartment D-2 open and two or more persons quickly exit. Sergeant Krejsa exited his patrol vehicle, ran towards the door, saw a

number of people outside the apartment building,<sup>1</sup> was concerned that Young was among the crowd, and yelled “police, get on the ground” several times. Supplemental Appendix at 39. The police yelled “[m]urder suspect D2” and Woods stood up and walked towards the police.<sup>2</sup> Id. at 55. Police told Woods to “[s]hut up and hit the ground.”<sup>3</sup> Id.

Police approached the apartment and did not see anyone in the crowd outside the building that looked like Young, and Sergeant Krejsa became concerned that Young was in the apartment, knew the police were there to arrest him, and that Young might start shooting. The door to Apartment D-2 was open, and police entered the apartment to make sure Young was not there and to apprehend him as soon as possible to prevent Young from using a gun. The police told several people inside the apartment to go outside and determined that Young was not inside Apartment D-2. The police were not inside Apartment D-2 for more than approximately five minutes. After clearing the apartment, Sergeant Krejsa explained to the people outside the reason the police were present. Police apprehended Young four days later on July 17, 2007.

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<sup>1</sup> In his affidavit, Sergeant Krejsa states he saw approximately fifty persons outside the apartment building.

<sup>2</sup> In her deposition, Woods testified that she initially thought the police were going to the apartment of her sons because they were “outside partying, lighting firecrackers.” Supplemental Appendix at 53. Woods testified that the police “got out of their cars with guns and dogs and started running towards [her],” that she was “trying to tell them [she] lived there” and that she “had just moved there,” but that the police told her “to shut up and hit the ground.” Id. Woods also testified that she “was screaming, wondering where [Weir] was” and that she “saw [Weir] in the corner.” Id.

<sup>3</sup> In her deposition, Woods stated that she “was looking down the barrels of guns” and that “one of the officers took the gun to my head and told me shut up and stay down there.” Supplemental Appendix at 53.

In August 2007, Woods and Weir filed notices of tort claim alleging the Muncie police officers falsely accused Woods of being a criminal and unlawfully restrained, falsely imprisoned, intimidated, improperly detained, humiliated, and injured them. On July 3, 2008, Woods and Weir filed a verified complaint against the City alleging that Woods was falsely accused of being a criminal, that Woods and Weir were unlawfully restrained, falsely imprisoned, and intimidated, that the City did not properly educate and train the officers, and that Muncie Police officers did not use due diligence, detained Woods and Weir without probable cause, and were negligent in performing their duties, and requested relief including punitive damages. On August 19, 2008, the City filed an answer and affirmative defenses.

On February 15, 2010, the City filed a motion for summary judgment and memorandum and designation of evidence in support of the motion. In the motion, the City argued that Woods and Weir were not unlawfully detained, that police had a good faith belief that Young was an imminent threat to bystanders, that the claims of assault, negligence and other torts are barred by law enforcement immunity, and that the claims of Woods and Weir were barred because they did not comply with the notice requirements of the tort claims act. Woods and Weir filed a response and designation of evidence, and the City filed a reply and further designation of evidence along with a motion to strike certain affidavits designated by Woods and Weir.

Following a hearing, the court issued an order on May 14, 2010, granting summary judgment in favor of the City. The court found that the facts as interpreted with

all inferences in Woods and Weir's favor show that police officers detained them against their will and that Woods and Weir's two claims of false arrest and false imprisonment "appear to be one and the same, i.e., an unlawful detention of [Woods and Weir's] movement."<sup>4</sup> Appellant's Appendix at 11. The court then determined that the City designated evidence to establish that the police officers' actions were appropriate given the circumstances and that it "was reasonable for the police to have bystanders at the apartments get down on the ground for their safety." *Id.* at 12. The court determined that while Woods and Weir have shown they were detained, they did not designate evidence showing that the detention was improper. The court noted that "just because Woods was trying to explain to the police that she had a lease for the apartment doesn't change anything" and that "[i]t could have been dangerous for the police to stop what they were doing, talk to [] Woods, and allow her to go into the apartment to find her lease." *Id.* at 13. The court further found that the designated evidence supports the City's good faith defense. The court also entered judgment in favor of the City as to the claims for assault, battery, negligence, negligent training, and punitive damages and stated that due to its ruling it did not make any specific findings as to the City's motion to strike.

The sole issue is whether the trial court erred in granting the City's motion for summary judgment. When reviewing a grant of a motion for summary judgment, we

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<sup>4</sup> The court noted that its "ruling is hampered somewhat by [Woods and Weir's] failure to comply with Trial Rule 56(C)" and that "[t]he Court cannot find any specific references to any fact issues which [Woods and Weir] believe preclude summary judgment in this case." Appellant's Appendix at 12. Trial Rule 56(C) provides in part: "A party opposing the motion shall also designate to the court each material issue of fact which that party asserts precludes entry of summary judgment and the evidence relevant thereto."

apply the same standard applicable to the trial court. Wagner v. Yates, 912 N.E.2d 805, 808 (Ind. 2009). Summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Id. Summary judgment should be granted only if the evidence sanctioned by Indiana Trial Rule 56(C) shows that there is no genuine issue of material fact and the moving party deserves judgment as a matter of law. Freidline v. Shelby Ins. Co., 774 N.E.2d 37, 39 (Ind. 2002). All factual inferences must be construed in favor of the non-moving party, and all doubts as to the existence of a material issue must be resolved against the moving party. Kovach v. Midwest, 913 N.E.2d 193, 197 (Ind. 2009), reh'g denied.

Woods and Weir focus their arguments on their alleged unlawful detention. Specifically, Woods and Weir argue that “the trial court disregarded the allegation made under oath by Woods, that she was being detained at gunpoint” and that “[i]f true, this fact is genuine and material to the success or failure of the Motion for Summary Judgment.” Appellant’s Brief at 4. Woods and Weir argue that “[w]hether the Police pointed and held a loaded gun to [Woods’] head and impeded her freedom of movement is helpful in determining whether the restraint of [Woods] was lawful or unlawful.” Id. at 5. Woods and Weir argue that “the heart of [their] complaint is the unlawful restraint or false imprisonment which occurred during the search of her Apartment complex,” that “[Woods] believes the restraint was unreasonable and beyond the authority of the Police,” and that Woods “feared for her life.” Id. at 6-7. Woods and Weir argue: “Does [Woods] know with absolute certainty that the gun pointed at her head was loaded? Does

it matter if the gun was really loaded or not? She certainly believed it was loaded and the threat of force was just as real as if the officer had put his hands on [Woods] and physically held her down, and potentially more dangerous.” Id. at 7-8. Woods and Weir further argue that any good faith exception does not shield the police in this instance because the exception “has nothing to do with [the police’s] specific actions towards [Woods] and [Weir] once Police arrived at the Apartments” and that even if the exception applied there is “still an issue of fact as to whether the Police acted within reason by not checking current records to ascertain that Young no longer lived at the Apartments.” Id. at 8.

The City argues that it was lawful for the police to detain Woods and Weir because the “police reasonably believed that murder suspect [Young] knew the police were there and would try to escape or would start shooting” and that police “were permitted to detain Woods and Weir” for their protection and to determine whether Young was in the apartment. Appellee’s Brief at 13-14. The City argues that “Woods and Weir were detained only momentarily” and that “[t]he designated evidence submitted to the court established the detention was lawful.” Id. at 14. The City also argues that the police had a good faith belief that Young was an imminent threat of harm to bystanders, that Woods and Weir’s only claim is false arrest or imprisonment, that Woods and Weir’s claims are barred because they did not comply with the notice requirements of the Tort Claims Act, and the affidavits of Woods and Rowlette should be stricken or disregarded.

As set forth above Woods and Weir essentially argue that their freedom was restrained and that the restraint was unlawful. We initially note that “false imprisonment is defined as the unlawful restraint upon one’s freedom of movement or the deprivation of one’s liberty without consent.” Earles v. Perkins, 788 N.E.2d 1260, 1265 (Ind. Ct. App. 2003) (citation omitted). This court has stated that “[f]alse imprisonment may be committed by words alone, or by acts alone, or by both and by merely operating on the will of the individual, or by personal violence, or both.” Dietz v. Finlay Fine Jewelry Corp., 754 N.E.2d 958, 967 (Ind. Ct. App. 2001) (citation omitted). A false imprisonment claim can be made absent an arrest. See, e.g., id. at 967-968. This court has previously stated: “In proving restraint on freedom of movement, incarceration need not be shown. Rather, it is sufficient to show a person’s freedom of movement was in some manner restricted against his will.” Delk v. Bd. of Commissioners of Delaware Cnty., 503 N.E.2d 436, 439 (Ind. Ct. App. 1987); see also Brickman v. Robertson Bros. Dep’t Store, Inc., 136 Ind. App. 467, 471, 202 N.E.2d 583, 586 (1964) (noting that the plaintiff made a *prima facie* showing of unlawful restraint by evidence of a detective grabbing the plaintiff’s arm and ordering the plaintiff to accompany him).

We agree with the trial court’s ruling in its summary judgment order that Woods and Weir’s freedom of movement was restrained. However, we must address whether the restraint of movement was unlawful under the circumstances. See Delk, 503 N.E.2d at 439 (noting that the evidence showed that the appellant’s freedom of movement had

been restrained but noting that the next consideration was whether the restraint of movement was unlawful).

With respect to whether the temporary detention of Woods and Weir outside the apartment building amounted to an unlawful restraint of Woods and Weir's freedom of movement, we find language in the United Supreme Court's opinion in Michigan v. Summers to provide some guidance:

In assessing the justification for the detention of an occupant of premises being searched for contraband pursuant to a valid warrant, both the law enforcement interest and the nature of the "articulable facts" supporting the detention are relevant. Most obvious is the legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found. Less obvious, but sometimes of greater importance, is the interest in minimizing the risk of harm to the officers. Although no special danger to the police is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.

452 U.S. 692, 702-703, 101 S. Ct. 2587, 2594 (1981) (footnote omitted).

Based upon the facts as set forth in the designated materials and described above, we conclude that the temporary or interim detention or restraint of the movement of the persons outside of Apartment D-2, including Woods and Weir, was not unreasonable or unlawful under the circumstances. The police officers had a legitimate interest in preventing the flight of Young if he was in the apartment building or was among the persons who had exited Apartment D-2 or was already outside the building. Further, the designated evidence shows that Young was suspected of murder, may have had a weapon, and was considered dangerous, and the officers had an interest in minimizing the

risk of harm to both themselves and to the neighbors and other bystanders. Although the officers did not ultimately encounter Young that day, the attempted execution of an arrest warrant under circumstances such as these is the type of activity which may result in sudden violence or other potentially dangerous responses. Police made efforts to minimize the risk of harm both to themselves and to bystanders by maintaining control of the situation for the duration necessary to determine whether Young was present among the crowd outside the apartment building or inside the building. Based upon the designated evidence and under the circumstances, the temporary detention of Woods and Weir by police officers was not unlawful. Accordingly, the court did not err in granting summary judgment in favor of the City.

For the foregoing reasons, we affirm the trial court's grant of summary judgment in favor of the City.

Affirmed.

ROBB, C.J., and RILEY, J., concur.