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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSEPH MUNDEN, )  
 )  
Appellant/Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee/Plaintiff. )

No. 49A04-1009-CR-534

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Steven R. Eichholtz, Judge  
The Honorable Michael S. Jensen, Magistrate  
Cause No. 49G20-0912-FC-97708

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April 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

**BRADFORD, Judge**

Appellant/Defendant Joseph Munden appeals his conviction of Class C felony carrying a handgun without a license.<sup>1</sup> Specifically, Munden contends that the trial court abused its discretion in admitting evidence of the gun found during the search of his person because the search was conducted incident to an allegedly unconstitutional arrest. Concluding that the search of Munden's person was conducted incident to a constitutional arrest, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

Early in the morning on November 27, 2009, Indianapolis Metropolitan Police Officer William Flude responded to a dispatch to 8235 McFarland Road in Indianapolis concerning a suspicious-looking individual sitting on a moped near a townhome. Upon arriving at the scene, Officer Flude approached the individual, who was subsequently identified to be Munden, engaged in a conversation with Munden, and asked him for his identification. Munden cooperated and presented Officer Flude with his Department of Correction ("DOC") identification card. Officer Flude contacted Police Control for a standard license and warrant check, and Police Control responded verbally that there were two outstanding warrants for Munden's arrest.

Upon learning of the active warrants for Munden's arrest, Officer Flude placed Munden under arrest. Officer Flude then conducted a search of Munden's person. During the search, Munden told Officer Flude that he had a gun in his pocket. Officer Flude determined that Munden did not have a license for the handgun and had prior felony

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<sup>1</sup> Ind. Code § 35-47-2-1 (2009).

convictions.

On December 3, 2009, the State charged Munden with Class A misdemeanor carrying a handgun without a license. In light of Munden's prior felony convictions, the State, in part two in the charging information, sought to enhance the carrying a handgun without a license charge to a Class C felony. Munden filed a motion to suppress evidence relating to the gun recovered during the search incident to his arrest on February 2, 2010. However, the trial court did not conduct a pre-trial hearing on Munden's motion to suppress in light of an agreement of the parties. On May 24, 2010, Munden waived his right to a trial by jury.

On June 23, 2010, the trial court conducted a bench trial. During the trial, Munden stipulated to the allegation that he had a prior felony conviction, but objected to the admission of evidence relating to the gun found on his person during the search incident to his arrest. Munden argued that evidence relating to the gun should not be admitted at trial because his arrest was unlawful. Munden claimed that the Event History Detail form compiled by Police Control indicated that at the time of his arrest, there were open warrants for a "David Munden," not Joseph Munden. Defendant's Ex. A. The State did not contest the accuracy of the information listed in the Event History Detail form, but asserted that "David Munden" was a known alias used by Joseph Munden. The trial court took the issue under advisement and provisionally admitted evidence relating to the gun for the purpose of continuing the bench trial.

On July 22, 2010, the trial court denied Munden's motion to suppress, ruled that evidence relating to the gun was admitted into evidence at trial over Munden's objection,

and, on July 27, 2010, determined that Munden was guilty of Class C felony carrying a handgun without a license. On August 10, 2010, the trial court sentenced Munden to an executed eight-year term in the Department of Correction.

## **DISCUSSION AND DECISION**

### **I. Admission of Evidence**

#### **A. Standard of Review**

Munden contends that the trial court abused its discretion in admitting evidence relating to the gun found on his person following his arrest. Although Munden originally challenged the admission of evidence relating to the gun through a motion to suppress, he appeals following a completed bench trial and challenges the admission of evidence relating to the gun at trial. ““Thus, the issue is ... appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial.”” *Widduck v. State*, 861 N.E.2d 1267, 1269 (Ind. Ct. App. 2007) (quoting *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003)). A trial court has broad discretion in ruling on the admissibility of the evidence. *Bentley v. State*, 846 N.E.2d 300, 304 (Ind. Ct. App. 2006), *trans. denied*. Accordingly, we will reverse a trial court’s ruling on the admissibility of the evidence only if the trial court abused its discretion. *Id.* An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. *Ackerman v. State*, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), *trans. denied*. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling. *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*. However, we must

also consider the uncontested evidence favorable to the defendant. *Id.* In this sense, the standard of review differs from the typical sufficiency of the evidence case where only evidence favorable to the verdict is considered. *Fair v. State*, 627 N.E.2d 427, 434 (Ind. 1993).

*Widduck*, 861 N.E.2d at 1269.

### **B. Whether Munden's Arrest was Constitutional**

Munden contends that the trial court abused its discretion in admitting evidence relating to the gun at trial because the gun was discovered during a search of his person following his allegedly unlawful arrest.<sup>2</sup> Munden claims that his arrest was unlawful because Officer Flude was erroneously informed that there were unrelated open warrants for his arrest. In making this claim, Munden argues that the trial court failed to consider uncontested evidence indicating that there were no open warrants for his arrest. Munden argues that the uncontested evidence in question indicates that the open warrants were not for his arrest, but rather for a different individual's arrest. In support, Munden relies on the Event History Detail form compiled by Police Control which indicated that at the time of Munden's arrest, there were open warrants for a "David Munden."

While the State did not contest the accuracy of the information listed in the Event History Detail form at trial, it did assert that "David Munden" was a known alias used by Joseph Munden. Accordingly, we conclude that the Event History Detail form compiled by Police Control was not uncontested evidence that the open warrants were not for Munden but

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<sup>2</sup> Munden does not challenge the search of his person that occurred following his arrest, only the constitutionality of the arrest.

for another individual.<sup>3</sup> Thus, we will not consider it as uncontested evidence in Munden's favor, and, in determining whether Munden's arrest was constitutional, will consider only the facts most favorable to the trial court's ruling.

### 1. Federal Constitution

The Fourth Amendment to the United States Constitution provides all citizens with “[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures ....” U.S. CONST. amend. IV; *see also Black v. State*, 810 N.E.2d 713, 715 (Ind. 2004). The Fourth Amendment's protection against unreasonable search and seizure has been extended to the states through the Fourteenth Amendment. *See Berry v. State*, 704 N.E.2d 462, 464-65 (Ind. 1998). The protection against unreasonable seizures includes seizure of the person. *California v. Hodari D.*, 499 U.S. 621, 624, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991) (citation omitted). However, not all police-citizen encounters implicate the Fourth Amendment. *See, e.g., Terry v. Ohio*, 392 U.S. 1, 19 n. 16, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (“Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude a ‘seizure’ has occurred.”); *see also Molino v. State*, 546 N.E.2d 1216, 1218 (Ind. 1989). A seizure does not occur, for example, simply because a police officer approaches a person, asks questions, or requests identification. *Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991); *see also Sellmer v. State*, 842 N.E.2d 358, 360 (Ind. 2006) (recognizing that a person is not seized within the meaning of the Fourth Amendment when police officers merely approach an individual and ask if the individual is willing to answer questions).

Instead, a person is seized for Fourth Amendment purposes when, considering all the surrounding circumstances, the police conduct “would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.” *Florida v. Royer*, 460 U.S. 491, 497, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (plurality opinion); *see also INS v. Delgado*, 466 U.S. 210, 216-17, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984) (“Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to

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<sup>3</sup> Moreover, even if the identity of the individual with open arrests had been uncontested, Munden has failed to prove that the arresting officer was aware of the information printed in the Event History Detail form at the time of Munden's arrest. It is unclear from the record whether the Event History Detail form was available to the arresting officer at the time of the arrest or was completed at some later time.

leave if he had not responded, one cannot say that the questioning resulted in a detention under the Fourth Amendment.”).

*Bentley v. State*, 846 N.E.2d 300, 305 (Ind. Ct. App. 2006), *trans. denied*.

Generally, police must have probable cause or a warrant before making an arrest.

*Shotts v. State*, 925 N.E.2d 719, 723 (Ind. 2010).

Probable cause justifying an arrest exists when, at the time of the arrest, the arresting officer has knowledge or reasonably trustworthy information of facts and circumstances sufficient in and of themselves to warrant a person of reasonable caution to believe an offense has been or is being committed by the person to be arrested. *See, e.g., Dunaway v. New York* (1979), 442 U.S. 200, 208 n. 9, 99 S.Ct. 2248, 2254 n. 9, 60 L.Ed.2d 824, 833 n. 9 and cases cited therein; *Green v. State* (1984), Ind., 461 N.E.2d 108; *Fyock v. State* (1982), Ind., 436 N.E.2d 1089; *Benton v. State* (1980), 273 Ind. 34, 401 N.E.2d 697. The existence of probable cause cannot be confined to the facts within the firsthand knowledge of the arresting officer. As we stated in *Benton*, 273 Ind. at 38, 401 N.E.2d at 699:

Probable cause should be determined on the basis of the collective information known to the law enforcement organization as a whole and not solely to the personal knowledge of the arresting officer. The police force being a unit wherein there is police-channel communication, if an officer acts in good faith reliance upon such information, the arrest will be deemed to have been based on probable cause so long as sufficient knowledge to establish probable cause exists within the organization. [citations omitted].

*See also Moody v. State* (1983), Ind., 448 N.E.2d 660 (officer acting in good faith reliance on police radio dispatcher had probable cause to conduct warrantless search of automobile); *United States v. Hensley* (1985), 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (investigative stop by officer in reliance on “wanted flyer” issued by another police department held reasonable under Fourth Amendment as long as flyer was issued on the basis of articulable facts supporting a reasonable suspicion that wanted person committed an offense).

*Kindred v. State*, 524 N.E.2d 279, 292 (Ind. 1988). Moreover, the Indiana Supreme Court

has held that:

Where police officers in the street act in good faith reliance on a dispatch from their own or another police agency that a crime has been committed, there is no need to show the source of the dispatcher's information or the reliability of the dispatcher's informant. *See, Benton v. State*, (1980) Ind., 401 N.E.2d 697; *Clark v. State*, (1977) 171 Ind. App. 658, 358 N.E.2d 761. It is ludicrous to assert the police officer on the street must be provided with some assurance the dispatcher at the police station has not merely fabricated tales about a crime that was, in fact, never committed and a description of suspects that do not exist.

*Moody*, 448 N.E.2d at 663.

In the instant matter, the information most favorable to the trial court's ruling indicates Officer Flude encountered Munden after being dispatched to investigate a suspicious-looking person who was reportedly sitting on a moped near a townhome. Munden spoke to Officer Flude, and, upon request, provided Officer Flude with his DOC identification card. Officer Flude relayed Munden's identity to an unnamed individual at Police Control who ran Munden's name through the Police Control computer system and verbally informed Officer Flude that there were active open warrants for Munden's arrest. Relying on this information, Officer Flude placed Munden under arrest. Based on this record, we conclude that Officer Flude reasonably relied upon the information he received from Police Control regarding the active open warrants creating probable cause for Munden's arrest, and that Munden's arrest was constitutional.

## **2. Indiana Constitution**

Although the search and seizure provision found in Article I, § 11 of the Indiana Constitution tracks the Fourth Amendment verbatim, our jurisprudence has focused on whether the actions of the government were "reasonable" under the "totality of the circumstances." *Litchfield v. State*, 824 N.E.2d 356, 359

(Ind. 2005). The Indiana provision in some cases confers greater protections to individual rights than the Fourth Amendment affords. *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006); *Litchfield*, 824 N.E.2d at 358-59; *Mitchell v. State*, 745 N.E.2d 775, 786 (Ind. 2001); Randall T. Shepard, *Second Wind for the Indiana Bill of Rights*, 22 Ind. L.Rev. 575, 577 (1989).

*Shotts*, 925 N.E.2d at 726. But Article 1, § 11 of the Indiana Constitution does not demand a different result here.

In *Litchfield* we summarized the relevant factors in assessing reasonableness of a seizure as turning on a balance of: “1) the degree of concern, suspicion, or knowledge that a violation had occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen’s ordinary activities, and 3) the extent of law enforcement needs.” *Litchfield*, 824 N.E.2d at 361.

*Shotts*, 925 N.E.2d at 726.

Here, based on the information given to him from Police Control, Officer Flude reasonably believed that there were active warrants for Munden’s arrest. The degree of intrusion to Munden—an arrest and incarceration—was equally strong. The arrest, however, was a necessary and reasonable intrusion considering the needs of law enforcement and government’s interest in keeping order and enforcing the laws of this state. Officer Flude had probable cause to believe that Munden had outstanding warrants for his arrest. Under the totality of the circumstances, Officer Flude’s actions were reasonable considering the governmental interests in enforcing the laws of this state and the information he received from Police Control before arresting Munden. Accordingly, Officer Flude acted reasonably and Munden cannot prevail under the Indiana Constitution. *See id.* at 727.

Because we conclude that Munden’s arrest was constitutional under both the Federal and Indiana constitutions, we need not consider his arguments relating to the applicability of

the exclusionary rule for unconstitutional searches set forth in *Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695 (2009), to the instant matter. *See generally Shotts*, 925 N.E.2d 727-28 (Sullivan, J., concurring in result) (stating that the exclusionary rule was not implicated because the court determined that defendant's arrest was constitutional). However, to the extent that Munden questions whether *Herring* should be extended to Indiana courts, we note that the Indiana Supreme Court has recently adopted *Herring*. *See id.* at 723-26.

### **C. Conclusion**

Having concluded that Munden's arrest was constitutional under both the Federal and Indiana Constitutions, we conclude that the trial court did not abuse its discretion in admitting the gun which was recovered from Munden's person during a search incident to his arrest. *See Van Pelt v. State*, 760 N.E.2d 218, 222 (Ind. Ct. App. 2001) (providing that one exception to the requirement of a search warrant is a search incident to arrest, which proves that a police officer may conduct a search of the arrestee's person and the area within his or her control), *trans. denied*.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.