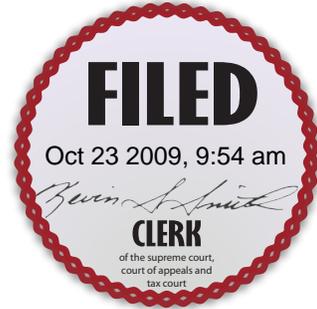


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)
)
 Appellant-Plaintiff,)
)
 vs.) No. 49A02-0903-CR-215
)
 WILLIAM H. NOLAN,)
)
 Appellee-Defendant.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable James Osborn, Judge
Cause No. 49F15-0803-CM-51624

October 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

The State appeals the trial court's pre-trial order suppressing evidence discovered when Officer Brady Ball arrested William Nolan pursuant to an arrest warrant. For our review, the State raises a single issue, which we restate as whether the trial court erred when it granted Nolan's motion to suppress. Concluding the uncontradicted evidence does not support the trial court's findings and its order is contrary to law, we reverse.

Facts and Procedural History

On March 3, 2008, Officer Ball was conducting an interdiction investigation at the America's Best Inns and Suites motel near Interstate 465. Officer Ball conducted such investigations as part of his regular duties. Officer Ball obtained the motel's guest registry, compared the names on the registry with the registrations of vehicles in the parking lot, and reviewed police reports for the associated names. The guest registry for room 105 contained Nolan's name, date of birth, and driver's license number. Using this information, Officer Ball was able to connect Nolan to a vehicle in the parking lot. Officer Ball also requested police records for Nolan using his date of birth and describing him as a white male. Officer Ball discovered an outstanding warrant for a person named "William Nolan" with the same date of birth. The warrant provided a social security number and described William Nolan as a black male with black hair, brown eyes, a height of five feet and nine inches, and a weight of two hundred and fifty pounds.

Officer Ball next reviewed Nolan's driver's license information using the driver's license number he obtained from the guest registry. The driver's license number was issued to a person named "William Nolan" with the same date of birth and social security number as

listed in the arrest warrant. The driver's license also contained the same height and weight description as the arrest warrant; however, the driver's license described William Nolan as having brown hair and blue eyes and did not indicate Nolan's race. Because of the disparity in physical descriptions, Officer Ball contacted the control operator to verify the information in the arrest warrant because the control operator had access to more detailed information than he could receive through his in-car computer. The control operator's information confirmed the name, date of birth, and social security number in the arrest warrant matched the information on the driver's license.

At the suppression hearing, Officer Ball testified, "originally, I wasn't sure, because it was a black male. And, what I did, is I used the ... social security numbers to verify the warrant – and they matched the warrant. And then I contacted the Control operator. Um, and the Control operator verified the warrant" Transcript at 21. Officer Ball further testified that he had reason to believe the individual for whom he had a warrant was the same person listed in the guest registry for room 105, explaining "I don't have to verify the warrants, um, with Control. But because the black male part came up – that was the only distinct difference – I did do that extra step." Id. at 23-24.

On the basis of the conforming information in the arrest warrant and the driver's license, Officer Ball went to room 105 and knocked on the door. A white male looked out of the curtain and Officer Ball asked him to open the door. The white male then closed the curtain. Officer Ball observed through the openings at the bottom of the curtain as the white male began moving things around near the air conditioning unit inside the room. The white

male then opened the motel room door. Officer Ball asked, “Are you William Nolan?” When Nolan responded affirmatively, Officer Ball informed Nolan he was under arrest, stepped into the room, and placed Nolan under arrest. As Officer Ball handcuffed Nolan, he looked down at the air conditioning unit where he had seen Nolan moving things around and saw marijuana cigarettes. Officer Ball bent down to retrieve the cigarettes and saw a baggy sticking out from one of the air conditioning vents. Officer Ball removed the baggie and discovered it contained marijuana.

On March 4, 2008, the State charged Nolan with possession of marijuana, a Class A misdemeanor. On May 19, 2008, Nolan filed a motion to suppress the evidence obtained during the execution of the arrest warrant arguing that since the arrest warrant indicated it pertained to a black male, Officer Ball did not have probable cause to arrest Nolan. The trial court, through a magistrate, conducted a hearing on June 23, 2008, at which Officer Ball testified. The magistrate denied the motion on July 21, 2008. However, prior to trial, the trial court, through the superior court judge, reconsidered the motion sua sponte, deemed the denial to be in error, and granted the motion, finding:

Officer Brady Ball should have examined the warrant information to determine basic identifiers. If Officer Ball had done so, he would have noticed that the warrant was for a black male and not a white male. Thus, when the white William Nolan answered the door to his hotel room, Officer Ball should have known the warrant did not apply to the Defendant and would not have had a legal basis to conduct the search that led to his discovery of the marijuana.

Appendix of Appellant at 30. Based on the suppression of the evidence, the State dismissed its charges on March 4, 2009. The State now appeals.¹

Discussion and Decision

I. Standard of Review

We review a trial court's decision to grant a motion to suppress as a matter of sufficiency. State v. Lucas, 859 N.E.2d 1244, 1248 (Ind. Ct. App. 2007), trans denied. In conducting our review, we neither reweigh the evidence nor judge the credibility of witnesses. Id. Further, the State appeals from a negative judgment; therefore, it must show the trial court's decision to grant the motion to suppress was contrary to law. Id. We reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. Id.

II. Suppression of the Evidence

Nolan sought suppression of the marijuana evidence as the result of a warrantless search in violation of the Fourth Amendment to the U.S. Constitution and article 1, section 11 of the Indiana Constitution. A search incident to a lawful arrest is an exception to the warrant requirement. Culpepper v. State, 662 N.E.2d 670, 675 (Ind. Ct. App. 1996), trans. denied. Under this exception, the arresting officer may conduct a warrantless search of the arrestee's person and the area within his immediate control. Id. The initial inquiry under this exception is to determine whether the arrest itself was lawful. Moffitt v. State, 817 N.E.2d 239, 246 (Ind. Ct. App. 2004), trans. denied.

¹ Nolan has not submitted an appellee's brief or taken part in this appeal in any other way.

An arrest warrant must “specify the name of the person to be arrested, or if his name is unknown, shall designate such person by any name or description by which he can be identified with reasonable certainty.” Ind. Code § 35-33-2-2. There is no dispute the arrest warrant was valid on its face. Similarly, there is no dispute the arrest warrant contains Nolan’s name, date of birth, and social security number. The issue then becomes whether Officer Ball reasonably believed Nolan was the subject of the arrest warrant that described him as a black male with black hair and brown eyes.

A. Fourth Amendment

Under federal law, where “the police mistake a person for someone else they seek to validly arrest, the arrest is constitutional if the arresting officers (1) have probable cause to arrest the person sought and (2) reasonably believe the person arrested is the person sought.” United States v. Marshall, 79 F.3d 68, 69 (7th Cir. 1996) (citing Hill v. California, 401 U.S. 797, 802 (1971)). Because Nolan does not dispute the validity of the arrest warrant, the issue turns on whether Officer Ball reasonably believed Nolan was the subject of the arrest warrant.

The guest registry provided Officer Ball with Nolan’s date of birth and driver’s license number. Nolan’s driver’s license, in turn, provided Officer Ball with Nolan’s social security number and confirmed his date of birth. This information matched the date of birth and social security number on the warrant. Officer Ball noted the discrepancy in race between Nolan and the warrant, and as a result, he took the extra step of verifying the warrant’s identifying information. In addition, Officer Ball was able to connect Nolan to a

vehicle in the motel parking lot through the vehicle's records. Therefore, Officer Ball had reason to believe the subject of the warrant was in room 105. When Nolan opened the door in response to Officer Ball's knock and announce, Officer Ball asked if he was William Nolan, and Nolan confirmed that he was. In light of this, the evidence does not support the trial court's finding that Officer Ball should have known the warrant did not apply to Nolan. Rather the evidence points to the conclusion that Officer Ball reasonably believed Nolan was the subject of the arrest warrant despite the race discrepancy.

B. Article 1, Section 11

The analysis under article 1, section 11 of the Indiana constitution is whether "in the totality of the circumstances, the intrusion [into Nolan's privacy] was reasonable." Finger v. State, 799 N.E.2d 528, 535 (Ind. 2003). In the context of the arrest of one person mistakenly believed to be another, the analysis under article 1, section 11 is whether the facts at the time, along with the reasonable inferences arising from those facts, would justify a prudent person in believing that the person arrested was the person sought. See id. As discussed above, Officer Ball took several steps to verify that the arrest warrant identified Nolan, including comparing the information in the arrest warrant to that in the guest registry and Nolan's driver's license, verifying the warrant information with the control operator who had access to more detailed information, connecting Nolan to a vehicle in the parking lot, and verifying Nolan's identity at the motel room door prior to arresting him. The steps taken by Officer Ball to identify Nolan as the subject of the arrest warrant would justify a reasonable person in believing that Nolan was the person sought. Therefore, the evidence does not support the

trial court's finding that Officer Ball should have known the warrant did not apply to Nolan. Rather, the evidence points to the conclusion that a reasonable person would believe Nolan was the person sought in the arrest warrant.

Conclusion

The uncontradicted evidence does not support the trial court's finding that Officer Ball should have known the arrest warrant did not apply to Nolan. On the contrary, the evidence demonstrates that Officer Ball had a reasonable belief Nolan was the subject of the arrest warrant, despite the race discrepancy, in light of the other identifying information. Therefore, we reverse the decision of the trial court to suppress the marijuana evidence.

Reversed.

DARDEN, J., and MATHIAS, J., concur.