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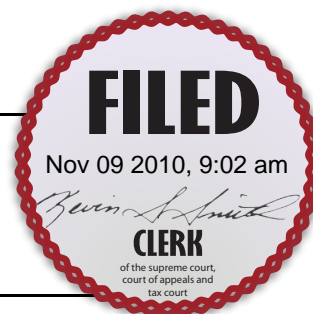
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**IN THE
COURT OF APPEALS OF INDIANA**



EMILIO RIVERA,)

Appellant-Defendant,)

vs.)

No. 49A02-1001-CR-59)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable James B. Osborne, Judge
Cause No. 49F15-0908-FD-076780

November 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Emilio Rivera appeals his convictions for two counts of Class D felony theft. Rivera was questioned by law enforcement in connection with a suspected child abduction. When asked to identify himself, Rivera provided several names and birth dates which were confirmed to be false. Rivera was handcuffed and Mirandized. Police searched Rivera's person and discovered two stolen social security cards in his wallet. Rivera was tried and convicted for theft of the cards. Rivera argues that his search was unlawful and that there was insufficient evidence to sustain his convictions. We conclude that (I) Rivera's search was permissible as incident to a lawful arrest and (II) there is sufficient evidence to sustain Rivera's theft convictions. We affirm.

Facts and Procedural History

In late July or early August 2009, William Neville's and Kelli Siler's social security cards were stolen from their trucks. The cards bore their respective names, social security numbers, and signatures. Both thefts were reported to authorities.

On August 30, 2009, Indianapolis Police Officer Jack Rebolledo was dispatched to a Marion County, Indiana, residence in response to an alleged runaway or child abduction. The complainant was a mother who believed someone was taking her daughter to Florida. Officer Rebolledo encountered several people at the residence, including two juvenile females, several adult parents/guardians, and a man later identified as Rivera. The juveniles informed Officer Rebolledo that they had met Rivera and were planning to move to Florida with him. Rivera allegedly promised to take them to Florida and find them jobs.

Officer Rebolledo asked Rivera to identify himself. Rivera gave three different names and several dates of birth. Officer Rebolledo checked the names and birthdates via radio control and discovered they were false. At one point Rivera said he was born in 1977. Officer Rebolledo asked Rivera how old he was. Rivera responded, "Twenty."

Officer Rebolledo placed Rivera in handcuffs, Mirandized him, and conducted a search of his outer clothing. Officer Rebolledo found a wallet in Rivera's back pocket containing several social security cards. Two of the cards belonged to Neville and Siler. Rivera told Officer Rebolledo that he had found the cards in a dumpster across the street.

The State charged Rivera with two counts of Class D felony theft. The State alleged that on or about August 30, 2009, in Marion County, Indiana, Rivera knowingly exerted unauthorized control over the social security cards of Neville and Siler.

Rivera moved to suppress the two stolen social security cards. Rivera argued that the evidence was the product of an unlawful search and seizure. The trial court denied the motion and admitted the exhibits.

A jury found Rivera guilty of both counts. Rivera now appeals.

Discussion and Decision

Rivera raises several issues which we condense and restate as: (I) whether the social security cards were inadmissible as products of an unconstitutional search and seizure and (II) whether there is insufficient evidence to sustain Rivera's theft convictions.

I. Search and Seizure

Rivera argues that the social security cards were seized in violation of both his federal and state constitutional rights and that the evidence was therefore improperly admitted at trial.

A. Federal Constitutional Claim

The Fourth Amendment to the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” The Fourth Amendment is made applicable to the States via the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 656 (1961). Evidence obtained in violation of a defendant’s Fourth Amendment rights may not be introduced against him at trial. *Id.* at 648-60.

For a search to be reasonable under the Fourth Amendment, a warrant is required unless an exception to the warrant requirement applies. *Berry v. State*, 704 N.E.2d 462, 465 (Ind. 1998).

One recognized exception to the warrant requirement is a search conducted incident to a lawful arrest. *Caudill v. State*, 613 N.E.2d 433, 439 (Ind. Ct. App. 1993). “Incident to lawful arrest, the arresting officer may conduct a warrantless search of the arrestee’s person and the area within his or her immediate control.” *Culpepper v. State*, 662 N.E.2d 670, 675 (Ind. Ct. App. 1996) (citing *Chimel v. California*, 395 U.S. 752, 772 (1969)), *trans. denied*.

An arrest occurs when a police officer “interrupts the freedom of the accused an[d] restricts his liberty of movement.” *Sears v. State*, 668 N.E.2d 662, 667 (Ind. 1996).

For an arrest to be lawful, it must be supported by probable cause. *VanPelt v. State*, 760 N.E.2d 218, 222 (Ind. Ct. App. 2001), *trans. denied*. Probable cause for arrest exists where at the time of the arrest the officer has knowledge of facts and circumstances which warrant a man of reasonable caution to believe a suspect has committed the criminal act in question. *Roberts v. State*, 599 N.E.2d 595, 598 (Ind. 1992).

“A police officer’s failure to formally arrest or to give a defendant notice of arrest prior to a search will not invalidate a search incident to an arrest as long as there is probable cause to make an arrest.” *Jackson v. State*, 588 N.E.2d 588, 590 (Ind. Ct. App. 1992). And “probable cause for an arrest may exist even though a police officer’s subjective evaluation of a situation leads him to the conclusion that he did not possess enough information to establish probable cause at a particular time.” *Roberts*, 599 N.E.2d at 598.

A person who “gives false information in the official investigation of the commission of a crime, knowing the . . . information to be false” commits false informing, a Class B misdemeanor. Ind. Code § 35-44-2-2(d). The offense of false informing includes giving false names and/or birthdates during police investigations. *See Smith v. State*, 660 N.E.2d 357, 359 (Ind. Ct. App. 1996). Indiana courts have routinely held that where a suspect furnishes police with identification confirmed to be false, law enforcement have probable cause to arrest for false informing. *See, e.g., Edwards v. State*, 759 N.E.2d 626, 628-29 (Ind. 2001); *Crawford v. State*, 755 N.E.2d 565, 566-67

(Ind. 2001); *Taylor v. State*, 891 N.E.2d 155, 159 (Ind. Ct. App. 2008), *trans. denied*; *Manigault v. State*, 881 N.E.2d 679, 686 & n.3 (Ind. Ct. App. 2008).

We conclude that Rivera's search and seizure were permissible as incident to a lawful arrest for false informing. Officer Rebolledo was dispatched in response to an alleged runaway or child abduction. Rivera was acknowledged as potentially involved. Officer Rebolledo asked Rivera to identify himself. Rivera provided three different names and several birthdates which Officer Rebolledo confirmed to be false. At that point, the facts and circumstances known to Officer Rebolledo sustained a reasonable belief that Rivera gave false information during the official investigation of a crime. Officer Rebolledo thus had probable cause to arrest Rivera for false informing. Officer Rebolledo placed Rivera in handcuffs and Mirandized him. Since Officer Rebolledo had probable cause justifying the initial arrest, he was in turn permitted to search Rivera's person. Officer Rebolledo frisked Rivera, found a wallet in his back pocket, and discovered the stolen social security cards inside. In line with the foregoing, Rivera's search was permissible as incident to a lawful arrest, and the seizure of the social security cards therefore did not offend Rivera's federal constitutional rights.

B. State Constitutional Claim

Article 1, Section 11 of the Indiana Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.” Article 1, Section 11 tracks the Fourth

Amendment verbatim, but we proceed somewhat differently when analyzing the language under the Indiana Constitution than when considering the same language under the United States Constitution. *Redden v. State*, 850 N.E.2d 451, 460 (Ind. Ct. App. 2006). Our analysis of reasonableness under Article 1, Section 11 turns on (1) the degree of concern, suspicion, or knowledge that a violation has 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 v. State*, 824 N.E.2d 356, 361 (Ind. 2005).

Here we cannot say Rivera's search violated his rights under Article 1, Section 11. Officer Rebolledo approached Rivera in connection with an alleged runaway or child abduction. When asked to identify himself, Rivera provided several names and birthdates confirmed to be false. Officer Rebolledo proceeded to handcuff Rivera and frisk his outer clothing. Based on (1) Officer Rebolledo's reasonable belief that Rivera provided false identification during the investigation of a runaway or child abduction, (2) the brevity and unintrusive character of the arrest and search, and (3) the need for law enforcement to examine falsely informing subjects during police investigations, we cannot say that the police acted unreasonably in this case. We therefore find that Rivera's arrest, search, and seizure did not run afoul of his state constitutional rights.

For the reasons stated, we conclude there is sufficient evidence to uphold the constitutionality of Rivera's search and seizure, and the trial court did not err by admitting the social security cards at trial.

II. Sufficiency of the Evidence

Rivera next argues there is insufficient evidence to sustain his theft convictions.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 925 N.E.2d 773, 781 (Ind. Ct. App. 2010), *reh'g denied, trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the verdict. *Id.* A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

“A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.” Ind. Code § 35-43-4-2(a).

The mere unexplained possession of recently stolen property standing alone does not automatically support a conviction for theft. *Fortson v. State*, 919 N.E.2d 1136, 1143 (Ind. 2010). Rather, such possession is to be considered along with the other evidence in a case, such as how recent or distant in time the possession was from the moment the item was stolen and the circumstances of the possession (say, possessing right next door as opposed to many miles away). *Id.* In essence, the fact of possession and all the surrounding evidence about the possession must be assessed to determine whether any rational juror could find the defendant guilty beyond a reasonable doubt. *Id.*

A person may be convicted of a crime in Indiana if “either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana.” Ind. Code

§ 35-41-1-1(b)(1). Territorial jurisdiction is not considered an element of the offense, but the State is required to prove it beyond a reasonable doubt. *Ortiz v. State*, 766 N.E.2d 370, 374 (Ind. 2002).

Here we find sufficient evidence to sustain Rivera's theft convictions. Rivera was discovered at a residence in Marion County, Indiana, with two stolen social security cards. To be sure, the cards had been stolen roughly one month before. Such distance in time between theft and discovery might ordinarily suggest innocent acquisition of the stolen property. But the property in question comprised two social security cards. The cards displayed the names, signatures, and social security numbers of William Neville and Kelli Siler, making obvious who their rightful owners were. Based not only on Rivera's possession of the property, but also on the subject property's personal and exclusive nature, a reasonable fact-finder could have concluded that Rivera knowingly or intentionally exerted unauthorized control over the social security cards with intent to deprive Neville and Siler of their value or use. Furthermore, Rivera's exertion of unauthorized control over the cards in Marion County, Indiana, was sufficient to establish Indiana's territorial jurisdiction.

Affirmed.

MAY, J., and ROBB, J., concur.