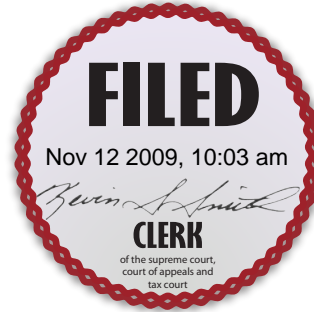


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**RUTH JOHNSON**  
Marion County Public Defender Agency  
Indianapolis, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**MARJORIE LAWYER-SMITH**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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DOUGLAS THOMPSON,  
Appellant- Defendant,

vs.

STATE OF INDIANA,  
Appellee- Plaintiff,

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No. 49A02-0903-CR-269

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable John Boyce, Judge  
Cause No. 49F08-0812-CM-281910

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November 12, 2009

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issue

Douglas Thompson appeals his conviction, following a bench trial, for carrying a handgun without a license, a Class A misdemeanor. Thompson raises one issue for our review: whether the trial court abused its discretion when it admitted Thompson's statements to police about the gun. Concluding the trial court did not abuse its discretion when it admitted Thompson's statements, we affirm.

### Facts and Procedural History

Officer Elise Torres responded to a call about two suspicious men looking into vehicles in a parking lot and located two men who fit the description, Thompson and his friend. They were staggering, had bloodshot eyes, and when Officer Torres spoke with them, they were slurring their speech. Officer Torres thought the men were intoxicated and took their identification. While Officer Torres looked up their information, Officer Christopher Sherrell arrived at the scene, approaching the two men as they stood near the driver's side of Torres's vehicle. Officer Sherrell noticed a handgun lying near the rear driver's side wheel of Officer Torres's vehicle and immediately placed both men in handcuffs. Officer Sherrell asked the men about the gun, and both men responded they did not know about it. Officer Sherrell read both men their Miranda rights, and both indicated they understood their rights. Officer Sherrell questioned the men about the gun a second time, and they again denied knowing anything about it.

Officer Sherrell observed both men had bloodshot, watery eyes and unsteady gazes, smelled of alcohol, and were rambling. Officer Sherrell advised the men they were under arrest for public intoxication. Officer Sherrell told the men one of them

would be charged with possessing the gun. Thompson admitted the gun was his and stated he did not want his friend to take the blame. Thompson said he did not have a license to carry the gun and only picked it up because he did not know if it was real and did not want a child to find it. At first, Thompson said he found it in a field next to an Embassy Suites. Later, Thompson could not say exactly where he found the gun, but told Officer Sherrell he could take the officers to the spot where he found it.

Thompson was charged with carrying a handgun without a license, a Class A misdemeanor, and public intoxication, a Class B misdemeanor. Thompson made a motion to suppress the statements he made to police. The trial court conducted a hearing, denied the motion to suppress, and incorporated part of the testimony from the hearing into the evidence at trial. At trial, Thompson objected to testimony about the statements; the trial court overruled his objection and admitted the testimony. The trial court found Thompson guilty of both counts and imposed concurrent sentences of one hundred eighty days, all suspended to probation. Thompson appeals his conviction for carrying a handgun without a license.

## Discussion and Decision

### I. Standard of Review

Where, as here, the defendant does not appeal the denial of a motion to suppress and the trial court admits the evidence over the defendant's objection at trial, we review the admission of evidence for an abuse of discretion. Cochran v. State, 843 N.E.2d 980, 982-83 (Ind. Ct. App. 2006), trans. denied, cert. denied, 549 U.S. 1122 (2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and

circumstances before the trial court. Id. at 983. We neither reweigh the evidence nor judge witness credibility, and we consider conflicting evidence in a light most favorable to the trial court's ruling. Peters v. State, 888 N.E.2d 274, 277 (Ind. Ct. App. 2008), trans. denied. We may consider evidence from the trial as well as evidence from the suppression hearing that is not in direct conflict with the trial evidence. Id.

## II. Statements to Police

Thompson argues the trial court erred in admitting his statements to police about the gun because he did not voluntarily waive his Miranda rights and did not voluntarily give the statements to police. When a defendant challenges the voluntariness of a confession, the State must prove the statement was given voluntarily by a preponderance of the evidence.<sup>1</sup> Pruitt v. State, 834 N.E.2d 90, 114 (Ind. 2005), cert. denied, 548 U.S. 910 (2006). The trial court considers the totality of the circumstances, including police coercion, the length, location, and continuity of the interrogation, and the maturity, education, physical condition, and mental health of the defendant. Id. at 115. We will affirm the trial court's decision as to voluntariness if there is substantial evidence to support it. Wells v. State, 904 N.E.2d 265, 271 (Ind. Ct. App. 2009), trans. denied.

Thompson argues he was too intoxicated to voluntarily waive his Miranda rights and give statements to police about the gun. We disagree. A statement is not inadmissible per se because the defendant is under the influence of drugs. Pruitt, 834 N.E.2d at 115. A defendant can knowingly and voluntarily confess even if he is

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<sup>1</sup> Thompson claims the State must prove the voluntariness of the statement beyond a reasonable doubt. The reasonable doubt standard, however, applies when challenging the voluntariness of a statement under the Indiana Constitution. Pruitt, 834 N.E.2d at 114. Here, Thompson challenges the voluntariness of his statement under the Fifth Amendment to the United States Constitution, which only requires proof by a preponderance of the evidence. Id.; see also Wells v. State, 904 N.E.2d 265, 271 n.2 (Ind. Ct. App. 2009), trans. denied.

voluntarily intoxicated; intoxication and drug use are merely factors to be considered by the trier of fact. Ellis v. State, 707 N.E.2d 797, 802 (Ind. 1999). “This Court will deem a defendant’s statement incompetent only when he is so intoxicated that it renders him not conscious of what he is doing or produces a state of mania.” Id. Intoxication of a lesser degree goes only to the statement’s weight, not its admissibility. Id.

In Ellis, statements of an intoxicated defendant were voluntary where testimony indicated the defendant was alert, was aware of the time and his surroundings, spoke clearly, was steady on his feet, and was not yawning. 707 N.E.2d at 802. In Williams v. State, statements of an intoxicated defendant were voluntary where evidence indicated the defendant was stumbling, spoke without slurring, effected entry into two houses and removed a valuable item from one of the houses, and gave complete and forthright answers in response to police questioning. 489 N.E.2d 53, 56 (Ind. 1986).

Thompson’s challenge to the admission of his statements asks us to reweigh the evidence and reconsider the credibility of the testifying officers, which we cannot do under our standard of review. Peters, 888 N.E.2d at 277. In Thompson’s case, it is undisputed he was intoxicated. Thompson, had bloodshot, watery eyes, smelled of alcohol, was stumbling, and was ultimately convicted of public intoxication. The totality of the circumstances, however, indicates Thompson was not so intoxicated that his waiver of Miranda rights and statements to police were involuntary. Although Thompson was rambling and slurring his speech, he was alert and coherent. Thompson was responsive to police questioning and carried on a lengthy conversation with the officers. Officer Sherrell testified, “[Thompson] was coherent enough to understand what I was

saying to him.” Transcript at 25. Thompson gave no indication he was having difficulty understanding the officer’s questions, and Officer Sherrell understood Thompson’s answers. Thompson indicated he understood his Miranda rights. Although Thompson gave inconsistent statements about exactly where he found the gun, Thompson was clear he had found the gun and had carried it with him on his person. Further, Thompson made a calculated choice not to drive<sup>2</sup> and did not want his friend to get in trouble for the gun, both of which indicate Thompson was aware of what was happening, considered the law, and understood the consequences of his actions. Ultimately, we conclude substantial evidence supports the trial court’s determination that Thompson voluntarily waived his Miranda rights and voluntarily gave statements to police.

#### Conclusion

The trial court did not abuse its discretion in admitting Thompson’s statements to police, and Thompson’s conviction for carrying a handgun without a license is affirmed.

Affirmed.

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

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<sup>2</sup> The State asked Thompson, “So you made a calculated choice not to drive?” Tr. at 30. Thompson replied, “Well yes I’ve had an OWI before and you know, I mean.” Id.