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IN THE COURT OF APPEALS OF INDIANA

Angelito Mercado,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 23, 2022

Court of Appeals Case No. 22A-CR-459

Appeal from the Bartholomew Circuit Court

The Honorable Kelly S. Benjamin, Judge

Trial Court Cause No. 03C01-2007-F2-3425

Mathias, Judge.

[1] Angelito Mercado appeals the trial court's denial of his motion to suppress. Mercado raises three issues for our review, which we restate as the following two issues:

I. Whether a stopping officer's mistaken understanding of the private nature of the road on which he initiated a traffic stop requires suppression of the evidence seized following the stop under Article 1, Section 11 of the Indiana Constitution.

II. Whether Mercado has shown reversible error under the United States and Indiana Constitutions in certain purported omissions and misstatements made by the officer in the probable cause affidavit for a search warrant for Mercado's person.

[2] We hold that Article 1, Section 11 affords Hoosiers greater protection than the Fourth Amendment does under *Heien v. North Carolina*, 574 U.S. 54 (2014). However, that greater protection notwithstanding, we agree with the trial court that Mercado is unable to demonstrate a violation of his rights in the initiation of the traffic stop here. We further hold that Mercado is unable to show reversible error in the purported omissions and misstatements in the officer's probable cause affidavit. Thus, we affirm the trial court's denial of Mercado's motion to suppress.

Facts and Procedural History

[3] Sometime before mid-June 2020, officers with the Columbus Police Department's Criminal Intelligence Unit were investigating "a very large drug dealer in Columbus," and the course of that investigation led officers to Mercado. Tr. Vol. 2, p. 34. In particular, officers had observed Mercado visiting the residence of the individual whom they had suspected of moving large amounts of narcotics.

[4] In mid-June, Mercado's ex-girlfriend, Christina Ricks, approached Columbus Police Department officers "multiple times" about alleged "criminal activities that Mr. Mercado was conducting . . . ." *Id.* at 36. Specifically, Ricks contacted Officer Drake Maddix and informed him that Mercado was dealing in methamphetamine. Officers "separately corroborate[d]" some of Ricks's assertions "through what [the officers] already knew . . . ." *Id.* at 37.

[5] In mid-July, Officer Maddix responded to Ricks. Ricks stated that she wanted "to help get Mr. Mercado off the streets." *Id.* at 51. In exchange, she wanted help in getting her fiancée, Ian Colson, released from jail. Colson "was facing several charges in multiple counties," including a "major felony drug case," and "was looking at dozens[of years], if not decades[,] in prison potentially." *Id.* at 52. Also, Ricks was currently on probation for a prior robbery conviction, and she had a notice of violation pending. Both Colson and Ricks were facing some of their legal issues in Jackson County, and Officer Maddix "reached out" to Jackson County prosecutors on their behalf. *Id.* at 55.

[6] Afterward, Officer Maddix asked Ricks for information regarding "where [Mercado] was" so that Officer Maddix could initiate a traffic stop, as Officer Maddix knew that Mercado had a suspended driver's license. *Id.* The evening of July 15, Ricks texted Officer Maddix that Mercado was on his way to pick her up at the Econo Lodge hotel[1] on Carrie Lane in Columbus, just off of State

[1] There are some references in the record to this hotel being a Motel 6, which it appears to have been prior to becoming an Econo Lodge. *See* Tr. Vol. 2, p. 38.

Road 46. Although referred to as "Carrie Lane," the road in question is a private service road that accesses three businesses, the middle of which is the hotel. Neither the Indiana Department of Transportation ("INDOT") nor the Columbus Department of Public Works ("DPW") maintains Carrie Lane. Instead, Carrie Lane is maintained by "the businesses associated with that road." *Id.* at 90. However, "several years" ago, the DPW filled "quite a few potholes" at the "intersection" of Carrie Lane and State Road 46. *Id.* at 91-92. Carrie Lane also "appears" to be "similar or the same as other roads in town" that are maintained by the DPW. *Id.* at 92. And in 2020, a vehicle hit the original stop sign that regulated traffic coming off Carrie Lane and onto State Road 46. An INDOT representative later testified that, while INDOT would not have installed the original stop sign on private property, INDOT typically replaces damaged stop signs regardless of their placement and did replace the stop sign here. *Id.* at 85-87.

[7] Immediately after receiving Ricks's text, Officer Maddix and another officer turned southbound onto Carrie Lane from State Road 46. Upon doing so, Officer Maddix observed Mercado operating a vehicle northbound on Carrie Lane, heading back toward State Road 46. Ricks was a passenger in Mercado's vehicle. Believing Carrie Lane to be a city street, Officer Maddix initiated a traffic stop on the ground that Mercado was operating a motor vehicle with a suspended license. A driver commits this offense only when he or she operates a motor vehicle on a *publicly* maintained way. Ind. Code §§ 9-13-2-175; -24-19-2

(2020). Officer Maddix then ordered Mercado out of the vehicle and placed him under arrest.

[8] Upon being placed under arrest, Mercado stated that "he was having a panic attack and slowly started falling to the ground." Tr. Vol. 2, p. 43. On the ground, he "was just continually yelling." *Id.* Officers called for an ambulance to take Mercado to the local hospital for medical clearance. Officer Brandon Decker accompanied Mercado in the ambulance. In the ambulance, Officer Decker observed Mercado "reach with his hands while restrained towards . . . the groin area" and "also towards his . . . buttocks." *Id.* at 26. When Officer Decker directed Mercado to cease his movements, Mercado "would start smacking his head" on the bedrail "to the point he got a nose bleed." *Id.* When Officer Decker "would pay attention to his head," he noticed that Mercado "would start reaching into his pants . . . in the front and the back." *Id.* at 26-27. Officer Decker informed Mercado that the jail has a scanner to search arrestees; Mercado responded that "he would kill himself" before he would "go in the f***ing scanner" and also that "he had COVID." *Id.* at 28.

[9] Meanwhile, back at Mercado's vehicle, Officer Branch Schrader had arrived on the scene with his K-9 unit, Argo. Officer Schrader had Argo do a free-air sniff around Mercado's vehicle. Argo alerted to the presence of narcotics at the driver's door.

[10] At that point, Officer Maddix applied for a search warrant for Mercado's vehicle. The trial court issued the search warrant, and Officer Maddix seized

raw marijuana, more than $1,500 in cash, two cell phones, and multiple credit cards in Mercado's name from the vehicle. Other officers also checked the license plate on the vehicle and learned that the vehicle had recently been reported as stolen. And Ricks, who appeared to exhibit some signs of intoxication, although officers on the scene did not immediately notice it, reported that, "while she was inside the vehicle," Mercado had "hidden [narcotics] in his groin [area] . . . before the traffic stop occurred." *Id.* at 46. Officer Maddix knew it to be "common for people to have . . . illegal narcotics concealed on their person as an attempt to frustrate and conceal them from law enforcement." *Id.* Around that same time, Officer Decker reported Mercado's behavior in the ambulance to Officer Maddix.

[11] Officer Maddix then applied for a second warrant to search Mercado's person. In his probable cause affidavit in support of the second warrant request, Officer Maddix stated the following as the factual basis for his request:

> On July 15th, 2020, I was southbound on Carrie Lane in my marked police commission. I observed a black Mercedes passenger car traveling northbound on Carrie Lane.
>
> I looked into the passenger compartment of the black Mercedes passenger car. I observed a black male with a blue baseball hat driving the vehicle. I observed a white female with blonde hair in the front passenger seat.
>
> The black Mercedes turned into the parking lot of [the hotel] from Carrie Lane. I recognized the driver of the Mercedes . . . to be Angelito Mercado from prior law enforcement encounters. I recalled Mercado's license status to be suspended . . . . I know

Mercado to be involved with illegal narcotics activities, specifically dealing in meth[] and marijuana, from criminal intelligence information.

Given I observed Mercado operate a vehicle upon a public highway with a suspended[ ]license, I activated my emergency lights, initiating a traffic stop. Mercado parked the Mercedes in a parking spot in the hotel's parking lot.

I approached the vehicle and asked Mercado to exit. Mercado was verbally argumentative during the encounter. Mercado exited the vehicle. I placed Mercado in handcuffs . . . .

Once Mercado was in handcuffs, he immediately began to act like he was going to pass out. Mercado fell to the ground. A medic was called for Mercado's medical welfare.

While waiting on the medic, K9 Officer Branch Schrader arrived on scene with his Police Service Dog, Argo, per my request.

After Mercado was transported by ambulance to the hospital, Officer Schrader had PSD Argo conduct a free-air sniff of the Mercedes . . . . Officer Schrader informed me PSD Argo indicated a positive alert to the odor of narcotics coming from within the Mercedes . . . .

After the free-air sniff, Sgt. Robert Mitchell conducted a license plate check on the Mercedes . . . . The license plate . . . returned as an active steal out of Columbus . . . .

I applied for and was granted a warrant to search the . . . Mercedes . . . . I located raw marijuana in the vehicle. I also located a very large amount of US currency in a bag containing Mercado's Indiana ID card.

> While Mercado was at the hospital, [t]he Bartholomew County Jail was contacted regarding Mercado coming to their facility. Mercado informed officers he would not go through the jail body scanner and would not have a strip-search conducted on him.
>
> Corrections staff advised they would not force Mercado to enter the body scanner or complete a strip-search.
>
> A cooperating witness, [Ricks], informed me that Mercado had illegal narcotics, specifically meth[], hidden in a body cavity.
>
> Given the aforementioned information, I have probable cause to believe Mercado has illegal narcotics concealed on or about his body.

Ex. Vol. 3, p. 46. The trial court issued the second warrant to search Mercado's person. Officers then executed that warrant and seized four baggies of a "substance consistent with the appearance of crystal methamphetamine," which had a total weight of nineteen grams, and a fifth baggie of a "solid white powder substance" of "suspected cocaine," which weighed three grams. Appellee's App. Vol. 2, p. 9.

[12] The State charged Mercado with Level 2 felony dealing in methamphetamine; Level 6 felony possession of cocaine; Class A misdemeanor resisting law enforcement; Class A misdemeanor operating a motor vehicle with a suspended license; and Class B misdemeanor disorderly conduct. Mercado moved to suppress the State's evidence on two grounds: that Carrie Lane is not a publicly maintained way as required for an offense of operating a motor vehicle with a suspended license and, thus, that all evidence seized as a result of that traffic

stop was seized in violation of Mercado's state and federal constitutional rights; and that Officer Maddix made material misstatements and omissions in his probable cause affidavit in support of the second search warrant. After an evidentiary hearing, the trial court denied Mercado's motion to suppress the evidence. The trial court certified its order for interlocutory appeal, which we accepted.

Standard of Review

[13] Mercado appeals the trial court's denial of his motion to suppress. As our Supreme Court has explained:

> Trial courts enjoy broad discretion in decisions to admit or exclude evidence. *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014). When a trial court denies a motion to suppress evidence, we necessarily review that decision "deferentially, construing conflicting evidence in the light most favorable to the ruling." *Id.* However, we "consider any substantial and uncontested evidence favorable to the defendant." *Id.* We review the trial court's factual findings for clear error, declining invitations to reweigh evidence or judge witness credibility. *Id. See also State v. Keck*, 4 N.E.3d 1180, 1185 (Ind. 2014) (explaining that "when it comes to suppression issues, appellate courts are not in the business of reweighing evidence" because "our trial judges are able to see and hear the witnesses and other evidence first-hand"). If the trial court's decision denying "a defendant's motion to suppress concerns the constitutionality of a search or seizure," then it presents a legal question that we review de novo. *Robinson*, 5 N.E.3d at 365.

Marshall v. State, 117 N.E.3d 1254, 1258 (Ind. 2019).

I. Whether Officer Maddix's Mistaken Understanding of the Private Nature of Carrie Lane Requires Suppression of the Evidence under Article 1, Section 11 of the Indiana Constitution.

[14] We first address Mercado's argument that suppression of the evidence is required due to Officer Maddix's mistaken understanding of the private nature of Carrie Lane in initiating the traffic stop of Mercado's vehicle. Officer Maddix initiated the traffic stop of Mercado's vehicle under Indiana Code section 9-24-19-2, which states in relevant part that an individual who knows that his driver's license has been suspended and "operates a motor vehicle upon a highway" commits a Class A misdemeanor. A "highway" is defined under the Indiana Code as "the entire width between the boundary lines of *every way publicly maintained* when any part of the way is open to the use of the public for purposes of vehicular travel." I.C. § 9-13-2-175 (emphasis added).

[15] The evidence presented to the trial court at the suppression hearing is unambiguous that Carrie Lane, the only road on which Officer Maddix observed Mercado operate a vehicle, is not in fact a "publicly maintained" way. Neither the Indiana Department of Transportation nor the Columbus Department of Public Works maintains Carrie Lane. Rather, Carrie Lane is privately maintained by the three businesses it services. And, despite the State's argument to the contrary, the evidence here does not show that DPW's repair of potholes at the "intersection" of Carrie Land and State Road 46 made Carrie Lane a publicly maintained way. Neither does INDOT's replacement of a damaged stop sign at that intersection, which an INDOT representative testified

was INDOT's regular practice regardless of who may have installed the original stop sign, demonstrate that Carrie Lane was a publicly maintained way. And neither does the testimony of various law enforcement officers that, based on the appearance of Carrie Lane or other factors, they believed Carrie Lane to be publicly maintained demonstrate that Carrie Lane was in fact a publicly maintained way. However, although not emphasized by the State on appeal, the parties' evidence to the trial court also demonstrates that the only way onto Carrie Lane is by way of State Road 46, which is a publicly maintained way.

[16] On appeal, the parties dispute whether Officer Maddix's mistake in identifying Carrie Lane as a publicly maintained way when he initiated the traffic stop requires suppression of the subsequently seized evidence. We acknowledge that, under the Fourth Amendment to the United States Constitution, an officer's reasonable mistake of law—that is, an officer's reasonable misunderstanding of what the law proscribes—may be sufficient to justify a traffic stop and avoid suppression of evidence seized following that stop. *Heien v. North Carolina*, 574 U.S. 54, 60 (2014). However, the Indiana Supreme Court has been clear that, "[e]ven though the Fourth Amendment and Article 1, Section 11 share parallel language, they part ways in application and scope. The Indiana Constitution sometimes affords broader protections than its federal counterpart and requires a separate, independent analysis from this Court." *Marshall*, 117 N.E.3d at 1258.

[17] Our case law has long recognized that, under Article 1, Section 11 of the Indiana Constitution, an officer's mistaken understanding of what the law

proscribes, regardless of how reasonable that mistake may be, is not a constitutionally sufficient basis for a stop.[2] In particular, we have repeatedly held that, under Article 1, Section 11, "[a]lthough a law enforcement officer's good faith belief that a person *has* committed a violation will justify a traffic stop," the officer's "mistaken belief about *what* constitutes a violation" of law "does not amount to good faith," and affording such discretion to officers in their attempts to enforce the law "is not constitutionally permissible." *State v. Rager*, 883 N.E.2d 136, 139-40 (Ind. Ct. App. 2008) (emphases added; quotation marks omitted); *see also* *Gunn v. State*, 956 N.E.2d 136, 139-41 (Ind. Ct. App. 2011) (same); *Goens v. State*, 943 N.E.2d 829, 834 (Ind. Ct. App. 2011) (citing *Rager*); *State v. Sitts*, 926 N.E.2d 1118, 1120-21 (Ind. Ct. App 2010) (citing *Rager*). Our Court's analyses in *Rager*, *Gunn*, *Goens*, and *Sitts* were each expressly based on both the Fourth Amendment and Article 1, Section 11. *Rager*, 883 N.E.2d at 139; *Gunn*, 956 N.E.2d at 138-39; *Goens*, 943 N.E.2d at 831; *Sitts*, 926 N.E.2d at 1120 & n.3. Of course, *Heien* overruled those opinions and similar Indiana authority on their Fourth Amendment analyses. *See* *Pridemore v. State*, 71 N.E.3d 70, 74 n.3 (Ind. Ct. App. 2017). But *Heien* did not and could not vitiate our analyses under the Indiana Constitution. Thus, our

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[2] The State is not correct in its assertion that Mercado has waived his argument on this issue under Article 1, Section 11. At the end of the evidentiary hearing, the trial court directed the parties to make their legal arguments to the court by way of proposed findings of fact and conclusions thereon, and in his proposed findings Mercado plainly preserved this argument. *See* Tr. Vol. 2, p. 141; Appellant's App. Vol. 2, p. 42.

precedent remains clear that Article 1, Section 11 affords broader protection to Hoosiers than the Fourth Amendment under *Heien* does.

[18] And we agree with the reasoning of our precedent for that greater protection. As we have explained, "this limitation is one of common sense. While we as citizens desire and expect law enforcement officers to enforce the requirements of state statutes," if citizens appear to meet those requirements, "we should not be subject to a traffic stop on suspicion of an alleged violation thereof." *Goens*, 943 N.E.2d at 834; *see also Heien*, 574 U.S. at 74 (Sotomayer, J., dissenting) ("One wonders how a citizen seeking to be law-abiding and to structure his or her behavior to avoid" police encounters "could do so" under the majority's holding). Other jurisdictions have likewise held that their state constitutions afford their citizens greater protection than the Fourth Amendment under *Heien* does. *See, e.g.*, *State v. Pettit*, 406 P.3d 370, 375-76 (Idaho Ct. App. 2017); *State v. Coleman*, 890 N.W.2d 284, 298 n.2 (Iowa 2017); *State v. Carter*, 255 A.3d 1139, 1147-48 (N.J. 2021); *State v. Heilman*, 342 P.3d 1102, 1106 n.5 (Or. Ct. App. 2015). As the Supreme Court of New Jersey succinctly stated: "it is simply not reasonable to restrict someone's liberty for behavior that no actual law condemns . . . ." *Carter*, 255 A.3d at 1148.

[19] Further, contrary to the State's argument on appeal, our analysis of whether an officer initiated a stop based on a mistake of law under Article 1, Section 11 is not an analysis under the traditional *Litchfield* factors. *Cf. Ramirez v. State*, 174 N.E.3d 181, 191 (Ind. 2021) (noting that, when we review whether "a particular search or seizure was reasonable" under Article 1, Section 11, we "employ the

framework provided in *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005)"). Rather, when a defendant asserts that his Article 1, Section 11 rights were violated because the officer had no legal authority to initiate the stop, "we must *first* determine whether [the defendant] committed an infraction" to ascertain "whether [the stopping officer] had the authority" to stop the defendant. *State v. Massey*, 887 N.E.2d 151, 156 (Ind. Ct. App. 2008) (emphasis added), *trans. denied*.

[20] We therefore agree with Mercado that, if Officer Maddix misunderstood what the law proscribed when he initiated the traffic stop, Article 1, Section 11, which provides greater rights to Hoosiers here than the Fourth Amendment does, would be available to afford Mercado relief. But we disagree with Mercado that he has made that showing here for two reasons. First, Officer Maddix's misunderstanding of the private nature of Carrie Lane was not a mistake of law; it was a mistake of fact. For example, we have held that an officer's misunderstanding as to whether our turn-signal statutes apply to motorists exiting roundabouts was a mistake of law that rendered the ensuing traffic stop invalid. *State v. Davis*, 143 N.E.3d 343, 347-50 (Ind. Ct. App. 2020) (holding that the officer's mistake of law was unreasonable under *Heien*). On the other hand, we have held that an officer who received a report that a motorist had an expired registration, which report turned out to be incorrect, committed a mistake of fact that did not invalidate the traffic stop the officer had initiated based on that information. *Dowdy v. State*, 83 N.E.3d 755, 762-63 (Ind. Ct. App.

2017) (holding that the traffic stop was not invalid under *Heien*) (citing *Sanders v. State*, 989 N.E.2d 332, 336 (Ind. 2013)).

[21] The basis for Officer Maddix's stop of Mercado's vehicle is like the mistake of fact in *Dowdy*, and it is not like the mistaken understanding of what Indiana law proscribes that was at issue in *Davis*. Officer Maddix had no misunderstanding that the operating-a-motor-vehicle-with-a-suspended-license statute required the operator of the vehicle to be on a publicly maintained way. Rather, like the officer in *Dowdy* who mistakenly believed the motorist had an expired registration, Officer Maddix believed Carrie Lane to be a publicly maintained way. Officer Maddix was in fact incorrect, but his legal basis for initiating the stop was sound. *See Sanders*, 989 N.E.2d at 335-36.

[22] Second, and Officer Maddix's mistake of fact notwithstanding, we cannot say that the State will be unable to prove at trial that Mercado committed the offense of operating a motor vehicle with a suspended license. *See Massey*, 887 N.E.2d at 156. The parties' evidence at the hearing on the motion to suppress demonstrates that the only way to access Carrie Lane is by way of State Road 46, and there is no dispute that State Road 46 is a publicly maintained way. Further, the parties' evidence was clear that Mercado was the only person operating the vehicle, that he had arrived at the hotel just moments before the traffic stop to pick up Ricks, that Ricks had promptly communicated Mercado's arrival to Officer Maddix, and that Officer Maddix arrived on the scene within moments of Mercado having picked up Ricks, who was then in the front passenger seat of Mercado's vehicle.

[23] While Officer Maddix may not have personally observed Mercado operate the vehicle on State Road 46, by virtue of Mercado operating a vehicle on a short access road that has a publicly maintained way as its only point of ingress and egress, and in light of the totality of the circumstances, the State may nonetheless be able to circumstantially demonstrate that Mercado committed the alleged offense of operating a motor vehicle with a suspended license. We therefore cannot say that Officer Maddix violated Mercado's rights under Article 1, Section 11 when Officer Maddix initiated a traffic stop of Mercado's vehicle under Indiana Code section 9-24-19-2. As Mercado cannot show a violation of his rights under the heightened protections of Article 1, Section 11, it follows that he also cannot show a violation of his Fourth Amendment rights under *Heien*. We therefore affirm the trial court's denial of Mercado's motion to suppress on this issue.

II. Whether Mercado can show Reversible Error in any Omissions or Misstatements made by Officer Maddix in his Probable Cause Affidavit in Support of the Second Search Warrant.

[24] Mercado next asserts that his rights under both the Fourth Amendment and Article 1, Section 11 were violated by alleged omissions and misstatements

made by Officer Maddix in his probable cause affidavit in support of the second search warrant.[3] As we have explained:

> The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution both require probable cause for the issuance of a search warrant. The determination of probable cause is based on the facts of each case and requires the issuing magistrate to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place.
>
> "A warrant is invalid where the defendant [establishes] by a preponderance of the evidence that the affidavits used to obtain the warrant contain perjury by the affiant, or a reckless disregard for the truth by him, *and the rest of the affidavit does not contain materials sufficient to constitute probable cause*." *Jones v. State*, 783 N.E.2d 1132, 1136 (Ind. 2003) (citing *Franks[v. Delaware]*, 438 U.S. [154,] 171-72, 98 S. Ct. 2674 [(1978)]). "[M]istakes and inaccuracies of fact stated in a search or arrest affidavit will not vitiate the reliability of the affidavits so long as such mistakes were innocently made." *Utley v. State*, 589 N.E.2d 232, 236-37 (Ind. 1992).
>
> In addition to the inclusion of false or misleading testimony in the affidavit, the defendant may also establish that the affiant omitted information essential to a finding of probable cause. In the case of an alleged omission, the defendant must establish that the affiant engaged in deliberate falsehood or reckless disregard

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[3] Our analysis of this issue is identical under both the Fourth Amendment and under Article 1, Section 11. *See, e.g.*, *Darring v. State*, 101 N.E.3d 263, 268-70 (Ind. Ct. App. 2018) (not distinguishing between the Fourth Amendment and Article 1, Section 11 on this issue); *Keeylen v. State*, 14 N.E.3d 865, 877 (Ind. Ct. App.) (same), *clarified on reh'g on other grounds*, 21 N.E.3d 840 (2014) (mem. decision), *trans. denied*. We therefore need not separately analyze Mercado's argument under the two constitutional provisions.

> for the truth in omitting the information *and show that probable cause would no longer exist if such omitted information were considered by the issuing judge*. *Franks* protects only against omissions that are designed to mislead, or that are made in reckless disregard of whether they would mislead.

Darring v. State, 101 N.E.3d 263, 268 (Ind. Ct. App. 2018) (emphases added; some citations and quotation marks omitted; some alterations original to *Darring*).

[25] Mercado alleges that Officer Maddix omitted the following material information from or misstated the following information in the probable cause affidavit in support of the second search warrant:

- That Carrie Lane was not a publicly maintained way;
- That Ricks said Mercado had hidden contraband in a body cavity rather than in his pants; and
- That Ricks had a prior criminal history and was working with law enforcement in an attempt to avoid jail time both for herself and for Colson.

[26] We initially note that we broadly agree with Mercado that law enforcement officers should not withhold material information from warrant-issuing magistrates, and "[p]olice who do not keep the issuing magistrate fully informed . . . run the risk that . . . the validity or the scope of the warrant" will be affected. *Query v. State*, 745 N.E.2d 769, 772-73 (Ind. 2001). That broad agreement aside, however, we conclude that Mercado has not met his burden to show reversible error on this issue for two reasons. First, even assuming for the sake of argument that Officer Maddix could have been more complete in his

probable cause affidavit, nothing about the alleged omissions or misstatements, if properly included in the affidavit, would have negated probable cause. *See Darring*, 101 N.E.3d at 268. The facts and affidavit still demonstrated that Officer Maddix knew Mercado to be "involved with illegal narcotics activities, specifically dealing in meth[] and marijuana, from criminal intelligence information"; the facts and affidavit still demonstrated that Mercado's vehicle was identified by Argo as containing narcotics; the facts and affidavit still demonstrated that Officer Maddix had seized raw marijuana and large amounts of cash from Mercado's vehicle; the facts and affidavit still demonstrated that the vehicle operated by Mercado had been reported as stolen; the facts and affidavit still demonstrated that Mercado was acting strangely at the scene before being transported away by ambulance; and the facts and affidavit still demonstrated that Ricks had identified Mercado as having drugs on or about his person, albeit by overstating the location of those drugs as within a body cavity. Ex. Vol. 3, p. 46. There is simply no question that those facts sufficiently established probable cause to search Mercado's person, and Officer Maddix's alleged omissions and misstatements would not have negated that probable cause.

[27] There is another conspicuous reason to affirm the trial court's denial of Mercado's motion to suppress on this issue. *Cf. Harris v. State*, 19 N.E.3d 298, 301 (Ind. Ct. App. 2014) (we "may affirm the trial court's ruling if it is sustainable on any legal basis in the record"), *trans. denied*. Officer Maddix had placed Mercado under arrest for Class A misdemeanor operating a motor

vehicle with a suspended license immediately upon arriving at the scene. Officer Maddix then discovered marijuana in Mercado's vehicle along with a substantial amount of cash, and officers also learned that that vehicle had been reported as stolen. In short, Mercado was not going home; he was under arrest and he was going to the local jail. A search of his person was thus inevitable as a search incident to arrest, which is an established exception to the warrant requirement. *See Garcia v. State*, 47 N.E.3d 1196, 1205 (Ind. 2016) ("a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment[] and encompasses searching the person of the arrestee.") (quotation marks omitted). Officer Maddix's request for the second search warrant was "likely unnecessary" as he had "the requisite probable cause to arrest [Mercado] and could have conducted a search incident to arrest." *Thomas v. State*, 81 N.E.3d 621, 628 (Ind. 2017). We therefore conclude that Mercado has not met his burden to show reversible error in the trial court's denial of his motion to suppress on this issue.

Conclusion

[28] For all of these reasons, we affirm the trial court's denial of Mercado's motion to suppress.

[29] Affirmed.

Robb, J., concurs.

Bradford, C.J., concurs in result with opinion.

IN THE
COURT OF APPEALS OF INDIANA

Angelito Mercado, *Appellant-Defendant,* v. State of Indiana, *Appellee-Plaintiff.*	November 23, 2022 Court of Appeals Case No. 22A-CR-459 Appeal from the Bartholomew Circuit Court The Honorable Kelly S. Benjamin, Judge Trial Court Cause No. 03C01-2007-F2-3425

Bradford, C.J., concurring in result with opinion.

[30] While I agree with the majority that the trial court correctly denied Mercado's motion to suppress, I write separately to express my belief that Article 1, Section 11, provides Hoosiers with no protection from reasonable mistakes of law. As the text of Article 1, Section 11, itself provides, "[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[.]" (emphasis added). The inescapable corollary to protection from unreasonable police activity, of course, is that there is no protection from reasonable police activity. If you also accept the proposition, as I do, that "reasonable men make mistakes of law, too,"

Heien v. North Carolina, 574 U.S. 54, 61 (2014), then I believe that you are constrained to conclude that Article 1, Section 11, offers no protection from them.

[31] I would, essentially, adopt the analysis of United States Supreme Court in *Heien*, which noted that, as with Article 1, Section 11,[4] "the ultimate touchstone of the Fourth Amendment is 'reasonableness[,]'" *id.* at 60, and went on to observe that

> such [reasonable] mistakes [of law] are no less compatible with the concept of reasonable suspicion [than reasonable mistakes of fact]. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: The facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.

Id.

[32] I acknowledge, of course, that Article 1, Section 11, provides protection from unreasonable mistakes of law and that, according to Hoosier standards of

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[4] Indiana case after Indiana case has recognized that, at heart, the question to which Article 1, Section 11, requires an answer is whether the State showed that "the police conduct 'was reasonable under the totality of the circumstances.'" *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014) (quoting *State v. Washington*, 898 N.E.2d 1200, 1206 (Ind. 2008)).

reasonableness regarding mistakes of law, Section 11 may offer more protection than the Fourth Amendment in some cases. There is, however, nothing in either the text of Article 1, Section 11, or in the jurisprudence of the Indiana Supreme Court that provides any support for the proposition that a reasonable mistake of law should be treated differently than any other reasonable police activity, *i.e.*, activity from which Article 1, Section 11, offers no protection. Because a blanket ban on evidence recovered as a result of a reasonable mistake of law goes against the letter and spirit of Article 1, Section 11, I concur in the majority's result only and note that, had I been on the panels of *Gunn*, *Goens*, *Stitts*, and *Rager*, I would have dissented in all of those cases on the same basis.

[33] I concur in result.