COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP597-CR **Cir. Ct. No. 2014CM1423**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN C. MARTIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: BARBARA H. KEY, Judge. *Affirmed.*

¶1 NEUBAUER, C.J.[1] John Martin appeals from a judgment of conviction for possession of tetrahydrocannabinols (marijuana) in violation of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

WIS. STAT. § 961.41(3g)(e). Martin moved to suppress the evidence, arguing that reasonable suspicion to justify the police detention of him was lacking. The circuit court denied the motion to suppress, concluding that the police had reasonable suspicion to detain him. We agree and affirm Martin's subsequent conviction.

BACKGROUND

¶2 On September 8, 2014, at approximately 3:00 p.m., Police Officer Donald Franklin was dispatched to a tavern in the city of Oshkosh in order to execute an arrest warrant. As Franklin entered the tavern and walked towards the back where Police Officer Matthew Pierce was standing, Martin exited the bathroom and walked past Franklin. Franklin spoke with Pierce outside the bathroom momentarily and then searched the bathroom for the subject of the warrant. No one was inside the bathroom. Franklin, however, smelled a strong odor of raw marijuana. Franklin searched the bathroom for evidence of marijuana but found none. He then asked several officers, including Pierce, to confirm the odor in the bathroom, and they agreed that it smelled of marijuana. Neither Franklin nor Pierce saw anyone enter or exit the bathroom after Martin. About ten minutes later, Franklin approached Martin, who was at the bar, and asked if he would speak with him; Martin agreed. Franklin explained that he had smelled marijuana in the bathroom and that Martin was the last person seen exiting it. Franklin asked permission to search Martin, but Martin refused. While they were talking, Martin twice placed his hands in his pants' pockets. Franklin asked Martin to "be honest" about whether he had something in his pockets, and Martin admitted that he had marijuana. A search of Martin's pockets followed, which uncovered marijuana, cocaine, and drug paraphernalia. Martin was arrested and charged with possession of controlled substances in violation of WIS. STAT. §§

961.41(3g)(c) and 961.41(3g)(e). He moved to have the evidence recovered from his person suppressed, but the circuit court denied his motion, finding that Franklin's testimony was credible and that he saw only one person exiting the bathroom. Martin later pleaded no contest to a violation of § 961.41(3g)(e) and was sentenced.

DISCUSSION

¶3 On appeal, Martin does not challenge the circuit court's findings of facts; rather, he contends that the circuit court's findings of facts were insufficient to meet the reasonable suspicion necessary to justify the police's investigatory stop of him. Thus, we are asked to apply undisputed facts to constitutional standards, which presents a question of law that we review de novo. ***State v. Rutzinski***, 2001 WI 22, ¶12, 241 Wis. 2d 729, 623 N.W.2d 516.

¶4 In order to make a valid investigatory stop, a reasonable police officer, in light of his or her training and experience, must have specific and articulable facts to suspect that the individual has committed, was committing, or is about to commit a crime. WIS. STAT. § 968.24; ***Terry v. Ohio***, 392 U.S. 1, 21 (1968); ***State v. Post***, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. The focus of an investigatory stop is on reasonableness, and the determination of reasonableness depends on the totality of the circumstances; it is a commonsense question. ***State v. Richardson***, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990).

¶5 Applying the law to the instant matter, the police had reasonable suspicion so as to justify the brief detention of Martin. Franklin's detection of the odor of marijuana in the bathroom, which Pierce confirmed, gave the police reasonable suspicion to believe that a crime had been or was being committed. ***State v. Secrist***, 224 Wis. 2d 201, 218-219, 589 N.W.2d 387 (1999) (strong odor

of marijuana coming from where the driver, the sole occupant of the vehicle, was seated gave police officer probable cause to believe he had committed a crime). Further, the police had reasonable suspicion to believe that Martin had committed or was committing that crime. He was the last person seen leaving the bathroom before Franklin first smelled the odor of marijuana, and no one else was seen entering or exiting it in the succeeding time period. Thus, this is not, as Martin contends, akin to a situation in which a defendant is simply one of many in an area suspected of criminal activity. Rather, under these circumstances, where Franklin was "able to link the unmistakable odor of marijuana … to a specific person," the police had reasonable suspicion to briefly detain Martin. ***Id.*** at 216-217; *see* ***State v. Chase A.T.***, No. 2014AP260, unpublished slip op. ¶¶26-27 (WI App. Sept. 4, 2014).

CONCLUSION

¶6 We conclude that the police had the requisite reasonable suspicion to justify the brief detention of Martin. We therefore uphold the circuit court's order in denying the motion to suppress and affirm the judgment of conviction.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.