

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 21, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-1218-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVEN R. PLEVAK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed.*

FINE, J. Steven R. Plevak appeals from a judgment, entered on his guilty plea, convicting him of unlawfully possessing cocaine. See § 961.41(3g)(c), STATS. We affirm.

When arrested, Plevak was driving a City of Milwaukee truck, described as either an “asphalt truck” or a “tar truck.” Using that truck, he drove

Joseph Patterson, a person whom law-enforcement officers had under surveillance for suspected drug activity, to a house where Patterson made a controlled drug purchase. Plevak waited in the truck. After approximately ten minutes, Patterson emerged from the house, and got back into the truck. Plevak drove off. The officers intercepted the truck and arrested both Patterson and Plevak. Other than the odd circumstance of someone appearing to be a municipal worker using a municipal truck to drive someone who had just made a drug transaction to and from the place where the transaction was made, the officers had no reason to suspect Plevak of any criminal activity before they arrested him. They did not have an arrest warrant. Plevak argued to the trial court that he was arrested unlawfully, and that the cocaine, which the officers found on his person after he was arrested, should be suppressed. The trial court denied the motion.

A person may be arrested without a warrant if a law-enforcement officer has “probable cause” to believe that the person has committed or is committing a crime. Section 968.07(1)(d), STATS.; *State v. Riddle*, 192 Wis.2d 470, 475–476, 531 N.W.2d 408, 410 (Ct. App. 1995). Whether the law-enforcement officers had probable cause to arrest Plevak, and, therefore, whether the search was lawful, presents an issue of law that we review *de novo*. See *State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). “Probable cause exists where the totality of the circumstances within the arresting officer’s knowledge at the time of the arrest would lead a reasonable officer to believe that the defendant probably committed a crime.” *State v. Koch*, 175 Wis.2d 684, 701, 499 N.W.2d 152, 161 (1993). This is an objective standard. *Riddle*, 192 Wis.2d at 476, 531 N.W.2d at 410. Probable cause to arrest, however, does not require proof beyond a reasonable doubt or even that guilt is more likely than not. See *State v. Paszek*, 50 Wis.2d 619, 624–625, 184 N.W.2d 836, 839–840 (1971).

It is illegal to traffic in unlawful drugs. It is also illegal to help another traffic in unlawful drugs. See § 939.05, STATS. Under § 939.05(2)(b), STATS., a person who “[i]ntentionally aids and abets the commission” of a crime is as guilty of that crime as the person who commits it directly. Plevak argues that *Riddle* requires reversal. We disagree.

In *Riddle*, law-enforcement officers found cocaine in the trunk of a car. *Riddle*, 192 Wis.2d at 473, 531 N.W.2d at 409. Riddle, who was sitting in the car’s back seat, was one of three passengers. *Ibid.* There “was absolutely no evidence to establish Riddle’s complicity” with the drugs. *Id.*, 192 Wis.2d at 478, 531 N.W.2d at 411. In contrast, here, Plevak not only drove Patterson to his drug rendezvous, he did it in a city-owned road-construction truck. Thus, although it is true that, as *Riddle* notes, a mere “companionship with an offender who is breaking the law does not provide a law enforcement officer with probable cause to arrest the companion,” *ibid.*, there was more than “companionship” here—there was active assistance. Stated another way, it was reasonable for the officers to conclude: 1) that the diversion of the city truck on what appeared to be a mission unrelated to city work was unusual and suspicious, and, 2) that, in light of this, Plevak knew Patterson’s purpose in going to the house, and intentionally helped him. As the trial court recognized, that reasonable conclusion was probable cause for the officers to arrest Plevak.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

