COURT OF APPEALS
DECISION
DATED AND FILED

January 10, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0460-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DOMINGO RAMIREZ

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Anderson, JJ.

¶1 BROWN, P.J. In ***Richards v. Wisconsin***, 520 U.S. 385 (1997), the United States Supreme Court overruled our supreme court's holdings in ***State v. Stevens***, 181 Wis. 2d 410, 511 N.W.2d 591 (1994), and ***State v. Richards***, 201 Wis. 2d 845, 549 N.W.2d 218 (1996), dealing with the no-knock rule. Our

supreme court had adopted a rule providing that when police have a search warrant supported by probable cause to search a residence for evidence of felony drug delivery or dealing, the officers are always justified in making a no-knock entry. ***Stevens***, 181 Wis. 2d at 424-25; ***Richards,*** 201 Wis. 2d at 850. The United States Supreme Court struck down this blanket rule. ***Richards***, 520 U.S. at 385. Thereafter, in ***State v. Ward***, 2000 WI 3, 231 Wis. 2d 723, 604 N.W.2d 517, our supreme court carved out a good-faith exception in which evidence seized based upon police reliance on the old ***Stevens/Richards*** rule was nonetheless admissible. ***Ward***, 2000 WI at ¶62. The trial court applied ***Ward*** here and we affirm that decision. We also hold that reasonable suspicion existed to justify an intercept of a package eventually delivered to the defendant in this case, Domingo Ramirez. We affirm the order finding reasonable suspicion and the judgment of conviction.

¶2 This is the second time on appeal for this case. The first time resulted in a published decision by this court, ***State v. Ramirez***, 228 Wis. 2d 561, 598 N.W.2d 247 (Ct. App. 1999). The facts pertinent to that appeal were that a postal authority intercepted a package based upon information provided by local officers that the package likely contained drugs. The package was addressed to a "Gabriel Ramirez," not to Domingo. The package was dog-sniffed and determined to be positive for drugs. A warrant was obtained, the package was opened and drugs were found. The package was rewrapped and delivered to Domingo Ramirez. After he accepted delivery, police, armed with a no-knock search warrant, barged in and seized the package. They arrested Ramirez. Ramirez contested the intercept, claiming no reasonable suspicion. The trial court threw out Ramirez's motion to suppress after holding that Ramirez lacked standing to object because the package was not addressed to him. We reversed the trial court and sent it back with directions that the trial court determine whether

reasonable suspicion existed to intercept the package. Ramirez also claimed that the no-knock search warrant for his apartment was unlawful. We directed the trial court to also determine whether exigent circumstances existed to justify the issuance of a no-knock search warrant.

¶3 In between the remittitur of the case after our decision and the time the trial court heard the matter on remand, our supreme court issued ***Ward***. Based on ***Ward***, the trial court ruled that the officers had acted in good faith in entering Ramirez's apartment without knocking and also held that there was reasonable suspicion to intercept the package. Ramirez appeals, raising both issues again.

¶4 We will reach the ***Ward*** issue first. During the hearing on remand, the trial court specifically asked the detective who executed the no-knock search warrant whether, in obtaining the warrant, he believed that he was acting in conformity with the law as stated by the supreme court of Wisconsin. The detective answered: "In 1996, yes, I do." Thus, it is incorrect for Ramirez to assert that there was no evidence of the police having relied upon the old ***Stevens/Richards*** rule. The detective's own testimony that he was acting pursuant to that law supports the inference that the police knew the law at the time and were acting in reliance.

¶5 Ramirez tries to minimize the damage of the detective's response by complaining that the officer did not elaborate about his understanding of the law. But more to the point, he argues that there is no basis to conclude that the officer was relying in "objective good faith" on any pronouncements of our supreme court. We understand that, by this, he means there must be some objective evidence not only that the detective knew about the ***Stevens/Richards*** decisions, but that when he went to the magistrate for a no-knock search warrant, he

intentionally provided only the minimum quantum of information required by the ***Stevens/Richards*** decisions.

¶6 We do not agree. We do not read ***Ward*** to require express evidence that the police packaged the information they submitted to the magistrate based upon the ***Stevens/Richards*** decisions. Rather, such reliance can be implied based upon a reading of the affidavit and the evidence supplied at the suppression hearing.

¶7 Here, the affidavit submitted by the detective in support of the search warrant provided ample evidence from which we can draw an inference that the detective was relying on the law in existence at the time he went to the magistrate. First, we note that the affidavit was an application for a "no knock search warrant." Second, in support of that affidavit, the detective only supplied the minimum information required by the ***Stevens/Richards*** courts. In sum, the affidavit provided only the following information: that the purpose of the affidavit was to support a no-knock drug bust, that it was based on information provided by a confidential informant who had recently bought drugs from Ramirez at his premises and that a package for Ramirez had on that very day been intercepted by the postal authorities and found to contain marijuana.

¶8 The detective provided the magistrate with no particular facts showing exigent circumstances, only generalities. It is obvious to this court that the detective submitted only those general facts which were necessary under the ***Stevens/Richards*** decisions. Under those decisions, the general facts provided by the detective were enough to pass muster for a no-knock search warrant. We conclude that the detective provided information in conformance with the existing law at the time—***Stevens/Richards***. We observe that the detective gave no

particular information to support a finding of exigent circumstances which would have been necessary had the ***Stevens/Richards*** decisions not been in existence. We conclude that the detective did not do so because he did not have to. This much is evident from the detective's testimony that he was acting in conformance with the law at the time. We hold that express evidence that the police were acting based upon ***Stevens/Richards*** is not necessary; we can infer such reliance based upon the facts presented. Ramirez's claim fails.

¶9 The remaining issue is whether the postal office detective had reasonable suspicion to intercept the package intended for delivery to Ramirez's residence. The facts adduced at the hearing are as follows: The police detective testified that he had been investigating Ramirez for delivery of marijuana with the use of a confidential informant. The confidential informant told the detective that Ramirez said he received marijuana in the mail. On December 5, 1996, the informant told the detective that a package would come from Texas and that it was due to arrive that same day.

¶10 The detective relayed all of this information to the postal detective. The postal detective learned from Kenosha post office employees that a package intended for delivery to Ramirez's address had indeed arrived at the post office on December 5. That same day, the package was sent to Milwaukee where a narcotic-detecting dog sniffed the package along with five others that did not contain narcotics. The dog alerted on the package intended for delivery to Ramirez's address. A federal search warrant was obtained and the package was opened. It contained marijuana.

¶11 The law on intercepts of packages by postal authorities is contained in ***State v. Gordon***, 159 Wis. 2d 335, 344, 464 N.W.2d 91 (Ct. App. 1990). The

standard is "reasonable suspicion." ***Id.*** at 344. In determining reasonable suspicion, the ***Gordon*** court considered two factors: investigatory diligence and the length of the delay. ***Id.*** at 345. Ramirez appears to make three contentions: First, he complains that the "flag" apparently was on *all* packages sent to the Ramirez *residence* rather than a specific package intended for the specific defendant, as was the case in ***Gordon***. Therefore, the information supplied to the postal detective was too general. Second, he argues that there is no clear testimony about *when* the flag was put on the packages. He claims that ***Gordon*** places a "time frame" within which a flag maintains its validity. After that time, the information which provided the basis for the flag becomes stale and may no longer justify the flag. Ramirez argues that since the State did not provide a record showing a specific time frame, it has failed in its burden of proof to show due diligence. Third, Ramirez argues that even if the State did provide sufficient evidence, and even if we buy the State's argument that the time frame is one day—December 5, 1996—a problem still exists. He points out that the postal inspector ordered that the package be sent from Kenosha to Milwaukee for the dog-sniff. He argues that the State did not establish why it could not have conducted the sniff in Kenosha. He sees this as an unnecessary delay which does not meet the "length of delay" factor in ***Gordon***. We reject all three challenges.

¶12 Initially, Ramirez is wrong to say that the information provided to the postal authority was too general to be considered reasonable. The information provided was that on December 5 a package from Texas would arrive that was intended for delivery to the Ramirez residence. Thus, the "flag" cannot accurately be said to have been for "all packages" coming to the Ramirez residence. Rather, the flag was for all packages coming from Texas on that very day. The universe of packages arriving from Texas on December 5 is small. It is not a general

proposition. Moreover, that the Texas package was addressed to a "Gabriel Ramirez" rather than Domingo Ramirez does not mean that the postal employees were without reasonable suspicion to seize the package. Reasonable suspicion was satisfied because the package came from Texas, as expected, arrived on December 5, as expected, and was addressed to a person named Ramirez, as expected. The postal employees had finite information that was corroborated the minute that package arrived. We hold that the information was particular in scope and warranted reasonable suspicion.

¶13 Second, the State *did* prove the predicate facts from which the court could make a determination about whether the information was stale or fresh.[1] It does not matter to this court whether an original "flag" was placed on all packages coming to the Ramirez residence earlier than December 5. What happened before December 5 is irrelevant for the simple fact that nothing happened before December 5 which harmed Ramirez in any way or which has any bearing on reasonable suspicion. On December 5, the government received new, fresh information to be on the lookout for a package from Texas due to arrive that very day. That information set a new one-day window. The State did provide sufficient evidence from which a court could determine whether the information supporting the intercept was fresh or stale. We hold that the State did meet its burden of production here.

¶14 Ramirez complains that the detective's testimony about having received information about the packages on the same day that the package arrived

[1] It appears that this issue was not even argued at the trial court level. Waiver would be an appropriate response. But since the issue is easily answered on the merits without taxing our scarce judicial resources, we will answer it.

is "impossible." He does not elaborate. We guess that he thinks it highly improbable that a person would know a package was expected to arrive that very day. But we fail to see how this is so and Ramirez fails to tell us how this is so. Within the realm of common experience, reasonable persons make assumptions every day about when mail is due to arrive. We see this as no different.

¶15 As to Ramirez's third complaint, whatever delay occurred between the time on December 5 when seizure first occurred and the time that the package was actually searched is certainly justified by the circumstances.[2] Once the package arrived, the inspector had to be called, the package had to be transported to Milwaukee—where, apparently, the drug-sniffing dog was located—and a warrant had to be obtained. All such actions were reasonable and warranted. While Ramirez claims that a dog-sniff could have taken place in Kenosha, that is conjecture. The record does not establish that such dogs are located in Kenosha. Once the State has submitted evidence that the police acted with reasonable suspicion, the burden of producing contrary evidence shifts and the defense then has the opportunity to show why the police did not act with reasonable suspicion. Ramirez provided no such evidence. His claim fails.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

[2] This issue was not raised before the trial court either. However, we will address it.