

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 18, 1998

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. 97-0776-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RONALD L. SAARI,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Rock County:  
JOHN W. ROETHE, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Ronald Saari appeals from a judgment of conviction of possession with intent to deliver cocaine within 1,000 feet of a school as a second or subsequent offender, §§ 161.41(1m)(cm), 161.48, 161.49(1) and (2)(a), STATS., maintaining a drug-trafficking place, § 161.42, STATS., and

possession of drug paraphernalia, § 161.573(1), STATS.<sup>1</sup> The issue on appeal is whether the trial court improperly refused to suppress evidence obtained during a warrantless search of a motel room. Because we conclude that the trial court properly found that the officers lawfully entered the room and the subsequent search was within the permissible scope incident to a lawful arrest, we affirm.

The night Ronald Saari was arrested, he and his wife, Tammy Saari, were staying in a motel room in Beloit. Police officers knocked on the door of their room and Tammy came out and let the door close behind her. The officers told her she was under arrest and she asked if she could get her shoes and coat. The officer testified about what happened next as follows:

I told her that she could, however, for our safety and for other reasons, she--we would need to go back inside the room with her while she recovered those items. And she opened the door, allowed me in, she followed behind, and Sergeant Sciamme followed behind her.

The trial court found the testimony of the arresting officer to be credible. Specifically, the trial court found that on the night of the arrest the police had a reasonable basis to be at the motel and to believe that Tammy was in the motel room and wanted under a warrant. The court further found that the officer's testimony that Tammy consented to their entry was credible. The court found that even if the entry was not consensual, the officers were lawfully in the room incident to Tammy's arrest.

Ronald argues that the trial court should have suppressed the evidence seized inside the motel room because the police did not have consent to

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<sup>1</sup> These statutes have been renumbered as: § 961.41(1m)(cm), 961.48, 961.49(1) and (2)(a), 961.42, and 961.573(1), STATS.

enter at the time of Tammy's arrest and because entry was not pursuant to a lawful arrest. The officer's testimony established, however, that they accompanied Tammy into the room after she was arrested. It is not unreasonable for a police officer "as a matter of routine, to monitor the movements of an arrested person, as his judgment dictates, following the arrest." *Washington v. Chrisman*, 455 U.S. 1, 7 (1982). The officer may "remain literally at [the defendant's] elbow at all times; nothing in the Fourth Amendment is to the contrary." *Id.* at 6. In other words, a police officer may lawfully follow an arrested person into a motel room to retrieve her shoes and coat at her request. Therefore, the officers lawfully entered the room with Tammy.

Ronald also appears to contest the search of the room once the officers had entered claiming that the officers were on a "fishing expedition." The trial court found, however, that the search of the room was incident to the lawful arrests of both Ronald and Tammy. In reviewing an order concerning the suppression of evidence seized incident to a lawful arrest, we apply a two-step analysis. *State v. Phillips*, 209 Wis.2d 559, 563 N.W.2d 573 (Ct. App. 1997). We will uphold the trial court's determination of historical or evidentiary facts unless they are against the great weight and clear preponderance of the evidence. *State v. Murdock*, 155 Wis. 2d 217, 225, 455 N.W.2d 618, 621 (1990). Whether a particular place is an area from which a defendant might secure a weapon is a question of constitutional fact which we review independently of the trial court's finding. *Id.* at 226, 455 N.W.2d at 621.

In this case, the trial court found the testimony of the arresting officer to be credible. The officer testified that certain evidence was in sight when he entered the room. He further testified that Ronald was sitting on the bed, and after he was arrested, Ronald stood up and the officer saw a large lump between

the mattresses which he thought was a weapon. The officer further testified that there was a space of only a few paces between Ronald and the places searched. The court concluded that the search occurred all within an area which could be covered by two or three paces and that this was within the scope permissible under *Murdock*, 155 Wis.2d at 236, 445 N.W.2d at 323. We agree.

Since the officers were lawfully in the room and conducted the search incident to a lawful arrest, the circuit court properly denied Ronald's motion to suppress the evidence obtained. Therefore, we affirm the judgment of conviction entered by the circuit court.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

