COURT OF APPEALS
DECISION
DATED AND FILED

June 10, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2170-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MANUEL L. RILEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County: DONALD J. HASSIN, JR., Judge. *Affirmed.*

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

PER CURIAM. Manuel L. Riley appeals from a judgment of conviction of possession of cocaine with intent to deliver. He argues that an illegal search occurred and that inadmissible hearsay was introduced at trial. We reject his claims and affirm the judgment.

At 5:45 a.m. on August 15, 1996, police went to room 24 of the Como Hotel in Waukesha in response to an anonymous tip that there was drug dealing being conducted there with a possibility that a gun was involved. Riley and another man, Jones, answered the door and informed the officers that the room was being rented by their friend "Shorty." The officers' request for permission to search the room was denied. Riley remained standing on the threshold of the room. It was discovered that there was an outstanding arrest warrant against Riley. Riley was placed under arrest, asked to step out into the hallway, and handcuffed. Jones asked to retrieve a shirt from the room and was allowed to do so while accompanied by a police officer. The officer observed a dresser located behind the door. The officer searched the dresser drawers and found crack cocaine and a napkin with two names written on it. The officer believed the information on the napkin to be related to drug sales.

The issue is whether the search was valid as incident to Riley's arrest. When an appellate court reviews an order denying a motion to suppress evidence obtained during a search, it will uphold the trial judge's findings of fact unless they are clearly erroneous. *See* ***State v. Roberts***, 196 Wis.2d 445, 452, 538 N.W.2d 825, 828 (Ct. App. 1995). However, whether the search meets constitutional standards is a question of law subject to de novo review by this court. *See* ***id.***

The threshold consideration is whether Riley, as a guest in the hotel room rented by another individual not present, had an expectation of privacy which is protected by the constitutional prohibition against unreasonable searches. *See* ***id.*** at 453, 538 N.W.2d at 828. This is also a question of law subject to independent review in this court. *See* ***State v. West,*** 185 Wis.2d 68, 89-90, 517 N.W.2d 482, 489 (1994).

Minnesota v. Olson, 495 U.S. 91, 98-99 (1990), holds that an overnight guest has a legitimate expectation of privacy in his or her host's home. *See also* ***State v. Curbello-Rodriguez***, 119 Wis.2d 414, 424, 351 N.W.2d 758, 763 (Ct. App. 1984). We reject the State's contention that Riley did not meet his burden to prove that he was an overnight guest because there was no testimony about when Riley arrived at the room, how long he planned to stay in the room, or whether he had any personal belongings there. The trial court found that Riley was an overnight guest. That finding is not clearly erroneous in light of the testimony that it appeared that Riley and Jones had been sleeping when the police arrived and they had a key to the premises.

Riley argues that the search was not contemporaneous with his arrest but instead was incident to Jones' request to retrieve a shirt from the room. A search incident to arrest is permitted to allow officers to detect and remove any weapons that the arrestee might try to use to resist arrest or escape or to prevent the destruction or concealment of evidence. *See* ***State v. Murdock***, 155 Wis.2d 217, 228, 455 N.W.2d 618, 622 (1990). Thus, police may reasonably search the area within the arrestee's immediate control—that is, the "area from within which [the arrestee] might gain possession of a weapon or destructible evidence." ***Id.*** at 229, 455 N.W.2d at 623 (quoting ***Chimel v. California***, 395 U.S. 752, 763 (1969)).

We acknowledge that at the time of the search, Riley and Jones were out in the hallway and Riley was in handcuffs. However, actual accessibility to a weapon or destructible evidence is not the benchmark of the reasonableness of the scope of a search incident to arrest. ***Murdock***, 155 Wis.2d at 231, 455 N.W.2d at 624.

In ***Murdock***, contemporaneously with the handcuffing of the three occupants of the house, a search of the room, which was about twelve-by-fourteen feet, and a connected pantry-type closet was executed. *See* ***id.*** at 222-23, 455 N.W.2d at 620. In the pantry, detectives searched through the three closed drawers of the pantry and found a short-barreled rifle in the middle drawer. *See* ***id.*** at 223, 455 N.W.2d at 620. The supreme court determined that under the ***Chimel*** standard, the pantry was within Murdock's immediate control and the search of the pantry incident to his arrest was therefore reasonable. *See* ***id.*** at 236, 455 N.W.2d at 626.

We are obligated to follow the ***Murdock*** decision. *See* ***State v. Clark***, 179 Wis.2d 484, 493, 507 N.W.2d 172, 175 (Ct. App. 1993). Without regard to actual accessibility, the hotel room was an area within Riley's immediate control. The trial court found that the search of the dresser occurred within a very brief period of time of Riley's arrest. Therefore, we conclude that the search was reasonable as incident to Riley's arrest.

Next we address Riley's claim of evidentiary error. At trial a teletype printout reflecting the outstanding arrest warrant was admitted as an exhibit. The teletype indicated that Riley was known as "Smiley Riley." The arresting police officer testified about how he obtained the teletype and the information it contained. "Smile" was one of the names on the napkin recovered from the dresser drawer. Thus, the revelation that Riley was "Smiley" linked Riley to drug sales. Riley argues that the evidence of the alias listed on the teletype was impermissible double hearsay because no person was identified as having personal knowledge that Riley was also known as "Smiley Riley."

On appeal, we will affirm the trial court's admission of evidence if it is a proper exercise of discretion. *See* ***State v. Webster***, 156 Wis.2d 510, 514, 458 N.W.2d 373, 374-75 (Ct. App. 1990). This requires the trial court to correctly apply accepted legal standards to the facts of record and to reach a reasonable conclusion by a demonstrated rational process. *See* ***id.*** at 515, 458 N.W.2d at 375.

The trial court admitted the evidence under § 908.03(6), STATS., which creates a hearsay exception for records or reports made in the course of a regularly conducted activity. *See* ***State v. Gilles***, 173 Wis.2d 101, 113, 496 N.W.2d 133, 138 (Ct. App. 1992). The teletype included information kept in the normal course of police business. It is the type of regularly kept information that § 908.03(6) addresses. We reject any notion that it would have been necessary to have the person to whom Riley first identified himself as "Smiley" authenticate the entry into police records. The teletype was admissible as a regularly kept record.

The suggestion that the police officer's testimony created multiple layers of hearsay fails. The police officer's testimony served to provide the foundation for the admission of the teletype.

> The foundation for the records … may be furnished by the custodian or other qualified witness. The important factor is whether the witness is familiar with how records of this type are prepared by the organization. The foundation witness need not be a member of the entity, provided he or she is knowledgeable about the record keeping activities. Nor is it necessary that the foundation witness have any personal knowledge of the information reflected in the record.

7 DANIEL D. BLINKA, WISCONSIN PRACTICE, EVIDENCE, § 803.06, at 484 (West 1991). The inability of the officer to identify the person who recorded Riley's

known aliases, the thing Riley most complains about, affects only the weight of the evidence and not its admissibility. *See* ***id.***

This case is unlike ***Berg-Zimmer & Associates, Inc. v. Central Manufacturing Corp.***, 148 Wis.2d 341, 434 N.W.2d 834 (Ct. App. 1988), cited at footnote 22 in Professor Blinka's treatise. In ***Berg-Zimmer***, the admission of business records was reversed because the foundation witness was not an employee of the business entity whose records he was identifying and there was no evidence establishing the witness's qualifications to lay a proper foundation for the admissibility of the records. *See* ***id.*** at 350-51, 434 N.W.2d at 838. In contrast, here the police officer was familiar with the record keeping which generates information contained on the teletype. The officer possessed knowledge that entries of known aliases were made in the course of a regularly conducted police activity. We conclude that the trial court properly exercised its discretion in admitting the teletype and the alias information.

By the Court.—Judgment affirmed.

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