

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 25, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

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

**Appeal No. 2014AP1430-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 2011CF163**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANTWAN D. HOPSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Sheboygan County: TERENCE T. BOURKE, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 REILLY, J. Antwan Hopson appeals his convictions for possession of cocaine, obstruction of an officer, and felony bail jumping. Hopson argues that we should reverse as the court improperly denied his motion to suppress the cocaine evidence. We disagree and affirm.

¶2 Hopson was a passenger in a vehicle stopped by city of Sheboygan police officer Stephen Schnabel for suspended license plates. While checking on the driver's license, which turned out to be suspended, Schnabel also ran a check on Hopson and learned that there was a nonextraditable probation warrant from another state for possession with intent to deliver marijuana. Schnabel requested assistance from a K-9 unit and another officer.

¶3 After backup arrived, the driver and Hopson were asked to exit the vehicle. Officer Trisha Saeger led her trained K-9 partner, Bud, around the exterior of the vehicle to sniff for drugs. Bud "indicate[d]" that there was an odor of drugs coming from the vehicle. Saeger led Bud inside the vehicle, where Bud indicated an odor coming from the console area between the two front seats of the vehicle. Schnabel and Saeger subsequently searched the vehicle, where they found what they identified as "marijuana shake" in the "ashtray area, the front passenger floor area, and in the pocket behind the front passenger seat." Saeger then searched Hopson's "pockets, et cetera, and the lower legs and area and top of [Hopson's] shoes." Before Saeger finished her search, Hopson "took off" running. After Hopson was caught, Saeger found a baggie filled with cocaine along the path that Hopson had traveled.

¶4 Hopson moved for an order excluding evidence of the cocaine, arguing that it was obtained as the result of an illegal search. The circuit court denied the motion. Hopson was subsequently convicted by a jury of possession of cocaine and obstructing an officer. Hopson then pled no contest to a felony bail jumping charge; misdemeanor bail jumping charges were dismissed and read in at sentencing.

¶5 Hopson appeals, arguing that the cocaine evidence should have been suppressed as he was not under arrest at the time of the search and Saeger’s search of his pants pockets and shoe area exceeded the scope of an allowable stop-and-frisk. We will uphold the circuit court’s findings of fact unless clearly erroneous, but independently review whether those facts meet our constitutional requirements. *State v. Tullberg*, 2014 WI 134, ¶27, 359 Wis. 2d 421, 857 N.W.2d 120. We reject Hopson’s argument as there was probable cause at the time of the search to believe that Hopson possessed marijuana.

¶6 The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution protect citizens from unreasonable searches. *State v. Sykes*, 2005 WI 48, ¶13, 279 Wis. 2d 742, 695 N.W.2d 277. A warrantless search is per se unreasonable unless it falls within a recognized exception to the warrant requirement. *State v. Lefler*, 2013 WI App 22, ¶7, 346 Wis. 2d 220, 827 N.W.2d 650. One exception recognized by our supreme court is a search of a suspect whom law enforcement officers have probable cause to arrest. *Sykes*, 279 Wis. 2d 742, ¶16. Probable cause in such a case requires that under the totality of the circumstances a law enforcement officer has a reasonable belief that the suspect’s “guilt of a crime is more than a possibility.” *Tullberg*, 359 Wis. 2d 421, ¶33. A formal arrest need not precede such a search. *See id.*, ¶55.

¶7 For example, in *State v. Mata*, 230 Wis. 2d 567, 568, 602 N.W.2d 158 (Ct. App. 1999), we found that there was probable cause to search a passenger in a motor vehicle based solely on the odor of marijuana. Mata was a passenger in a vehicle that was stopped due to the absence of a front license plate. *Id.* at 568-69. The officer who stopped the vehicle “detected a strong odor of raw marijuana” in the vehicle and searched all three vehicle occupants. *Id.* at 569.

This court found that “while the initial stop of the vehicle was premised on a possible traffic violation, the ensuing observations made by [law enforcement] established probable cause to believe that marijuana was in the vehicle or on the persons of the occupants.” *Id.* at 573. Even though the search may have exceeded what was allowable by *Terry v. Ohio*, 392 U.S. 1 (1968), we found the search justified by probable cause. *Mata*, 230 Wis. 2d at 573-74.

¶8 Relying solely on *State v. Marten-Hoye*, 2008 WI App 19, 307 Wis. 2d 671, 746 N.W.2d 498, Hopson argues that Saeger’s search was unconstitutional as “the totality of the circumstances would ... not lead a reasonable person to believe that [he or she] was under arrest.” Hopson’s reliance on *Marten-Hoye* is misplaced as *Marten-Hoye* involved a search incident to the issuance of a citation rather than one based on probable cause for arrest for a crime. *See id.*, ¶7. *Marten-Hoye* might be helpful if the search of Hopson was premised on a possible traffic violation. *See Mata*, 230 Wis. 2d at 573. But here, the additional observations made by the K-9 unit established probable cause to believe that marijuana was in the vehicle or on one of the occupants, which is a crime in Wisconsin. *See WIS. STAT. § 961.41(3g)(e); Mata*, 230 Wis. 2d at 573.

¶9 We find *Mata* to be on point as Saeger had probable cause to search Hopson based on a reasonable belief under the totality of the circumstances that it was more than a possibility that Hopson possessed marijuana. Hopson had a criminal history that included marijuana charges. A K-9 officer trained in the detection of drug odors had detected drugs inside a vehicle where Hopson was a passenger. Hopson had recently been sitting in an area surrounded by what officers recognized as “marijuana shake.” Based on these circumstances, there was a reasonable belief that Hopson possessed marijuana, which would make him guilty of a crime, and Saeger had probable cause to arrest Hopson at the time of

the search in question. As the search was supported by probable cause, it is immaterial whether it exceeded the scope of a *Terry* search. See *Mata*, 230 Wis. 2d at 573-74. The court properly denied Hopson's motion to suppress.

*By the Court.*—Judgment affirmed.

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