COURT OF APPEALS
DECISION
DATED AND FILED

December 16, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0426-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

KELBY K. CHRISCO,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Kelby K. Chrisco appeals from a judgment convicting him of a second drug offense for possession of cocaine with intent to deliver, as party to the crime, contrary to §§ 961.41(1m)(cm)5, 939.05 and 961.48, STATS. He claims the trial court erred when it denied his motion to suppress

evidence seized after an investigatory stop of a motor vehicle in which he was a passenger, and his subsequent arrest. We conclude that the stop and arrest were justified by reasonable suspicion and probable cause. The reasonable suspicion stemmed from the same facts which had supported the issuance of a search warrant for Chrisco's home shortly before the investigatory stop. Probable cause arose from those same facts, plus the results of the execution of the warrant shortly after Chrisco's detention. Accordingly, we affirm.

BACKGROUND

¶2 On November 10, 1997, Dane County law enforcement officers obtained a search warrant for Chrisco's residence, and "persons unknown within said premises," to look for cocaine and other evidence of drug trafficking. The warrant was based upon information that a confidential informant had bought cocaine from Chrisco in his home while under police surveillance. Shortly after the warrant was issued, but before it had been executed, officers observed a man and woman leave the Chrisco residence and drive away in a van which had been parked in the driveway. Other police officers were directed over the radio to follow the van, and they pulled it over a few miles away from the residence.

¶3 The police removed Chrisco from the van at gunpoint, handcuffed him, and conducted a pat-down search. They noted several cube-shaped objects in his pants that did not feel like weapons. They then placed him in a squad car until the search warrant had been executed on his house. When the police found drugs in Chrisco's residence, they informed him that he was under arrest for a probable parole violation. A full search of Chrisco at the City-County Building revealed 136.6 grams of cocaine base in a baggie in his underwear.

¶4 Chrisco moved to suppress the drugs on the contention that the police did not have grounds to pull over the van and arrest him. The trial court ruled that the vehicle stop was authorized as part of the search warrant, and Chrisco appeals.

STANDARD OF REVIEW

¶5 When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. *See* ***State v. Eckert***, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). However, the application of constitutional principles to the facts as found is a question of law that we decide without deference to the circuit court's decision. *See* ***State v. Patricia A.P.***, 195 Wis.2d 855, 862, 537 N.W.2d 47, 49-50 (Ct. App. 1995).

ANALYSIS

¶6 Items seized during a period of illegal detention are inadmissible. *See* ***Florida v. Royer***, 460 U.S. 491, 501 (1983). Chrisco claims that he was being illegally detained at the time police found drugs on his person, because the police lacked grounds to stop the van and arrest him.

¶7 The detention of a motorist by a law enforcement officer constitutes a "seizure" of the person within the meaning of the Fourth Amendment. *See* ***Berkemer v. McCarty***, 468 U.S. 420, 436-37 (1984). However, such detention is not "unreasonable" if the stop is brief in nature, and justified by a reasonable suspicion that the motorist has committed, or is about to commit, a crime. *See*

U.S. CONST., amend. IV; ***Berkemer***, 468 U.S. at 439; *see also* WIS. CONST., art. I, § 11; § 968.24, STATS.[1]

¶8 Chrisco first challenges the trial court's determination that the van in which he was apprehended was "part of the premises" subject to the search warrant. The issue turns on whether the van needed to be on Chrisco's property at the time the warrant was issued, or at the time it was executed. We need not resolve the question of whether the stop of the van exceeded the scope of the search warrant, however, because we determine that independent grounds for the stop and subsequent arrest existed.

¶9 According to ***Terry v. Ohio***, 392 U.S. 1 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be based on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot, and that action would be appropriate. ***Id***. at 21-22. "The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?" ***State v. Jackson***, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989). The test is designed to balance the personal intrusion into the suspect's privacy occasioned by the stop against the societal interests in solving crime and bringing offenders to justice. *See* ***State v. Guzy***, 139 Wis.2d 663, 680, 407 N.W.2d 548, 556 (1987).

[1] The same standards which have been established for rights arising under the United States Constitution apply to rights derived from the Wisconsin Constitution. See ***State v. Harris***, 206 Wis.2d 243, 259, 557 N.W.2d 245, 252 (1996).

¶10 We are satisfied that the facts within the collective knowledge of the police at the time they stopped the van created reasonable suspicion that there was contraband in the vehicle. First, even Chrisco concedes the information that a confidential informant had purchased drugs from Chrisco in Chrisco's residence under police surveillance was sufficient to support a search warrant. In other words, there was probable cause to believe that there were drugs somewhere on the Chrisco premises, possibly located on "persons unknown." As the trial court correctly observed, the premises also included the van parked in the driveway at the time the warrant was issued. *See generally* ***State v. O'Brien***, 214 Wis.2d 328, 572 N.W.2d 870 (Ct. App. 1997) (discussing scope of "premises"), *aff'd*, 223 Wis.2d 303, 588 N.W.2d 8 (1999).

¶11 Chris asserts that the police had no articulable reason to believe that there might be drugs concealed in the van or on the persons seen exiting the Chrisco residence after the van had left the premises. We are not persuaded. If there was probable cause to believe that people inside Chrisco's residence might be carrying drugs, it was certainly reasonable to suspect that people leaving the premises shortly after the issuance of the warrant may have taken drugs with them. Consequently, it was reasonable to use an investigatory stop to either confirm or dispel the officers' suspicions.

¶12 Chrisco contends that, even if the initial stop were proper, the police had no basis to perform a pat-down search on him, or to detain him while the search warrant was being executed, because they could not be certain who he was, and had no specific reason to believe that he was armed. Again, we disagree. This was not, as Chrisco argues, the "mere execution of a traffic stop." This was an investigatory detention premised upon the likelihood that the man seen leaving the Chrisco residence was involved in drug trafficking. As the supreme court has

recognized, weapons are often "tools of the trade" for drug dealers, and "[t]he violence associated with drug trafficking today places law enforcement officers in extreme danger." ***State v. Guy***, 172 Wis.2d 86, 96, 492 N.W.2d 311, 315 (1992).

¶13 The police had probable cause based on the controlled drug buy to believe that Chrisco was a drug dealer and had reasonable suspicion to believe that the man observed leaving Chrisco's residence was Chrisco. The officers who detained Chrisco knew that he matched the general description they had been given of the target of their investigation, and that he had been observed leaving the Chrisco residence in a van registered to a Chrisco family member. It was certainly reasonable to infer that he was probably Chrisco, and not unreasonable to check whether he was armed before placing him behind an officer in a squad car and verifying his identity. The pat down search was proper to protect the officers.

¶14 Feeling several cube-like objects in Chrisco's pants hardly did anything to dispel the officers' suspicion that he was their target and carrying contraband on his person. In light of the fact that an officer had plainly felt what appeared to be drugs on his person, and that the police believed that he matched the description of the target of their investigation, it was reasonable to detain Chrisco in handcuffs and place him in the squad car. Furthermore, once Chrisco identified himself to one of the officers while sitting in the back of the squad car, the officers' reasonable suspicions were confirmed, rather than dispelled. At that point, the police had probable cause to arrest Chrisco based upon the controlled buy which had occurred earlier, and his continued detention during the execution of the search warrant and the full search incident to his arrest were proper.

By the Court.—Judgment affirmed.

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