

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 26, 2000

Cornelia G. Clark
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.

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No. 99-2498-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRANCE J. TRAMMELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KITTY K. BRENNAN and M. JOSEPH DONALD, Judges.
Affirmed.

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Terrance J. Trammell appeals from a judgment, entered on a guilty plea, convicting him of possessing cocaine with intent to deliver, party to a crime, *see* WIS. STAT. §§ 961.16(2)(b)1, 961.41(1m)(cm)2 and

939.05 (1997–98), and from the trial court’s order denying his motion for postconviction relief.¹ Trammell claims that the trial court should have granted his motion to suppress the cocaine because the police: (1) illegally seized him, as a passenger, without reasonable suspicion; (2) lacked probable cause to arrest him; and (3) illegally searched his sister’s home. We affirm.²

I. BACKGROUND

¶2 Trammell was a back seat passenger in a car that was stopped by police for a traffic ordinance violation. The police asked Trammell, as well as the driver and front seat passenger, for their names and dates of birth, and ran a warrant check on each person. While running the warrant checks, police observed furtive movements made by all three occupants. Police arrested the front seat passenger for an outstanding warrant and searched the car incident to the arrest. Pursuant to this search, police found cocaine pushed between the two front seats. Police also found a corner cut of marijuana that was tucked into a flap behind the front passenger seat, “less than an arm’s length away” from where Trammell was sitting. Trammell was arrested for possession of the marijuana. After Trammell was arrested, officers searched his sister’s house where he had been staying, and found cocaine in a duffel bag he left there.

¶3 The trial court denied Trammell’s motion to suppress because the seizure of the marijuana in the flap behind the front passenger seat was permissible as a search incident to arrest, and that “ample probable cause”

¹ All references to the Wisconsin Statutes are to the 1997–98 version unless otherwise noted.

² The Honorable Kitty K. Brennan presided over the plea hearing. The Honorable M. Joseph Donald presided over the postconviction motion.

supported Trammell’s arrest for marijuana possession.³ The trial court also determined that Trammell lacked standing to challenge the search of his sister’s house because his expectation of privacy “no longer existed once he left that house” on the night he was arrested.⁴ Trammell pled guilty and was convicted.⁵ The postconviction court denied Trammell’s motion on the same grounds as the trial court.

II. ANALYSIS

¶4 When reviewing the trial court’s denial of a motion to suppress, this court will uphold a trial court’s findings of fact unless clearly erroneous. Whether those facts meet the constitutional requirements of reasonableness, however, is a question of law that we review *de novo*. See *State v. King*, 175 Wis. 2d 146, 150, 499 N.W.2d 190, 191 (Ct. App. 1993).

A. Police Request for Passenger Identification.

¶5 Trammell argues that police cannot ask a passenger for identification without reasonable suspicion that the passenger is involved in illegal activity. Specifically, Trammell argues that the request for identification transformed the

³ The marijuana was actually found pursuant to an inventory search following the search-incident-to-arrest of the car. Neither party takes issue with this fact, however, and we do not find it pertinent to our analysis.

⁴ Although Trammell also claimed that no lawful consent to search was given by his sister to the police, the trial court did not reach the issue of consent because it concluded that Trammell lacked standing to challenge the search.

⁵ A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. See WIS. STAT. § 971.31(10).

traffic stop into an unreasonable and unlawful seizure.⁶ We disagree. The facts here are nearly identical to those in *State v. Griffith*, 2000 WI 72, ¶43, 236 Wis. 2d 48, ___, 613 N.W.2d 72, 81, where police lawfully stopped a car and asked Griffith, a back seat passenger, for his name and date of birth. *Griffith* held: “In the absence of any reasonable, articulable suspicion, police may ask questions, request identification, and ask for consent to search, ‘as long as the police do not convey a message that compliance with their requests is required.’” *Id.*, 2000 WI 72 at ¶39, 236 Wis. 2d at ___, 613 N.W.2d at 80 (quoting *Florida v. Bostick*, 501 U.S. 429, 434–435 (1991)).⁷ While such questioning does not constitute a “seizure” under the Fourth Amendment, questioning “can transform a reasonable seizure into an unreasonable one if it extends the stop beyond the time necessary to fulfill the purpose of the stop.” *Id.*, 2000 WI 72 at ¶53–54, 236 Wis. 2d at ___, 613 N.W.2d at 82. “To determine whether the intrusion was unreasonable, we must weigh the public interest served by the questioning against the incremental liberty intrusion that resulted from the questioning.” *Id.*, 2000 WI 72 at ¶10, 236 Wis. 2d at ___, 613 N.W.2d at 75.

¶6 “There is a general public interest in attempting to obtain identifying information from witnesses to police-citizen encounters.” *Id.*, 2000 WI 72 at ¶48, 236 Wis. 2d at ___, 613 N.W.2d at 81. Under *Griffith*, this public interest is not

⁶ Trammell does not argue that the traffic stop was unlawful. See *State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63, 65 (Ct. App. 1991) (police may legally stop a vehicle with probable cause of a civil traffic ordinance violation); *State v. Harris*, 206 Wis. 2d 243, 260, 557 N.W.2d 245, 252 (1996) (a lawful stop of a vehicle is lawful as to any occupant of the vehicle).

⁷ Trammell moved to file a supplemental brief addressing the applicability of *State v. Griffith*, 2000 WI 72, 236 Wis. 2d 48, 613 N.W.2d 72, which he characterizes as controlling authority. In response, the State agreed that *Griffith* was controlling, but opposed supplemental briefing as unnecessary. We conclude that *Griffith* is controlling, rendering additional briefing unnecessary. Thus, we deny Trammell’s motion.

outweighed by the de minimis interference with Trammell's liberty interests. "[T]he brief period of time it takes to ask a question does not unreasonably prolong a temporary detention." *Id.*, 2000 WI 72 at ¶56, 236 Wis. 2d at ___, 613 N.W.2d at 83 (citation omitted). The trial court properly considered the police request for identification and the subsequent record check to be "extremely limited and reasonable activity." Despite Trammell's claim that no reasonable person in his position would have felt free to decline the officer's request for identification, the record does not reflect that the police demanded compliance from Trammell.⁸ Accordingly, Trammell's claim that he was unlawfully seized by the officer's request for his name and date of birth fails. Here, both passengers voluntarily gave their names to police and could not have been prosecuted for refusing to answer. *See id.*, 2000 WI 72 at ¶52, 236 Wis. 2d at ___, 613 N.W.2d at 82; WIS. STAT. § 946.41. The front seat passenger's voluntary answer led to the eventual search-incident-to-arrest of the car, and, ultimately, to the chain of events leading to Trammell's arrest and conviction.

B. Probable Cause to Arrest.

¶7 Trammell next argues that the police lacked probable cause to arrest him for possessing the marijuana found in the flap behind the front passenger seat because he could not be specifically linked to the marijuana. "Probable cause exists where the totality of the circumstances within the arresting officer's knowledge at the time of the arrest would lead a reasonable officer to believe that

⁸ As evidence of the claimed coercive atmosphere, Trammell notes that police were in a marked squad car with lights flashing, that police aimed a spotlight at the stopped car, and that the officers approached the vehicle using flashlights. Although Trammell may have felt "some pressure to respond," *see State v. Griffith*, 2000 WI 72 at ¶53, 236 Wis. 2d at ___, 613 N.W.2d at 82, the officers did not "convey a message that compliance with their request [was] required." *See id.*, 2000 WI 72 at ¶39, 236 Wis. 2d at ___, 613 N.W.2d at 80.

the defendant probably committed a crime.” *State v. Koch*, 175 Wis. 2d 684, 701, 499 N.W.2d 152, 161 (1993). Probable cause to arrest includes both probable cause to believe that a crime has been or is being committed and probable cause to believe that a specific individual is a criminal actor. *See State v. Wilson*, 229 Wis. 2d 256, 267–268, 600 N.W.2d 14, 20 (Ct. App. 1999). The information available must reasonably lead the officer to believe that “guilt is more than a possibility.” *Id.*, 229 Wis. 2d at 267–268, 600 N.W.2d at 20 (citation omitted).

¶8 Here, the trial court correctly determined that “ample probable cause” supported Trammell’s arrest for possession of marijuana. The trial court based its probable cause determination on, among other things, the fact that Trammell was sitting less than an arm’s length away from the marijuana. The court stated: “The proximity of the defendant’s location to the map flap, the furtive movements, and the presence of cocaine in the front seat, I think, lead to a fair probability that he knew the marijuana was in the map flap.” We agree.

¶9 Trammell relies on *State v. Riddle*, 192 Wis. 2d 470, 531 N.W.2d 408 (Ct. App. 1995), to show that he “could not be solely linked” to the marijuana. *Riddle*, however, is distinguishable from the present situation and does not support his argument. Although both Trammell and Riddle were back seat passengers in cars stopped for traffic violations, the drugs in *Riddle* were found in the trunk. *See id.*, 192 Wis. 2d at 475, 531 N.W.2d at 409. Here, the marijuana was found less than an arm’s length away from Trammell. Indeed, the *Riddle* court recognized such a distinction when it acknowledged: “Had the cocaine in this case been found in the passenger compartment of the vehicle, probable cause may have existed for

Riddle's arrest." *Id.*, 192 Wis. 2d at 479, 531 N.W.2d at 411. Accordingly, we conclude that there was sufficient probable cause to arrest Trammell.⁹

C. Search of Duffel Bag in Sister's House.

¶10 Finally, Trammell argues that, as an overnight guest, he had a reasonable expectation of privacy in the duffel bag he left at his sister's residence, and thus, standing to challenge the search. A person claiming Fourth Amendment protection must demonstrate a "legitimate expectation of privacy in the invaded place." *Minnesota v. Olson*, 495 U.S. 91, 95 (1990) (citation omitted). A legitimate expectation of privacy is one which society recognizes as reasonable. *See id.* at 95–96. "[S]tatus as an overnight guest is alone enough to show ... an expectation of privacy in the home that society is prepared to recognize as reasonable." *Id.*, 495 U.S. at 96–97. The proponent of the motion to suppress has the burden to establish a legitimate expectation of privacy by a preponderance of the credible evidence. *See State v. Whitrock*, 161 Wis. 2d 960, 972, 468 N.W.2d 696, 701 (1991).

⁹ Trammell, citing *State v. Riddle*, 192 Wis. 2d 470, 531 N.W.2d 408 (Ct. App. 1995), also claims that the probable cause determination in this case hinges on whether the marijuana was found in a non-secretive location. Clearly, *Riddle* does not stand for this proposition. Discussing the connection between Riddle and the cocaine, the court noted:

Here, the cocaine was located in the locked trunk of [the] vehicle and was concealed in a secretive area beneath the floor mat. Additionally, there is no evidence that Riddle had a key to the trunk or that he ever had access to the trunk. Based upon our review of the record, it appears that the only evidence [the officer] had to link Riddle to the cocaine was the fact that he had been traveling in the backseat of the vehicle at the time of the stop.

Id., 192 Wis. 2d at 479–480, 531 N.W.2d at 411–412. As noted, probable cause exists under the totality of the circumstances. *See State v. Koch*, 175 Wis. 2d 684, 701, 499 N.W.2d 152, 161 (1993).

¶11 The trial court properly determined that Trammell did not meet his burden of establishing that he was an overnight guest at the time of the search. *Whitrock* identifies the factors to consider in determining whether a person has a legitimate expectation of privacy:

(1) whether the defendant had a property interest in the premises; (2) whether he was legitimately (lawfully) on the premises; (3) whether he had complete dominion and control and the right to exclude others; (4) whether he took precautions customarily taken by those seeking privacy; (5) whether he put the property to some private use; and (6) whether the claim of privacy is consistent with historical notions of privacy.

Id., 161 Wis. 2d at 974, 468 N.W.2d at 702. The record reflects that Trammell had no keys, that he was “not the kind of guest that was free to come and go,” that he took no precautions to maintain the privacy of the duffel bag, and that “[t]here was no plan or permission for him to return.” Trammell concedes that there was no evidence that he had permission to return to his sister’s house. Thus, the trial court reasonably concluded: “I cannot find, based on this record, that he had an expectation of privacy because I cannot find from this record that he had any right to return as a guest.” Accordingly, we affirm the trial court’s conclusion that Trammell abandoned any expectation of privacy he may have had in the duffel bag by leaving it behind in his sister’s house without access to return.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

