COURT OF APPEALS
DECISION
DATED AND FILED

April 20, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP2196-CR **Cir. Ct. No. 2015CM408**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVEN T. DELAP,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County: STEVEN G. BAUER, Judge. *Affirmed*.

¶1 KLOPPENBURG, P.J.[1] Steven Delap appeals the judgment of conviction for obstructing an officer and possession of drug paraphernalia, both as a repeat offender. Delap argues that law enforcement officers unlawfully

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

attempted to stop him and pursued him into his residence without a warrant; therefore, his subsequent arrest and search violated "the Fourth Amendment requirement of reasonableness." I reject Delap's arguments and conclude that the officers lawfully attempted to stop, pursued, and arrested Delap.[2] Therefore, I affirm.

BACKGROUND

¶2 The following facts are taken from the testimony at the suppression hearing and from the circuit court's findings based on that testimony.

¶3 At about 10:00 one night in September 2015, Sergeant Michael Willmann and Deputy Dustin Waas of the Dodge County Sheriff's Department, having learned that Steven Delap had fled from officers at two separate traffic stops in the preceding month and was living at 110 Milwaukee Street in Neosho, drove to that address to execute two warrants for Delap's arrest. The officers had also learned that Delap was a white male between twenty-five and thirty years old who had a history of resisting and assaulting enforcement officers. The officers parked one block away from the building that they believed to be 110 Milwaukee Street (the residence), out of concern that Delap might try to flee when he saw them.

¶4 As the officers approached the residence, they observed a man in the street near a car, and another man who was walking down the driveway from the

[2] Delap does not argue that the search, independent of the arrest, was excessive or otherwise unreasonable. Accordingly, I do not address the search.

residence toward the car. The man walking toward the car turned and looked at the officers, then began to walk away toward the residence.

¶5 Based on the information that Willmann had learned, he believed that the man walking away was Delap. Willmann shined his flashlight at Delap and shouted, "stop, police."[3] At that point, Delap was in the driveway near the sidewalk. Delap did not stop, but began to run to the residence. Delap testified that when he saw the officers, he started to run because he did not want to be arrested on the warrants.

¶6 When Delap began to run to the residence, Willmann ran after him. Delap entered the rear door of the residence. Willmann came into contact with the door before it latched. With the help of Waas, Willmann was able to push the door open and place Delap under arrest.

¶7 Delap was charged with obstructing an officer and possession of drug paraphernalia as a repeat offender. Delap filed a pro se motion to suppress the evidence obtained after his arrest. The circuit court held an evidentiary hearing and denied the motion. Delap subsequently entered pleas of no contest to both charges. He now appeals.

DISCUSSION

¶8 When reviewing an order granting or denying a motion to suppress evidence, this court upholds the circuit court's findings of fact unless they are

[3] Both officers testified that Willmann shouted, "stop, police." Delap testified that he did not hear Willmann shout. The circuit court credited the officers' testimony and found that Willmann shouted, "stop, police," and Delap fails to show that that finding is clearly erroneous.

clearly erroneous. ***State v. Maddix***, 2013 WI App 64, ¶12, 348 Wis. 2d 179, 831 N.W.2d 778. We then independently apply constitutional principles to those facts. ***Id.*** Delap's challenge to the court's denial of his motion to suppress focuses on the validity of the officers' initial stop and their subsequent warrantless entry into his residence.

¶9 The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution offer protection against unreasonable searches and seizures. ***Id.***, ¶13. An investigatory stop that is supported by reasonable suspicion does not violate the Fourth Amendment. ***State v. Washington***, 2005 WI App 123, ¶16, 284 Wis. 2d 456, 700 N.W.2d 305. "When determining if the standard of reasonable suspicion was met, those facts known to the officer at the time of the stop must be taken together with any rational inferences, and considered under the totality of the circumstances. Stated otherwise, to justify an investigatory stop, '[t]he police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is [or was] violating the law.'" ***Id.*** (citations omitted).

¶10 Warrantless entries into a home are presumptively unreasonable. ***Welsh v. Wisconsin***, 466 U.S. 740, 749 (1984). However, the presumption is subject to certain exceptions including, relevant here, when supported by probable cause and justified by exigent circumstances. ***State v. Robinson***, 2010 WI 80, ¶24, 327 Wis. 2d 302, 786 N.W.2d 463.

¶11 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 police officer to believe that the defendant probably committed a crime." ***State v.***

Koch, 175 Wis. 2d 684, 701, 499 N.W.2d 152 (1993). The totality of the circumstances that constitute probable cause to arrest "must be measured by the facts of the particular case." ***State v. Paszek***, 50 Wis. 2d 619, 625, 184 N.W.2d 836 (1971).

¶12 The exigent circumstance implicated in this case is hot pursuit, defined as the "immediate or continuous pursuit of [a suspect] from the scene of a crime." ***Welsh***, 466 U.S. at 753.

1. Reasonable suspicion to stop

¶13 The incident here began with the officers seeing a man who matched the description of Delap, the man seeing the officers and then turning and walking towards a building that the officers believed was Delap's residence, and Willmann shining his flashlight at the man and shouting, "stop, police." At that time, a reasonable officer could reasonably suspect that it was Delap who was walking away, based on the information that the officers possessed as to Delap's description and his residence, the man's turning and walking towards that residence, and Delap's having recently fled from officers at two prior stops.

¶14 Delap does not argue that the officers lacked reasonable suspicion to stop him in order to execute the arrest warrants. Delap appears to argue, without citation to the record, that the circuit court found that the officers were not engaged in executing the arrest warrants when they stopped him. However, the court expressly found that the officers were so engaged, and the facts as set forth above establish that the court's finding is not clearly erroneous.

¶15 Delap also appears to argue that the attempted stop was unlawful because it took place within the curtilage of his residence. Under common law,

curtilage is "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" ***Oliver v. United States***, 466 U.S. 170, 180 (1984) (quoting ***Boyd v. United States***, 116 U.S. 616, 630 (1886)). For Fourth Amendment purposes, curtilage is considered part of the home. ***Oliver,*** 466 U.S. at 180. However, "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." ***Katz v. United States***, 389 U.S. 347, 351 (1967). Here, Delap was in the driveway of his residence, near the sidewalk along the street, and there is no evidence that that area was enclosed or protected from public view. *Cf.* ***State v. Martwick***, 2000 WI 5, ¶30, 231 Wis. 2d 801, 604 N.W.2d 552 (identifying the "four factors that a court should refer to when defining the extent of a home's curtilage" as proximity of the area to the home, whether the area is within an enclosure surrounding the home, the use of the area, and whether any measures were taken to protect the area from observation by the public). Because Delap was in his driveway near the sidewalk, and visible to anyone walking down the street, he did not have an expectation of privacy. Therefore, Delap's curtilage argument fails.

2. Warrantless entry—Probable cause to arrest

¶16 Delap does not argue that the officers here did not have probable cause to arrest him for obstruction when he fled after Willmann shined the flashlight at him and commanded him to stop. Waas testified that, upon commanding the man they reasonably suspected was Delap to stop, the officers intended to proceed to identify him, and the man's running away obstructed their investigation. That Delap increased his speed, from walking to running away, after Willmann shined the flashlight at him and commanded him to stop,

confirmed the reasonable belief that Delap knowingly fled from the officers.[4] That belief was also consistent with Delap's testimony, that he started to run when he saw the officers because he did not want to be arrested on the warrants.

¶17 Instead, Delap argues that the officers lacked probable cause because they did not know that the man who fled had committed the earlier crimes for which the arrest warrants were issued. However, the crime for which the officers had probable cause to arrest was the man's failing to comply with the command to stop, thereby obstructing the officers' investigation in the course of their lawful effort to execute the arrest warrants. Accordingly, Delap's probable cause argument fails.

3. Warrantless entry—Exigent circumstances

¶18 Delap argues that the exigent circumstance of hot pursuit was not present here because he "had not committed a jailable offense and was not being continuously pursued from a crime scene." Delap does not support this argument with citations to legal authority or the record, and I reject it on that basis. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (the court of appeals may decline to consider arguments that are undeveloped).

¶19 Moreover, Delap's argument is contrary to both legal authority and the record: the crime of obstructing an officer is a jailable offense, *see* ***State v. Ferguson***, 2009 WI 50, ¶29, 317 Wis. 2d 586, 767 N.W.2d 187; the "crime scene" was the area from which Delap fled after being told to stop, where he obstructed

[4] WISCONSIN STAT. § 946.41(1) provides: "whoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority is guilty of a Class A misdemeanor."

the officer; and the officers immediately and continuously chased Delap as soon as he began running away. That Delap had previously successfully fled from officers underscored the urgency of the situation. As the circuit court concluded, citing ***Ferguson***, 317 Wis. 2d 586, ¶¶28-30, the officers "in hot pursuit of a fleeing jailable misdemeanor suspect [were] faced with exigent circumstances allowing the officer[s] to follow [the] suspect into his home to effectuate an arrest."

¶20 Delap also argues that the exigent circumstance of hot pursuit did not exist here because other types of exigent circumstances, such as destruction of evidence or safety to others, were not present. However, Delap cites no legal authority for this proposition; therefore, I do not consider it further. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("Arguments unsupported by legal authority will not be considered, and we will not abandon our neutrality to develop arguments." (citations omitted)).

4. Warrantless entry—Reasonableness

¶21 Finally, Delap argues that, "[e]ven if the officers had probable cause and were engaged in hot pursuit of a fleeing suspect, their [arrest] of Mr. Delap was unreasonable," citing ***State v. Weber***, 2016 WI 96, ¶34, 372 Wis. 2dd 202, 887 N.W.2d 554, in support of his argument. Delap argues that, "there will be some cases of hot pursuit where the principle of reasonableness functions to permit a person to thwart a valid arrest by retreating into his abode." Delap argues that this is one of those cases because the offense was minor (even though jailable) and the police forcibly entered his residence. However, Delap does not explain how these two facts override the probable cause and exigent circumstances

analyses undertaken above. Accordingly, I reject his argument as undeveloped. *See* ***Pettit***, 171 Wis. 2d at 646.

CONCLUSION

¶22 Because the officers lawfully attempted to stop, pursued, and arrested Delap, the circuit court properly denied the suppression motion. Therefore, I affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.