COURT OF APPEALS
DECISION
DATED AND FILED

July 25, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1856-CR **Cir. Ct. No. 2015CM224**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JANAYA L. MOSS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washburn County: EUGENE D. HARRINGTON, Judge. *Affirmed.*

¶1 SEIDL, J.[1] Janaya Moss appeals a judgment of conviction for misdemeanor possession of cocaine. Moss challenges the circuit court's order denying her motion to suppress evidence, arguing that evidence obtained during a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16).

warrantless search of her wallet was constitutionally unreasonable. We conclude Moss's suppression motion was properly denied because the law enforcement officer conducted a valid identification search of Moss's wallet. Accordingly, we affirm.

BACKGROUND

¶2 Moss was arrested and charged with misdemeanor possession of cocaine and tetrahydrocannabinols (THC). Deputy Jordan Price testified to the following facts at Moss's suppression motion hearing.

¶3 Price and another deputy were dispatched to a bar in response to a report of a heated and potentially physical confrontation between two women. When Price arrived, a bartender directed him to the women, who were later identified as Nekeya Moody and Moss. Moody was loud and belligerent toward Price and the other deputy. Price testified Moss was sitting on a barstool some distance away from Moody and was intoxicated to the point she was "not coherent."

¶4 Price arrested Moody for disorderly conduct. After placing her in handcuffs and frisking her, Price asked Moody for her name and if she possessed identification. Moody told him her name was "Jasmine," which the bartender confirmed was the only name to which she answered that night. Moody otherwise ignored Price.

¶5 While frisking Moody, Price found no wallet or other identification on her person.[2] Price then observed a wallet on a table located two feet away from both him and Moody. Price asked "Jasmine" if the wallet was hers. Moody did not reply. At that point Moss was about ten to fifteen feet away from both Price and Moody and was no more coherent than when Price had arrived.

¶6 Price picked up the wallet, and as he opened it, a small bag fell out containing what was later identified as cocaine. Price further discovered marijuana and Moss's identification in the wallet. At that point Moody told Price the wallet belonged to Moss. After Moody was arrested, but before Price searched the wallet, Moss fell off her barstool and injured her head. After he opened the wallet, Price tried unsuccessfully to have a conversation with Moss about the wallet's contents.. Moss was later taken by ambulance to a hospital to treat her injury and advanced state of intoxication.

¶7 Moss moved to suppress the evidence obtained as a result of the warrantless search. After an evidentiary hearing on the motion, the circuit court denied Moss's motion, concluding Price discovered the wallet's contents as part of a valid search incident to arrest.[3]

[2] Price did not specifically testify that he did not discover a wallet or identification on Moody's person, but his question to Moody about her name and identification indicates he did not. The circuit court drew that inference when it found Price "had a need to look at the wallet that was there." The court's finding in that regard is not clearly erroneous.

[3] In its oral decision, the circuit court determined Moss was arrested shortly after Moody was arrested. Moss interprets this as a finding that Moss was arrested prior to when Price opened the wallet, and she argues that finding was clearly erroneous. Because we ultimately decide this appeal on different grounds, we need not address that issue. *See infra* n.5.

¶8 Following the suppression hearing, Moss pled no contest to the cocaine charge, while the THC charge was dismissed and read in for sentencing. The circuit court withheld sentence and imposed a $500 fine. Moss now appeals.

DISCUSSION

¶9 Review of an order granting or denying a motion to suppress evidence presents a two-step question of constitutional fact. ***State v. Parisi***, 2016 WI 10, ¶26, 367 Wis. 2d 1, 875 N.W.2d 619. The circuit court's findings of fact are upheld unless clearly erroneous, while the application of constitutional principles to those findings is reviewed de novo. ***Id.***

¶10 The Fourth Amendment to the United States Constitution guarantees freedom from unreasonable searches and seizures.[4] ***Id.***, ¶28. Warrantless searches are per se unreasonable unless they fit within an exception to the warrant requirement. ***Id.*** Wisconsin recognizes an "identification search" exception to the warrant requirement.[5] ***State v. Flynn***, 92 Wis. 2d 427, 448-49, 285 N.W.2d 710 (1979). While investigating a crime, an officer may briefly detain an individual and request that the person provide identification if the officer reasonably suspects

[4] In the circuit court, and on appeal, the State contends Moss did not have a reasonable expectation of privacy to the contents of the wallet and therefore did not have standing under the Fourth Amendment to contest Price's search of her wallet. Because we conclude the suppression order was correctly denied on other grounds, we assume, without deciding, that Moss possessed Fourth Amendment standing to challenge the search of her wallet.

[5] The circuit court did not determine whether a valid identification search occurred, in spite of the State's briefing on the issue. However, we may affirm on grounds other than those upon which the circuit court relied. *See* ***State v. Earl***, 2009 WI App 99, ¶18 n.8, 320 Wis. 2d 639, 770 N.W.2d 755. We also do not address the State's additional arguments that Price conducted a valid search incident to arrest or that the inevitable discovery doctrine applied to the contents of the wallet. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (appellate courts need not address every issue raised by the parties when one is dispositive).

that person is involved in a crime.[6] ***State v. Black***, 2000 WI App 175, ¶10, 238 Wis. 2d 203, 617 N.W.2d 210. This court noted in ***Black*** that "unless the officer is entitled to at least ascertain the identity of the suspect, the right to stop him [or her] can serve no useful purpose at all." ***Id.***, ¶14 (citing ***Flynn***, 92 Wis. 2d at 442).

¶11 In ***Flynn***, our supreme court stated that "[t]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his [or her] shoulders and allow a crime to occur or a criminal to escape." ***Flynn,*** 92 Wis. 2d at 433 (citing ***Adams v. Williams***, 407 U.S. 143, 145 (1972)). The court concluded a law enforcement officer was permitted to conduct a pat-down search of a burglary suspect near the scene of the crime. ***Id.*** at 448. The officer frisked the defendant for the purpose of obtaining the suspect's proof of identity after the suspect refused to give a name or any identification to the officer. ***Id.*** at 431-32. The court observed that the "defendant could himself have substantially avoided the intrusion simply by producing the identification" upon the officer's request. ***Id.*** at 448. The court concluded that under the Fourth Amendment, the reasonableness of such an identification search was measured by balancing the need for the particular search against the invasion of personal rights the search entailed. ***Id.*** at 446.

¶12 This court also addressed an identification search in ***Black***, where a police officer frisked a drug-dealing suspect to uncover his identification when the suspect provided the officer with what a records search disclosed was a false name. ***Black***, 238 Wis. 2d 203, ¶¶5-8. Under the ***Flynn*** balancing test, we determined the need for a search—created when the suspect gave a confirmed

[6] Moss does not dispute that deputy Price had reasonable suspicion that a crime had occurred.

false name to police during an ongoing investigation—outweighed the officer's "touch[ing] and tapp[ing]" of the suspect's "bulging pockets," which the officer reasonably assumed held the suspect's wallet. ***Black***, 238 Wis. 2d 203, ¶¶17-18. We concluded the search was reasonable. ***Id.***, ¶¶15, 19.

¶13 Moss argues the search of her wallet was unreasonable under the ***Flynn*** balancing test because the need for identification here was "minimal" and the level of intrusion was "significant."[7] However, we agree with the State that Price's search of the wallet was reasonable because the need for the search outweighed the limited nature of the intrusion. *See* ***Black***, 238 Wis. 2d 203, ¶19.

¶14 As to need, Price was in the midst of an investigation into a possible fight at the bar when he requested Moody's identification. Moss argues the investigation ended the moment Moody was handcuffed, but the record does not support that contention. Price testified that after arriving at the bar, he became aware that Moody and Moss were the subjects of the dispatch report. At the time he arrested Moody, however, Price had not yet fully determined the extent of the dispute or the identity of either woman. In resolving the incident, Price was entitled to inquire into each individual's identity and their conduct at the bar. *See* ***id.***, ¶17.

¶15 Moody, however, did not cooperate with Price's request for identification. She said her name was "Jasmine" only, and thereafter she ignored Price. Price testified that Moody's response was not "nearly enough information"

[7] Although Moss argues Moody's arrest weighed against the need for the search, Moss does not challenge the State's core premise that ***State v. Flynn***, 92 Wis. 2d 427, 285 N.W.2d 710 (1979), applies to this scenario—i.e., a post-arrest search—as an exception to the warrant requirement.

for an adequate database search for her identity. Unlike the officers in ***Black***, who were able to look up the suspect's (ultimately false) first and last names in law enforcement records prior to their search, Price could not verify "Jasmine's" identity through another avenue. *See* ***Black***, 238 Wis. 2d 203, ¶¶4, 17. Moody could have provided Price with a meaningful name or other identification to eliminate the need for a search. *See* ***Flynn***, 92 Wis. 2d at 448-49. She did not. In addition, Moss was in no condition to provide assistance.

¶16 Price's intrusion was also quite narrow in scope. Similar to the officers in ***Flynn***, Price "sought merely to learn [Moody's] identity" and focused on the wallet located near Moody after she ignored and failed to respond to his requests for complete identification. *See* ***id.*** at 448. Moss asserts the scope of the search "was broader than that of ***Flynn*** and ***Black***" because Price unreasonably assumed the wallet on the table belonged to Moody. That argument is unpersuasive. Prior to when the wallet was seized, Price had reason to believe Moody owned that particular wallet. He discovered Moody did not have a wallet on her person after the arrest, and the wallet on the table was only two feet from her location. Moss was ten to fifteen feet away at the time the wallet was opened. Price asked Moody if the wallet was hers, but she did not reply, and therefore, she did not deny ownership. *Cf.* ***Black***, 238 Wis. 2d 203, ¶17 (officer who noticed "bulging pockets" of defendant "had reason to suspect" they contained a wallet based upon officer's training and experience). Price was mistaken that Moody owned the wallet, but "a search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake." ***State v. Houghton***, 2015 WI 79, ¶43, 364 Wis. 2d 234, 868 N.W.2d 143 (quoting ***Heien v. North Carolina***, 135 S. Ct. 530, 534 (2014)).

¶17 We conclude the identification search was proper and Moss's suppression motion was properly denied.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4. (2015-16).