COURT OF APPEALS
DECISION
DATED AND FILED

July 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1606-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIAM STAPLES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. William Staples appeals *pro se* from a judgment entered after he pled guilty to possession with intent to deliver a controlled

substance (cocaine), contrary to WIS. STAT. § 961.41(1m)(cm)1 (1997-98).[1] Staples claims that the trial court erred when it denied his motion to suppress evidence. Specifically, Staples argues that: (1) the citizen informant, Imogene Hines, referred to in the complaint, does not exist; (2) the arresting officers' statements are inconsistent; and (3) the police officers did not have probable cause to stop or search him. Because Staples waived the first two arguments, and because the stop and search were constitutionally permissible, we affirm.

I. BACKGROUND

¶2 On November 14, 1999, City of Milwaukee Police Officers Kurt LeRoy and Alan Schleif were on patrol when they observed a woman knocking on a window of Apartment #2 at 3421 West Wells Street. The woman, identified as Imogene Hines, asked the officers—with all the other drug dealers out there like "Shorty" (whose parked truck she pointed to), "why are you hassling me?" The officers entered the building at 3421 West Wells Street through an open door and encountered Shorty, identified as Staples, in the hallway of the building.

¶3 During the conversation with Staples, his beeper went off. At that point, Officer LeRoy feared Staples might pull out a weapon and he then conducted a pat-down search. The search did not reveal any weapons. Then, Staples's beeper went off a second time, and when he reached for the beeper, his coat jacket opened, revealing a black knife case. Officer LeRoy immediately seized the case, fearing it contained a knife. Officer LeRoy observed that a plastic sandwich bag was sticking out of the knife case and, after opening the case, the

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

officer discovered 3.31 grams of crack cocaine enclosed in thirty-six individually wrapped plastic bags.

¶4 Staples was charged with possession with intent to deliver. Staples waived his preliminary hearing and a reading of the information. In December 1999, Staples filed a motion to suppress evidence, arguing that the search of the "utility case" and the search of his person were unreasonable. The trial court conducted a suppression hearing on January 21, 2000. Officer LeRoy testified at the hearing. The trial court denied the motion to suppress, and Staples subsequently pled guilty. He now appeals.

II. DISCUSSION

A. Imogene Hines's Existence.

¶5 Staples argues that his conviction should be reversed because the citizen-informant referred to in the complaint against him does not exist. He claims he conducted a thorough investigation and could not find any person known as "Imogene Hines." We cannot agree with Staples.

¶6 Under WIS. STAT. § 971.31(5)(c), objections to the insufficiency of the complaint must be made before the preliminary examination. If not made timely, the objection is deemed waived. ***Id.*** Staples did not raise the "Imogene Hines does not exist" issue until this appeal. In fact, Staples waived his preliminary examination. Accordingly, he did not preserve this issue for appeal and we will not consider it.

B. Officer's Inconsistent Testimony.

¶7 Staples also suggests that an inconsistency in Officer LeRoy's sworn statements somehow should have led to the suppression of evidence. We cannot agree. The complaint and information in this case refer to a date of occurrence as November 14, 1999. During the suppression hearing, the prosecutor posed the following question to Officer LeRoy: "Directing your attention to April 14, 1999, were you on duty that day?" Officer LeRoy then proceeded to testify regarding the events that are detailed in the complaint as having taken place on November 14, 1999.

¶8 No one corrected the prosecutor's reference to *April* instead of November. Staples did not object to the misstatement. Staples points out the inconsistency for the first time in this appeal. Accordingly, we decline to address the merits. "[O]ne of the rules of evidence is that an objection must be made as soon as the opponent might reasonably be aware of the objectionable nature of the testimony[,]" and "[f]ailure to object results in a waiver of any contest to that evidence." ***Holmes v. State***, 76 Wis. 2d 259, 272, 251 N.W.2d 56 (1977). The reason for this rule is simple: it allows the error to be corrected. If Staples would have interposed a timely objection, the obvious misstatement would have been immediately corrected. Because Staples failed to object to the misstatement when it was made, he has waived his right to raise the issue in this court.

C. Probable Cause.

¶9 Staples's final argument is that the trial court should have granted his motion to suppress because the police officers' stop and search of him occurred without probable cause. We disagree.

¶10 We review the denial of a motion to suppress evidence under a mixed standard of review. We will uphold the circuit court's findings of fact unless they are clearly erroneous. ***State v. Whitrock***, 161 Wis. 2d 960, 973, 468 N.W.2d 696, 701 (1991). However, we will independently determine whether the facts underlying a particular search and seizure satisfy constitutional demands. ***Id.***

¶11 First, Staples contends the officers lacked probable cause to stop and question him. Staples is confusing legal principles. Here, the police officers entered the apartment building through an open door and encountered Staples, who voluntarily answered the officers' questions. Officers do not need probable cause to ask questions of an individual who voluntarily cooperates. ***Florida v. Bostick***, 501 U.S. 429, 435 (1991). Moreover, police officers do not need probable cause to conduct a ***Terry*** stop.

¶12 In ***Terry v. Ohio***, 392 U.S. 1, 22 (1968), the United States Supreme Court recognized the legitimacy of an investigative stop: "[A] police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." In ***Adams v. Williams***, 407 U.S. 143 (1972) (citations omitted), the Court provided the following description of a ***Terry*** stop:

> The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

Adams, 407 U.S. at 145-46.

¶13 Under ***Terry***, the reasonable suspicion necessary to detain a suspect for investigative questioning must rest on specific and articulable facts, along with rational inferences drawn from those facts, sufficient to lead a reasonable person to believe that criminal activity may be afoot, and that action would be appropriate. ***Terry***, 392 U.S. at 21. Here, the police officers were provided information from a citizen informant that Staples was dealing drugs. Citizen-informants who have witnessed criminal activity are considered reliable sources of information. ***State v. Paszek***, 50 Wis. 2d 619, 184 N.W.2d 836 (1971); ***Sanders v. State***, 69 Wis. 2d 242, 259, 230 N.W.2d 845, 855 (1975) (actual direct observation is sufficient to demonstrate reliability). Ms. Hines advised the officers that Staples was selling illegal substances and pointed out his car parked in front of the apartment building. Acting on that information, the officers entered the building through an open door and found Staples in the hallway of the building. Officer LeRoy had previously investigated Staples for possession of drugs. This information constitutes reasonable suspicion to stop and question Staples and therefore, does not violate any Fourth Amendment rights.

¶14 Second, Staples contends that the officers lacked probable cause to seize the "utility case," which contained the illegal substance. He argues that the officer "went further than he was allowed" when he seized the utility case. We cannot agree.

¶15 An officer conducting a ***Terry*** stop is constitutionally permitted to conduct a protective frisk, and seize any weapons discovered. ***State v. McGill***, 2000 WI 38, ¶23, 234 Wis. 2d 560, 609 N.W.2d 795, *cert. denied*, 121 S. Ct. 250 (2000). Although Officer LeRoy testified that he did not locate any weapons during the pat-down, he did detect an unidentifiable object. When Staples's jacket opened, which put the black plastic nylon case in plain view of the officer, Officer

LeRoy testified that he believed the object was a knife and, "fearing for [his] safety, … reach[ed] in there, grabbed the knife or the knife case and pulled it out."

¶16 The trial court found that Officer LeRoy reasonably feared for his safety. That finding is not clearly erroneous. We cannot accept Staples's contention that after a protective search is completed, an officer's right to protect himself ceases. As recently demonstrated by public events, a police officer's protective search will not always locate a carefully concealed weapon. Here, the officer did not discover the knife case during the pat-down. The knife case was discovered shortly thereafter, in plain view, when Staples reached for his pager. The discovery was a natural continuation of the ***Terry*** investigation, and the officer was justified in seizing the item that he feared was a weapon, which could have been used against him. The limited intrusion was necessary to insure his safety and we conclude that it was reasonable. *See* ***State v. Chambers***, 55 Wis. 2d 289, 296 & n.10, 198 N.W.2d 377 (1977).

By the Court.—Judgment affirmed.

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