COURT OF APPEALS
DECISION
DATED AND FILED

March 15, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2106-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAMAUN A. HARRIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: MARYANN SUMI, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ramaun A. Harris appeals from a judgment convicting him of possession of cocaine with intent to deliver near a youth center and from an order denying his motion for postconviction relief. He claims the trial court erred by refusing to suppress evidence obtained pursuant to a warrantless

arrest made without probable cause. We conclude that the police had reasonable suspicion to detain Harris and that their suspicion ripened into probable cause to arrest during the course of a valid investigatory stop.

BACKGROUND

¶2 Dane County narcotics officers placed the parking lot of a Kentucky Fried Chicken (KFC) restaurant under surveillance as the result of citizen complaints about drug activity. An officer observed a black Chevy enter the lot, wait for three or four minutes, then leave. The same Chevy returned five to ten minutes later. Shortly after the Chevy's driver waived his arm out the window, a green car pulled up next to the Chevy and the driver of the green car exited his own vehicle and got into the Chevy.

¶3 The officer observed the passenger make hand-to-hand motions as if he were counting currency, and then hand something to the driver. He then observed the driver lean forward and back and reach into his crotch area. At this point, the officer believed he was witnessing a drug deal in progress, and that the participants might be armed.

¶4 After calling for backup, the officer drove alongside the parked cars and approached the Chevy with his service weapon drawn. He told the occupants to place their hands on the dash and informed them that he was conducting a drug investigation. He asked the driver, Harris, to step from the car and told him that he was not under arrest, but that he was going to be placed in handcuffs because the officer did not want to have to fight or chase him until his backup arrived.

¶5 After the additional officers arrived, Harris consented to a search of his person, which revealed $450 in his pocket. The searching officer was unable

to thoroughly pat down Harris's groin area because Harris clenched his buttocks up tightly and held his thighs together. The officer asked whether Harris would consent to have his car searched, and Harris agreed. The officer placed him in the back of a squad car for about five minutes while the car was being searched.

¶6 Meanwhile, the other officers interviewed the driver and the passenger of the green car, who eventually admitted that they had driven to the KFC parking lot specifically to buy drugs from Harris. One of the backup officers obtained consent to search Harris's groin area again, and when he tightened up again, the officer informed him that he was under arrest. Harris was transported to the police station, where drugs were discovered on his body.

STANDARD OF REVIEW

¶7 When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2) (1999-2000);[1] ***State v. Eckert***, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). We will independently determine, however, whether the facts establish that a particular search or seizure violated constitutional standards. ***State v. Richardson***, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990).

ANALYSIS

¶8 Items seized during a period of illegal detention are inadmissible. ***Florida v. Royer***, 460 U.S. 491, 501 (1983). The detention of a motorist by a law enforcement officer constitutes a "seizure" of the person within the meaning of the

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Fourth Amendment. ***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; WIS. STAT. § 968.24.[2]

¶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 (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. ***State v. Guzy***, 139 Wis. 2d 663, 680, 407 N.W.2d 548 (1987).

¶10 When a detention rises to the level of an arrest, the necessary degree of justification rises from reasonable suspicion to probable cause. "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

[2] 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 (1996).

Wis. 2d 684, 701, 499 N.W.2d 152 (1993). The information available must reasonably lead the officer to believe that "guilt is more than a possibility." ***State v. Wilson***, 229 Wis. 2d 256, 267-268, 600 N.W.2d 14 (Ct. App. 1999).

¶11 We determine the moment of arrest for Fourth Amendment purposes using an objective test. ***State v. Swanson***, 164 Wis. 2d 437, 446, 475 N.W.2d 148 (1991). We ask whether a reasonable person in the defendant's position would have considered himself or herself to be "in custody" given the degree of restraint and considering the totality of the circumstances, including what the police officers communicate by their words or actions. ***Id.*** at 446-47.

¶12 Here, we are satisfied that the police had reasonable suspicion to detain Harris for questioning when they observed an exchange that looked to be a drug deal occur in an area where they had been informed that drug activity was occurring. We are further satisfied that, by the time the police transported Harris to the police station and recovered the drugs from his person, they had probable cause to arrest him, based in part on the information supplied by the occupants of the green car that they had come to the parking lot to buy drugs from Harris. Harris does not dispute either of these conclusions.

¶13 Instead, he argues that the actual moment of arrest occurred when the first police officer on the scene removed Harris from his car and placed him in handcuffs. He claims that the police lacked probable cause for arrest at that point. While we agree that the use of handcuffs indicates a fairly high degree of restriction, we note that no one fact is controlling. The totality of the circumstances show that the officer told Harris that he was not under arrest, and explained that he was going to handcuff him while waiting for backup to complete the drug investigation. As our 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 (1992).

¶14 We are persuaded that a reasonable person who had been told he was not under arrest would be able to understand that he was being handcuffed to assure officer safety during an investigatory stop, rather than to be taken into custody. This is particularly true here since the officers proceeded to obtain Harris's consent to search his person and his car. Under these circumstances, a reasonable person would have understood that if the officers did not discover anything in their searches or interviews, he would be free to leave. We conclude that Harris was not under arrest until the police told him he was and transported him to the police station. The arrest was supported by probable cause, and the suppression motion was properly denied.

By the Court.—Judgment and order affirmed.

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