COURT OF APPEALS
DECISION
DATED AND FILED

September 24, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1357-CR **Cir. Ct. No. 01 CM 7615**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LUIS A. MARTINEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed*.

¶1 FINE, J. Luis A. Martinez appeals from a judgment of conviction entered on his guilty plea to unlawfully possessing cocaine, *see* WIS. STAT. § 961.41(3g)(c), and from the trial court's order denying his motion to

suppress.[1] The State, in a brief filed by the office of the Milwaukee County district attorney, attempts to concede that a Milwaukee County assistant district attorney prosecuting the case before the trial court "failed to place adequate facts on the record" for a court to sustain the search of Martinez by the police. We are not, of course, bound by the State's concession, ***State v. Gomaz***, 141 Wis. 2d 302, 307, 414 N.W.2d 626, 629 (1987), or the trial court's rationale, ***State v. Holt***, 128 Wis. 2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985), and affirm.

I.

¶2 Martinez was in the wrong place at the wrong time. He entered an apartment just as police officers were making a drug arrest. Martinez does not contend that the officers were not lawfully in the apartment. One of the officers patted-down Martinez and discovered the cocaine in the brim of his baseball cap. Martinez testified that the officers "started patting me down" when he "had placed one foot in the door," and that "[t]hey grabbed me by my hand and made a motion to me to come inside." He later modified his version of when he was patted-down, testifying that it was when he was in the apartment, rather than at its threshold: "They put me against the wall, and they started patting me down."

¶3 The officer who testified at the suppression hearing told the trial court that Martinez was patted-down "[f]or officer safety." When asked whether that was "standard procedure when someone enters an investigative area," the officer testified: "Well, at this location where we were, we had already recovered a large amount of narcotics and a firearm so, yeah, based on those circumstances,

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

yeah." The State then elicited testimony from the officer that it would "not be uncommon" for narcotics to be hidden "in the brim of a cap."

¶4 The trial court found that Martinez entered the apartment deliberately ("[H]e was in the process of entering that apartment. He put his foot in the apartment.") and thus "injected himself into a crime scene." The trial court ruled that having done so, Martinez "opens himself up to a search, not only a search for the officer's own protection." The trial court opined: "I think this goes beyond the officer's protection. You can't really stick a gun in the hat's brim, maybe a razor. You can't stick a gun in there. Having entered into a crime scene, he opens himself up to a more extensive search. For all the officers know, he may have taken some element of evidence that was in that crime scene." We disagree with the trial court's rationale, but, for the reasons explained below, affirm. *See* ***Holt***, 128 Wis. 2d at 124, 382 N.W.2d at 687.

II.

¶5 In reviewing an order refusing to suppress evidence, we will uphold a trial court's findings of historical fact unless they are clearly erroneous; however, we review *de novo* a trial court's conclusion on whether a search comports with the "reasonableness" requirement of the Fourth Amendment. ***State v. McGill***, 2000 WI 38, ¶17, 234 Wis. 2d 560, 567–568, 609 N.W.2d 795, 800.

¶6 Weapons and drugs go together. ***State v. Guy***, 172 Wis. 2d 86, 96, 492 N.W.2d 311, 315 (1992) ("weapons are often 'tools of the trade' for drug dealers") (quoted source omitted). Thus, police officers may pat-down someone at a drug crime-scene irrespective of whether they have a specific reason to believe that the person may be armed. ***Ibid.*** (officer searching defendant "was aware" that

"defendant did not appear to be armed"). Indeed, the subjective intent of the officer is not material; a search conforms with constitutional requirements when it is *objectively* reasonable. ***State v. Kelsey C.R.***, 2001 WI 54, ¶48, 243 Wis. 2d 422, 453, 626 N.W.2d 777, 792; ***McGill***, 2000 WI 38 at ¶23, 234 Wis. 2d at 570, 609 N.W.2d at 801. Moreover, we review the record *de novo* to ascertain what is "reasonable" under an objective standard even if the particular officer did not fully articulate his or her reasons. ***Kelsey C.R.***, 2001 WI 54 at ¶48, 243 Wis. 2d at 453, 626 N.W.2d at 792; ***McGill***, 2000 WI 38 at ¶24, 234 Wis. 2d at 570–571, 609 N.W.2d at 801–802.

¶7 Razor blades and other sharp objects small enough to be secreted are equally dangerous to officers as larger and more obvious guns may be. *See* ***Guy***, 172 Wis. 2d at 91–92, 96–97, 492 N.W.2d at 313, 315. Unlike the situation in ***Ybarra v. Illinois***, 444 U.S. 85, 93–94 (1979), which struck down a generalized search of a tavern patron, this case is almost on "all fours" with ***Guy***: the defendant entered an apartment where officers were lawfully making a drug arrest; it would have been fool-hardy indeed for them to assure themselves that Martinez did not have a gun without also checking to see if he had anything small but potentially equally as lethal. *See* ***Guy***, 172 Wis. 2d at 98–100, 492 N.W.2d at 316. As ***McGill*** recognized, "[t]he need for officers to frisk for weapons is even more compelling today than it was at the time of" ***Terry v. Ohio***, 392 U.S. 1 (1968). ***McGill***, 2000 WI 38 at ¶20, 234 Wis. 2d at 568, 609 N.W.2d at 800. Although the State, in urging reversal, cites a number of decisions from other jurisdictions in support of its concession of alleged error, the conclusions the State seeks to have us draw from those decisions are neither good law nor good policy.

By the Court.—Judgment and order affirmed.

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