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DISTRICT IV

April 10, 2025

To:

Hon. Joseph G. Sciascia
Circuit Court Judge
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Walter Arthur Piel Jr.
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP143-CR State of Wisconsin v. Samuel D. Stephenson (L.C. # 2023CF86)

Before Kloppenburg, P.J., Blanchard, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Samuel Stephenson appeals a judgment of conviction for possession of cocaine with intent to deliver. Stephenson challenges the circuit court's denial of a motion to suppress, arguing that the police lacked the necessary reasonable suspicion to conduct a warrantless search of his person and vehicle under 2013 Wis. Act 79, § 9 (Act 79). Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

Stephenson was charged with multiple drug offenses and misdemeanor bail jumping. The charges were based on evidence obtained through a search of Stephenson's person and vehicle by law enforcement. At the time of the search, Stephenson was on probation for a felony conviction. Under Act 79, law enforcement may search a person on probation and any property under that person's control "if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of probation." WIS. STAT. § 973.09(1d). Stephenson moved to suppress the evidence seized during the search of his person and vehicle, arguing that law enforcement lacked reasonable suspicion to support the search.

At a suppression hearing, Sergeant Jesse Shilts testified to the following facts. Shilts was on patrol and observed a vehicle that he identified as belonging to Stephenson through a records check of its license plate number. Shilts was familiar with Stephenson through prior police contacts, and knew that he was involved in drug sales in Beaver Dam and that he was currently on probation.[2] Shilts observed Stephenson park in the driveway of a duplex that Shilts knew was the residence of Ryan Price. Shilts knew that Price was also involved in drug use, that Price was on probation with a condition not to have contact with Stephenson based on the drug use and drug sale connection between them, and that Price had an active warrant for his arrest.

Shilts parked on the street and observed the residence for ten to fifteen minutes. Shilts saw an individual exit the duplex and make contact with Stephenson in the driveway. Based on

[2] Shilts testified that he was aware that Stephenson was on probation for battery of a law enforcement officer or judge. The State contends that Stephenson was actually on probation for battery to a law enforcement officer and possession of THC, citing information in the criminal complaint. We do not consider, for purposes of this opinion, the crime underlying Stephenson's probation.

the individual's physical appearance, Shilts believed that the individual who made contact with Stephenson was Price. Stephenson and Price got very close to each other for several seconds, and it appeared to Shilts that they made contact in some way, although he could not see their hands. Price then went back inside the duplex, and Stephenson went to the front porch and smoked a cigarette. Shilts believed, based on his training and experience and his knowledge of Stephenson and Price, that the interaction was consistent with a hand-to-hand drug transaction.

After about ten minutes, Shilts pulled his squad car up to the front of the house and parked. Shilts observed Stephenson watch Shilts park in front of the house. Shilts began approaching the house on foot and Stephenson looked at him, then turned and started walking away, leaving his car parked in the driveway. Shilts followed Stephenson around a corner and noted that Stephenson was a good distance away already, which Shilts believed indicated that Stephenson had been walking quickly. Shilts called out to Stephenson to stop, and made contact with him. Shilts conducted a search of Stephenson and his vehicle pursuant to Act 79, which resulted in discovery of cocaine.

The circuit court denied the suppression motion. The court concluded that Shilts had reasonable suspicion that Stephenson had committed a crime sufficient to justify the search. Stephenson pled guilty to possession of cocaine with intent to deliver and was sentenced to three years of initial confinement and five years of extended supervision. Stephenson appeals the circuit court's order denying his suppression motion.[3]

[3] The appellant's briefs do not comply with WIS. STAT. RULE 809.19(8)(bm), which addresses the pagination of appellate briefs. *See* RULE 809.19(8)(bm) (providing that, when paginating briefs, parties should use "Arabic numerals with sequential numbering starting at '1' on the cover"). This rule (continued)

"An officer has reasonable suspicion if he or she has 'a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime.'" ***State v. VanBeek***, 2021 WI 51, ¶52, 397 Wis. 2d 311, 960 N.W.2d 32 (quoted source omitted). The standard is an objective one, looking to the totality of the circumstances. *See* ***id.*** On review of a motion to suppress, we uphold the circuit court's factual findings unless those findings are clearly erroneous. ***State v. Johnson***, 2007 WI 32, ¶13, 299 Wis. 2d 675, 729 N.W.2d 182. We review de novo whether those facts establish reasonable suspicion. *See* ***State v. Young (Young I)***, 2006 WI 98, ¶17, 294 Wis. 2d 1, 717 N.W.2d 729.

Stephenson argues that none of Shilt's observations, alone or collectively, provided reasonable suspicion that Stephenson had engaged in criminal activity. First, Stephenson argues that Shilts' knowledge as to prior drug activity involving Stephenson and Price was not reliable because it was not current and because there was no testimony as to the source of the information. We disagree. Shilts testified that he had received information about Stephenson's drug activity within the previous month, and that he knew that Price was currently on probation with a condition not to have contact with Stephenson due to the drug activity connection between them. Stephenson has not established that the information known to Shilts was insufficiently current to be considered in the reasonable suspicion analysis.

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was amended in 2021, *see* S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021), because briefs are now electronically filed in PDF format and electronically stamped with page numbers when they are accepted for e-filing. As our supreme court explained when it amended the rule, the pagination requirement ensures that the numbers on each page of the brief "will match … the page header applied by the eFiling system, avoiding the confusion of having two different page numbers" on every page of a brief. ***Id.*** at x1.

Stephenson also has not established that the information known to Shilts must be disregarded due to the absence of specific testimony as to the source of the information. On this point, Stephenson's citations to ***Florida v. J.L.***, 529 U.S. 266, 270 (2000), and ***State v. Rutzinski***, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, are inapposite. Those cases address the circumstances under which an informant's tip to police can establish reasonable suspicion. Here, however, Officer Shilts did not testify that he received an informant's tip as to drug activity or that he relied on an informant's tip to support reasonable suspicion for the search. Rather, he testified that he was aware of Stephenson's and Price's involvement in drug activity through prior police contacts and through information from other officers. Stephenson has not established that we are precluded from considering that information in our reasonable suspicion analysis.

Next, Stephenson contends that the interaction that Shilts observed between Stephenson and Price did not support reasonable suspicion that a drug transaction had occurred because Shilts acknowledged that he could not see their hands.[4] Stephenson argues that Shilts observed only innocent behavior inconsistent with a drug transaction. Stephenson also argues that his walking away from the officer was not suspicious because he did not break into a run or attempt

[4] Separately, Stephenson argues that the circuit court made a clearly erroneous factual finding that a hand-to-hand drug transaction had taken place. However, the circuit court found that the officer did not observe an exchange. We address below, as a matter of law, whether the facts of this case supported reasonable suspicion of criminal activity.

Stephenson also argues that the circuit court made a clearly erroneous factual finding that, because Stephenson was on his phone as he walked away from Shilts, Stephenson was communicating to Price that police were following him. We assume, without deciding, that the court's finding that Stephenson was talking to Price on the phone about the police following him was clearly erroneous and accordingly we do not take into account anything about Stephenson's use of his cell phone as he walked away from Shilts.

to flee after being told to stop, and that his probation status did not provide reasonable suspicion that he was engaging in criminal activity.

In support of his contention that Shilts' observations did not establish reasonable suspicion of criminal activity, Stephenson argues that the facts in this case are analogous to those in ***State v. Young (Young II)***, 212 Wis. 2d 417, 569 N.W.2d 84 (Ct. App. 1997), and distinguishable from those in ***State v. Genous***, 2021 WI 50, 397 Wis. 2d 293, 961 N.W.2d 41. In ***Young II***, we concluded that the following facts did not amount to reasonable suspicion: "(1) presence in a high drug-trafficking area; (2) a brief meeting with another individual on a sidewalk in the early afternoon; and (3) the officer's experience that drug transactions in this neighborhood take place on the street and involve brief meetings." ***Young II***, 212 Wis. 2d at 433. In ***Genous***, our supreme court determined that the following facts did amount to reasonable suspicion: (1) a police officer observed Genous park in front of a house around 3:30 a.m.; (2) two weeks prior, the officer had received an intra-department email containing information about a resident of the house, K.S., who was a known drug user who had previously worked with the department, directing police to "keep an eye on her because she does obviously still use"; (3) the officer observed that the woman entering and exiting Genous' car matched the physical description of K.S.; and (4) the officer knew from communications within his department that this area had a reputation for high drug-trafficking activity. ***Genous***, 397 Wis. 2d 293, ¶¶2-3. Stephenson argues that here, as in ***Young II***, his close proximity to Price was insufficient to support reasonable suspicion of criminal activity, and that the facts in ***Genous*** were "significantly stronger and more precise" than the facts in this case.

We conclude that the facts of this case are more analogous to the facts in ***Genous*** than to those in ***Young II***. Here, as in ***Genous***, Stephenson had brief contact with a person matching the

physical description of a known drug user outside that person's residence, which we consider along with other facts in our reasonable suspicion analysis. ***Young II***, by contrast, involved only contact between two individuals in a high drug-trafficking area, without any additional information about either individual's involvement in drug use or drug sales.

We acknowledge that, as Stephenson contends, none of the individual behaviors that Shilts observed were illegal or, on their own, amounted to reasonable suspicion. However, we do not examine the facts individually, but rather consider whether, as a whole, those facts support reasonable suspicion. *See* ***State v. Waldner***, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996) ("We look to the totality of the facts taken together. The building blocks of fact accumulate. And as they accumulate, reasonable inferences about the cumulative effect can be drawn" so that "a point is reached where the sum of the whole is greater than the sum of its individual parts."). Moreover, reasonable suspicion is supported "'so long as the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot.'" ***State v. Anderson***, 2019 WI 97, ¶52, 389 Wis. 2d 106, 935 N.W.2d 285 (quoted source omitted).

We conclude that the totality of the circumstances provided Shilts with reasonable suspicion of criminal activity despite the fact that none of Stephenson's behaviors alone was illegal or, in isolation, amounted to reasonable suspicion. The following facts, in light of Shilts' training and experience, provided reasonable suspicion that Stephenson had engaged in a drug transaction: (1) Stephenson was on probation and was known to be involved in drug sales in the area; (2) Stephenson made contact with Price, who was also on probation, was a known drug user, and had as a condition of his probation that he was not to have contact with Stephenson based on the known drug use and drug sale connection between them; (3) the contact was outside Price's residence; (4) the contact between Stephenson and Price was close enough in physical

proximity for them to make physical contact, and lasted only several seconds, which Shilts knew to be consistent with a drug transaction; (5) Price then went back into his residence and Stephenson remained alone on the porch; and (6) when Stephenson saw Shilts approach, he walked away quickly, leaving his vehicle in the driveway of Price's residence. Those facts, together, supported the reasonable inference that a drug transaction had occurred.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals