COURT OF APPEALS
DECISION
DATED AND FILED

May 19, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1665-CR **Cir. Ct. No. 2013CF2586**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD RONDIE LAURA, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Ronald Rondie Laura, Jr., appeals a judgment of conviction entered upon his guilty plea to one count of possessing with intent to deliver more than three grams but less than ten grams of heroin as a second or

subsequent offense. The issue is whether the circuit court erred by denying Laura's motion to suppress evidence. We affirm.

BACKGROUND

¶2 Police stopped a van in which Laura was a passenger. During the course of the traffic stop, police searched Laura and a plastic baggie fell out of his pants leg. The baggie contained a substance subsequently determined to be heroin. The State charged Laura with possessing with intent to deliver more than three grams but less than ten grams of heroin as a second or subsequent offense. Laura moved to suppress the physical evidence found during the traffic stop, and the circuit court conducted a hearing on the motion.

¶3 Officer Jacob Wasechek testified he was with Officer Matthew Helwer and their sergeant in a squad car patrolling the area of North 39th Street and West Burleigh Avenue in Milwaukee, Wisconsin, on June 2, 2013. A fellow officer on bicycle patrol, Daniel Roufus, contacted the squad car and said that a tan Chevy van with a defective rear lamp was on the road in the area and emitting a strong odor of marijuana. The officers in the squad car stopped the van nearby, and Roufus soon joined them. Wasechek said he could smell the odor of marijuana coming from the van as soon as he got out of the squad car.

¶4 Helwer testified about the first moments of the traffic stop. He said he could smell burnt marijuana as he exited his squad car, and the odor became stronger as he approached the van. Helwer said the officers identified Laura as the front-seat passenger and David Bradford as the driver. Helwer then described how Roufus ordered Laura out of the vehicle, patted him down, and directed him to sit on the curb. Helwer went on to say he conducted a warrant check for both of the

men in the van. He found no outstanding warrants but determined that Laura was on probation for a drug offense.

¶5 Officer Matthew Seitz testified that he went to the area of 39th and Burleigh Avenue on June 2, 2013, to assist with a traffic stop that was underway. As he exited his squad car, he noticed the stopped vehicle "smelled strongly of an odor of marijuana." He approached Laura and Bradford sitting on the curb and asked if they had any marijuana in their possession. Laura replied, "no, we smoked it all up."

¶6 Seitz concluded that Laura had violated the terms of his probation because, in Seitz's experience, probationers are always required to maintain absolute sobriety, and Laura acknowledged smoking marijuana. Seitz decided to arrest Laura, and Seitz therefore conducted a custodial search in connection with that decision. During the search, a plastic baggie fell out of Laura's pant leg.

¶7 Laura also testified. He said Roufus found nothing during the original pat down search, and Laura confirmed that he was not handcuffed or restrained as he sat on the curb after that search. He denied saying he and Bradford had smoked up their marijuana. Laura claimed Bradford actually made that statement. Finally, Laura admitted telling Seitz that the object he shook out of Laura's pants concealed only "some plastic bags."

¶8 The circuit court found that the officers were "far more credible than Laura" and determined the relevant question to be whether the officers' testimony showed they acted lawfully. The circuit court concluded the officers properly stopped the van and detained Laura while they conducted an investigation. The circuit court determined that the odor of marijuana and Laura's statement that he "smoked up" the marijuana gave the officers probable cause to arrest Laura for

possessing marijuana and justified searching him incident to the arrest. The circuit court found that the search incident to arrest uncovered evidence concealed in Laura's pants, that the officers lawfully discovered that evidence, and that the evidence was admissible at trial.

¶9 Laura pled guilty as charged. The circuit court imposed a five-year term of imprisonment, bifurcated as three years of initial confinement and two years of extended supervision. Laura appeals.

DISCUSSION

¶10 "The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures." ***State v. Artic***, 2010 WI 83, ¶28, 327 Wis. 2d 392, 786 N.W.2d 430. Wisconsin courts normally "construe[] the protections of these [constitutional] provisions coextensively." ***Id.*** Upon review of an order resolving a challenge to a search or seizure, we uphold the circuit court's findings of fact unless they are clearly erroneous. ***State v. Kutz***, 2003 WI App 205, ¶13, 267 Wis. 2d 531, 671 N.W.2d 660. Additionally, we defer to the circuit court's assessment of witness credibility. *See* ***State v. Young***, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736. The application of the facts to constitutional principles, however, is a question of law that this court reviews independently. *See* ***State v. Drew***, 2007 WI App 213, ¶11, 305 Wis. 2d 641, 740 N.W.2d 404.

¶11 Laura contends the circuit court erred by denying his motion to suppress evidence because police searched him unreasonably in violation of his

state and federal constitutional rights.[1] Before addressing the arguments Laura offers on appeal, we preliminarily note his concession that the odor of marijuana detected by the officers permitted them to stop the vehicle in which he was a passenger and to conduct an investigation. We accept that concession: "[t]he unmistakable odor of marijuana coming from an automobile provides probable cause for an officer to believe that the automobile contains evidence of a crime." ***State v. Secrist***, 224 Wis. 2d 201, 210, 589 N.W.2d 387 (1999). Laura suggests, however, that the police could not order him out of the van during the course of the investigative stop, and he claims the "original search of Mr. Laura [by Roufus] was not warranted." We reject the first of these propositions and conclude the second is immaterial.

¶12 "[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop." ***Maryland v. Wilson***, 519 U.S. 408, 415 (1997). The rule furthers officer safety, ensuring that no one riding in the car has access to weapons in its interior during the course of the stop. *See* ***id.*** at 414.

¶13 As to the contention that the "original search of Mr. Laura was not warranted," the circuit court found that Roufus did not uncover any evidence when he initially frisked Laura. Assuming without deciding that the initial frisk was for some reason improper, "an illegal search is irrelevant to the admissibility of any evidence that does not actually flow from that illegal activity." ***State v. Roberson***, 2006 WI 80, ¶33, 292 Wis. 2d 280, 717 N.W.2d 111. Because the police

[1] We may review the circuit court's order denying Laura's suppression motion notwithstanding Laura's guilty plea. *See* WIS. STAT. § 971.31(10) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

uncovered nothing during the initial search, we need not and will not consider whether it was lawful.

¶14 After Roufus frisked Laura, the officers required him to remain at the scene and to sit on the curb while they continued their investigation of the odoriferous van. The general rule is that "the detention of a passenger ordinarily remains reasonable for the duration of the stop." ***State v. Salonen***, 2011 WI App 157, ¶15, 338 Wis. 2d 104, 808 N.W.2d 162. A passenger has as much motivation as does a driver to use violence in aid of avoiding apprehension of a serious crime. *See* ***id.***, ¶¶12, 14. The rule permitting continued detention of passengers permits officers to maintain control over a potentially volatile scene while they investigate the vehicle they have stopped for evidence of a crime. *See* ***id.***, ¶12.

¶15 The circuit court found that the investigation continued for "a very short period of time right there at the that [sic] location.... The defendant was not under arrest at that time. He was not handcuffed." The circuit court concluded that Laura's detention therefore properly continued throughout the duration of the stop. Similarly, in ***Salonen***, the police kept the passenger at the scene of a traffic stop for only a few minutes, without handcuffs and without otherwise restraining the passenger's liberty, while the officers continued the investigation. *See* ***id.***, ¶15. We held that the passenger's continued detention fell within the limits of what is ordinarily reasonable. *See* ***id.*** We reach the same conclusion here.

¶16 During the course of the continuing investigation, Seitz asked Laura and Bradford whether they had any marijuana.[2] Laura replied, "we smoked it all up."[3] We agree with the circuit court that, at that point, the police had probable cause to arrest Laura.

¶17 The standard governing probable cause for an arrest is not very high. "There must be more than a possibility or suspicion that defendant committed an offense, but the evidence need not reach the level of proof beyond a reasonable doubt or even that guilt is more likely than not." ***State v. Mitchell***, 167 Wis. 2d 672, 681-82, 482 N.W.2d 364 (1992). Rather, "'[p]robable cause [to arrest] 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. Riddle***, 192 Wis. 2d 470, 476, 531 N.W.2d 408 (Ct. App. 1995) (citation omitted). The facts before the police officer need only lead to the conclusion that "guilt must be more than a mere possibility.... Further, in determining whether probable cause existed, we do not look to the officer's subjective beliefs, but apply an objective standard based upon the circumstances as they were at the time of the arrest." ***Id.*** (citation omitted).

[2] Laura did not suggest during circuit court proceedings and does not suggest on appeal that any officer questioned him improperly. We observe for the sake of completeness that police may ask a detainee a moderate number of questions to dispel suspicions during an investigative stop. *See* ***Berkemer v. McCarty***, 468 U.S. 420, 439 (1984).

[3] On appeal, Laura points to his testimony during the suppression hearing and insists that Bradford was the person who said he and Laura had smoked all their marijuana. The circuit court, however, believed Seitz, who testified that Laura made the admission. We will not disturb the circuit court's credibility determination. *See* ***State v. Young***, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736.

¶18 Here, Laura confessed to smoking marijuana. The confession was corroborated by the strong smell of marijuana emanating from the car in which Laura had just been riding. The information known to the police thus supported a common sense conclusion that Laura probably committed the crime of possessing marijuana, a violation of WIS. STAT. § 961.41(3g)(e). *Cf.* ***Mitchell***, 167 Wis. 2d at 683-84 (odor of marijuana coupled with presence of smoke inside vehicle sufficient to support probable cause to arrest vehicle's occupants for possessing marijuana); ***Jackson v. State***, 29 Wis. 2d 225, 231-32, 138 Wis. 2d 260 (1965) (confession corroborated by single significant detail sufficient to sustain conviction beyond a reasonable doubt). Accordingly, the police had probable cause to arrest Laura.

¶19 To be sure, Seitz testified that he decided to arrest Laura for violating the terms of his probation. Laura places great weight on this testimony, but his reliance is misplaced. When we consider whether probable cause existed to support an arrest, we examine the objective facts as they were at the time of the arrest, not the officer's subjective beliefs. *See* ***Riddle***, 192 Wis. 2d at 476. Because the circumstances objectively supported Laura's arrest for possessing marijuana, the officer's subjective reason for the arrest is not significant.

¶20 The rule is well settled that police may lawfully conduct a warrantless search of an arrested person. *See* ***State v. Sykes***, 2005 WI 48, ¶14, 279 Wis. 2d 742, 695 N.W.2d 277. Seitz could therefore lawfully search Laura pursuant to his arrest. Although the search took place before Seitz handcuffed Laura and formally advised him that he was under arrest, the search was incident to the arrest and entirely proper. *See* ***id.***, ¶16 (if probable cause existed for arrest, search may immediately precede the person's formal arrest). The search

uncovered evidence that Laura had hidden in his pant leg. The circuit court correctly concluded that the evidence was admissible at trial. We affirm.

By the Court.—Judgment affirmed.

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