IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	DIVISION ONE
Respondent,	)	No. 67360-2-I
v.	)	
DAVID MILES MARTIN,	)	UNPUBLISHED OPINION
Appellant.	)	FILED: November 14, 2011

Dwyer, C.J. — David Martin appeals from several convictions relating to the intended sale of a controlled substance. Martin contends that the arresting officers failed to place him under arrest prior to searching a bag containing methamphetamine, marijuana, and other contraband and, thus, that the search conducted was not authorized as a search incident to an arrest. However, because a reasonable person in circumstances similar to those in which Martin found himself would have considered himself or herself under arrest, the trial court did not err by ruling that Martin was, in fact, under arrest and accordingly denying Martin's motion to suppress the evidence garnered in the search. Because Martin's other contentions are also without merit, we affirm.

I

On the night of April 2, 2009, a confidential informant notified police by

telephone of an impending drug deal. Several officers traveled to the informant's residence to observe the transaction. The informant identified the dealer as David Martin, described Martin and his vehicle, and warned the officers that Martin always carried a gun. Approximately 15 minutes later, a person matching Martin's description arrived at the residence, removed an item from the trunk of his vehicle, and approached the rear of the building. This person was, in fact, Martin. When Martin reached the backdoor, the officers waiting inside drew their weapons, stepped outside, and confronted him. Aiming their firearms at eye level, the officers identified themselves and ordered Martin to stop. Martin immediately removed a maroon camera bag from his coat and dropped it on the ground beside him. Martin was ordered to approach the officers and was physically restrained. The officers conducted a weapons pat-down, retrieved the camera bag, and physically escorted Martin at gunpoint into a laundry room inside the building. Once inside, the officers opened the bag and observed a magazine for a semi-automatic pistol. Thereafter, Martin was told that he was under arrest, handcuffed, and read his Miranda[1] rights.

Martin subsequently consented to a search of his vehicle, whereupon officers discovered drug paraphernalia, marijuana, ammunition, and a .32 caliber semi-automatic pistol. The following day, additional drug paraphernalia, a bag of crystal methamphetamine, and a small quantity of marijuana were recovered from the camera bag.[2]

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[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Martin was charged with one count of unlawful possession of a controlled substance with intent to deliver while armed with a firearm, two counts of unlawful possession of a firearm in the first degree, one count of unlawful possession of a controlled substance, and three counts of bail jumping. In addition, because the offense was alleged to have occurred within 1,000 feet of a school, a school zone sentence enhancement allegation was added to the charge of unlawful possession with intent to deliver.

Martin waived his right to a trial by jury. At the subsequent bench trial on stipulated facts, the trial court concluded that Martin was "arrested" when the officers detained him at gunpoint and physically escorted him into the laundry room. The court explained that the "officers manifested an intent to take the defendant into custody and actually did so even though he was not told he was under arrest." Clerk's Papers at 116. Thus, the court ruled that the subsequent search was lawfully conducted incident to this arrest. The court found Martin guilty on all counts but determined that he was not armed at the time of the possession with intent to deliver. He was sentenced accordingly.

Martin appeals.

II

Martin contends that the trial court erred by concluding that the police had placed him under custodial arrest prior to searching the camera bag and that,

[2] Martin does not contest the State's authority to conduct a lawful inventory search. Nor does he contend that his consent to the search of his vehicle was not knowing, intelligent, and voluntary. Accordingly, we do not address these issues.

consequently, the evidence seized from the bag should have been suppressed as the fruit of an illegal search.[3] We disagree.

When reviewing the denial of a suppression motion, we first determine whether substantial evidence supports the trial court's findings of fact and, if so, whether those findings support the court's conclusions of law. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Whether a trial court's factual findings support its conclusions of law is reviewed de novo. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Here, because Martin assigns error to none of the court's factual findings, our review is limited to a de novo determination of whether the trial court's conclusions of law were properly derived from its findings of fact.

"'An arrest takes place when a duly authorized officer of the law manifests an intent to take a person into custody and actually seizes or detains such person. The existence of an arrest depends in each case upon an objective evaluation of all the surrounding circumstances.'" State v. Patton, 167 Wn.2d 379, 387, 219 P.3d 651 (2009) (quoting 12 Royce A. Ferguson, Jr., Washington Practice: Criminal Practice and Procedure § 3104, at 741 (3d ed. 2004) (footnote omitted)). The relevant inquiry is whether a reasonable person in the detainee's

[3] A search incident to arrest is valid if there is probable cause to arrest a suspect and an "actual custodial arrest" takes place. State v. O'Neill, 148 Wn.2d 564, 585, 62 P.3d 489 (2003). Because Martin does not contend that the officers lacked probable cause to effectuate his arrest, our analysis is limited to the question of whether an actual arrest occurred.
Presumably, in the trial court, Martin also sought the suppression of later-discovered evidence as being the fruit of the first search of his bag. This is not entirely clear from the record before us. Nevertheless, we analyze the issue presented as if this was also part of the relief sought.

circumstances would consider himself or herself to have been placed under full custodial arrest.[4] State v. Glenn, 140 Wn. App. 627, 638-39, 166 P.3d 1235 (2007) (citing State v. Radka, 120 Wn. App. 43, 49, 83 P.3d 1038 (2004)). The officer's "subjective, unspoken perception" of whether an arrest has occurred is irrelevant. Glenn, 140 Wn. App. at 639. Nor is a formal announcement of arrest necessary for a custodial arrest to take place. See, e.g., State v. McIntyre, 92 Wn.2d 620, 621, 600 P.2d 1009 (1979); Glenn, 140 Wn. App. at 639. As our Supreme Court has explained, "[w]hether an officer informs the defendant he is under arrest is only one of all of the surrounding circumstances, albeit an important one." Patton, 167 Wn.2d at 387 n.6.

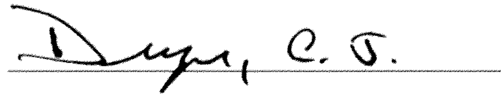
Martin contends that no custodial arrest took place prior to the search of his bag in the laundry room. He asserts that his detention by police was "motivated by other factors," such as officer safety and additional investigation. However, as noted above, the subjective perception of the detaining officers is irrelevant to the inquiry. Instead, whether Martin was arrested at the time of the search is determined by whether a reasonable person in Martin's position would consider himself or herself to be under custodial arrest if placed in similar circumstances.

This objective test is met here. As Martin approached the backdoor, he was confronted by multiple officers in full raid gear. The officers raised their

[4] Typical manifestations of intent indicating a custodial arrest include handcuffing a suspect, placement of the suspect in a patrol vehicle, telling the suspect that he or she is under arrest, Radka, 120 Wn. App. at 49, and reading Miranda warnings to the suspect. Glenn, 140 Wn. App. at 631.

firearms to eye level and pointed them at Martin. Martin was ordered to stop, physically restrained, and checked for weapons. He was held at gunpoint and physically escorted into an enclosed room where he was guarded by two officers. Under an objective evaluation of all the surrounding circumstances, an arrest occurred. The fact that Martin was not told that he was under arrest does not undermine the validity of the arrest. Accordingly, the trial court did not err by determining that the subsequent search was conducted incident to this arrest. There was no error in the trial court's ruling denying Martin's motion to suppress.[5]

Affirmed.



We concur:

[5] In a statement of additional grounds, Martin contends that the waiver of his right to a jury trial was not knowing, voluntary, and intelligent, that he received ineffective assistance of counsel, and that the length of his sentence exceeds the statutory maximum permitted by law. We have examined each of these claims of error and have concluded that they are without merit.

Appelwick, J. Grosse, J.