

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

July 17, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3252-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STANLEY R. SCOTT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
JACK F. AULIK, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Roggensack, J.

DYKMAN, P.J. Stanley R. Scott appeals from a judgment convicting him of possession of cocaine with intent to deliver, contrary to § 161.41(1m)(cm)1, STATS., 1993-94.¹ He argues that the officer who arrested

¹ Scott was charged and sentenced as a repeat offender under § 161.48, STATS.

him for trespassing did not have probable cause to do so, and therefore the officer's subsequent warrantless search of his person violated the Fourth Amendment to the United States Constitution. We conclude that the officer had probable cause to arrest Scott for trespassing and therefore affirm.

BACKGROUND

On December 5, 1995 at approximately 12:45 p.m., Deputy Todd Endl of the Dane County Sheriff's Department was patrolling Darbo Drive when he saw Stanley Scott walking on a sidewalk between two apartment buildings toward Darbo Drive. When Scott noticed that Endl was a police officer, he immediately turned around and walked rapidly in the opposite direction. Endl radioed another squad patrolling the area to report his observations.

Officer Ann Lehner of the City of Madison Police Department was turning onto Darbo Drive when she heard Endl's call. Lehner saw a man matching the description Endl provided walking westbound in the 3000 block of Darbo Drive. As Lehner approached in her unmarked squad car, Scott turned around and proceeded eastbound. While walking, Scott looked over his shoulder to see if he was being followed, then turned to the south and began jogging between 3033 and 3037 Darbo Drive. Scott proceeded to a parking lot that separates Darbo Drive and Worthington Avenue.

Officer Shane Pueschner, Lehner's partner, exited the squad car and walked into the apartment complex. Lehner drove to the parking lot and saw Scott standing by a man who was working on a car. Lehner exited the squad and asked Scott if she could speak with him. Scott walked over to her.

Lehner asked Scott if he lived in the apartment complex, which was posted with numerous signs for no trespassing. Scott initially responded "yes." Scott at first did not tell Lehner his exact address, but later provided an address of 3029 Darbo Drive, apartment number 3. Scott also told Lehner and Pueschner that he had been attempting to visit "Mary" at that apartment.

Pueschner went into the apartment building to attempt to verify whether Scott lived there. Pueschner spoke to Evelyn Brown at 3029 Darbo Drive, apartment number 3. Brown stated that she did not live at that residence, but had been visiting for about one week. Pueschner described Scott to Brown and asked Brown if she had seen him. Brown stated that Scott had knocked on her door looking for "Connie," who is the same person as "Mary." Brown told Scott that Connie was not home and that she did not know when Connie would return. Scott then left.

While Pueschner went into the apartment complex, Lehner asked Scott for his name. Scott replied "Anthony Williams," but did not provide any identification. Lehner ran various data checks on the name "Anthony Williams," but was unable to come up with anybody matching Scott's description. After Pueschner informed Lehner that Scott did not reside in the neighborhood, Lehner arrested Scott for trespassing. Scott eventually told Lehner that he had identification in his wallet, at which time Lehner removed his wallet and found out Scott's true identity. Lehner informed Scott that he was also under arrest for obstructing. Deputy Endl searched Scott incident to his arrest and found a pager, \$1,025 in currency, \$65 in coupons and fourteen individually-packaged rocks of crack cocaine.

The State charged Scott with possession of cocaine with intent to deliver and obstructing an officer. Scott moved the trial court to suppress evidence obtained during the search of his person, arguing that the officer did not have probable cause to arrest him. The trial court denied this motion, and Scott pleaded no contest to the drug charge pursuant to a plea bargain. Scott appeals.

DISCUSSION

Scott argues that Officer Lehner lacked probable cause to arrest him for violating the municipal trespassing ordinance, and therefore the subsequent warrantless search of his person violated the Fourth Amendment. In reviewing a motion to suppress evidence, we will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. King*, 175 Wis.2d 146, 150, 499 N.W.2d 190, 191 (Ct. App. 1993). "Whether a search or seizure passes constitutional muster, however, is a question of law subject to *de novo* review." *Id.*

In *State v. Mitchell*, 167 Wis.2d 672, 681-82, 482 N.W.2d 364, 367-68 (1992), the court defined "probable cause":

Probable cause is the *sine qua non* of a lawful arrest. Probable cause refers to the quantum of evidence which would lead a reasonable police officer to believe that defendant committed a crime. 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. The information which constitutes probable cause is measured by the facts of the particular case.

Probable cause is a common-sense determination. It is judged by the factual and practical considerations of everyday life on which reasonable people, not legal

technicians, act. *State v. Pozo*, 198 Wis.2d 705, 711, 544 N.W.2d 228, 231 (Ct. App. 1995).

Lehner arrested Scott for violating Madison's trespassing ordinance. This ordinance provides: "It shall be unlawful for any person to enter or remain on any property of another or to enter or remain in any building of another after having been notified by the owner or occupant not to enter or remain on such premises." We conclude that Lehner had probable cause to arrest Scott for violating this ordinance.

Scott changed directions when he saw Deputy Endl, and again when he saw Officer Lehner. This behavior is consistent with the behavior of a person attempting to avoid contact with the police officers, possibly because the person was trespassing. In light of her experience as a member of the Dane County Narcotics and Gang Task Force, Lehner reasonably concluded that Scott may have been trespassing on the property to sell drugs. Lehner testified: "From my training and experience in that particular neighborhood, ... it is a common practice for people who are wishing to purchase controlled substances to either park their car in the area or walk in on foot in order to make contact with individuals who are loitering in the apartment complex, just as Mr. Scott was on that date."

Scott also told Lehner that he lived at 3029 Darbo Drive, which he did not. A reasonable police officer could conclude that Scott lied to make the officer believe that he was legally on the premises, when actually he was trespassing. Scott also lied about his identity, indicating that he may have been on the property for some illegal purpose.

Finally, Scott should have been on notice that uninvited or unwanted guests were not permitted to enter or remain on the premises because the

apartment complex was posted with no trespassing signs. Therefore, the officer had probable cause to believe that the notice requirement of the ordinance had been satisfied.

We do not view each fact in isolation. The test is whether “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 Wis.2d 684, 701, 499 N.W.2d 152, 161 (1993). We conclude that this quantum of proof has been met.

Scott argues that a sign that simply reads “no trespassing” without defining “trespassing” is meaningless because it would not inform non-residents when they are allowed to be on the premises, and conversely, when they are trespassing. Scott argues that people who, like him, believed that they were legitimately on the premises would have no reason to believe that the “no trespassing” sign applied to them.

Assuming that Scott believed he was legitimately on the premises, this does not mean that Officer Lehner did not have probable cause to believe he was trespassing. Scott told Lehner that he lived on the premises when he did not. This would lead a reasonable police officer to believe that Scott was not legitimately on the premises. And the fact that Scott may have been legitimately on the premises when he knocked on the door of 3029 Darbo Drive, Apartment 3, does not mean that he was still legitimately on the premises when encountered by police. Scott changed direction several times and eventually ended up in an apartment complex parking lot. The record does not show that Scott’s continuing presence on the premises was related to his attempt to visit “Mary.”

Scott also argues that his evasive behavior upon seeing police could not contribute to the officer's belief that he was trespassing because "[i]f knowledge of his trespassing was what motivated Scott's behavior, he would likely have evaded the police by simply leaving the property so that they would have no reason to detain him." This argument seems to imply that someone who unlawfully enters property cannot be arrested for trespassing after leaving the property. This is not correct. Therefore, a reasonable police officer could conclude that Scott took evasive action because he was trespassing, even though Scott remained on the premises while attempting to avoid police contact.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

