

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 4, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 97-1811-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

NICOLE E. GRAHAM,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Nicole E. Graham appeals from a judgment convicting her of possessing cocaine with intent to deliver. Graham pleaded no contest after the trial court denied her motion to suppress the evidence of her crime. She contends that police did not have reasonable suspicion to justify an attempt to detain her in an area outside her apartment. She further contends that

when she fled their approach, they unlawfully pursued her into the apartment, where they arrested her and found inculpatory evidence in the immediate area. We reject her arguments and affirm.

Detective Timothy Hammond of the Madison Police Department was conducting an afternoon surveillance in the Badger Road area of Madison when he observed Graham walk into a private parking area adjacent to an apartment building. He saw a man approach her there and touch hands with her. Graham scanned the area during the encounter, and then she immediately walked away.

The area under surveillance was known to Hammond for its high drug activity. Based on his training and experience as a drug enforcement officer, he suspected a possible drug transaction between Graham and the unknown man. He based his suspicion on:

the fact they walked into this parking lot, her expression upon him approaching her, this grasping of the hands, how this took place. She was looking about as opposed to directly at this person she was having contact with as though she was concerned about what may be occurring within the general area as opposed to this contact she was having with this black male; about how after she, after she ungrasped his hand, she immediately turned and walked back across the street and the other guy walked back northbound on Cyprus; the brevity of the contact. It was two or three seconds at the most.

As a result, Hammond followed Graham and observed her a few minutes later talking on a cell phone, an act he also described as one common to drug traffickers. He and another officer approached her with the intent of conducting a *Terry* stop, and she began running toward an adjacent building, yelling for her mother. The officers gave chase and yelled at her to stop. They

entered the building close behind her, followed her down a hallway and into an apartment, and finally caught up to her in the bathroom. There, Hammond saw her crouching with both hands behind a shower curtain. He arrested her and found cocaine when he looked behind the curtain. He also found other inculpatory evidence when he later searched her person incident to the arrest.

Graham's motion to suppress contended that Hammond's initial effort to *Terry* stop Graham was unlawful. She further contended that he lacked probable cause to arrest her when she fled and did not have any exigent circumstances justifying entry into her apartment without consent or a warrant. The trial court found that Hammond had a reasonable, articulable suspicion of drug activity that justified the attempt to make a *Terry* stop. The court further found that Graham's attempt to flee that stop created probable cause to arrest her for obstructing an officer, and that the officers lawfully entered the apartment to make the arrest under the "hot pursuit" exception to the Fourth Amendment.

A police officer may stop and detain a person in a public place, for a reasonable period of time, when the officer reasonably suspects that the person has committed or may be committing a crime. Section 968.24, STATS.; *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Reasonable suspicion depends on specific and articulable facts and rational inferences available from the facts. *See id.* at 21. It is a common-sense objective standard based on what a reasonable police officer would reasonably suspect given the officer's training and experience. *State v. Waldner*, 206 Wis.2d 51, 56, 556 N.W.2d 681, 684 (1996). Applying this constitutional standard of reasonableness to the facts of a particular case is a question of law. *See State v. Betterley*, 191 Wis.2d 406, 415-16, 529 N.W.2d 216, 219 (1995).

Hammond reasonably suspected Graham of drug activity based on her public conduct. In *State v. Young*, 212 Wis.2d 417, 433, 569 N.W.2d 84, 92 (Ct. App. 1997), we held that a person's presence in a high drug trafficking area, a brief afternoon meeting with another individual on the sidewalk, and the officer's knowledge that drug transactions in the neighborhood took place on the street and involved brief meetings was not sufficient to create a reasonable articulable suspicion of criminal activity. Here, however, additional factors were present. Graham acted furtively when she met the man in the parking lot and touched hands with him. Minutes later she was seen talking on a cell phone. Graham ran screaming when the officers approached, before any stop occurred. The totality of these circumstances combined to form a reasonable, articulable suspicion of criminal activity.

The officers had probable cause to arrest Graham once she fled. Section 946.41(1), STATS., provides that one who knowingly resists or obstructs an officer acting in an official capacity is guilty of a Class A misdemeanor. Resisting or obstructing under this section includes fleeing a lawful attempt to detain. See *State v. Grobstick*, 200 Wis.2d 242, 248-51, 546 N.W.2d 187, 189-90 (Ct. App. 1996).

The officers had lawful authority to enter the apartment and arrest Graham for obstructing. Police officers may enter a residence to make an arrest without a warrant or consent if in hot pursuit. See *State v. Smith*, 131 Wis.2d 220, 229, 388 N.W.2d 601, 605 (1986). Graham contends, however, that hot pursuit justifies a warrantless entry only when there is probable cause to believe that the fleeing person has committed a felony. We disagree. There is no authority in Wisconsin for the proposition that police may not hotly pursue misdemeanants into private residences, although Graham cites *Welsh v. Wisconsin*, 466 U.S. 740,

750 (1984), in which the Supreme Court noted its hesitation in allowing warrantless arrests “when the underlying offense for which there is probable cause to arrest is relatively minor.” The minor offense in question in *Welsh* was first offense drunk driving, a noncriminal violation. We would not place the Class A misdemeanor of obstructing an officer in the same category, nor are we persuaded that the Supreme Court would either. Additionally, *Welsh* did not involve hot pursuit of the suspect after an offense committed in an officer’s presence. A suspect may not defeat an arrest that is set in motion in a public place by expediently escaping to a private place. *United States v. Santana*, 427 U.S. 38, 43 (1976).

Officers may also enter a residence without a warrant or consent upon their reasonable belief that delaying entry would risk the imminent destruction of evidence. *See Smith*, 131 Wis.2d at 229-30, 388 N.W.2d at 605-06. All of the circumstances observed by officer Hammond, up to and including Graham’s act of fleeing their approach, allowed him to reasonably believe that a delay in arresting Graham would lead to the destruction of drug evidence.

By the Court.—Judgment affirmed.

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

