COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0424-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LEON R. MCQUEEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County: DANIEL S. GEORGE, Judge. *Affirmed.*

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

PER CURIAM. Leon R. McQueen appeals his conviction for a second offense of possession of THC. He claims that the circuit court erred when it denied his suppression motion. Because we conclude that the evidence against McQueen was validly seized, we affirm.

BACKGROUND

On June 17, 1996, McQueen summoned police to his home because he wanted their assistance in removing his live-in girlfriend, Shanna Damien, from the residence. While inside, police observed a gun case containing several weapons. Upon their subsequent discovery that Damien was a convicted felon, the police obtained a warrant to search McQueen's home for evidence that Damien was a felon in possession of a firearm. When they executed the warrant, officers saw a firearm in plain view. They also opened drawers looking for weapons, and found a scale, rolling paper, and clear baggies in and under a desk. On the basis of those items, the police arrested McQueen for possession of drug paraphernalia. One of the officers then obtained McQueen's written consent to expand the scope of their search to include any contraband. The subsequent search of the premises and outbuildings revealed the drugs which McQueen seeks to suppress.

STANDARD OF REVIEW

Section 971.31(10), STATS., authorizes our review of adverse suppression rulings notwithstanding a subsequent plea of no contest. When reviewing the denial of a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. Section 805.17(2), STATS.; ***State v. Eckert***, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). However, we will independently determine whether the facts found by the circuit court satisfy applicable statutory and constitutional provisions. ***State v. Ellenbecker***, 159 Wis.2d 91, 94, 464 N.W.2d 427, 429 (Ct. App. 1990).

ANALYSIS

Validity of the Warrant and Arrest

McQueen first challenges the validity of the warrant to search his home. The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution each require that a search warrant be supported by probable cause. Probable cause means that, under the totality of the circumstances and taking into account reasonable inferences, "there is a fair probability that contraband or evidence of a crime will be found in a particular place." ***State v. Lopez***, 207 Wis.2d 413, 425-26, 559 N.W.2d 264 268 (Ct. App. 1996). "In deciding whether probable cause to issue a search warrant existed, … [g]reat deference should be given to the warrant-issuing court's determination … [in order] to further the Fourth Amendment's strong preference for searches conducted pursuant to a warrant." ***Id***. at 425, 559 N.W.2d at 268.

We conclude that the affidavit presented to the circuit court provided probable cause to issue a search warrant under this standard. The police knew that there were unsecured firearms in the residence where a convicted felon was living. The facts within the knowledge of police thus raised a fair inference that Damien exercised shared control over the weapons within the meaning of § 941.29, STATS., and that a search of McQueen's house would reveal evidence linked to a crime. Because the search was lawful, the drug paraphernalia which the police discovered supplied valid probable cause to arrest McQueen. *See* ***State v. Koch***, 175 Wis.2d 684, 701, 499 N.W.2d 152, 161 (1993). Furthermore, because the arrest was valid, McQueen's consent to search was not given during a period of unlawful detainment and was not tainted under ***Florida v. Royer***, 460 U.S. 491, 507-08 (1983).

Validity of Consent

McQueen next argues that, even if the arrest itself were valid, his consent to expand the scope of the search was involuntarily given. He points out that the State bears the burden of showing that consent was freely and voluntarily given, and that this burden is heavier when consent is given while a person is under arrest. ***Gautreaux v. State***, 52 Wis.2d 489, 492, 190 N.W.2d 542, 543 (1971). He also notes that he was not given any ***Miranda*** warnings before signing the consent form. However, "there is no presumption a consent to a search given by a person under arrest is involuntary and coerced as a matter of law." ***Id***. at 492-93, 190 N.W.2d at 543. Nor are ***Miranda*** warnings, which are designed to protect Fifth Amendments rights, necessary before obtaining consent to search under the Fourth Amendment. ***State v. Turner***, 136 Wis.2d 333, 351-53, 401 N.W.2d 827, 835-36 (1987).

We conclude that the State met its burden of showing that McQueen's consent was obtained "in the absence of actual coercive, improper police practices designed to overcome the resistance of a defendant." ***State v. Phillips***, 218 Wis.2d 180, 203, 577 N.W.2d 794, 804 (1998) (quoted source omitted). The police officers did not misrepresent what they were looking for or how they intended to use any evidence they found. The consent form which they gave McQueen to sign advised him that he had the right to refuse consent and that any contraband recovered could be used against him. McQueen, who testified at the suppression hearing, did not claim that any physical threats or intimidation had been used. McQueen was a literate, forty-five-year-old man with some college education, prior experience with the criminal justice system, and no history of emotional or mental health problems. There is no basis on which to overturn the suppression ruling.

By the Court.—Judgment affirmed.

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