

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 14, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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Appeal No. 2016AP1674-CR

Cir. Ct. No. 2015CF165

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DONTE L. COLEMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CAROLINA STARK, Judge. *Affirmed.*

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

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Donte L. Coleman appeals his conviction for possession with intent to deliver cocaine (between one and five grams). *See* WIS. STAT. § 961.41(1m)(cm)1r. (2015-16).¹ He entered a guilty plea to this charge after the circuit court denied his motion to suppress. Because the circuit court properly concluded that the evidence Coleman sought to suppress was admissible, we affirm.

I. BACKGROUND

¶2 The complaint charged Coleman with one count of possession with intent to deliver cocaine, one count of possession of narcotic drugs (heroin), and one count of possession with intent to deliver a controlled substance (tetrahydrocannabinols). According to the complaint, while the police were executing a lawfully obtained no-knock search warrant for firearms and narcotics at a Milwaukee residence, Coleman entered the residence through the back door. When the officers patted him down, they found he had marijuana, cocaine, and heroin.

¶3 Coleman filed a suppression motion arguing that the officers unlawfully seized and searched him when he arrived at the residence.

¶4 At the hearing on the suppression motion, Officer Dean Newport testified that in February 2015, he assisted in executing the no-knock search warrant. The warrant was based on information that one of the residents was a drug dealer and that there were drugs and firearms in the home.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶5 Officer Newport testified that during the search, officers found marijuana, heroin paraphernalia, crack pipes, and two different types of ammunition, leading them to conclude that “this was a drug house.” About an hour into executing the search warrant, Officer Newport heard a knock at the front door. Without opening the door, he instructed the visitor, later identified as Coleman, to “go to the back.” There was no outward indication that police were inside the home. Officer Newport did not identify himself as a police officer or order Coleman to the back door. Therefore, in Officer Newport’s view, Coleman “could have just walked off, and that would have been the end of it, but he went to the back door.”

¶6 Officer Newport testified that he asked Coleman to go to the back door because he suspected that Coleman might be armed with a gun. Based on Officer Newport’s experience searching drug houses, he feared there could be a “shootout, somebody would get shot.” Further, he asked Coleman to go to the back because there were six people being detained near the front door, the front door was partially blocked by debris, and there were missing steps on the front porch that posed a safety issue.

¶7 Officer Joseph Warren testified that he and another police officer, Officer Juan Duran, heard Coleman’s knock at the back door. Officer Duran opened the exterior door and Coleman stepped completely through the back door’s threshold into the mudroom that was next to the kitchen. At that point, Coleman “seemed shock[ed]” when he realized that Warren and Duran were law enforcement officers and “immediately reached down towards his pockets.” Officer Warren “became concerned for [his] safety,” given “the nature of the search warrant” for “firearms and narcotics,” and therefore pulled Coleman “through the threshold [of the mudroom] into the kitchen.” Officer Warren

explained that there were “no more than two feet” between the back door threshold through the mudroom to the kitchen threshold.

¶18 After pulling Coleman from the mudroom into the kitchen, Officer Warren conducted a pat-down of Coleman. In addition to Coleman’s keys and two cell phones, Officer Warren found something that “felt like a knot” in Coleman’s left pocket. Coleman “immediately said that’s just some weed.” Officer Warren pulled out a clear baggy containing “seven clear, plastic corner-cut baggies filled with a green plant-like substance that [he] believed to be marijuana.” After finding the marijuana, Officer Warren continued to search Coleman and found other “items of interest relevant to this case” on Coleman’s person.

¶19 Coleman, on the other hand, claimed that he never voluntarily entered the house. He testified that when he went to the back door, it opened and he saw two people, one holding a gun. Coleman said that he “jumped back” and “they reached for me and grabbed my hands and pulled me toward them.” Coleman testified that when he was grabbed he “was still outside on the porch” and that once he was inside, one of the officers patted him down and found the cell phone and the marijuana. On cross-examination, Coleman admitted that in addition to the marijuana he also had thirty-three corner-cuts of cocaine and three corner-cuts of heroin. Coleman also testified that he was “rattled” by the situation because of the officers and because he could see the other people handcuffed in the living room. Coleman further testified that while he was being questioned by police, he “was high” because he had “just smoked.”

¶10 After listening to the testimony, the circuit court denied the suppression motion. Coleman then pled guilty to the charge of possession with

intent to deliver cocaine. The other charges against him were dismissed and read in at sentencing.

¶11 Coleman now appeals. Additional background information is provided in the discussion section.

II. DISCUSSION

¶12 The sole issue on appeal is whether the circuit court erred when it denied Coleman's suppression motion. Coleman argues that he was illegally seized and searched by the police while they were executing the search warrant at the residence. Coleman argues that he had "no connection to that residence, and the police pulled [him] into the crime scene residence during the search."

¶13 The Fourth Amendment of the United States Constitution and article I, section 11 of the Wisconsin Constitution both protect against unreasonable seizures. *State v. Dearborn*, 2010 WI 84, ¶14, 327 Wis. 2d 252, 786 N.W.2d 97. When we review the denial of a motion to suppress evidence based on an argument that it was obtained in violation of the Fourth Amendment, we uphold the circuit court's factual findings unless they are against the great weight and clear preponderance of the evidence. *See State v. McGill*, 2000 WI 38, ¶17, 234 Wis. 2d 560, 609 N.W.2d 795. "We then independently review those facts to determine whether the constitutional requirement of reasonableness is satisfied." *See id.*

¶14 An officer may not perform a protective pat-down for weapons unless the officer has "reasonable suspicion that a person may be armed and dangerous to the officer or others." *State v. Kyles*, 2004 WI 15, ¶7, 269 Wis. 2d 1, 675 N.W.2d 449. The officer "must be able to point to specific and articulable

facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.” *Id.*, ¶9 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)).

¶15 An objective standard applies when reviewing the reasonableness of a protective search for weapons, “that is, ‘whether a reasonably prudent [person] in the circumstances would be warranted in the belief that [the person’s] safety and that of others was in danger’ because the individual may be armed with a weapon and dangerous.” *Kyles*, 269 Wis. 2d 1, ¶10 (quoting *Terry*, 392 U.S. at 27). We must evaluate the totality of circumstances in the particular case to decide whether an officer had the reasonable suspicion necessary to justify a protective pat-down for weapons. *See id.*, ¶49. “[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to [the officer’s] inchoate and unparticularized suspicion or hunch, but to the specific reasonable inferences which [the officer] is entitled to draw from the facts in light of [the officer’s] experience.” *Terry*, 392 U.S. at 27 (internal quotation marks omitted).

¶16 Having set forth the applicable legal standards, we now turn to the circuit court’s detailed findings of facts, which included the following:

Officer Newport had a safety concern regarding the person arriving at the house in part based upon the items that the search warrant allowed law enforcement to look for. In part based on [the fact that] there were six citizens right there in that living room area detained and cuffed. In part, based on what had already been found in the residence, including suspected controlled substances and firearm ammunition.

And additionally, Officer Newport was aware, as a result of the briefing that was conducted for law enforcement before executing the search warrant, he was aware that a couple of days before the search warrant execution, law enforcement had received a call for a subject with a gun at that address.

That some months before the execution of the search warrant, there has been a reported shooting of people back and forth at the residence and also that the confidential informant who provided some of the information that was the basis or contained in the search affidavit, alleged a firearm at the location. So [Officer Newport] was concerned for his safety, he was concerned for [the] safety of those in the home regarding whether he open the [front] door and let that person on the porch, Mr. Coleman, into the living room. So he told the person at the door to go to the back.

At that point, Mr. Coleman, standing at the front door did not know that the person telling him to go to the back was a law enforcement officer. There were no longer marked squad cars or other immediately recognizable signs of a law enforcement presence outside or at the house and Mr. Coleman left the front porch and walked to the back door.

As he did this, Officer Newport notified other officers in the home, includ[ing] Officers Warren and Duran, that someone had come to the front door and was making their way to the back door. Officers Warren and Duran then started to be more alert at the back door, Officer Warren heard a knock at the rear door and, looking through some window blinds, saw the defendant at the rear door.

Officer Warren told Officer Duran, who was standing near him at the rear door, that the person was at the rear door; Officer Duran opened the rear door, the defendant started to step over the threshold; and as he stepped over the threshold into a mudroom area, he looked up and saw Officers Duran and Warren, who were in plain clothes with law enforcement identification. As the defendant stepped over the threshold into the mudroom, Officer Warren grabbed his clothing and pulled him closer to Officer Warren, pulling him further into the home through the little mudroom over the next doorway threshold into the kitchen area.

Officer Warren then positioned himself quickly behind the defendant, placing one of his feet behind the defendant's feet or between the defendant's feet and he immediately started to conduct a pat down of the defendant specifically for safety purposes, to see if the defendant had any type of weapon....

Officer Warren felt something that he thought was a phone in the defendant's clothing but continued to do the

pat down looking specifically for weapons, when Officer Warren then felt a knotted like object in the defendant's front left jacket pocket. Upon stopping over that item, the defendant told him that it was weed; and Officer Warren removed it from the defendant's pocket and saw a green plant like substance that he suspected to be marijuana. After recovering that item from the defendant's clothing, he continued to search the defendant and found other suspected contraband on the defendant.

These findings are not against the great weight and clear preponderance of the evidence; therefore, we accept them. *See McGill*, 234 Wis. 2d 560, ¶17.

¶17 We conclude that, under the totality of circumstances, *see Kyles*, 269 Wis. 2d 1, ¶49, there were specific and articulable facts providing a reasonable basis for the pat-down. As summed up by the State, these circumstances included “Coleman’s voluntary entry into a residence where officers had already found drugs and ammunition, the officers’ awareness of recent reports of shootings at the residence, and officers’ seeing Coleman reach toward his pockets after he came through the back door of the residence[.]”

¶18 Upon finding marijuana during the pat-down, the police had probable cause to arrest Coleman and to continue to search him incident to the arrest. *See State v. Sykes*, 2005 WI 48, ¶18, 279 Wis. 2d 742, 695 N.W.2d 277 (A police officer has probable cause to arrest ““when the totality of the circumstances within that officer’s knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant probably committed a crime.””) (citation omitted); *see also id.*, ¶16 (explaining that if probable cause existed for arrest, search may immediately precede the person’s formal arrest).²

² We benefit from the circuit court’s analysis in this regard, *see Washburn Cty. v. Smith*, 2008 WI 23, ¶16, 308 Wis. 2d 65, 746 N.W.2d 243:

(continued)

¶19 Therefore, the circuit court properly denied Coleman’s motion to suppress.³

By the Court.—Judgment affirmed.

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

So this is a situation where there was an evolution of the circumstances, the circumstances changed as the officers were executing the search warrant; and their responses to those changing circumstances including the initial seizure of the defendant for the pat[-]down purpose, the pat[-]down, and then ultimately completing the pat[-]down.

But it changing into a search as well for additional contraband [was] all legally justified and did not violate any of [Coleman’s] constitutional rights.

³ Because we affirm on this basis we need not address the alternative basis offered by the State. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (“As one sufficient ground for support of the judgment has been declared, there is no need to discuss the others urged.”).

