COURT OF APPEALS
DECISION
DATED AND RELEASED

September 10, 1996

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.

NOTICE

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

No. 96-1195-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JACQUELINE J. BEATTIE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed*.

FINE, J. Jacqueline J. Beattie appeals from a judgment entered after a bench trial convicting her of possessing cocaine. *See* §§ 161.16(2)(b)1 and 161.41(3m), STATS. She claims that the search of her car was illegal even though it was incident to her lawful arrest. We affirm.

Beattie was driving her car when she was stopped and arrested by Brown Deer police officer Richard P. Schwoegler, who was told by a police dispatcher that there was an outstanding warrant for Beattie's arrest on fraud

charges and that Beattie's driving license had been suspended. Beattie was handcuffed, searched, and placed in the back seat of Schwoegler's squad car while Schwoegler searched Beattie's car. Schwoegler noticed a loosely mounted ashtray. Schwoegler lifted the ashtray and found drug paraphernalia and crack cocaine. Beattie argues that the search of her automobile violated her rights under the Fourth Amendment to the United States Constitution, Article I, Section 11 of the Wisconsin Constitution, and § 968.11, STATS.[1] We disagree.

A trial court's findings of fact will be upheld on appeal unless they are clearly erroneous, RULE 805.17(2), STATS., made applicable to criminal

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[1] The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, Section 11 of the Wisconsin Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Section 968.11, STATS., provides:

> **Scope of search incident to lawful arrest.** When a lawful arrest is made, a law enforcement officer may reasonably search the person arrested and an area within such person's immediate presence for the purpose of:
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> **(1)** Protecting the officer from attack;
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> **(2)** Preventing the person from escaping;
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> **(3)** Discovering and seizing the fruits of the crime; or
>
> **(4)** Discovering and seizing any instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, the offense.

proceedings by § 972.11(1), STATS. Whether the search of Beattie's automobile met constitutional and statutory standards, however, is a question of law subject to *de novo* review. ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

The Fourth Amendment, Article I, Section 11 of the Wisconsin Constitution, and § 968.11, STATS., are consistent with one another and are coextensive. ***State v. Fry***, 131 Wis.2d 153, 171–176, 388 N.W.2d 565, 573–575 (1986), *cert. denied*, 479 U.S. 989 (1986). Under these provisions, a search incident to an arrest is reasonable if it is in an area from which the person being arrested might at the time of arrest have access to a weapon or evidence that can be destroyed irrespective of whether the area being searched is *actually accessible* at the time of the search. ***New York v. Belton***, 453 U.S. 454, 460–462 (1981); ***Fry***, 131 Wis.2d at 174–175, 388 N.W.2d at 574; *cf.* ***State v. Murdock***, 155 Wis.2d 217, 231, 455 N.W.2d 618, 624 (1990) (search of residence). Moreover, it makes no difference whether the arrest is for a traffic offense or something more serious. ***Whren v. United States***, 116 S. Ct. 1769 (1996) (traffic arrest—proposition not questioned); ***United States v. Robinson***, 414 U.S. 218 (1973) (traffic arrest—proposition not questioned); ***United States v. Pino***, 855 F.2d 357, 363–364 (6th Cir. 1988), *cert. denied*, 493 U.S. 1090 (1990).

Among the places that can be lawfully searched incident to a legal arrest are containers inside the automobile, irrespective of whether they are open or closed. ***Belton***, 453 U.S. at 460 n.4, 461–462. Significantly, in both ***Belton*** and ***Fry***, as here, the persons arrested no longer had actual access to the interior of the car being searched at the time of the search, ***Belton***, 453 U.S. at 455–456, 466 (Brennan, J., dissenting); ***Fry***, 131 Wis.2d at 186, 388 N.W.2d at 579 (Bablitch, J., dissenting). Indeed, in ***Fry***, the officers searched a *locked* glove compartment while the persons arrested were handcuffed, seated in squad cars, and guarded by police officers. ***Id.*** The search of the interior of Beattie's car incident to her lawful arrest was valid.[2]

[2] We decline to adopt the rationale of the cases from other states upon which Beattie relies—they are inconsistent with the law as established by ***Belton*** and, in this state, by ***Fry***.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.