

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 5, 2003

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-2202-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00-CF-270

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SCOTT A. CLEMONS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
DANIEL T. DILLON, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Scott Clemons appeals a judgment convicting him of multiple drug charges. He claims the trial court erred in denying his suppression motion. We disagree and affirm for the reasons discussed below.

BACKGROUND

¶2 Upon being told by a man arrested for possession of cocaine that Clemons had supplied the cocaine, police obtained a search warrant for Clemons' house and any vehicles located on the premises. The police noted in the warrant application that their files also contained information from a confidential informant who had proved reliable in the past that cocaine was being sold from that residence.

¶3 Before officers could execute the search warrant, they observed Clemons and his girlfriend driving away from the house. The officers followed Clemons, pulled him over, and arrested him. Subsequent searching revealed about \$600 cash and a pager on Clemons' person and a package of cocaine which Clemons' girlfriend said had been tossed out of the car's window.

¶4 Clemons moved to suppress the evidence seized from and around his car and statements he later made to police, claiming that the police exceeded the scope of the search warrant and lacked reasonable suspicion to stop him or probable cause to arrest him. The trial court denied the motion and Clemons appeals.

STANDARD OF REVIEW

¶5 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. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996); *see also* WIS.

STAT. § 805.17(2) (2001-02).¹ 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 (Ct. App. 1990).

DISCUSSION

¶6 A police officer has probable cause to arrest when the totality of the circumstances within the 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 (1993). This is a practical test, based on “considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *State v. Drogsvold*, 104 Wis. 2d 247, 254, 311 N.W.2d 243 (Ct. App. 1981) (citation omitted). The objective facts before the police officer need only lead to the conclusion that guilt is more than a possibility. *State v. Richardson*, 156 Wis. 2d 128, 148, 456 N.W.2d 830 (1990).

¶7 Here, the man earlier arrested with cocaine in his possession, Concepcion Relerford, had told police that he had bought the cocaine from Clemons at an address which police verified was Clemons’ residence. Relerford claimed he had been working with another officer to try to obtain evidence that Clemons was dealing drugs, which the other officer confirmed. The police emphasized to Relerford that providing untruthful information about the source of the drugs could create problems for him, given his parole status.

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶8 The corroborating facts of Clemons' address and Relerford's involvement with another officer, in addition to the recovered cocaine itself, lent reliability to Relerford's statement that Clemons had sold him cocaine. It was not necessary for the police to rule out any possibility that Relerford was attempting to shift blame from himself by naming Clemons; they needed only enough information to conclude that Clemons' guilt was more than a possibility. We are satisfied that the police had probable cause to arrest Clemons when they pulled him over.

¶9 Because we conclude the arrest was based upon probable cause, the search of Clemons' person and car were properly conducted incident to the arrest, regardless of whether the search warrant would otherwise have authorized the search. The suppression motion was properly denied.

By the Court.—Judgment affirmed.

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

