

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 24, 2004**

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. 04-0157-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 02CM003808

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHRISTOPHER D. ROSE,**

**DEFENDANT-APPELLANT.**

---

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

¶1 LUNDSTEN, J.<sup>1</sup> Christopher Rose appeals a judgment convicting him of possession of drug paraphernalia. Rose argues on appeal that there was no reasonable suspicion to conduct an investigatory stop and no probable cause to

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

arrest him. He contends, therefore, that the circuit court erred in denying his motion to suppress evidence and that his conviction should be overturned. We disagree and affirm the circuit court.

### ***Background***

¶2 On September 11, 2002, Officer Retlick and Officer Hale were at the Capitol View Terrace apartment complex. Officer Retlick testified that a lot of drug transactions occur at this particular location. The area is posted with “No Trespassing” signs. Officer Hale called Officer Retlick’s attention to Rose and told Officer Retlick that he had seen Rose pass something to another male. Officer Retlick approached Rose as Rose was walking and asked him questions as Rose continued to walk. Officer Retlick asked Rose what he had passed and Rose denied passing anything. Officer Retlick stated that he asked Rose what Rose was doing on the premises, and Rose told Retlick that he was “hanging with [his] buddies,” but Rose could not give Officer Retlick any specific information about where his buddies lived.

¶3 Officer Retlick then stopped Rose and asked if Rose would consent to a search for weapons or drugs. Rose gave his consent, stating: “Yeah, go ahead, I have nothing to hide.” After Officer Retlick began searching Rose, Officer Hale told Rose that he was under arrest for trespassing. Officer Retlick found on Rose a pipe, a push rod, and a lighter, devices used in the smoking of cocaine.

¶4 Rose was charged with possession of drug paraphernalia in violation of WIS. STAT. § 961.573. Rose moved the court to suppress all evidence on the grounds that the officer had illegally seized Rose. After a hearing on the matter,

the circuit court denied Rose's motion. Rose then pled no contest to the possession of drug paraphernalia charge.

### *Discussion*

¶5 Rose begins his argument with the apparent assumption that he was seized during the time Officer Retlick initially approached Rose and started asking him questions while Rose continued walking. The State points out that Rose had not been seized during this time period. We agree with that assessment.

¶6 The circuit court found that Rose continued walking as he answered Officer Retlick's questions. Rose does not challenge this factual finding or the circuit court's apparent conclusion that no investigatory stop occurred until Officer Retlick directed Rose to stop and asked permission to search him. We conclude that there is no basis to challenge admission of the answers Rose gave to Officer Retlick while the two men were walking because Rose had not even arguably been seized before he was directed to stop.

¶7 Rose argues that the investigatory stop was not supported by reasonable suspicion. According to Rose, the only information known to police was that Rose had a brief encounter with another individual in a high crime area and Rose "was purportedly unable to provide detailed responses to the officer's questions, to wit, the precise address of his friend [at the apartment complex]." Rose's argument badly misses the mark. He ignores several suspicious facts.

¶8 In order to justify an investigatory seizure, "[t]he police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is [or was] violating the law." *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623. "The

question of what constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience.” *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

¶9 As described in the State’s brief, police knew more than the mere facts that Rose had a brief encounter with another individual in a high crime area and that he was unable to provide the address of the person he was visiting. Most notably, the area was known to police as a drug trafficking area and police had seen Rose pass an unknown object to another individual and then heard Rose deny passing an object. This information would lead a reasonable police officer to suspect that Rose had just engaged in a drug transaction. Rose’s actions may have been innocent, but the officers were not required to rule out innocent behavior before stopping Rose. *See State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990) (before initiating a brief stop, an officer is not required to rule out the possibility of innocent behavior).

¶10 Rose next argues that Officer Hale did not have probable cause to arrest Rose for trespassing. Rose does not argue that the collective knowledge of the two officers did not constitute probable cause. Instead, he argues that the record does not reveal that Officer Retlick conveyed to Officer Hale what Officer Retlick had learned.

¶11 Rose’s argument is meritless. First, we agree with the State that the most appropriate characterization of this arrest is that both Officer Retlick and Officer Hale together arrested Rose. Officer Retlick put handcuffs on Rose and Officer Hale told Rose that he was under arrest. But there is a more fundamental reason that Rose’s challenge to the arrest should not result in suppression of

evidence, namely, that the arrest for trespassing has no effect on the legality of the search. The search was not conducted pursuant to the arrest. Rather, the search had begun prior to the arrest and was justified by Rose's consent. Rose does not argue that he did not give consent for the search.

¶12 Therefore, we affirm both the suppression ruling of the circuit court and the judgment of conviction.

*By the Court.*—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

