COURT OF APPEALS
DECISION
DATED AND FILED

June 26, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP635-CR **Cir. Ct. No. 2007CF5934**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CARTEL D. WEATHERS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Cartel D. Weathers, *pro se,* appeals orders denying his motion for postconviction relief and motions for reconsideration. He contends that he was illegally arrested and that his trial lawyer did not effectively assist him

when he was convicted of armed robbery with threat of force, as a party to a crime, and bail jumping. We affirm.

¶2 Weathers first argues that the police did not have probable cause to arrest him. "Every lawful warrantless arrest must be supported by probable cause." ***State v. Nieves***, 2007 WI App 189, ¶11, 304 Wis. 2d 182, 188, 738 N.W.2d 125, 128. "An arrest is legal when the officer making the arrest has reasonable grounds to believe that the person has committed or is committing a crime." ***Ibid.*** We look at "'the totality of the circumstances within the arresting officer's knowledge at the time of the arrest'" to determine whether reasonable grounds existed. ***State v. Riddle***, 192 Wis. 2d 470, 476, 531 N.W.2d 408, 410 (1995) (citation omitted). "While the circumstances within the arresting officer's knowledge need not be sufficient to make the defendant's guilt more probable than not, the defendant's guilt must be more than a mere possibility for the arrest to be constitutional." ***Ibid.*** "[I]n determining whether probable cause existed, we do not look to the officer's subjective beliefs, but apply an objective standard based upon the circumstances as they were at the time of the arrest." ***Ibid.***

¶3 The essential facts pertaining to the arrest are not disputed. As summarized by the circuit court, a Radio Shack employee called police to say that there was a robbery in progress. When the police arrived, an employee informed the police that the suspects had fled from the store to the east. A police officer ran in the direction the robbers went and, as he rounded the corner of the building, saw someone wearing dark clothing in the street running away down the middle of the street. The suspect ran toward a car that was driving very slowly, but the car became stuck in snow. The people in the car then jumped out, abandoning the car, and all of them ran into the yards of homes down the block. The police immediately established a perimeter around approximately five blocks in order to

locate the suspects. Ten or fifteen minutes after the robbery, a resident of the area within the perimeter notified one of the officers on the perimeter that he saw someone run through his backyard, jump a six-foot fence, and continue running. The officer ran in the direction the person had gone. After the officer went about two-thirds of the way up the block, he saw an individual wearing dark clothing sitting on the front steps of a residence in the shadows. The officer stated that the person appeared to be attempting to hide because he was sitting on the edge of the porch next to some very tall bushes so he blended in with his surroundings. The officer arrested the person, who turned out to be Weathers.

¶4 Based on these facts, we conclude that the police had reasonable grounds to believe that Weathers was involved in the robbery. A citizen witness within the perimeter where the police had surrounded the suspects informed an officer that a person ran through his backyard and jumped a six-foot high fence, which is certainly somewhat suspicious. The officer gave chase and came across Weathers, who was sitting on the edge of a porch, despite the fact that it was winter and already dark, trying to hide in the shadows. The person wore clothing that matched the description of the robber's clothing provided by the officer who initially chased the robbers after they left the store. All of these facts, when considered together, provided reasonable grounds for the officer to conclude that Weathers had been involved in the robbery. There was probable cause for the arrest.

¶5 Weathers next argues that he did not have effective assistance from his trial lawyer because he failed to interview the citizen witnesses who told the police that someone was running through his backyard and jumped the fence. We first note that Weathers did not make any argument on this point in the circuit court; he claimed ineffective assistance of counsel on this ground in a heading to

one of his arguments on a motion to reconsider, but did not address the claim in the argument section of the motion. We generally will not consider issues that are not first raised in the circuit court. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 492, 611 N.W.2d 727, 730. Moreover, Weathers does not specify what information the citizen would have provided that would have assisted his case had it been known. We reject this argument.

¶6 Weathers next argues that he did not have effective assistance from his trial lawyer because he should have challenged the legality of Weathers's arrest. We have concluded that the arrest was legally made. Therefore, this claim of ineffective assistance of counsel will not lie.

By the Court.—Orders affirmed.

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