COURT OF APPEALS
DECISION
DATED AND RELEASED

August 8, 1995

No. 95-0417-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ELAINE VEASLEY,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

WEDEMEYER, P.J.[1] Elaine Veasley appeals from a judgment of conviction, after pleading guilty to one count of possession of drug paraphernalia, contrary to § 161.573, STATS. She claims the trial court erred in denying her motion to suppress evidence that was discovered during an illegal search. She contends the search was illegal because the officer did not have probable cause to arrest her. Because there was probable cause to arrest Veasley as party to the crime of retail theft, the search incident to arrest was proper, and

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

the trial court did not err in denying the motion to suppress evidence discovered during the search.[2] This court affirms.

I. BACKGROUND

On May 11, 1994, a black man and a black woman were in a clothing store in the City of West Allis. As the black woman distracted the employees, the black man grabbed an armful of jeans off a rack and ran out of the store. The black woman joined him and both were seen getting into an Aries car, which went southbound. Several members of the West Allis police received the dispatch of the incident. Shortly after hearing the dispatch, Detective Gerald Ponzi observed a tan color Dodge Aries K car in the vicinity of the theft, traveling above the speed limit. He also observed that the occupants of the car were black males and black females. He began pursuit. He noticed the two individuals in the back seat turning their whole bodies around to look out the back of the vehicle. Ponzi radioed for a marked squad to make the stop of this vehicle. The marked squad, with its siren on, pursued the Aries for approximately five blocks before the vehicle stopped. The occupants were ordered to get out of the vehicle. As they got out, they started moving away from Ponzi. Police Officer David Coolidge, another officer involved in the pursuit, observed several pairs of jeans in the vehicle. The four occupants were arrested. Veasley was one of the occupants of the vehicle.

Upon searching Veasley, incident to arrest, Coolidge discovered a five-inch steel tube, with rough edges. Coolidge indicated his belief that the tube was used for smoking illegal drugs. Veasley was charged with possession of drug paraphernalia. After the trial court denied her motion to suppress the pipe, she pled guilty. She now appeals.

II. DISCUSSION

[2] Because this court concludes that probable cause existed, it is not necessary for this court to address whether the search was actually a "pat-down" incident to a ***Terry*** stop. *See* ***Terry v. Ohio***, 392 U.S. 1 (1968); *see also* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

The issue in this case is whether the officers had probable cause to arrest the four occupants for retail theft, party to a crime. If this court concludes that probable cause existed, then the search constituted a search incident to arrest and was clearly legal. If this court concludes that no probable cause existed to arrest, then the search was illegal and Veasley's motion to suppress the pipe should have been granted. After reviewing the briefs and the record, this court concludes that probable cause to arrest all four occupants existed and, therefore, the trial court did not err in denying Veasley's motion to suppress.

A motion to suppress evidence raises a constitutional question, which presents a mixed question of fact and law. To the extent the trial court's decision involves findings of evidentiary or historical facts, those findings will not be overturned unless they are clearly erroneous. ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The application of constitutional and statutory principles to the facts found by the trial court, however, presents a matter for independent appellate review. ***Id.*** Further, "whether a seizure or search has occurred, and if so, whether it passes statutory and constitutional muster are questions of law subject to *de novo* review." ***State v. Richardson***, 156 Wis.2d 128, 137-38, 456 N.W.2d 830, 833 (1990).

Our supreme court offers guidance on when probable cause exists: "Probable cause exists where the totality of circumstances within the arresting 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, 161, *cert. denied*, 114 S.Ct. 221 (1993). Hence, this court turns to a review of the totality of circumstances presented under the facts of the instant case. The facts and circumstances of record demonstrate that: (1) West Allis police received a dispatch that a black male and black female were involved in a retail theft at a store on 68th and Greenfield and that they were seen fleeing the scene in a Dodge Aries; (2) shortly after hearing the dispatch, Detective Ponzi observed an Aries with occupants matching the descriptions and in the immediate vicinity of the crime; (3) the occupants in the rear of the Aries turned around to see if they were being followed; (4) a pursuit by a marked squad occurred for about five blocks before the Aries stopped; (5) the occupants of the Aries began walking away from the police; and (6) jeans matching the description of the stolen property were observed in the Aries.

Under the totality of the circumstances described above, it was reasonable for the police to believe that these four individuals probably committed the retail theft, party to a crime.[3]

Veasley's reliance on ***State v. Riddle***, 192 Wis.2d 470, 531 N.W.2d 408 (Ct. App. 1995) is misplaced because the facts present in the instant case are distinguishable from those presented in ***Riddle***. The present case involves an apprehension of the car involved in a retail theft immediately after the crime occurred. ***Riddle*** involved contraband in a trunk that was discovered after a traffic stop. ***Id.*** at 473-74, 531 N.W.2d at 409. If the Aries had been stopped days or even hours after the crime and the officers discovered jeans in the trunk, this court would have a difficult time concluding that probable cause existed to arrest all four occupants. However, the facts in this case do not present a ***Riddle*** scenario.

As noted above, the totality of the circumstances presented in the instant case demonstrate that probable cause existed to arrest all four occupants of the Aries. Because probable cause existed, the search of Veasley was properly conducted incident to a legal arrest. ***State v. Fry***, 131 Wis.2d 153, 160-61, 168, 388 N.W.2d 565, 568, 571-72, *cert. denied*, 479 U.S. 989 (1986). Because the search was proper, the trial court was correct to deny the motion seeking to suppress the pipe discovered during the search.[4]

By the Court. – Judgment affirmed.

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

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[3] Although the record is not clear as to what each individual officer knew, this court looks to the collective knowledge of the officers involved in determining the totality of the circumstances. ***State v. Wille***, 185 Wis.2d 673, 683, 518 N.W.2d 325, 329 (Ct. App. 1994) (Wisconsin courts recognize the collective knowledge rule in determining whether an officer had probable cause).

[4] It is not altogether clear from the record whether the trial court's decision to deny the motion to suppress was based on its decision that the search was simply a "pat-down" incident to a proper ***Terry*** stop, or whether the search was incident to a legal arrest. Nevertheless, this court must affirm the trial court because it reached the right result in refusing to suppress the pipe. *See* ***State v. Holt***, 128 Wis.2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985).