COURT OF APPEALS
DECISION
DATED AND RELEASED

June 19, 1996

No. 95-1931-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SINGKEO INPHACHACK,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed*.

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Singkeo Inphachack appeals from a judgment convicting him of being party to the crime of possession of cocaine with intent to deliver. On appeal, he challenges the trial court's order denying his motion to suppress evidence. The court ruled that he was lawfully stopped, frisked and arrested. Inphachack does not challenge the fact that he was lawfully stopped by police; he challenges the search and arrest. Because we conclude that the

search of Inphachack was constitutional and there was probable cause to arrest him, we affirm.[1]

Inphachack does not contest the following findings made by the trial court after a hearing on his motion to suppress. The Sheboygan county drug unit had set up a drug buy, and on January 4, 1995, an undercover officer gave Somkhith Neuaone $400 to purchase cocaine. Officers then followed Neuaone to monitor the anticipated drug transaction. Police saw Inphachack enter Neuaone's vehicle as a passenger. The two were followed by drug unit officers to Milwaukee. Officers observed the vehicle stop in the 2500 block of Michigan Avenue in Milwaukee; Neuaone left the vehicle and Inphachack remained inside. After Neuaone returned to the vehicle, he and Inphachack drove to a restaurant where they made a telephone call and then returned to the 2500 block of Michigan Avenue. Neuaone went into a residence while Inphachack remained in the vehicle. Neuaone returned to the vehicle and both entered a residence on that block.

The Neuaone vehicle was stopped on its way back to Sheboygan. Neuaone and Inphachack exited the vehicle and were handcuffed for the officers' safety. The officers were aware that Neuaone had carried weapons in the past. Inphachack was also frisked for weapons. The police located a pager on Inphachack and were aware that drug traffickers often use pagers. Inphachack consented to a search of his clothing. No contraband was found on Inphachack or in the Neuaone vehicle. Inphachack told the officers that he was in Milwaukee eating noodles. The officers noted that Inphachack was walking in an unusual manner at the scene, and after he was transported to the sheriff's department, crack cocaine was found in his shoes.

The trial court found that the officers had probable cause to stop Neuaone's vehicle and authority under ***Terry v. Ohio***, 392 U.S. 1 (1968), to perform a pat-down search on Inphachack. The court also determined that the officers had probable cause to arrest Inphachack at the scene of the traffic stop based on the following circumstances. The officers were aware that Inphachack had accompanied Neuaone, who had been asked to purchase drugs for an

[1] Inphachack's guilty plea preserved his right to appeal from the order denying his motion to suppress evidence. *See* § 971.31(10), STATS.

undercover officer. In Milwaukee, Neuaone and Inphachack acted suspiciously and appeared to be in the process of obtaining drugs. The pat-down search of Inphachack revealed a pager. Finally, the officers believed that Inphachack lied when he claimed that he was in Milwaukee eating noodles.

On appeal, Inphachack does not challenge the reasonableness of the stop of Neuaone's vehicle. However, he challenges the constitutionality of the pat-down search at the scene of the stop.

When we review an order denying a suppression motion, we will uphold the trial court's findings of fact unless they are clearly erroneous. *See* ***State v. Jackson,*** 147 Wis.2d 824, 829, 434 N.W.2d 386, 388 (1989). However, whether these facts satisfy the constitutional requirement of reasonableness presents a question of law which we determine independently. ***Id.***

We use a two-part analysis to assess the constitutionality of a stop-and-search (or frisk) to determine whether a police officer acted within permissible constitutional grounds in initiating a search: (1) whether the officer was rightfully in the presence of the party frisked; and (2) whether the officer suspected the party was armed and dangerous. ***State v. Buchanan,*** 178 Wis.2d 441, 445, 504 N.W.2d 400, 402 (Ct. App. 1993) (quoted source omitted). Inphachack does not dispute the first prong of the test. He focuses his challenge on the second prong and claims that the officers did not have reasonable suspicion that he was armed and dangerous.

Under ***Terry,*** "an officer must have a reasonable suspicion—less than probable cause, but more than a hunch—that someone is armed before frisking that person for weapons." ***State v. Guy,*** 172 Wis.2d 86, 95, 492 N.W.2d 311, 314 (1992), *cert. denied,* 509 U.S. 914 (1993). An officer need not be absolutely certain that the individual is armed. The question is whether a reasonably prudent officer under the circumstances would be warranted in believing that his or her safety or that of others was endangered. *See* ***id.*** at 99, 492 N.W.2d at 316. In determining whether the officer acted reasonably under the circumstances, due weight must be given to the specific reasonable inferences which the officer is entitled to draw from the facts in light of the officer's experience. ***Buchanan,*** 178 Wis.2d at 448, 504 N.W.2d at 403-04 (quoted source omitted).

The facts found by the trial court are not clearly erroneous, and Inphachack does not dispute them on appeal. Officer James Tetzlaff of the Sheboygan county drug unit testified at the suppression hearing that he customarily searches an individual if he believes that the individual is involved with a controlled substance. Tetzlaff testified that he knew Neuaone had kept a weapon in his car in the past and Neuaone had been provided with money for a drug transaction. Tetzlaff was involved in the surveillance of Neuaone's vehicle as it traveled in and around Milwaukee, and based upon his experience, the activities of Neuaone and Inphachack in Milwaukee indicated drug activity. Considering the totality of the circumstances, including the possibility that Inphachack might be armed, Tetzlaff frisked Inphachack for weapons.

Tetzlaff's concern that Inphachack might be armed was a reasonable inference from the facts in light of the officer's experience. *See* ***Guy,*** 172 Wis.2d at 96, 492 N.W.2d at 315. One of the purposes of a ***Terry*** frisk is to safeguard the officer. ***Guy,*** 172 Wis.2d at 93-94, 492 N.W.2d at 314. An officer's belief that safety might be jeopardized when dealing with persons engaged in drug transactions is reasonable given that weapons are often "tools of the trade" for drug dealers. ***Id.*** at 96, 492 N.W.2d at 315 (quoted source omitted). Based upon the information available to Tetzlaff, we conclude that he had a reasonable suspicion that Inphachack was involved in drug dealing and might be armed. Therefore, the ***Terry*** frisk was constitutional.

Inphachack also challenges the existence of probable cause to arrest him. The probable cause to arrest standard "is defined in terms of facts and circumstances sufficient to warrant a reasonable police officer in believing that the defendant committed or was committing a crime." ***State v. Koch,*** 175 Wis.2d 684, 701, 499 N.W.2d 152, 161, *cert. denied,* 114 S. Ct. 221 (1993). "Probable cause exists where the totality of the 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." ***Id.***

The trial court found that Inphachack was arrested at the scene of the stop based on probable cause. The court found the following factors contributed to probable cause to arrest Inphachack. The officers knew that Neuaone had been given $400 to purchase cocaine as part of an undercover buy, that he picked up Inphachack and they drove to Milwaukee in Neuaone's car. The officers observed that while in Milwaukee, Neuaone and Inphachack acted

suspiciously and appeared to be in the process of obtaining drugs. When Inphachack was lawfully frisked, police found a pager—a device often used by drug traffickers.

Whether there was probable cause for Inphachack's arrest involves the application of a constitutional standard to undisputed facts. *See* ***State v. Riddle,*** 192 Wis.2d 470, 475, 531 N.W.2d 408, 410 (Ct. App. 1995). We conclude that the totality of the circumstances within the arresting officer's knowledge at the time of the arrest would have led a reasonable officer to believe that Inphachack probably committed a crime. We conclude that there was probable cause to arrest Inphachack.

Inphachack relies upon ***Riddle*** to support his contention that he was unlawfully arrested. We agree with the State that ***Riddle*** is distinguishable. Riddle was a passenger in a stopped vehicle, and a search of the trunk found a substance later identified as cocaine. The court of appeals held that other than the fact that he was one of three individuals traveling with the driver of the vehicle, Riddle had no relationship to the cocaine found in the locked trunk and there was no evidence to show that Riddle was engaged in a conspiracy to possess and sell the cocaine. ***Id.*** at 477-78, 531 N.W.2d at 410-11. Riddle never acted suspiciously and did not provide the arresting officer with any reasonable indication that he possessed the cocaine or had access to the location where it was concealed. ***Id.*** at 477, 531 N.W.2d at 410.

Here, in contrast, the officer had a reasonable basis for believing that Inphachack was involved in possession of drugs. He was traveling with Neuaone, who was on the way to conduct a drug transaction at the request of an undercover officer. Inphachack and Neuaone engaged in activity in Milwaukee which the officer reasonably believed indicated a drug transaction was underway. Furthermore, when Inphachack was lawfully patted-down, the police found a pager—a device which in the officer's experience indicated that Inphachack was involved in drug dealing. In ***Riddle,*** the defendant's connection to the probable commission of a crime was more tenuous than it was in this case. Here, the totality of the circumstances led the arresting officer to reasonably believe that Inphachack probably committed a crime.

By the Court.—Judgment affirmed.

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