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DISTRICT I

November 22, 2022

To:

Hon. Michael J. Hanrahan
Circuit Court Judge
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Ronald Fillyaw Jr. 546639
Felmers O. Chaney Corr. Center
2825 N. 30th St.
Milwaukee, WI 53210

John D. Flynn
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2020AP2116-CR	State of Wisconsin v. Ronald Fillyaw, Jr. (L.C. # 2018CF705)
2020AP2117-CR	State of Wisconsin v. Ronald Fillyaw, Jr. (L.C. # 2019CF2045)

Before Brash, C.J., Donald, P.J., and Dugan, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Ronald Fillyaw, Jr. appeals the judgments convicting him of possession of a firearm by a felon, possession of THC with the intent to deliver, obstructing an officer, and felony bail jumping. Fillyaw argues that the trial court erred in finding that the State did not violate his right to a timely probable cause determination. Based upon our review of the briefs and record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We therefore summarily affirm.

On the evening of February 9, 2018, Milwaukee police arrested Fillyaw for possession of a firearm by a felon, possession of THC with intent to deliver, and obstructing an officer. Within forty-eight hours of the arrest, on the morning of February, 11, 2018, a Milwaukee County Court Commissioner reviewed a form known as a “CR–215,” titled, “Probable Cause Statement and Judicial Determination.” The form, prepared by one of the arresting officers, contained a statement alleging that while police were conducting a walk-through of a Milwaukee apartment complex, they observed Fillyaw holding a bag with a green substance, appearing to be marijuana. Fillyaw was with two other individuals. When Fillyaw noticed the officers, he put the bag in his front pocket and started to walk down the apartment’s staircase. The officers attempted to stop Fillyaw, who resisted their orders. The CR-215 further states that the officers called for assistance and ultimately were able to detain Fillyaw. The officers located a firearm in Fillyaw’s coat pocket. The CR-215 also states that subsequent testing on the green substance was positive for marijuana. The State formally charged Fillyaw on February 14, 2018, and he made an initial appearance that same day. The trial court found probable cause at the preliminary hearing on February 22, 2018, and bound Fillyaw over for trial.²

Fillyaw then began filing a series of *pro se* motions seeking to dismiss the charges against him on the grounds that a probable cause determination was not made within forty-eight

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² After Fillyaw failed to appear for a scheduled court appearance, the trial court issued a warrant for his arrest. Based on his nonappearance, the State also filed a separate complaint charging Fillyaw with felony bail jumping. The matters were joined for a bench trial.

hours of his warrantless arrest, in violation of *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991). At a hearing on the motions, the trial court found “that the law was complied with, or substantially complied with.”

At a second hearing following Fillyaw’s subsequent *pro se Riverside* motions, the trial court reviewed the CR-215 form and found “the signed form indicates that it was actually considered by a court commissioner within 48 hours of arrest and that [it] complies with the local procedure.”

The matter proceeded to a bench trial, where the trial court ultimately found Fillyaw guilty of all four charges. The trial court sentenced Fillyaw to six years of imprisonment for being a felon in possession of a firearm, two years of imprisonment for possession of THC with intent to deliver (concurrent with the felon in possession sentence), six months of imprisonment for resisting an officer (consecutive), and five years of imprisonment for bail jumping (concurrent with the other sentences). This appeal follows.

On appeal, Fillyaw contends that the trial court erred “by not correctly addressing the excessive length of the defendant’s detention prior to a hearing” and by failing to dismiss his case as a result of the alleged constitutional violation. Fillyaw is mistaken.

A suspect detained pursuant to a warrantless arrest has a Fourth Amendment right to prompt judicial determination of whether probable cause exists for the arrest. *Gerstein v. Pugh*, 420 U.S. 103, 124-25 (1975). Absent a bona fide emergency or extraordinary circumstance, “prompt” means within forty-eight hours. *Riverside*, 500 U.S. at 56-57. Wisconsin has adopted the *Riverside* forty-eight hour rule. *State v. Koch*, 175 Wis. 2d 684, 696, 499 N.W.2d 152 (1993).

Fillyaw’s argument rests on his contention that he “did not appear before a court commissioner until 116 hours later after his warrantless arrest.” Fillyaw misunderstands the forty-eight hour rule. A probable cause determination under *Riverside* does not involve an adversarial proceeding. *Koch*, 175 Wis. 2d at 698. The judicial officer may base the probable cause determination entirely on hearsay and written testimony. *Id.* A probable cause determination, therefore, is independent from an initial appearance, where the State is required to bring the defendant before a judge within a “reasonable time” following arrest. *See id.* at 696; *State v. Evans*, 187 Wis. 2d 66, 90, 522 N.W.2d 554 (Ct. App. 1994). In short, there is no constitutional requirement that a defendant be present for the *Riverside* probable cause determination.

Here, Fillyaw was arrested on the evening on February 9, 2018. Less than forty-eight hours later, on the morning of February 11, 2018, a court commissioner reviewed and signed the CR-215, which contained a detailed statement from the arresting officer regarding the events leading to Fillyaw’s arrest and law enforcement’s subsequent findings. While Fillyaw’s *initial appearance* took place 116 hours after his arrest, *a probable cause determination* was indeed made in a timely manner. Thus, the record does not support Fillyaw’s assertion of a *Riverside* violation.

To the extent Fillyaw contends that the CR-215 was not properly authenticated, again, the record does not support his assertion. The CR-215 was notarized by the arresting officer and physically signed by the court commissioner.

Accordingly, we affirm the trial court.

Upon the foregoing,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See*
WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals