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DISTRICT III

October 31, 2023

To:

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Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

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

2021AP473-CRNM State of Wisconsin v. Jason Christopher Coben
(L. C. No. 2017CF756)

Before Stark, P.J., Hruz and Gill, JJ.

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).

Counsel for Jason Coben filed a no-merit report concluding that no grounds exist to challenge Coben's convictions for delivering more than ten, but not more than fifty, grams of heroin; possession with intent to deliver more than three, but not more than ten, grams of amphetamine; possession with intent to deliver more than ten, but not more than fifty, grams of heroin; and possession of drug paraphernalia—the first three counts as a second or subsequent offense, and all four counts as a repeater. Coben filed a response challenging the denial of his pretrial motions to suppress evidence obtained from his car and from his person. Upon our

independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2021-22).¹

The charges in this case arose from allegations that Coben sold fourteen grams of heroin to a confidential informant for \$1,200 in prerecorded U.S. currency.² The sale occurred at a residence on Shawano Avenue in Green Bay. Less than two hours later, Coben was arrested in his vehicle while parked in the alley behind the Shawano Avenue residence. The \$1,200 of prerecorded U.S. currency was located in Coben's pants pocket.

During a search of Coben's vehicle, law enforcement found 31.82 grams of heroin, 5.41 grams of methamphetamine, and drug paraphernalia. Coben filed a motion to suppress the evidence found in his vehicle and any statements he made after the vehicle search, claiming that law enforcement lacked probable cause for the warrantless search of his vehicle. That motion was denied after a hearing. Coben then moved to suppress evidence seized from his person during a search incident to his arrest, claiming that there was no probable cause for the arrest. That motion was also denied after a hearing. The circuit court granted defense counsel's motion to withdraw, and Coben filed several pro se motions ostensibly seeking reconsideration of the orders denying his earlier suppression motions. Those motions were denied. The court also denied Coben's pro se motion to dismiss the action for lack of personal and subject matter

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² Because field testing on the heroin was inconclusive, Coben was initially charged with knowingly delivering a noncontrolled substance and expressly or impliedly representing to the recipient that the substance was a controlled substance, contrary to WIS. STAT. § 961.41(4)(am). After testing by the Wisconsin State Crime Laboratory confirmed that the substance was heroin, the circuit court granted the State's motion to amend the Information.

jurisdiction. The court appointed new counsel for Coben. Despite having a court-appointed attorney, Coben continued to file pro se suppression motions, all of which were denied.

Although there was no pending plea offer by the State, Coben ultimately entered no-contest pleas to the crimes charged. Out of a maximum possible 101-year sentence, the circuit court imposed concurrent sentences aggregating in a thirteen-year term, consisting of six years of initial confinement followed by seven years of extended supervision. Coben filed a postconviction motion for sentence credit, and that motion was granted.

Although the no-merit report does not specifically address it, we conclude that any challenge to Coben's motions to dismiss his case for lack of personal and subject matter jurisdiction would lack arguable merit. A circuit court's subject matter jurisdiction "attaches when the complaint is filed," and the court "lacks criminal subject-matter jurisdiction only where the complaint does not charge an offense known to law." See *State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). Here, the complaint charged Coben with offenses known to law. In turn, personal jurisdiction in criminal cases involves the power of the circuit court over the physical person of the defendant. See, e.g., *Walberg v. State*, 73 Wis. 2d 448, 457-58, 243 N.W.2d 190 (1976). Here, the court obtained personal jurisdiction when a complaint stating probable cause to believe a crime had been committed by Coben within Brown County was filed within the applicable statute of limitations. See *State v. Dabney*, 2003 WI App 108, ¶10, 264 Wis. 2d 843, 663 N.W.2d 366.

Both the no-merit report and Coben's response address the denial of Coben's pretrial suppression motions. Coben claimed he was illegally arrested and his vehicle was illegally searched, thus rendering any evidence found or statements made thereafter inadmissible fruit of

the poisonous tree.³ When we review a circuit court’s decision resolving a motion to suppress evidence, we uphold the court’s findings of historical fact unless they are clearly erroneous. *State v. Young*, 2006 WI 98, ¶17, 294 Wis. 2d 1, 717 N.W.2d 729. We review de novo the application of constitutional principles to the facts as found by the circuit court. *State v. Vorburger*, 2002 WI 105, ¶32, 255 Wis. 2d 537, 648 N.W.2d 829.

Citing the nearly two-hour period between the drug sale and his arrest, Coben argues that law enforcement should have sought a warrant to arrest him and to search his vehicle. A reasonable search pursuant to a lawful arrest, however, is valid without a search warrant. *Molina v. State*, 53 Wis. 2d 662, 670, 193 N.W.2d 874 (1972). For a search incidental to arrest to be legal, the arrest itself must be legal. *Id.* A lawful arrest requires probable cause. *See State v. Secrist*, 224 Wis. 2d 201, 212, 589 N.W.2d 387 (1999).

“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.” *State v. Riddle*, 192 Wis. 2d 470, 476, 531 N.W.2d 408 (Ct. App. 1995). The circumstances within the arresting officer’s knowledge need not be sufficient to make the defendant’s guilt more probable than not. *See id.* Whether the facts of a given case constitute probable cause to arrest is a question of law that this court decides independently. *See State v. Kasian*, 207 Wis. 2d 611, 621, 558 N.W.2d 687 (Ct. App. 1996).

³ We may review the circuit court’s orders denying the suppression motions notwithstanding Coben’s no-contest pleas. *See* WIS. STAT. § 971.31(10).

Based on motion hearing testimony, the circuit court recounted that members of the Brown County Drug Task Force met with a confidential informant and arranged for the informant to make a controlled purchase of heroin from Coben for \$1,200 in prerecorded currency. By means of an audio recording device, a law enforcement officer surveilled the controlled buy and heard the informant speaking with Coben about the price and potency of the drug, with Coben referring to it as “hot,” which, based on the officer’s training and experience, meant that the drug was potent. The officer also heard Coben warn the informant that it was “strong” and to be careful. The officer then observed the informant and Coben exit the residence, allowing the officer to confirm that the voices he heard during the controlled buy inside the residence were consistent with the voices of the individuals he observed outside the residence. The informant then gave law enforcement a clear bag containing a substance that Coben told the informant was heroin. Law enforcement arrested Coben in his vehicle while he was parked in the alley behind the residence where the controlled buy had occurred.

Given the information available to law enforcement at the time of the arrest, a reasonable officer could believe that Coben probably committed the crime of selling a controlled substance. Therefore, the search of Coben’s person following his arrest did not violate his due process rights, as “a warrantless search of a person incident to a lawful arrest does not violate constitutional search and seizure provisions.” *State v. Sykes*, 2005 WI 48, ¶14, 279 Wis. 2d 742, 695 N.W.2d 277.

Turning to the search of Coben’s vehicle, the United States Supreme Court has held that “circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’” *Arizona v. Gant*, 556 U.S. 332, 343 (2009). Here, during the search of Coben’s person, officers

discovered the buy money in Coben's pocket. With Coben's car door open, an officer also observed in plain sight plastic material in the gap between the driver's seat and the car door frame that, based on the officer's training and experience, was similar to the type of material commonly used to package narcotics. Given that observation and the fact that Coben was in possession of the buy money, it was reasonable for law enforcement to believe that evidence relevant to the crime of arrest might be found in the vehicle. We therefore agree with counsel's conclusion that any challenge to the denial of the suppression motions would lack arguable merit.

The no-merit report also addresses whether Coben knowingly, intelligently, and voluntarily entered his no-contest pleas and whether the circuit court properly exercised its sentencing discretion. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that any challenge to Coben's pleas or sentences would lack arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further. With some exceptions not relevant here, Coben's valid no-contest pleas waived all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis.2d 62, 716 N.W.2d 886. Our independent review of the record discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Daniel Goggin II is relieved of his obligation to further represent Jason Coben in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals