STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

Appeal No.: 2015-AP-597

v.

JOHN C. MARTIN,

Circuit Court
Case No.: 2014-CM-1423

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON NOTICE OF APPEAL FROM A DENIAL OF A MOTION TO SUPPRESS EVIDENCE AND A JUDGMENT OF CONVICTION ENTERED IN THE WINNEBAGO COUNTY CIRCUIT COURT, THE HONORABLE BARBARA H. KEY, PRESIDING

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Table of Contents

Statutes & Constitutional Provisions Cited

Cases Cited

I. Statement of Issue Presented for Review

The issue before this court is whether the motion to suppress evidence should be granted. The trial court answered in the negative and denied Mr. Martin's motion to suppress evidence.

II. Statement on Oral Argument and Publication

The State does not request oral arguments or publication as the matter involves only the application of well-settled law to the facts of the case.

III. Statement of the Case

The State believes Mr. Martin's recitation of the facts of the case to be sufficient, and pursuant to Wis. Stat. 809.19(3)(a)(2), omits a repetitive statement of the case.

IV. Argument

The State agrees with Mr. Martin on the standard of review. The appellate court reviews application of constitutional principles to the facts of a given case. This is a question of law which is reviewed de novo. *State v. Rindfleisch*, 2014 WI App 121, ¶ 17, 359 Wis. 2d 147, 161, 857 N.W.2d 456, review denied, (Wis. Mar. 16, 2015). Unless clearly erroneous, any

findings of fact by the trial court should be upheld. *State v. Kennedy*, 2014 WI 132 ¶ 16. 359 Wis. 2d 454, 856 N.W.2d 834.

The Fourth Amendment protects people against unreasonable searches and seizures without probable cause. In *Terry v. Ohio*, the U.S. Supreme Court held that in certain circumstances police officers may conduct investigative stops without having probable cause to make an arrest. *Terry v. Ohio* 392 US 1, 22 (1968). However, an officer must have more than an "inchoate and unparticularized suspicion or 'hunch'" in order to make the stop. *Id.* at 27. An officer making an investigative stop "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the stop. *Id.* at 21. *State v. Post* 2007 WI 60, ¶ 10, 301 Wis. 2d 1, 733 N.W.2d 634.

The test for reasonable suspicion is a test of common sense, "[w]hat would a reasonable police officer reasonably suspect in light of his or her training and experience?" *State v. Anderson*, 155 Wis. 2d 77, 83, 454 N.W.2d 763 (1990). This test is objective. The court need not ask what a particular police officer found reasonable "based on the totality of the facts and circumstances," but what would a reasonable police officer reasonably suspect. *Post* at ¶13. If an officer reasonably suspects that an individual has

committed, was committing, or is about to commit a crime, the officers can perform a stop. *Id*. Further, an officer is "not required to rule out the possibility of innocent behavior before initiating a brief stop." *Anderson* at 84. Finally, officers are also able to "temporarily freeze a situation, particularly where failure to act will result in the disappearance of a potential suspect." *State v. Guzy,* 139 Wis. 2d 663, 676, 407 N.W.2d 548 (1987).

Officer Franklin of the Oshkosh Police Department had reasonable suspicion to question Mr. Martin concerning the odor of marijuana in the restroom. Having reasonable suspicion that a crime had been committed, the stop was lawful, complied with Mr. Martin's Fourth Amendment constitutional protections, and the evidence obtained is therefore not subject to the exclusionary rule.

In this case, Officer Franklin testified that he witnessed Mr. Martin exiting the bathroom shortly after his arrival. *(Record 18: Page 6)* A few minutes later, Officer Franklin entered the bathroom and smelled the distinct odor of marijuana. *Id.* at 9. Two other officers then entered the bathroom and confirmed the smell of marijuana. *Id.* at 10. Officer Franklin also testified that no one else entered or exited the bathroom other than Mr.

Martin. *Id.* at 8. Applying the common sense test for reasonable suspicion, a reasonable officer would 1) recognize that a crime had been committed, 2) recognize that the crime had been committed recently based on the strength of the odor, and 3) recognize that there was only one logical place to begin the investigation, with the single man who had entered or exited the bathroom since the officer's arrival.

Mr. Martin is concerned with the lack of convincing facts to support a *Terry* stop in this instance. Mr. Martin cites three cases to support this idea. *State v. Washington*, 2005 WI App 123, ¶ 19, 284 Wis. 2d 456, 700 N.W.2d 305, *State v. Gordon*, 2014 WI App 44, ¶ 18, 353 Wis. 2d 468, 846 N.W.2d 483, *United States v. Ruffin*, 448 F. Supp. 2d 1015, (E.D. Wis. 2006). The most striking difference between the cases Mr. Martin cites and this case is that here the officers had first-hand knowledge that a crime had been committed, based off of the strong odor of marijuana, while this was not the case in the cases cited by Mr. Martin.

The State, in following the balancing test outlined in *Terry v, Ohio*, contends that the officers involved with the stop of Mr. Martin had reasonable suspicion to believe that Mr. Martin may have had some connection to or information about the strong odor of marijuana coming

from the bathroom, as he was the only one who officers observed enter or leave the bathroom. The government has a vested interest in investigating crimes. With these observations, and the interest in investigating law violations, the officers had enough articulable facts to know that a crime had been committed and to know where best to begin the investigation. This was enough for the officers to "temporarily freeze" the situation in order to begin investigating the case by stopping Mr. Martin. *State v. Guzy*, 139 Wis. 2d 663, 676, 407 N.W.2d 548 (1987).

The Circuit Court did not err in denying Mr. Martin's motion to suppress.

Conclusion

For the reasons set forth above, Officer Franklin's stop was lawful, and the evidence gathered subsequent to the stop is not subject to the exclusionary rule.

Dated at Oshkosh, Wisconsin in this __ day of June, 2015.

By:_____
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Attorney for the Respondent

CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 967 words.

I further certify pursuant to Wis. Stat. § 809.19(b)(12)(f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

I further certify that on the date of signature I routed the enclosed briefs to our office station for first class US Mail Postage to be affixed and mailed to:

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