

## ISSUES

(1) Did a sheriff's deputy have grounds to stop a car to investigate suspected drug dealing? (2) Did deputies have grounds to pat search the occupants of the car and, if so, was their search reasonable in scope?

## FACTS

In West St. Paul, Minnesota, a sheriff's deputy in an unmarked car was parked in a lot outside Awada's Lounge, a location known as "a hotbed for drugs." His assignment was to watch for a fugitive who was believed to be headed there.

Shortly after 5 P.M., he saw a car occupied by two men pull into the lot and park. The driver walked over to the side of Awada's where he spoke with a man, later identified as Thelen. The man then handed Thelen some money, and Thelen handed the man a plastic baggie. Although the deputy could not see what was inside the baggie, he was "certain" it was drugs. Thelen then walked back into Awada's; the men drove off. The deputy took no action because the search for the fugitive had priority.

A few minutes later, the deputy was told to terminate the surveillance because the fugitive was not coming to Awada's after all. Just then he happened to notice three men in a Chevy Lumina drive into the parking lot and stop. When the men remained inside the car, he became curious and decided to watch for a while. The men soon had company—none other than Thelen. As the deputy watched, he saw Thelen walk over to the Lumina and get inside. He could not see what Thelen and the men were doing but he was pretty sure it was another drug deal. He called for backup.

A few minutes later, Thelen stepped out and the men drove off. Deputies stopped the Lumina and pat searched the occupants. While patting down one of them, a deputy felt currency, a lot of it. He removed the money from the man's pockets, counting \$6,000 in one pocket and \$4,000 in the other. All three were arrested; the court did not specify the charge.

While searching one of the men incident to the arrest, a deputy found a motel key. When the man consented to a search of the motel room, deputies went there and found 12 pounds of methamphetamine and "large amounts" of cash.

The men were convicted of, among other things, conspiracy to distribute methamphetamine.

## DISCUSSION

The defendants contended the money and methamphetamine should have been suppressed because the car stop, the pat search, and the search of the motel room were unlawful.

GROUND FOR THE CAR STOP: The main issue on appeal was whether the deputy's observations of the activities outside Awada's gave him reasonable suspicion to believe the occupants of the Lumina were selling or buying drugs. The defendants pointed out that the deputy did not see them engage in any activity that, in the abstract, would have justified the stop. After all, they parked in a public parking lot early in the evening, a man got into their car, a few minutes later he stepped out, they drove off.

The only thing that made this suspicious was Thelen's hand-to-hand exchange with the unidentified man that occurred a few minutes earlier. And even then, the deputy did not see anyone in possession of drugs or even an unknown substance.

The court responded by noting two things. First, even though no drugs were seen, it was "probable" that the money-for-baggie exchange was a drug transaction. It was also

reasonable for the deputy to conclude that Thelen's base of operations was Awada's, and that he was transacting his business in Awada's parking lot. In the words of the court, "[A] reasonable officer witnessing the first scene would have had a reasonable suspicion Mr. Thelen dealt drugs from Awada's and sold drugs to the occupants of the first vehicle."

Second, the court pointed out that the circumstances surrounding the apparent sale of drugs to the unidentified man and the circumstances surrounding the meeting with the defendants were strikingly similar—virtually “parallel events.” “Within a matter of minutes,” said the court, Thelen apparently sold drugs to the unidentified man, then met with the defendants inside the Lumina. Although the deputy could not see what they were doing, his conclusion that it was a drug deal was not unreasonable, especially considering the area was a “hotbed” of drug activity. The court also noted that it was apparent the unidentified man and the defendants came to Awada's “without satisfying any purpose” other than to meet with Thelen. “Put simply,” said the court, “an experienced narcotics officer reasonably would have believed the second car, like the first, was likely on the scene to buy drugs.” The car stop was lawful.

**GROUND TO PAT SEARCH:** The defendants contended that, even if there were grounds to stop their car, the evidence should have been suppressed because the deputies did not have grounds to pat search them. It is basic police procedure that officers may pat search a detainee if they reasonably believe he was armed or dangerous.<sup>1</sup> This does not mean, however, that pat searches are permitted *only* if officers see a weapon or suspicious object, or observe some threatening conduct. On the contrary, grounds to conduct a pat search may be based solely on circumstantial evidence.

One circumstance that will justify a pat search is that the suspect was lawfully detained for a crime in which weapons are commonly used. And drug dealing certainly falls into this category.<sup>2</sup> Consequently, the court ruled the pat search was justified, noting, “Because weapons and violence are frequently associated with drug transactions, it is reasonable for an officer to believe a person may be armed and dangerous when the person is suspected of being involved in a drug transaction.”

**SEIZURE OF THE MONEY:** Officers who are conducting a lawful pat search may, of course, remove any weapons they detect under the suspect's clothing. The defendants interpreted this rule to mean that officers cannot remove anything other than a weapon. This interpretation was wrong, said the court, because it is settled that officers who are conducting a pat search may seize anything under the suspect's clothing if, based on how the object felt and the surrounding circumstance, they had probable cause to believe it was contraband or other evidence of a crime.<sup>3</sup> And it was apparent that probable cause did, in fact, exist because, (1) the deputy knew that the object he felt was currency; and (2) while currency it not always evidence of a crime, there is a fair probability that it is

---

<sup>1</sup> See *Terry v. Ohio* (1968) 392 U.S. 1, 27-8; *Ybarra v. Illinois* (1979) 444 U.S. 85, 93-4; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240; *People v. Dickey* (1994) 21 Cal.App.4th 952, 956.

<sup>2</sup> See *People v. Lee* (1987) 194 Cal.App.3d 975, 9893 [“persons engaged in selling narcotics frequently carry firearms to protect themselves and would-be robbers.”]; *People v. Thurman* (1989) 209 Cal.App.3d 817, 822; *People v. Simpson* (1998) 65 Cal.App.4th 854, 862 [“Illegal drugs and guns are a lot like sharks and remoras. And just as a diver who spots a remora is well-advised to be on the lookout for sharks, an officer investigating cocaine and marijuana sales would be foolish not to worry about weapons.”]; *U.S. v. Brown* (7th Cir. 1999) 188 F.3d 860, 865 [“Drug dealing is a crime infused with violence.”].

<sup>3</sup> See *Minnesota v. Dickerson* (1993) 508 U.S. 366; *People v. Dibb* (1995) 37 Cal.App.4th 832, 836-7 [“The critical question is not whether [the officer] could identify the object as contraband based on only the ‘plain feel’ of the object, but whether the totality of circumstances made it immediately apparent to [the officer] when he first felt the lump that the object was contraband.”].

incriminating evidence when it is possessed by someone who has just left “the scene of a suspected drug buy in an area known for drug traffic.” Consequently, the court ruled the deputy “had probable cause to believe the wad of papers he came across with his hand was indeed cash, and was likely evidence of the drug trade.”

PROBABLE CAUSE TO ARREST: Finally, the defendants argued that their arrests—and thus the subsequent searches—were unlawful because the discovery of the money in their possession did not constitute probable cause. On the contrary, said the court, when a suspect is carrying \$10,000 in cash in his pockets after leaving the scene of a suspected drug deal—that’s probable cause.<sup>4</sup>

The defendants’ conviction was affirmed.

---

<sup>4</sup> See *Maryland v. Pringle* (2003) 540 U.S. 366, \_\_\_, fn.2 [“The Court of Appeals of Maryland dismissed the \$763 seized from the glove compartment as a factor in the probable-cause determination, stating that ‘[m]oney, without more, is innocuous.’ The court’s consideration of the money in isolation, rather than as a factor in the totality of the circumstances, is mistaken in light of our precedents.”].