COURT OF APPEALS
DECISION
DATED AND RELEASED

September 17, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1446-CR

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

State of Wisconsin,

Plaintiff-Respondent,

v.

Artie L. Terrell,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS R. COOPER, Judge. *Affirmed*.

WEDEMEYER, P.J.[1] Artie L. Terrell appeals from a judgment entered after he pled no contest to possession of a controlled substance (cocaine base), contrary to §§ 161.14(7)(a) and 161.41(3m), STATS. He claims the trial court erred in denying his motion to suppress because the search conducted by the police was violative of his Fourth Amendment right. Because the police officers' conduct passes constitutional muster, this court affirms.

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

I. BACKGROUND

During their shift on July 27, 1993, police officers Steven Rineberg and his partner drove past an apartment building located on North 29th Street in Milwaukee. They observed a number of people standing in front of the building. The building had a posted sign on it that prohibited loitering. The police officers drove by this building four separate times and observed a group of people in front of the building. Officer Rineberg knew that there had been prior complaints about drug dealing at this location and had personally made dozens of arrests for drug offenses in this area.

At 2:30 a.m., while making their fourth pass by the building, the officers stopped and decided to conduct pat-down searches to check the individuals for weapons. Terrell was the only individual seated and when he was asked to stand, the officers observed two small cartridges, one containing an illegal substance. As a result, Terrell was immediately arrested and searched. The officers discovered a baggie with a white powdery substance in Terrell's pants' pocket. This substance, which turned out to be cocaine, was the basis for Terrell's conviction.

Terrell moved to suppress the evidence. The trial court denied the motion. Terrell entered a no contest plea. He now appeals.

II. DISCUSSION

Terrell claims the initial search (i.e., the intended pat-down, which actually only resulted in Terrell standing up) was unconstitutional because the officers did not have reasonable grounds for suspicion to conduct a pat-down search. As a result, he argues the resulting arrest and subsequent search, leading to the discovery of the cocaine were poisonous fruits. The trial court disagreed, ruling:

> Number one, there is community complaints about the location, the officer's direct knowledge that he's made over a hundred drug arrests at that same location, and the

> apartment building is posted as a no loitering area. That gave him three reasons to stop and do a community caretaker function.
>
> And part of that community caretaker function, the officer tells us his intent is to search for their own protection, but it never even gets that far. I mean, quite frankly, even if he adopts the defendant's statement, I think it's a valid search because ... we adopt the defendant's statement they took him out and patted him down for his own protection or their own protection, that's probably a good search, but that is not what the officer's testimony is. He saw the drugs and did a custodial search.
>
> So based upon either scenario and the fact it's not a mere hunch, there's very strong indicia and responsibility and reasons for this officer to stop, I'm satisfied it's a reasonable stop, it's a reasonable search, and your motion to suppress is denied.

This court agrees with the trial court's conclusion.

A motion to suppress evidence raises a constitutional question, which presents a mixed question of fact and law. To the extent the trial court's decision involves findings of evidentiary or historical facts, those findings will not be overturned unless they are clearly erroneous. ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The application of constitutional and statutory principles to the facts found by the trial court, however, presents a matter for independent appellate review. ***Id.***

The search in question here is the initial intended pat-down, which falls under the category of a ***Terry*** stop. Under ***Terry v. Ohio***, 392 U.S. 1 (1968) a police officer may detain a person for an investigation as long as the officer has a reasonable suspicion of some past, present or future wrongdoing. Moreover, an officer may conduct a pat-down frisk if he believes the individual may be armed or dangerous. After reviewing the record in the instant case, this court concludes that the initial intended pat-down passes constitutional muster.

There is sufficient evidence in the record to show that the ***Terry*** standard was satisfied. That is, the evidence demonstrates that the officer in the instant case had a reasonable suspicion that the crowd outside the apartment building may be engaging in some sort of illegal activity. ***State v. Richardson***, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990). The focus of an investigatory stop is on reasonableness, and the determination of reasonableness depends on the totality of the circumstances. ***Id.*** Contrary to Terrell's assertion, the fact that this area was a known high-crime area was not the sole factor upon which the officer relied. This factor, together with the time of day that this activity was occurring (2:30 a.m.), the fact that the individuals were present over a period of time, and the fact that there were numerous complaints about drug activity in that area—when viewed in their totality—leads this court to conclude that the initial ***Terry*** pat-down was not unconstitutional. Accordingly, the trial court did not error in denying Terrell's motion to suppress.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.