

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 25, 1997

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(1), 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. 96-1875-CR & 96-2373-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JERALD R. ALLEN,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Eau Claire County: GREGORY A. PETERSON, Judge. *Affirmed.*

Before LaRocque, Myse and Mangerson, JJ.

PER CURIAM. Jerald Allen appeals judgments of conviction for two counts of burglary entered upon his guilty pleas. Allen argues that because he was subjected to an unlawful stop, the evidence seized must be suppressed. We reject his argument and affirm the judgments.

Sergeant Edward Asselin testified that on September 27, 1995, at 9:07 p.m., while on routine patrol in a rural area that had a number of daytime burglaries in the past few weeks, he observed two males walking down the

road. They drew his attention because one of them wore a hooded sweatshirt with the hood pulled up and drawstring pulled tightly so that it obscured his face. Only the individual's eyes, nose and mouth were showing from the six-inch diameter circular opening. Asselin thought this was unusual because it was neither freezing nor cold out. The officer estimated the temperature as ranging from the mid to upper forties to the fifties. The officer stopped them and asked them their names. One of the individuals identified himself as Ben Baker and the other identified himself as Jerald Allen.

The officer had been told by one of the deputies that a burglary had taken place that afternoon and that Baker had been seen in the area and was a possible suspect. Baker lived in the area. The officer was not, however, acquainted with Baker. When asked if they had any weapons, Allen responded that he had a pocketknife. They gave the officer permission to pat them down. Allen had a screwdriver and an "Uncle Henry" knife in his possession. The officer believed the knife had been stolen based on a description of property stolen in a burglary earlier that day.

Allen argues that his constitutional rights were violated by an unlawful stop. We disagree. A trial court's findings of fact are upheld unless they are clearly erroneous, but whether those facts satisfy the constitutional requirement of reasonableness presents a question of law we review de novo. *State v. Jackson*, 147 Wis.2d 824, 829, 434 N.W.2d 386, 388 (1989). A police officer may, in an appropriate circumstance and in an appropriate manner approach a person for the purpose of investigating possibly criminal behavior even though there is not probable cause to make an arrest. *Terry v. Ohio*, 392 U.S. 1, 22 (1968). "[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Id.* at 27.

"The essential question is whether the action of the law enforcement officer was reasonable under the facts and circumstances present." *State v. Richardson*, 156 Wis.2d 128, 139-40, 456 N.W.2d 830, 834 (1990) (citation omitted). The Fourth Amendment does not require a police officer "who lacks the precise level of information necessary for probable cause to simply shrug his shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 497 U.S. 143, 145-46 (1972). "To the contrary, *Terry*

recognizes that it may be the essence of good police work to adopt an intermediate response." *Id.* A brief stop of a suspicious individual in order to determine his identity may be the most reasonable in light of the facts known by the officer at the time. *Id.*

Here, the officer had been informed that numerous burglaries had occurred in the area, the latest one that very afternoon. He was also informed that a possible suspect was Baker, who lived in the area. The officer observed two males walking down the road in the rural area, one with a hooded sweatshirt tightly tied in such a way around his face as to obscure his identity. The officer felt that the mid-forty to fifty degree weather was not cold enough to warrant that manner of dress and surmised that the hood was being used as a disguise. It was reasonable under these circumstances for the officer to stop the individuals and question their identities.

Allen contends that it is not reasonable to conclude that the sweatshirt hood was worn as a disguise: "A person who wishes to avoid detection would alter his appearance with a wig or eyeglasses." We disagree. The trial court found that "at least one potential explanation of that behavior might be that the person is attempting to conceal his identity." Although there might be other inferences to be drawn from the manner of dress, the one drawn by the court is reasonable. We conclude the officer possessed sufficient and articulable facts to justify the brief stop and questioning. Because we conclude the stop was lawful, we need not address the State's alternative arguments to support the trial court's decision. Also, Allen does not contend that after the officer made the stop, questioned the individuals and discovered the knife, that the subsequent arrest was without probable cause.

By the Court. – Judgments affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.