

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

April 1, 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, STATS.

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

No. 96-3347-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WYLIE McDONALD, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed.*

SCHUDSON, J.¹ Wylie McDonald, Jr. appeals from the judgment of conviction, following his guilty plea, for carrying a concealed weapon. He argues that police stopped and frisked him illegally and, therefore, that the trial court erred in denying his motion to suppress evidence. This court affirms.

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

Most of the facts are undisputed. At the trial court hearing on McDonald's motion to suppress, City of Milwaukee Police Officer Brian Ketterhagen testified that on April 22, 1995, he and his partner were patrolling in a squad car at about 6:30 PM when they were dispatched to the report of a shooting at 3915 N. 19th Place in Milwaukee. Upon their arrival they found the victim who had been shot. Ketterhagen spoke to the victim briefly before he was taken away in an ambulance.

Ketterhagen and other police then spoke with witnesses. From either a witness or another officer or detective, Ketterhagen learned that "Stoney" may have been involved. Ketterhagen also "received information that the subject, who had shot the victim,... may be at 3929 North 19th Place, which would be one block to the east."

Ketterhagen, along with detectives and other officers, then went to the house at 3929 N. 19th Place. He testified, "[T]he detectives walked up to the door and knocked on the door and asked if they could come in and search the house because we had information which led us to believe that the shooter may be inside the house." They were not given permission to enter so, as a result, "the house was contained." Ketterhagen explained:

I responded to the house. The detectives were there. Officers were informed to secure the perimeter because there may be a shooting suspect inside the house. Detectives approached the house, talked to the mother, asked permission, explained to her what was going on, asked permission to enter the home. She declined. We were outside the house waiting for further instructions from the Detective Bureau when Mr. McDonald exited the house.

Ketterhagen testified that McDonald walked out of the house shortly before 9:10 PM. He said that McDonald was cooperative, and further described

their encounter: "I asked Mr. McDonald his name, which he gave me, and he gave me all the information. And for officers' safety reasons and for safety of all people standing around an area, I patted Mr. McDonald down." Ketterhagen recovered a .380 semi-automatic pistol concealed inside the front of McDonald's pants, and a magazine for the pistol from McDonald's coat pocket.

McDonald's mother, Bessie Mallet, also testified. She said the shooting took place "outside on the sidewalk in front of [her] house at about 4:30 PM. She said she saw three males involved in the shooting, none of whom was her son, but one of whom was "Stoney," a friend of her daughter. She said she gave police a description of "Stoney" and the other two males. She confirmed that she had denied police permission to search her house for the shooting suspect. She testified that McDonald was not at her house at the time of the shooting, but arrived about a half-hour later, after the police had come to the house.

In rebuttal testimony, Ketterhagen stated that "[w]hen we have a house where a shooting suspect may be in, nobody is allowed into the house and nobody is allowed out of the house ... [u]nless ... we let them out and at which time we talk to them, identify them." He said that he never saw McDonald enter or exit the house until he came out and was stopped, and that "Mr. McDonald would not have been allowed in the house" by other officers.

Denying McDonald's motion, the trial court concluded that even accepting Mallet's testimony, Ketterhagen's conduct was lawful. The trial court explained:

I can't imagine ... that you [defense counsel] really expect police, when they're investigating a shooting, to not ask questions of people on the scene where the witnesses report the shooter went.

You do concede in your argument they probably did have a right to ask Mr. McDonald questions. Clearly, they did. And if they do have the right to ask him questions, the *Terry* law states that they have a right to frisk him for their protection and the protection of the people standing around there.

....

It's absolutely unreasonable to expect the police to not take precaution for their own safety and for the safety of people standing around.

McDonald now argues that when Ketterhagen stopped McDonald, he did not have reasonable suspicion to justify the stop and frisk. Although his contentions swirl in somewhat less-than-exact form, they essentially seem to be that: (1) the source of Ketterhagen's information was an unidentified and uncorroborated informant and, therefore, the information was insufficient to form the basis for reasonable suspicion; (2) Ketterhagen had no physical description of "Stoney" at the time of the stop; (3) the subsequently-obtained description of "Stoney" did not fit him (McDonald); (4) the passage of several hours between the shooting and the stop removed what otherwise might have been the reasonableness of any suspicion of any occupant of the house; and (5) his cooperation and truthful answers to Ketterhagen eliminated any remaining, conceivable basis for the frisk. McDonald is incorrect.

Whether a stop and frisk are constitutional presents issues subject to *de novo* review. *State v. Richardson*, 156 Wis.2d 128, 137-38, 456 N.W.2d 830, 833 (1990). To be constitutional, the police conduct must be reasonable under the totality of the circumstances. *Id.* at 139, 456 N.W.2d at 834. This court concludes that Ketterhagen's conduct was reasonable. Indeed, as the State argues, "it would have been imprudent and careless for the officer to have acted in any other manner."

McDonald argues that *Richardson* requires that an anonymous informant's tip be corroborated to justify a stop and that "there was no corroboration of the tip" in this case. He is wrong. This tip was not an isolated allegation from an anonymous informant, disclosed for no apparent reason and with no apparent connection to any verifiable information. Rather, this tip had come from a citizen at a crime scene and had ample corroboration--most obviously, the fact that a man had been shot.

Thus, when he stopped McDonald, Ketterhagen had seen that a man had been shot; had been informed by a citizen at the scene that a suspect had entered the house from which McDonald later exited; and had come to understand that police had secured the perimeter of the house. At that point, it would have been preposterous for Ketterhagen not to have stopped, questioned, and frisked any person exiting the house. The fact that the stop occurred several hours after the shooting is immaterial; as long as police had the house secured, Ketterhagen reasonably suspected the shooting suspect was inside. Thus, regardless of the time span, and regardless of McDonald's cooperation, the stop and frisk were constitutional.²

² This court notes, however, that the trial court incorrectly commented that "if [police] do have the right to ask him questions, the *Terry* law states that they have a right to frisk him for their protection and the protection of the people standing around there." Although this court agrees with the trial court that both the stop and frisk were lawful, this court also calls the trial court's attention to the distinct standards of §§ 968.24 & 968.25, STATS.

By the Court.—Judgment affirmed.

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

