

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 97-1546-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID LEE GREENWOOD,

DEFENDANT-APPELLANT,

JASON B. JONES,

DEFENDANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RUSSELL W. STAMPER, Judge. *Affirmed.*

SCHUDSON, J.¹ David Lee Greenwood appeals from a judgment of conviction, following a jury trial, for possession of a controlled substance—

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

cocaine, contrary to §§ 961.16(2)(b)(1) and 961.41(3g)c, STATS. Greenwood claims that the trial court erred in denying his motion to suppress. He argues that the pat-down search conducted by Officer Holley was not supported by articulable facts giving rise to a reasonable suspicion that he was armed. This court rejects his arguments and affirms.

On August 28, 1997, City of Milwaukee Police Officers Marion Holley and Byron Page were patrolling the neighborhoods located between Center and Burleigh Streets and North 16th and North 22nd Streets on the near-northside of Milwaukee. Due to numerous aldermanic complaints, Officers Holley and Page were assigned to "saturation patrol" to crack down on loitering and drug trafficking in these neighborhoods.

While patrolling an alley behind the 2700 block of North 16th Street, the officers observed two males sitting in a vehicle parked at the side of the alley. As they drove past the vehicle, the officers detected a strong odor of marijuana emanating from the parked car. Officer Page testified that he saw what appeared to be a "blunt," i.e., a marijuana cigarette in the passenger's mouth. Officer Page testified that Officer Holley then backed up the squad car and parked it behind the vehicle. The officers then exited the squad to conduct a field interview.

Officer Holley testified that as he approached the vehicle, he could see the driver moving around and the passenger completely bent over in his seat. He testified that when he asked Greenwood, the driver, for his license, Greenwood told him that he did not have one. When Officer Holley asked him if he had any other type of identification, Greenwood again told him that he did not have any. At that point, Officer Holley asked Greenwood to step out of the car and conducted a pat-down of his person. Officer Holley testified that he conducted a

pat-down search for his own safety because of the smell of marijuana smoke, Greenwood's lack of identification, and the presence of debris in the vehicle Greenwood had just exited. During the pat-down, Officer Holley felt a crack pipe in "plain feel." Greenwood was then arrested for possession of drug paraphernalia.²

In reviewing the denial of a defendant's motion to suppress evidence, this court will uphold the trial court's findings of fact unless they are clearly erroneous. *See State v. Morgan*, 197 Wis.2d 200, 208, 539 N.W.2d 887, 891 (1995). The issues of "whether a ... search has occurred, and, if so, whether it passes statutory and constitutional muster are questions of law subject to *de novo* review." *State v. Richardson*, 156 Wis.2d 128, 137-38, 456 N.W.2d 830, 833 (1990).

As the supreme court reiterated:

A pat down, or "frisk," is a search. The Fourth Amendment prohibits only unreasonable searches; in determining whether a search is reasonable, this court balances the need for the search against the invasion of the suspect's privacy entailed in the search. Pat-down searches are justified when an officer has a reasonable suspicion that a suspect may be armed. The officer's reasonable suspicion must be based on "specific and articulable fact, which, taken together with rational inferences from those facts, reasonably warrant that intrusion." The test is objective:

[T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.... And in determining whether the officers acted reasonably in such circumstances, due weight must be given ... to the specific

² The cocaine, the subject of the offense with which Greenwood was charged, was discovered after Greenwood's arrest, as he was being escorted to the police conveyance vehicle.

reasonable inferences which he is entitled to draw from his experience.

Finally, the determination of reasonableness is made in light of the totality of the circumstance known to the searching officer.

Morgan, 197 Wis.2d at 208-209, 539 N.W.2d at 891 (citations omitted).

The totality of the circumstance known to Officer Holley at the time he encountered Greenwood justified his pat-down search for weapons. Officer Holley, a three and one-half year police veteran, testified that the alley in which Greenwood was parked was located in a high-crime area, one which had been the subject of numerous aldermanic complaints. He also testified that he had detected an odor of marijuana coming from Greenwood's vehicle. After he and Officer Page exited the squad, they observed Greenwood moving around and his passenger completely bent over in his seat, activity which could be indicative of the occupants retrieving a weapon from under the seat. Consequently, this court concludes that these facts, taken in combination, were sufficient to cause a reasonable officer in the position of Officer Holley to have a reasonable suspicion that Greenwood might be armed, and thus justified the limited pat-down search for weapons.

By the Court.—Judgment affirmed.

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

