

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 29, 2019

Sheila T. Reiff
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2018AP1193-CR

Cir. Ct. No. 2015CF3171

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JARVIS JERMANE BESTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: CAROLINA STARK and FREDERICK C. ROSA, Judges.
Affirmed.

Before Kessler, P.J., Kloppenburg and Dugan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Jarvis Bester appeals the circuit court’s judgment convicting him of felon in possession of a firearm and possession of THC. Bester also appeals the court’s order denying his motion for postconviction relief.¹ Bester argues that the police unlawfully conducted an investigative stop without reasonable suspicion. We disagree and conclude that the police reasonably suspected Bester of unlawfully carrying a concealed weapon. Accordingly, we affirm.

Background

¶2 The facts are not in dispute. Around 10:30 p.m. on July 11, 2015, a group of Milwaukee police officers were on bicycle patrol in Milwaukee near a gas station. The officers were in full police uniform. One of the officers, Daniel Drewek, was on the opposite side of the street from other officers when his attention was drawn to a male subject at the gas station later identified as Bester.

¶3 As other officers entered the gas station store, Officer Drewek observed Bester exit the driver’s side of a vehicle parked at a gas pump, take three steps toward the store, then immediately turn around and head back toward the vehicle. Drewek further observed that, when Bester returned to the vehicle, he got back into the vehicle and remained there for a couple of seconds. Finally, Drewek observed Bester get out of the vehicle and again walk toward the gas station store. Drewek could not see what Bester had been doing inside the vehicle.

¹ The Honorable Carolina Stark presided over trial and entered the judgment of conviction. The Honorable Frederick C. Rosa entered the order denying Bester’s postconviction motion.

¶4 His suspicions aroused, Officer Drewek approached the vehicle and, with the aid of a flashlight, looked inside through the windshield.² Drewek saw an object protruding from under the driver’s seat that he recognized as a firearm. More specifically, Drewek could see the bottom of the magazine and a lower corner portion of the firearm.

¶5 Officer Drewek initiated an investigative stop of Bester. The stop led to the discovery that Bester was a convicted felon, and to the recovery of the firearm in the vehicle along with other evidence.

¶6 Bester moved to suppress. The circuit court denied the motion. The court concluded that the police reasonably suspected Bester of unlawfully carrying a concealed weapon. In his postconviction motion, Bester challenged that conclusion, arguing that the circuit court should have granted his suppression motion. The circuit court disagreed, and Bester now appeals.

Discussion

¶7 Bester argues that the police lacked reasonable suspicion for the investigative stop. We disagree and conclude that the police reasonably suspected Bester of unlawfully carrying a concealed weapon.

¶8 “When determining if the standard of reasonable suspicion was met, those facts known to the officer at the time of the stop must be taken together with any rational inferences, and considered under the totality of the circumstances.” *State v. Washington*, 2005 WI App 123, ¶16, 284 Wis. 2d 456, 700 N.W.2d 305.

² Bester does not challenge Officer Drewek’s use of the flashlight as requiring any constitutional justification.

Police must have a particularized and objective basis for suspecting illegal activity. *Id.* Reasonable suspicion cannot be based on an “inchoate and unparticularized suspicion or hunch.” *Id.* (citation and quotation marks omitted). We review *de novo* whether a particular seizure meets these constitutional standards. *See id.*, ¶11.

¶9 Under WIS. STAT. § 941.23(2), carrying a concealed weapon is generally prohibited in Wisconsin. *See State v. Grandberry*, 2018 WI 29, ¶¶15, 17, 380 Wis. 2d 541, 910 N.W.2d 214. However, the general prohibition is subject to exceptions, including an exception for individuals with a license to carry a concealed weapon. *See* § 941.23(2); *Grandberry*, 380 Wis. 2d 541, ¶17.

¶10 Based on this statutory scheme, Bester argues that the mere observation of a partially concealed firearm in his vehicle, without more, was insufficient to permit a reasonable belief that he was engaged in a crime. Bester also argues that his actions in walking away from and returning to his vehicle were too innocuous to suggest that he was engaged in any criminal activity.

¶11 Bester’s arguments are not persuasive because Bester analyzes the potentially suspicious circumstances in isolation rather than in their totality. It is the combination of those circumstances that we conclude supply reasonable suspicion in this case. In particular, it is the combination of the seemingly hidden firearm that Officer Drewek observed in Bester’s vehicle and Bester’s preceding actions that Drewek also observed. As noted, while uniformed officers were entering the gas station store, Drewek observed Bester engage in the following sequence of behaviors: Bester exited the driver’s side of a vehicle parked at a gas pump, took three steps toward the store, then immediately turned around and headed back toward the vehicle; Bester then got back into the vehicle and

remained there for a couple of seconds; and finally, Bester again exited the vehicle and walked back toward the gas station store.

¶12 In its brief, the State aptly summarizes the reasonable, incriminating inferences that can be drawn from these circumstances. We agree with that summary and thus, quote it here:

[W]hen Bester first exited his car, he stopped walking to the store when he saw the police officers at the door. He did that because he had something illegal that he did not want the officers to see. Accordingly, Bester returned to his car to conceal the item before going to the store. Seconds later, Drewek observed a gun, partially hidden under the driver's seat where Bester had been sitting. Given all of that, Drewek reasonably inferred that the gun was the object Bester returned to his car to hide, and for good reason: carrying a concealed gun is illegal, with limited exceptions. Moreover, guns are bulky objects, they can be difficult to conceal on a person—especially when that person is in close proximity to police officers trained to look for the presence of guns. Accordingly, Drewek reasonably inferred that Bester sought to avoid arrest or detection by police by stowing his illegal gun in his car.

In short, Bester's apparent effort to prevent police from detecting the firearm supplied a reasonable basis to suspect that Bester was not authorized to carry it.

¶13 In sum, when we consider all of the circumstances and the reasonable inferences therefrom, we are satisfied that the police possessed a particularized, objective basis to suspect that Bester was unlawfully carrying a concealed weapon.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

