

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1282-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PATRICK D. DAWSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Racine County: DENNIS J. FLYNN, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Patrick D. Dawson appeals from a judgment of conviction of possession of cocaine with intent to deliver and from an order denying his postconviction motion. He argues that he was seized without reasonable suspicion that he was engaging in unlawful activity and that evidence

obtained during the unlawful seizure should have been suppressed. We conclude that the stop was proper and affirm the judgment and order.

¶2 RACINE CITY ORDINANCE § 66-107 prohibits loitering and prowling.¹ Racine police officer Joe Stevens observed Dawson standing in front of the LaTapatia, a popular restaurant and convenience store in Racine. LaTapatia is located in a high crime area of the city, and the Racine police department had received numerous complaints of loitering and drug sales in front of LaTapatia. When Stevens first observed Dawson it was approximately 3:25 p.m., after the end of the day at the nearby school where Dawson was a student. Stevens observed Dawson walking back and forth between the entrance to LaTapatia and the stop sign on the corner. Dawson was “impeding the progress of people in and out of

¹ The ordinance provides in pertinent part:

Racine City Ordinance § 66-107. Loitering and prowling.

- (a) No person shall loiter or prowl in a place, at a time, or in a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of persons or property in the vicinity Unless flight by the actor or other circumstances makes it impracticable, a peace officer shall, prior to any arrest for an offense under this subsection, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this subsection if the peace officer did not comply with the preceding sentence....
- (b) No person shall loiter, loaf, wander, stand or remain idle either alone or in consort with others in a public place so as to obstruct any public street, highway, sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles or pedestrians in such a manner that it is reasonable to believe will cause a threat to public safety or a breach of the peace.

[the] restaurant.” When Dawson spied the squad car, he began to walk away from the corner, in the direction the squad car was coming from. When Stevens went by LaTapatia about fifteen minutes later, Dawson was there along with three other men. The men were situated such that eight to twelve pedestrians had to walk around the group of men to get in and out of the store. At that point, Stevens intended to conduct a stop and question the group. He called for back-up from another officer but stopped the group before back-up arrived because the men started to walk away from the area.

¶3 After arriving on the scene, Officer Christopher Dupuis took identifying information from Dawson. He asked Dawson if he could go inside his pockets and Dawson gave his consent. Officer Dupuis found a baggie containing fifteen smaller baggies of crack cocaine in Dawson’s inside coat pocket. Dawson’s motion to suppress this evidence was denied. Dawson entered a guilty plea to possession of cocaine with intent to deliver.

¶4 In *Terry v. Ohio*, 392 U.S. 1, 22 (1968), the Supreme Court held that “a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.” The issue is reasonableness. The essential question which must be addressed by the reviewing court is “whether the action of the law enforcement officer was reasonable under all the facts and circumstances present.” *State v. Jackson*, 147 Wis. 2d 824, 831, 434 N.W.2d 386 (1989). Whether an investigative stop meets the constitutional standard of reasonableness is a question of law subject to de novo review by this court. *State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). A police officer may only stop an individual if he or she possesses a suspicion grounded in specific, articulable facts and reasonable inferences from those facts that the

individual has committed, was committing, or is about to commit a crime; a “hunch” will not suffice. *See id.* at 56.

¶5 Dawson argues that there was no objectively reasonable basis for stopping him because the brief observations of his presence did not give rise to objective facts justifying a suspicion of unlawful conduct.² Specifically, Dawson contends that merely standing in front of the store or walking about on the public sidewalk is not conduct that either “warrant[s] alarm for the safety of persons or property in the vicinity” or “cause[s] a threat to public safety or a breach of the peace.” RACINE CITY ORDINANCE § 66-107(a), (b).

¶6 The apparent innocent nature of Dawson’s conduct is not a protective veil. “The law allows a police officer to make an investigatory stop based on observations of lawful conduct so long as the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot.” *Waldner*, 206 Wis. 2d at 57. We look at the totality of the facts and the reasonable inferences that can be drawn about the cumulative effect of the accumulated “building blocks of fact.” *Id.* at 58. Here, Dawson was observed not once, but twice, in the same location. While it may not have been suspicious for Dawson to have left the area when he spotted the squad car, his reappearance at the same location just fifteen minutes later was suspicious. Numerous complaints had been received about loitering and drug sales at that location. Additionally, Dawson himself, and later with his companions, was situated so as to impede pedestrians entering or leaving LaTapatia. It is a reasonable inference that the impeding of pedestrian traffic in

² In his appellant’s brief Dawson argued that Officer Stevens’s misunderstanding of the elements and requirements of the Racine loitering ordinance made it impossible for Stevens to form a reasonable suspicion that a violation occurred. Dawson withdrew this argument in his reply brief, conceding that it was legally incorrect.

front of a popular store and restaurant threatens public safety or a breach of the peace.

¶7 We conclude that the *Terry* stop was reasonable.³ Having concluded that the stop was lawful, we need not address Dawson's contentions that the subsequent search and statement were fruits of the unlawful stop.

By the Court.—Judgment and order affirmed.

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

³ We acknowledge that the Racine loitering ordinance obligates the police officer to request the suspect to move on or disperse and that a person who fails to comply with such an order is subject to arrest. See RACINE CITY ORDINANCE § 66-111. Although Dawson points out this requirement and that there was no evidence that the officer ordered Dawson and his companions to move on or disperse, he does not develop any argument based on this reading of the ordinance. We need not consider arguments not developed. See *Estrada v. State*, 228 Wis. 2d 459, 465 n.2, 596 N.W.2d 496 (Ct. App. 1999). Moreover, as the trial court noted, there was no opportunity for the officer to give an order to move on or disperse since Dawson was leaving the area when the stop was made. That there was no refusal to move on does not negate the behavior that gave rise to the possible violation of the ordinance.

