COURT OF APPEALS
DECISION
DATED AND FILED

August 19, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP832-CR **Cir. Ct. No. 2007CM001455**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

O.C. TRIGGS,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed.*

¶1 KESSLER, J.[1] This is an appeal of a conviction for possession of a controlled substance contrary to WIS. STAT. § 961.41(3g)(c) (2005-06)[2] based on a guilty plea entered after denial of a motion to suppress the seizure of cocaine

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

[2] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

which was found in Mr. Triggs' pocket after his admission to possession of drug paraphernalia during an investigative stop. Triggs argues that the police did not have a reasonable suspicion upon which to base the investigative stop, thus the subsequent search was invalid. We disagree and affirm.

¶2 According to the testimony at the suppression hearing, Milwaukee Police Officers Christopher Chu and David Gabbard were on patrol the morning of March 3, 2007. The officers stopped Triggs, who they had observed for one half to three quarters of a block walking in the roadway against traffic and looking into the parked cars along his path. Triggs looked into five or six cars. Triggs was observed "walking to each car, pausing for a moment, peering in, [and] moving onto the next one." Chu and Gabbard understood the specific area to be a high theft area including "thefts from autos or residents" which, coupled with their observations of Triggs, indicated to them suspicious behavior. Chu believed Triggs was looking into the cars to see what he could steal. They stopped Triggs, and noticed bulges in his pockets, which Chu thought might be tools such as a hammer or screwdriver which could be used to break into a car. Chu asked Triggs if he had any drugs or weapons, to which Triggs responded that he had a "crack pipe." Chu then conducted a pat down search to check for the crack pipe and weapons. He recovered the crack pipe. Chu asked Triggs if he had any cocaine base or crack cocaine. Triggs acknowledged that he did, and that it was in his pockets. Chu retrieved a "clear plastic corner cut" of what turned out to be cocaine, and arrested Triggs.

¶3 Triggs' version of the events was very different. Triggs testified that he was walking in the street because of ice on the sidewalks and that he had not been looking into cars but rather at the ground, which was a habit, picked up from his father, of glancing toward the ground looking for anything that might be laying

on the ground. Triggs described the officers as having emptied all of his pockets when they first encountered him, then, apparently finding nothing of interest, returning the contents to him. At that point, Triggs was put in the back of the squad car and questioned about knowing drug dealers. Triggs denied knowing any drug dealers. Chu then produced from the front seat something Chu identified as crack cocaine. Triggs denied any knowledge of the cocaine. Triggs was then ordered out of the squad car, arrested and handcuffed.

¶4 The trial court accepted the officers' version of events. It concluded that the officers properly stopped Triggs to investigate his walking in the street looking into cars, that the officers had a right to do the pat down search for weapons and that Triggs' admission to possessing drug paraphernalia (the crack pipe), which is a crime, provided separate probable cause to conduct the search. On those bases, the trial court denied the motion to suppress.

¶5 "Review of an order granting or denying a motion to suppress evidence presents a question of constitutional fact." ***State v. Hughes***, 2000 WI 24, ¶15, 233 Wis. 2d 280, 607 N.W.2d 621. A question of constitutional fact is reviewed in a two-step process. First, we uphold a trial court's findings of fact unless they are clearly erroneous. Second, we apply the law to those facts without deference to the trial court. ***Id.***

¶6 "Where the trial court is the finder of fact and there is conflicting evidence, the trial court is the ultimate arbiter of the credibility of witnesses." ***Fidelity & Deposit Co. v. First Nat. Bank***, 98 Wis. 2d 474, 485, 297 N.W.2d 46 (Ct. App. 1980); *see also* ***State v. Poellinger***, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990) (credibility of witnesses and weight of the evidence are determinations for the trier of fact). "[T]he trier of fact is allowed to accept or reject inconsistent

testimony." ***State v. Curiel***, 227 Wis. 2d 389, 421, 597 N.W.2d 697 (1999). "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345.

¶7 We have held that certain investigative stops, prompted by an officer's suspicion that the individual may have committed a crime, are in certain circumstances constitutionally permissible even though the officer lacks probable cause to arrest. *See* ***State v. Guzy***, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). "The test is an objective test." ***Id.*** "Law enforcement officers may only infringe on the individual's interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime." ***Id.*** An "inchoate and unparticularized suspicion or 'hunch'" will not suffice. ***Terry v. Ohio***, 392 U.S. 1, 27 (1968). "The focus is on reasonableness.... It is impossible to write a black letter rule that governs law enforcement officers' conduct under such circumstances. It is a rule of reasonableness: was the action of law enforcement officers reasonable under all the facts and circumstances present?" ***Guzy***, 139 Wis. 2d at 679.

¶8 On appeal, Triggs argues that the trial court erred in concluding that the officers had a particularized and objective basis upon which to have reasonable suspicion to stop him. In essence, Triggs argues that the trial court should have accepted his explanation for walking in the street instead of on the sidewalk (icy sidewalks) and should have believed his testimony that he acquired the habit of glancing at the ground to see if anything was there from his father, thus inferring that his conduct was perfectly innocent and reasonable. However, if the trial court

believed the testimony of the officers, which it obviously did here, the inference that Triggs' conduct was indeed suspicious, and suggested criminal activity was afoot, is an inference which the trial court was entitled to draw. As we have seen, the trial court, as the factfinder in a motion to suppress, is the sole arbiter of facts and reasonable inferences to be drawn therefrom. *See* ***Fidelity & Deposit Co.***, 98 Wis. 2d at 485.

¶9 The testimony of the officers, which the trial court obviously believed, supports the trial court's conclusion that the facts provide reasonable articulable suspicion for the initial inquiry, and that Triggs' admission during that inquiry to possession of drug paraphernalia (a crack pipe) and cocaine base or crack cocaine additionally provided probable cause to search for evidence of the crimes to which Triggs admitted, and to search for weapons inimical to officer safety. We conclude that the evidence was properly suppressed.

By the Court.—Judgment affirmed.

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