COURT OF APPEALS
DECISION
DATED AND FILED

September 26, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-3053-CR **Cir. Ct. No. 00-CF-3030**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER V. TEAGUE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: MICHAEL J. BYRON, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 LUNDSTEN, J. Christopher V. Teague appeals a judgment of conviction of possession of cocaine with intent to deliver. The only issue in this case is whether drug evidence obtained pursuant to a search of Teague's person should have been suppressed because an officer lacked reasonable suspicion to stop Teague just prior to the search. We affirm.

Background

¶2 At 1 p.m. on November 8, 2000, uniformed officer Melvin Wells was dispatched to the Keeler store in the City of Beloit. The area in which the Keeler store is located is a high drug crime area, as Officer Wells' testimony established:

> Q And the area in which the complaint came in, do you consider that to be a high crime area?
>
> A That is one of our highest crime areas and drug activity areas in the City of Beloit.
>
> Q And have you made arrests for drug trafficking in that area prior to November 8th, 2000?
>
> A Hundreds.
>
> Q Hundreds of arrests?
>
> A That's correct, for drug activity, drug violations.
>
> Q The particular area outside the Keeler store, do you consider that to be a high drug trafficking area?
>
> A That is probably one of the highest drug trafficking areas in the entire city.

Officer Wells had been assigned to the neighborhood where the Keeler store is located for about a year.

¶3 Upon arriving at the intersection where the Keeler store is located, Officer Wells parked about forty feet away from a group of twelve to fourteen people congregating in front of the store. There is a "No Loitering" sign posted on the Keeler store. Officer Wells saw Teague and another man, Mr. Hanna, standing next to a stopped car conversing with the driver. Officer Wells observed Teague and Hanna for about five to ten seconds, during which time Officer Wells did not see either Teague or Hanna appear to exchange anything with the driver. After the

five- to ten-second period of observation, Teague looked up, saw Officer Wells, and immediately turned and walked away from Officer Wells. Hanna also walked away with Teague. Both Teague and Hanna looked back at Officer Wells as they walked away.

¶4 Officer Wells radioed another officer and asked her to stop and question Teague and Hanna. This officer directed Teague to stop and talk with her. Teague complied and subsequently consented to a search of his person. During the search, the officer discovered a ziplock bag containing marijuana in Teague's interior pocket. Teague was arrested and was transferred to the police station, where police discovered crack cocaine concealed in Teague's trousers.

¶5 Teague moved to suppress the drug evidence on grounds that the officers lacked reasonable suspicion to stop Teague and that Teague did not consent to the search of his person. The circuit court denied the motion to suppress, and Teague pled guilty to possession of a controlled substance with intent to deliver.

Discussion

¶6 On appeal, Teague challenges only the legality of his temporary detention. He implicitly concedes that if his initial detention was lawful, the evidence subsequently discovered was obtained legally. Accordingly, we review the well-established legal principles applicable to temporary investigative stops and then apply them to the facts in this case.

¶7 The Fourth Amendment prohibition against unreasonable searches and seizures requires

> that a law enforcement officer reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. Such reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." These facts must be judged against an "objective standard: would the facts available to the officer at the moment of the seizure ... 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?"

State v. Richardson, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (quoting ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968)) (citations omitted). The determination of the reasonableness of an officer's actions depends on the totality of the circumstances. *See* ***State v. Williams***, 2001 WI 21, ¶22, 241 Wis. 2d 631, 623 N.W.2d 106. As the supreme court stated in ***State v. Jackson***, 147 Wis. 2d 824, 434 N.W.2d 386 (1989):

> It is a common sense question, which strikes a balance between the interests of society in solving crime and the members of that society to be free from unreasonable intrusions. The essential question is whether the action of the law enforcement officer was reasonable under all the facts and circumstances present.

Id. at 831. In addition, "[t]his process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" ***United States v. Arvizu***, 534 U.S. ___, 122 S. Ct. 744, 750-51 (2002) (quoting ***United States v. Cortez***, 449 U.S. 411, 418 (1981)).

¶8 When reviewing a ruling on a suppression motion, "we will uphold the circuit court's findings of fact unless they are against the great weight and clear preponderance of the evidence." ***State v. Waldner***, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). At the same time, "we independently examine the circumstances of the case to determine whether the constitutional requirements of

reasonableness have been satisfied." ***State v. Allen***, 226 Wis. 2d 66, 70, 593 N.W.2d 504 (Ct. App. 1999).

¶9 Teague argues that the circumstances surrounding the stop did not present articulable facts sufficient to justify an investigative stop, either alone or in combination. Teague argues that talking on a street corner is innocent conduct engaged in every day by citizens for legitimate purposes. Teague points out that Officer Wells did not observe Teague exchange anything or make any furtive gestures and that Teague simply walked away upon observing Officer Wells. Moreover, Teague asserts that there was an innocent explanation for why he left the scene upon seeing the police officer: he was complying with the no loitering sign posted outside the Keeler store.

¶10 We agree that innocent explanations exist for Teague's behavior, but this same behavior may still support a reasonable suspicion of criminal misconduct. "[A] series of acts, each of which are innocent in themselves may, taken together, give rise to a reasonable suspicion of criminal conduct." ***State v. Young***, 212 Wis. 2d 417, 430, 569 N.W.2d 84 (Ct. App. 1997). "[P]olice officers are not required to rule out the possibility of innocent behavior before initiating a brief stop." ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990); *see also* ***Waldner***, 206 Wis. 2d at 60 ("Suspicious conduct by its very nature is ambiguous, and the principal function of the investigative stop is to quickly resolve that ambiguity.").

¶11 The following facts support a reasonable suspicion that Teague was engaged in illegal behavior. The location of the stop is in a high drug crime area in Beloit. Indeed, the specific location near the Keeler store was one of the highest drug crime areas in Beloit, a location where Officer Wells had personally

conducted hundreds of arrests in the past year for drug violations. Teague was speaking with a man in a stopped car. After the uniformed officer arrived and observed for about five to ten seconds, Teague looked up, saw the officer, and immediately turned and walked away. While walking away, Teague turned his head to observe the officer. Teague's conduct might have been entirely innocent, but it also suggests that Teague knew he was engaged in an illegal drug transaction and he wanted to avoid contact with the police. It is reasonable to infer that Teague's avoidance behavior was triggered by his observation of the officer because Teague looked back at the officer after he walked away. Knowing that this is an especially high drug trafficking area, and seeing Teague's abrupt avoidance behavior, we think any reasonable police officer would have suspected that Teague was possibly engaged in an illegal drug transaction.

¶12 Teague argues that this case is comparable to ***Young***, 212 Wis. 2d 417. We disagree. In the ***Young*** case, this court held that a short-term contact between two people on a sidewalk in a high drug trafficking area during the middle of the day is not enough to support a reasonable suspicion of criminal activity. ***Id***. at 433. Unlike the defendant in ***Young***, Teague, while engaged in a contact with a person in a car, exhibited clearly evasive behavior in response to spotting a police officer and did so at a specific location police knew was frequented by drug dealers. We conclude that the facts here significantly differ from those in ***Young***.

¶13 Teague also relies on ***Allen***, 226 Wis. 2d 66, arguing that the facts in this case are not as suspicious as the facts in that case. In ***Allen***, the court found reasonable suspicion where a brief contact with a car occurred late at night in a high crime area. ***Id***. at 75. Teague's reliance on ***Allen*** is similarly misplaced. Both ***Allen*** and this case involved a contact between a pedestrian and a car in a

high crime area. Although this case did not occur late at night, this case involves additional factors not present in ***Allen***, as the defendant in ***Allen*** did not take immediate action upon seeing a police officer to avoid that officer.

¶14 We conclude that, under the totality of the circumstances, reasonable suspicion existed, and we affirm the circuit court.

By the Court.—Judgment affirmed.

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