

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 6, 2003**

Cornelia G. Clark  
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. 02-0210-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 00-CF-39**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JEROD R. SCOTT,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dane County:  
STEVEN D. EBERT, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Jerod Scott appeals from a judgment convicting him of one count of being party to the crime of armed robbery with threat of force, one count of felony bail jumping, and two counts of misdemeanor bail jumping, all as a habitual offender. He claims the trial court erred in denying his suppression motion. We disagree and affirm.

## BACKGROUND

¶2 On the evening of January 4, 2000, the Middleton police received a report of an armed robbery at a local restaurant. One suspect was described as a black man wearing black jeans and a black leather jacket, and the second was a described as a man who might have been black who was wearing a puffy dark jacket. A police dispatch call alerting officers to look for two black males went out between five and ten minutes after the robbery was reported.

¶3 A nearby officer who heard the dispatch observed a car traveling at high speed from the direction of the restaurant, then making a U-turn. She saw that the driver was a black male, but could not tell whether there was a second person in the car. She followed the car and called for backup.

¶4 The police pulled the car over, drew their weapons and ordered the car's two occupants to exit the vehicle and get on their knees. Scott and the other suspect were handcuffed, although they were told they were not under arrest. They were then placed in one of the squad cars, where they were questioned without having been advised of their rights.

¶5 Meanwhile, a search of the car revealed a gun and money in bank bags in the trunk and more cash hidden beneath the dashboard, as well as a black leather jacket and ski masks in the backseat. The police were also able to obtain a more detailed description of the robbers by reviewing tape from the surveillance cameras at the restaurant.

¶6 After he was charged, Scott filed a suppression motion claiming there was no reasonable suspicion justifying the stop, and the police lacked

probable cause to arrest at the time they handcuffed and began questioning him. The trial court denied the motion, and Scott was subsequently convicted by a jury.

## DISCUSSION

¶7 When we review a suppression motion, we will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2) (2001-2002)<sup>1</sup>; *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). We will independently determine, however, whether the facts establish that a particular search or seizure violated constitutional standards. *State v. Richardson*, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830, 833 (1990).

### *Investigatory Stop*

¶8 According to *Terry v. Ohio*, 392 U.S. 1 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be based on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot, and that action would be appropriate. *Id.* at 21-22. “The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?” *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386, 390 (1989).

¶9 The officer here was able to articulate the following facts in support of her suspicion: she observed Scott's vehicle (1) traveling at high speed

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-2002 version unless otherwise noted.

(2) coming from the direction of the restaurant (3) about five blocks away from the restaurant (4) within one or two minutes after hearing the robbery dispatch (5) with no other cars on the street (6) with a black driver (7) and possibly a passenger (8) and then making a U-turn in an unusual location. We agree with the State that it was not necessary for the officer to have specifically known that the robbery suspects drove off. The officer had enough information to reasonably detain the car for investigation to either confirm or dispel her suspicions.

### *Arrest*

¶10 Scott contends that he was arrested without probable cause. The State does not dispute that Scott was detained at gunpoint and then questioned in the back of the squad car. It maintains, however, that Scott had not yet been arrested at that time.

¶11 We determine the moment of arrest for Fourth Amendment purposes using an objective test. *State v. Swanson*, 164 Wis. 2d 437, 446, 475 N.W.2d 148 (1991). We ask whether a reasonable person in the defendant's position would have considered himself or herself to be in custody given the degree of restraint. *Id.* at 446-47. The totality of the circumstances, including what the police officers communicate by their words or actions, controls the outcome under the test. *Id.* at 447.

¶12 While handcuffing is a relatively high level of restraint, the questioning at issue here occurred at the place of detention. Moreover, Scott was specifically advised that he was not under arrest. We are satisfied that a reasonable person who is told that he is not under arrest and is not transported to the police station would understand that his detention is investigatory in nature and that the use of guns and handcuffs was a precaution to ensure officer safety. We

further conclude that the facts the police learned during the investigative detention provided probable cause for Scott's ultimate arrest.

*By the Court.*—Judgment affirmed.

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

