COURT OF APPEALS
DECISION
DATED AND FILED

March 15, 2011

A. John Voelker
Acting 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. 2010AP2493-CR

Cir. Ct. No. 2008CM556

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LOREN C. PURINTUN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Barron County: JAMES C. BABLER, Judge. *Affirmed*.

¶1 PETERSON, J.[1] Loren Purintun appeals a judgment of conviction for one count each of possessing THC and possessing drug paraphernalia and an

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

order denying his motion for postconviction relief. Purintun contends the circuit court erroneously denied his motion to suppress evidence. We affirm.

BACKGROUND

¶2 The following facts are taken from the suppression hearing testimony. On November 18, 2008, at about 8:45 p.m., deputy Darren Hodek was dispatched to 2179 18th Street in Barron County. Dispatch indicated there had been a report of "gunshots or a traffic accident" at that address. On the way there, Hodek and another deputy encountered Purintun walking southbound on 18th Street about one-half mile from the address dispatch provided. Purintun was walking backwards, in a direction that would take him away from that address. The area in question is semi-rural, with scattered homes. Hodek did not see any other individuals or vehicles in the area that evening.

¶3 The deputies stopped their vehicles and made contact with Purintun. Hodek observed that Purintun was staggering, his speech was slurred, and he smelled of intoxicants. He asked if Purintun knew what had happened at 2179 18th Street, and Purintun replied that he did not.

¶4 While speaking with the deputies, Purintun placed his hands inside the front pockets of his sweatshirt. After Hodek asked Purintun to remove his hands, Purintun "removed his hands for one or two seconds and then placed them back inside of his pockets." At that point, Hodek decided to perform a protective frisk for weapons. Hodek testified he felt it was important to frisk Purintun for weapons "based on the circumstances and the nature of the call, not knowing if there [were] gunshots or a traffic accident. And I felt that him walking backwards down 18th Street was kind of suspicious[.]"

¶5 The frisk revealed a marijuana pipe in the pocket of Purintun's pants. Hodek asked Purintun if he had anything else in his pockets, and Purintun admitted he had "a little bit of marijuana." Purintun was arrested and charged with possession of THC and possession of drug paraphernalia.

¶6 Purintun moved to suppress, arguing the deputies did not have reasonable suspicion to justify the initial, investigatory stop and did not have a reasonable belief that he was armed to justify the protective frisk. The circuit court denied Purintun's motion. He was convicted following a jury trial, and the court denied his motion for postconviction relief.[2] Purintun now appeals.

DISCUSSION

¶7 When reviewing a suppression motion, we uphold the circuit court's findings of fact unless they are clearly erroneous. ***State v. Eckert***, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, whether a search or seizure meets constitutional standards is a question of law that we review independently. ***Id.***

I. The investigatory stop

¶8 A police officer may initiate an investigatory stop if he or she "reasonably suspect[s] ... that some kind of criminal activity has taken or is taking

[2] The court denied Purintun's postconviction motion without an evidentiary hearing. A circuit court may deny a postconviction motion without a hearing when the motion does not raise facts sufficient to entitle the defendant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief. ***State v. Bentley***, 201 Wis. 2d 303, 309-10, 548 N.W.2d 50 (1996). Purintun does not argue the circuit court erred by failing to hold a hearing on his postconviction motion. Moreover, we conclude a hearing was unnecessary because the record conclusively demonstrates Purintun is not entitled to relief. *See infra*, Parts I and II.

place." ***State v. Allen***, 226 Wis. 2d 66, 71, 593 N.W.2d 504 (Ct. App. 1999). An inchoate and unparticularized hunch will not suffice. ***State v. Post***, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634. "Rather, the officer 'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' the intrusion of the stop." ***Id.*** (quoting ***Terry v. Ohio***, 392 U.S. 1, 21 (1968)). The reasonableness of a stop is determined based on the totality of the circumstances, using an objective, common sense standard. ***Id.***, ¶13.

¶9 Here, the totality of the circumstances provided Hodek with reasonable suspicion to stop Purintun. Hodek was dispatched to a semi-rural area to investigate a report of either a shooting or a car accident. He encountered Purintun about one-half mile from the address provided by dispatch. Purintun was staggering backwards down the road, moving away from the location where the shooting or car accident had reportedly occurred. Based on these facts, Hodek could reasonably suspect that Purintun was involved in some kind of criminal activity. Specifically, Hodek could have reasonably concluded Purintun had been in a car accident, was either injured or intoxicated, and was leaving the scene of the crash. Or, Hodek could have reasonably believed Purintun had been shot and was staggering backwards down the road, facing the shooter. Alternatively, Hodek could have reasonably suspected that Purintun was the shooter, was attempting to leave the area, and was facing backwards to determine whether anyone was following him. Reasonable suspicion therefore supported the investigatory stop.

II. The protective frisk

¶10 "A frisk or pat-down of a person being questioned during an investigatory stop is reasonable if the stop itself is reasonable and if the officer has reason to believe that the person might be armed and dangerous." ***Allen***, 226 Wis. 2d at 76. The officer's belief must be based on specific and articulable facts. ***State v. McGill***, 2000 WI 38, ¶22, 234 Wis. 2d 560, 609 N.W.2d 795. The reasonableness of the frisk is determined using an objective standard, based on the totality of the circumstances. ***Id.***, ¶23. The operative question is "'whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety and that of others was in danger.'" ***Id.*** (quoting ***Terry***, 392 U.S. at 27).

¶11 Based on the totality of the circumstances, Hodek had reason to believe Purintun might be armed and dangerous. Hodek knew that a potential shooting had been reported about one-half mile from Purintun's location. Purintun was staggering backwards down the road in the dark, facing the direction of the reported shooting. Hodek did not see any other individuals or vehicles in the area. Purintun placed his hands in his sweatshirt pockets and then put them back in his pockets seconds after being asked to remove them. On these facts, Hodek could reasonably suspect Purintun was involved in a shooting, had a weapon in his sweatshirt, and presented a danger to Hodek and the other deputy. Hodek was therefore justified in performing the protective frisk.

¶12 Purintun cites ***State v. Kyles***, 2004 WI 15, 269 Wis. 2d 1, 675 N.W.2d 449, and ***State v. Mohr***, 2000 WI App 111, 235 Wis. 2d 220, 613 N.W.2d 186, for the proposition that merely putting one's hands in one's pockets after being ordered to remove them is insufficient to establish reasonable suspicion of dangerousness. *See* ***Kyles***, 269 Wis. 2d 1, ¶48 (declining to adopt a bright line rule

"that an individual's 'hands in pockets' automatically establishes reasonable suspicion of dangerousness"). However, Hodek's suspicion was not based solely on the fact that Purintun placed his hands in his pockets. Hodek knew that a potential shooting had been reported in the vicinity and believed Purintun was acting suspiciously by staggering backwards down the road. These additional facts, combined with Purintun's refusal to keep his hands out of his pockets, supported Hodek's reasonable belief that Purintun might be armed and dangerous.

By the Court.—Judgment and order affirmed.

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