COURT OF APPEALS
DECISION
DATED AND FILED

August 31, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-2337-CR **Cir. Ct. No. 02CF005236**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MIGUEL A. SEGARRA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed*.

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Miguel A. Segarra appeals the judgment convicting him of possession of cocaine with intent to deliver, contrary to WIS. STAT. § 961.41(1m)(cm) (2001-02).[1] Segarra contends that the trial court erred in

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

denying his motion to suppress the cocaine that was discovered during a pat-down search because the police had no reasonable basis to search him. Because under the totality of the circumstances the police had a reasonable basis to conduct a pat-down search of Segarra, we affirm.

I. BACKGROUND.

¶2 On September 11, 2002, in the span of about fifteen minutes, the Milwaukee police received approximately ten calls concerning shots being fired. Most of the people complaining were in a two-block area on Milwaukee's south side. Testimony at the hearing revealed that the neighborhood is a high crime area with frequent gang activity. The callers, some giving their names and others remaining anonymous, gave conflicting descriptions of the shooters and the clothing they wore, and different approximations of the number of shots they heard fired. One caller told the dispatcher that someone might have been shot.

¶3 Another caller described the shooters as being three Hispanic males in their twenties. Several of the callers indicated that the shooters were on foot and running. One caller stated that the subjects at 2905 West Lincoln looked very suspicious. This caller told the police that he could see the 2905 West Lincoln address from his window, and he described a Hispanic man standing outside the residence with a heavy build wearing a white shirt, tan shorts and black shoes, as looking suspicious.

¶4 Several squad cars responded to 2905 West Lincoln within minutes of the time the police received the first call. Upon arriving at the address, the officers observed several Hispanic men, both on the porch and on the walkway between the porch and the sidewalk. Segarra, who is Hispanic, was one of them. The police officers testified that they immediately patted down all of the men

present. As Segarra was being patted down, a plastic bag, containing what was later determined to be cocaine, fell out of the leg of his pants. He was subsequently arrested and charged.

¶5 Segarra brought a motion to suppress the cocaine, claiming that the police did not have a reasonable basis for the pat-down search. His motion was denied and he subsequently pled guilty.

II. ANALYSIS.

¶6 Segarra argues that because the police violated his federal and state constitutional rights, as well as WIS. STAT. § 968.25, by conducting the pat-down search, the trial court erred in denying his motion to suppress the cocaine. Segarra contends that the numerous calls to the police certainly invited an investigation, but they did not establish a reasonable suspicion to frisk him, particularly when the police saw nothing suspicious occur when they reached the residence. Indeed, Segarra notes that since his clothing matched none of the descriptions related to the police, and he was doing nothing more than standing outside on a September afternoon, he should not have been searched. We disagree.

¶7 "When we review a motion to suppress evidence, we will uphold the [trial] court's findings of fact unless they are clearly erroneous. However, the application of constitutional principles to the facts is a question of law we decide without deference to the [trial] court's decision." ***State v. Fields***, 2000 WI App 218, ¶9, 239 Wis. 2d 38, 619 N.W.2d 279 (citations omitted).

¶8 The Fourth Amendment to the United States Constitution, and article I, section 11 of the Wisconsin Constitution, guarantee citizens the right to be free from "unreasonable searches." ***State v. Morgan***, 197 Wis. 2d 200, 207,

539 N.W.2d 887 (1995). In construing article I, section 11 of the Wisconsin Constitution, our supreme court consistently follows the United States Supreme Court's interpretation of the Fourth Amendment. ***Id.*** at 207-08. "A pat down, or 'frisk,' is a search" within the meaning of the Fourth Amendment. ***Id.*** at 208.

¶9 The seminal case concerning pat-down searches is ***Terry v. Ohio***, 392 U.S. 1 (1968). The test articulated in ***Terry*** for determining the propriety of a pat-down search for weapons "is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." ***Id.*** at 27. As explained in ***Morgan***, police can conduct a pat-down search when a reasonable suspicion exists that a subject may be armed:

> Pat-down searches are justified when an officer has a reasonable suspicion that a suspect may be armed. The officer's reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." ... Finally, the determination of reasonableness is made in light of the totality of the circumstances known to the searching officer.

197 Wis. 2d at 208-09 (citations omitted). The supreme court concluded: "We hold that an officer making a ***Terry*** stop need not reasonably believe that an individual is armed; rather, the test is whether the officer 'has a reasonable suspicion that a suspect may be armed.'" ***Morgan***, 197 Wis. 2d at 209 (citation omitted). Thus, the determination of reasonableness for a police frisk is based on an objective standard in light of the totality of the circumstances. *See* ***State v. Richardson***, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990).

¶10 In applying the law to the facts of this case, we are satisfied that, under the totality of the circumstances then present, the officer administering the

pat-down search of Segarra had a reasonable suspicion that Segarra may have been armed.

¶11 The nature of the underlying offense the police are investigating is a factor to consider when weighing the reasonableness of the search. *See* ***State v. Guy***, 172 Wis. 2d 86, 96-97, 492 N.W.2d 311 (1992). Here, the police were investigating a dangerous situation in which multiple callers complained of people shooting guns, possibly even shooting a person, in a crowded urban area. The complaints concerned the use of weapons, the very items the officer was concerned about when he conducted the pat-down search. Additionally, our supreme court has determined that an "officer's perception of an area as 'high-crime' can be a factor justifying a search." ***Morgan***, 197 Wis. 2d at 211. Here, there was testimony from the police that the two-block area where the callers were located is a high-crime area.

¶12 Further, only a short period of time elapsed between the calls and the time police encountered Segarra at the specific location mentioned in a call, facts which strongly suggested that Segarra might have been involved in the criminal activity, and the police immediately patted him down. *But see, e.g.*, ***State v. Mohr***, 2000 WI App 111, ¶¶16, 18, 235 Wis. 2d 220, 613 N.W.2d 186 (a frisk twenty-five minutes after an initial traffic stop ruled unreasonable).

¶13 Moreover, Segarra matched one of the descriptions given to the police—he was a young Hispanic male. Although Segarra's clothing did not match any of the descriptions given by the callers, one of the testifying officers related that it is quite common for subjects engaged in criminal activity to change the way they look. In fact, the officer stated that he encountered a suspect who was wearing multiple layers of clothing the day before he testified.

¶14 Finally, Segarra's contention that the frisk was unlawful because the officers observed no unusual conduct before performing the frisk is equally unavailing. Segarra relies on ***State v. McGill***, 2000 WI 38, 234 Wis. 2d 560, 609 N.W.2d 795, for his argument that the police must witness suspicious conduct before proceeding to pat down a suspect. However, that case did not hold that the police must observe suspicious conduct at close range before frisking a suspect. Rather, the case discussed the fact that the police were prompted to conduct a frisk after witnessing unusual conduct. This unusual conduct was one of the specific circumstances which led to a reasonable suspicion that McGill may have been armed. As noted, it is the totality of the circumstances that determines whether the pat down is appropriate.

¶15 In sum, after considering the totality of the circumstances, we are satisfied that the police had a reasonable suspicion that Segarra may have been armed, as a reasonably prudent officer would have been justified in believing his or her safety was in danger. The police were investigating numerous reports, from within a two-block area, that shots were being fired and a person may have been shot. They were told that Hispanic men might be responsible for the shootings. They were directed to an address in a high-crime area where a caller said some men were looking suspicious. When they arrived within fifteen minutes of the first call, they observed several Hispanic men outside the residence. Under these facts, it was entirely reasonable for the officers to believe that Segarra may have been armed.

¶16 For the reasons stated, we affirm the trial court's ruling.

By the Court.—Judgment affirmed.

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