

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 25, 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. 2010AP1487-CR**

**Cir. Ct. No. 2009CF1902**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TEVIN L. WELCH,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

Before Lundsten, P.J., Vergeront and Sherman, JJ.

¶1 PER CURIAM. Tevin Welch appeals a judgment convicting him of possession of a firearm by a felon. The sole issue on appeal is whether the circuit court properly refused to suppress evidence seized during an investigatory stop

and pat-down search by police. For the reasons discussed below, we conclude that the stop and pat-down were justified. Accordingly, we affirm the conviction.

### BACKGROUND

¶2 Two police officers were on afternoon patrol in a neighborhood where there had been some robberies and shootings in recent weeks, as well as ongoing complaints of loitering, drug dealing, and firearm possession. The officers observed Welch leaning on a parked vehicle in an alley, talking on a cell phone. One of the officers noticed that Welch was wearing a heavy winter coat, despite the fact that the temperature was in the 60s, no one else was wearing a winter jacket, and others were even wearing shorts.

¶3 Upon seeing the officers, Welch ended his call and immediately began walking toward the rear door of an apartment building along the alley. His gait was somewhat unusual, in that his left arm was swinging freely, while his right arm was tightly pressed against his body with the hand flat on his waistband in a manner the officers had been trained to recognize as consistent with someone checking to make sure a firearm tucked into a waistband without a holster is secured. After looking over his shoulder and seeing the squad had circled back, Welch quickened his pace. As an officer exited the squad and approached him, Welch knocked on the rear door of the apartment building in an increasingly anxious manner.

¶4 When the officer reached Welch, the officer instructed Welch to raise his hands. Welch turned sideways and raised one hand, but kept the other hand that was further away from the officer against his waistband. The officer described Welch's positioning as "blading," or distancing one's firearm side away

from someone. The officer immediately conducted a pat-down search, which revealed the firearm that Welch was subsequently convicted of possessing.

### STANDARD OF REVIEW

¶5 When we review a suppression motion, we will defer to the circuit court's credibility determinations and will uphold the court's findings of fact unless they are clearly erroneous. *See State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996); *Global Steel Prods. Corp. v. Ecklund Carriers, Inc.*, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269; WIS. STAT. § 805.17(2) (2009-10).<sup>1</sup> We will independently determine, however, whether the facts establish that a particular search or seizure violated constitutional standards. *See State v. Richardson*, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990).

### DISCUSSION

¶6 The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures.<sup>2</sup> *See State v. Drogsvold*, 104 Wis. 2d 247, 264, 311 N.W.2d 243 (Ct. App. 1981). According to the seminal case of *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

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

<sup>2</sup> Due to the similarity of these provisions, Wisconsin courts look to the United States Supreme Court's interpretation of the Fourth Amendment for guidance in construing the state constitution. *See State v. Roberts*, 196 Wis. 2d 445, 452-53, 538 N.W.2d 825 (Ct. App. 1995).

believe that criminal activity may be afoot, and that action would be appropriate. *See id.* at 20-22. “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 (1989). During an investigative stop, an officer may also pat down the subject’s outer clothing to check for a weapon if the officer is able to point to specific articulable facts giving rise to a reasonable inference that the person might be armed. *State v. Johnson*, 2007 WI 32, ¶21, 299 Wis. 2d 675, 729 N.W.2d 182.

¶7 Items seized during a period of illegal detention or pursuant to an unjustified pat-down search are inadmissible. *See Florida v. Royer*, 460 U.S. 491, 501 (1983). Welch contends that he was being illegally detained and searched when police discovered his firearm because the facts in the officers’ possession were insufficient to raise a reasonable suspicion that Welch was either engaged in criminal activity or armed, since the police were not responding to any specific complaint or observation of criminal activity, were not looking for a particular offender, had no knowledge of Welch’s prior record, and each of Welch’s actions could have an innocent explanation. We disagree.

¶8 Police do not need to be responding to a specific incident or looking for a particular person in order to form a reasonable suspicion that criminal activity is afoot (although those are obviously relevant factors). Rather, being on patrol affords police an opportunity to observe unreported suspicious activity. Here, Welch’s unseasonably bulky coat, his nervous and evasive reaction to seeing police in a high-crime area, and especially the placement of his arm flat along his waistband as he walked were all indicative of someone carrying a concealed weapon. The fact that there may have been some other innocent explanation for

Welch's behavior is precisely what an investigative stop is designed to discover. Welch's additional "blading" posturing reinforced the impression that he had a weapon in his waistband, and fully justified the pat-down search.

¶9 In sum, we agree with the circuit court that the police had reasonable suspicion to believe that Welch was carrying a concealed weapon, and conclude that the suppression motion was properly denied.

*By the Court.*—Judgment affirmed.

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

