

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 18, 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. 2010AP2044-CR**

**Cir. Ct. No. 2009CF2175**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JERROLD ANTHONY EZELL,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: PAUL R. VAN GRUNSVEN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Jerrold Anthony Ezell appeals a judgment convicting him of possession of cocaine with intent to deliver. He argues that the police violated the Fourth Amendment when they conducted a pat-down search of him for weapons after stopping his car for traffic violations. We affirm.

¶2 “The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable governmental searches.” *State v. Sumner*, 2008 WI 94, ¶19, 312 Wis. 2d 292, 303, 752 N.W.2d 783 (footnotes and citation omitted). “The Fourth Amendment’s touchstone is reasonableness, which is measured in objective terms by examining the totality of the circumstances, eschewing bright-line rules and emphasizing instead the fact-specific nature of the reasonableness inquiry.” *Id.*, ¶20. “A determination of the reasonableness of the search must balance ‘the government’s need to conduct the search against the invasion the search entails.’” *Id.*

¶3 “‘During an investigative stop, an officer is authorized to conduct a [protective] search of the outer clothing of a person to determine whether the person is armed if the officer is able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *Id.*, ¶21 (brackets in original, footnote and citation omitted). “The purpose of a protective search is ‘to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.’” *Id.* (citation omitted). “‘The reasonableness of a protective search for weapons is an objective standard ... whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety and that of others was in danger because the individual may be armed with a weapon and dangerous.’” *Id.*, ¶22 (citation omitted).

¶4 Ezell does not challenge the initial traffic stop and agrees that the circuit court’s findings of fact are not clearly erroneous. He challenges only the circuit court’s legal conclusion that there was a reasonable suspicion for the police to conduct the pat-down search of his person for weapons. *See State v. Morgan*, 197 Wis. 2d 200, 208, 539 N.W.2d 887 (1995) (whether a search is reasonable

based on the facts found by the circuit court is a question of law that we review independently of the circuit court).

¶5 We conclude that the police had a reasonable suspicion to conduct the pat-down search for weapons based on the facts found by the circuit court. After the police activated their emergency lights, Ezell did not immediately pull his car over to the side of the road. Prior cases establish that a driver's delay in stopping a vehicle after a police car turns on its lights may raise suspicion that the people in the vehicle are trying to buy time to conceal weapons or contraband. *See, e.g., State v. Alexander*, 2008 WI App 9, ¶13, 307 Wis. 2d 323, 744 N.W.2d 909. Before the car pulled over, the police officers saw Ezell reach between the front seats and could not see his hand as he did this. As previously explained by the supreme court, “[d]epending upon the totality of the circumstances in a given case, a surreptitious movement by a suspect in a vehicle immediately after a traffic stop could be a substantial factor in establishing that officers had reason to believe that the suspect was dangerous and had access to weapons.” *State v. Johnson*, 2007 WI 32, ¶37, 299 Wis. 2d 675, 729 N.W.2d 182. Ezell was pulled over in a neighborhood known to have a high concentration of weapons and crime, and had been observed before the traffic stop with his car idling in the middle of the street while he talked to someone who had approached his window. The supreme court has previously held that whether a geographical area is a high crime area is a factor that can be considered in justifying a frisk. *State v. Kyles*, 2004 WI 15, ¶62, 269 Wis. 2d 1, 675 N.W.2d 449. Ezell appeared nervous when he spoke to the police, and the stop occurred after dark. “[O]ur cases hold that unusual nervousness is a legitimate factor to consider in evaluating the totality of the circumstances,” and that “[t]he hour of the day may also be relevant.” *Id.*, 269 Wis. 2d 1, ¶¶54, 58. Based on the totality of the circumstances in this case, we

conclude that the officers had a reasonable suspicion that Ezell might be armed, and therefore properly conducted the pat-down search for weapons to protect themselves.

*By the Court.*—Judgment affirmed.

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

