COURT OF APPEALS
DECISION
DATED AND FILED

April 10, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP721-CR **Cir. Ct. No. 2009CF5780**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADRIAN JOHNSON,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Adrian Johnson appeals from a judgment of conviction of possession of cocaine, as a second offense. He argues that his motion to suppress the cocaine recovered from his pocket should have been granted because the stop and search were illegal. We conclude that the officers

had a reasonable suspicion to approach Johnson's car and then observed additional conduct giving probable cause for Johnson's arrest and the search. We affirm the denial of the suppression motion and the judgment of conviction.

¶2 When an appellate court reviews an order denying a motion to suppress evidence, it will uphold the circuit court's findings of fact unless they are clearly erroneous. ***State v. Roberts***, 196 Wis. 2d 445, 452, 538 N.W.2d 825, 828 (Ct. App. 1995). Here Johnson does not challenge the circuit court's findings of fact and we recite and rely on those findings.

¶3 It was approximately 7:00 p.m. on December 14, 2009, when three Milwaukee police officers observed a car parked on the street with the engine running and two individuals sitting inside. The car was parked too far from the curb. Two officers approached the car from the front. They observed that the front license plate was not affixed to the front of the car but was displayed on the front dashboard. As he approached, one officer observed the driver of the car, Johnson, move toward the female passenger and reach to the rear seat of the car. The officer also observed a blue plastic bag with a bottle of gin in the back seat. The other officer interpreted Johnson's movement as attempting to conceal something or pass it to the passenger.

¶4 Upon reaching the driver's door, the officer ordered Johnson to step out of the car, twice. Johnson stated, "You have no reason to stop me." When the officer asked Johnson to step out of the car a third time, Johnson replied, "You have no reason to have me step out of the vehicle." The officer then opened the car door and removed Johnson from his car. Johnson reached into his right coat pocket and retrieved his wallet. The officer feared for his own safety as Johnson, a man larger than himself, was increasingly belligerent and noncooperative. The

officer grabbed Johnson's hand and told Johnson he was going to be detained and handcuffed. Assistance was needed to handcuff Johnson. Johnson was warned that he was under arrest for obstructing or resisting an officer. Johnson's pockets were searched because he had been placed under arrest.

¶5 In ***Terry v. Ohio***, 392 U.S. 1, 22 (1968), the Supreme Court held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." To justify an investigatory seizure, police must have a reasonable suspicion based on specific and articulable facts and reasonable inferences that the individual has committed, was committing, or is about to commit a crime. *See* ***State v. Colstad***, 2003 WI App 25, ¶¶8, 11, 260 Wis. 2d 406, 413–414, 415–416, 659 N.W.2d 394, 397, 398. We review the determination that the undisputed facts establish reasonable suspicion *de novo*. ***Id.***, 2003 WI App 25, ¶8, 260 Wis. 2d at 414, 659 N.W.2d at 398**.**

¶6 Here there are three time periods in question before the cocaine was found. First, we consider whether the initial approach of Johnson's car was lawful. Under ***Colstad***, 2003 WI App 25, ¶11, 260 Wis. 2d at 415–416, 659 N.W.2d at 398, the observation that Johnson's car was parked too far from the curb, a violation of a civil traffic ordinance, was sufficient to justify the officers' approach.

¶7 Next, we consider the lawfulness of the police in asking Johnson to step out of the car. The officers saw Johnson turn and reach into the back of the car. As the circuit court observed, the officers' interpretation of this movement as either the possible retrieval of a weapon or the concealment of a weapon or other contraband was a reasonable inference. *See* ***State v. Johnson***, 2007 WI 32, ¶25,

299 Wis. 2d 675, 693, 729 N.W.2d 182, 191 (recognizing the serious risk law enforcement officers undertake in approaching a suspect seated in a vehicle). Additionally, the officer observed the bottle of gin in the backseat which was suggestive of possible drinking and driving concerns. Had the officers observed only the bad parking position, the request that Johnson step out of the car would have been unreasonable. But here there was more and it was reasonable for the officer to ask Johnson to step out so as to investigate the traffic violation and Johnson's reach within the car. *See* ***id.***, 2007 WI 32, ¶37, 299 Wis. 2d at 700, 729 N.W.2d at 194 ("Depending 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.").

¶8 The third period of police action we consider is the lawfulness of the decision to handcuff Johnson. We agree with the circuit court that Johnson's initial refusal to exit the car and his contentious stance with the officer only served to heighten the officer's suspicion and fear that Johnson was concealing a weapon or something else. The transition from Johnson's removal from the car and to handcuffing occurred rapidly. In removing Johnson from his car, the officer was concerned for his personal safety as Johnson continued to be belligerent and physically imposing. The officer reasonably believed Johnson could be in possession of a weapon. Thus, it was reasonable to handcuff Johnson as a means to prevent harm and until such time as the inquiry could be made to dispel the growing reasonable suspicion. *See* ***State v. Vorburger***, 2002 WI 105, ¶¶64–66, 255 Wis. 2d 537, 567–568, 648 N.W.2d 829, 843 (handcuffing of suspects was not unreasonable in the officers' efforts to protect themselves); ***State v. Swanson***, 164 Wis. 2d 437, 448, 475 N.W.2d 148, 153 (1991) ("many jurisdictions have

recognized that the use of handcuffs does not necessarily transform an investigative stop into an arrest"), *abrogated on other grounds by* ***State v. Sykes***, 2005 WI 48, ¶27, 279 Wis. 2d 742, 758–759, 695 N.W.2d 277, 286.

¶9 The handcuffing did not go smoothly and required assistance. Johnson was properly placed under arrest for resisting an officer. The subsequent search was incident to arrest and was lawful. The motion to suppress evidence was properly denied.

By the Court.—Judgment affirmed.

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