



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/IV

March 9, 2015

To:

Hon. Rebecca F. Dallet
Circuit Court Judge
Branch 40
821 W State St
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Eileen W. Pray
Asst. Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Cheryl A. Ward
Ward Law Office
10533 W. National Ave., Ste. 304
West Allis, WI 53227

Christopher Carl Peete 434673
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

You are hereby notified that the Court has entered the following opinion and order:

2014AP786-CR	State of Wisconsin v. Christopher Carl Peete (L.C. # 2010CF1227)
2014AP787-CR	State of Wisconsin v. Christopher Carl Peete (L.C. # 2010CF3435)

Before Lundsten, Sherman and Kloppenburg, JJ.

Christopher Peete appeals judgments in two criminal cases that were handled together at a joint sentencing hearing, and an order denying his motion for postconviction relief in both cases. Peete raises two issues. First, he challenges a suppression ruling in one of the two cases, the case involving a charge of felon in possession of a firearm. Second, Peete contends that his sentences in both cases were based upon irrelevant and inaccurate information. After reviewing

the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

As to the suppression ruling, Peete argues that the police lacked reasonable suspicion for the investigatory stop during which the firearm was discovered. *See generally Terry v. Ohio*, 392 U.S. 1, 21-22 (1968) (setting forth reasonable suspicion standard for investigatory stops). The circuit court made factual findings that four different people—two of whom were anonymous and one of whom gave only a first name—had called authorities shortly after one o’clock in the morning to report that shots had been fired. A dispatch went out describing the suspect as a taller black male with braids and dark clothing, who may have gotten into a maroon sedan with license plate 805-LST. Two police officers in a squad car about five blocks away were heading toward the location at which the shots had reportedly been fired when they observed a black male in dark clothing as the passenger in a dark colored sedan with a license plate beginning with 805-L approaching them. The squad car made a Y-turn to follow the sedan. The sedan then sped up and made an abrupt turn at an unsafe speed without using a turn signal. By the time the squad car turned the corner, the sedan was already stopped and Peete was in the process of exiting it. The police then initiated an investigatory stop by directing Peete to remain in the vehicle.

Peete challenges several of the circuit court’s findings. Peete argues that the arresting officer, upon whose testimony the findings were based, should not be believed because the officer did not mention his observations about the sedan speeding up and making an abrupt,

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

unsignaled turn in his police report, and because the dispatch logs did not state that the car was maroon, just dark. However, defense counsel cross-examined the officer about both the completeness of the dispatch logs and the officer's failure to include everything in his report. Thus, the circuit court's factual findings were dependent upon its assessment of the officer's credibility in describing his observations on the night in question and in explaining how the logs might only reflect what one of the dispatchers was saying at any given time.

Because the circuit court is in the best position to observe witness demeanor and gauge the persuasiveness of testimony, it is the "ultimate arbiter" for credibility determinations when acting as a fact-finder, and we will defer to its resolution of discrepancies or disputes in the testimony and its determinations of what weight to give to particular testimony. *Johnson v. Merta*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980); *see also* WIS. STAT. § 805.17(2) ("due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses"). We will not overturn credibility determinations on appeal unless the testimony upon which they are based is inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts. *Global Steel Prods. Corp. v. Ecklund Carriers, Inc.*, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. Moreover, we will not set aside a fact found by the circuit court unless the record shows it to be clearly erroneous—meaning that after accepting all credibility determinations made and reasonable inferences drawn by the fact-finder—the great weight and clear preponderance of the evidence support a contrary finding. *Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 643-44, 340 N.W.2d 575 (Ct. App. 1983).

Here, we are satisfied that the officer's testimony was not inherently incredible, and that the circuit court's findings based upon that testimony were not clearly erroneous. Accordingly,

we include the fact that the sedan appeared to take evasive action after seeing the police as part of the totality of the circumstances that we consider to determine whether the investigatory stop was supported by reasonable suspicion.

Peete next argues that the information provided by the citizen informants lacked sufficient indicia of reliability to provide reasonable suspicion for the stop. He points out that some of the callers were anonymous; that the callers gave varying descriptions of the suspects and vehicle; and that the last two letters of the license plate provided by one of the callers did not match the vehicle in which Peete was a passenger. However, Peete ignores other facts that tend to support the reliability of the callers. In particular, when four different people contemporaneously called to report the same shooting incident, they corroborated one another as to both the place and the time of the shooting. The callers also appear to have been in agreement that at least one of the suspects was a black male who left the scene in a sedan. The officers' subsequent observation of a black male passenger in a sedan with a license plate beginning with the same three numbers and first letter as one of the callers reported, just blocks away from the site of the reported shooting and within a minute or so of the dispatch, provided adequate corroboration to satisfy constitutional standards regarding the reliability of the callers.

When considered in conjunction with the fact that the incident occurred in the early hours of the morning, when it would have been difficult for witnesses to make out the exact color or read the license plate of the sedan and when there would have been a limited amount of traffic on the streets, the officers' observations of a sedan matching the general description of the information provided by the callers in close proximity to the scene of the shooting would lead a reasonable law enforcement officer to suspect that the occupants of the sedan may have been involved in the incident.

As to the information presented at sentencing, Peete asserts that a memorandum prepared by a police detective relating to Peete's involvement with gang members was not relevant to either of the charges on which he was being sentenced. We agree with the circuit court, however, that the information was relevant to Peete's character. Information relating to a defendant's character is not only relevant to sentencing, it is a factor that the court is obligated to take into consideration.

Peete further contests the accuracy of the information in the memorandum, in particular denying that he was involved with a gang. However, the court did not find that Peete was actually a member of a gang. Rather, it determined that Peete "identified" with gang culture and wanted to be a part of it, particularly with respect to disregarding rules. Peete disagrees with the inferences that the circuit court drew from the information the detective presented about Peete's association with gang members, but Peete does not demonstrate that those inferences were inaccurate. In short, Peete has not presented anything to show that the information provided in the detective's memorandum was false, and the circuit court was entitled to determine what weight to give that information.

IT IS ORDERED that the judgments of conviction and order denying postconviction relief are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals