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DISTRICT II

February 10, 2016

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

2015AP849-CR State of Wisconsin v. Anthony T. Redick (L.C. #2012CF118)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Anthony T. Redick appeals from the judgment convicting him of possession with intent to deliver cocaine. He contends police lacked reasonable suspicion to stop him and to conduct a pat-down search. Based upon our review of the briefs and the record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14)[1]. We affirm.

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

City of Racine police officer Timothy Cisler and another officer were in an unmarked squad car in a "high crime/high drug" area of the city. They were parked near a "mini-mart" they had been directed to pay particular attention to as it had been the site of robberies and weapons violations and a source of frequent neighborhood complaints of loitering, loud music, and drug activity. At about 9:30 p.m., Cisler observed Redick enter the store and exit about a minute later at a "full-out" run. Cisler called out to Redick to stop. Redick complied, saying, "I didn't do anything." Knowing there are "a lot of weapons in that area," Cisler conducted a protective pat-down. Cisler found a baggie of marijuana in Redick's pants pocket. A further search yielded rock cocaine and more marijuana. Redick was charged with two counts of possession with intent to deliver marijuana and cocaine.

The court denied Redick's motion to suppress the evidence obtained through the pat-down and search. Redick pled guilty to one count of possession with intent to deliver cocaine.

On appeal Redick argues that the stop was unwarranted because the officers observed no illegal activity on his part, had no knowledge of any prior criminality, and only saw him engaged in behavior that may have been purely innocent. He argues that the pat-down was unreasonable because, besides being premised on an unreasonable stop, he cooperated with the officers and was not observed making any furtive or threatening movements.

Reviewing the denial of a motion to suppress evidence involves the constitutional protection against unreasonable searches and seizures. ***State v. Kelsey C.R.***, 2001 WI 54, ¶12, 243 Wis. 2d 422, 626 N.W.2d 777. We uphold the circuit court's findings of historical fact unless they are clearly erroneous but we review de novo its application of constitutional principles to those facts. ***Id.***

An investigatory stop is constitutional if the police have reasonable suspicion that a crime has been, is being, or is about to be committed. ***State v. Young***, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729. "[R]easonable suspicion must be based on 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" ***State v. Richardson***, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (citing ***Terry v. Ohio***, 392 U.S. 1, 21 (1968)). Reasonableness is a commonsense determination that depends on the totality of circumstances. *See* ***Richardson***, 156 Wis. 2d at 139.

The circuit court found that Cisler stopped and frisked Redick at night in a high-crime area outside a store that had been the site of crimes and which they had been directed to surveil, that, after being in the store only briefly, Redick left in a "full-out" run, and that Cisler knew from his law enforcement experience that there were a lot of weapons in the area and that mini-marts were the site of homicides and attempted homicides. These findings are not clearly erroneous.

Time of day and an officer's perception, based on his or her experience and training, that an area is "high-crime" are relevant considerations. *See* ***State v. Morgan***, 197 Wis. 2d 200, 211-14, 539 N.W.2d 887 (1995). Further, short of a stop, Cisler had no realistic alternative means of investigating whether a crime had been committed. He had to act promptly or lose the opportunity for further investigation, and the minimal intrusion to Redick allowed Cisler to determine whether Redick was armed or perhaps had committed a crime. *See* ***State v. Guzy***, 139 Wis. 2d 663, 678, 407 N.W.2d 548 (1987). As Cisler possessed specific and articulable facts warranting a reasonable belief that criminal activity was afoot, he was not bound to rule out the possibility of innocent behavior before initiating the stop to clarify ambiguous conduct. *See* ***Young***, 294 Wis. 2d 1, ¶21.

We conclude that based on the totality of circumstances, the temporary detention was reasonable. As Cisler reasonably believed Redick could be armed and dangerous, the ensuing protective search also was reasonable. *See* ***State v. Bridges***, 2009 WI App 66, ¶10, 319 Wis. 2d 217, 767 N.W.2d 593 (protective search reasonable if stop reasonable and officer reasonably believes person might be armed and dangerous).

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals