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DISTRICT I

May 3, 2019

To:

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

2018AP1550-CR

State of Wisconsin v. Nicholas J. Howell (L.C. # 2017CF2593)

Before Kessler, P.J., Kloppenburg and Dugan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Nicholas Howell appeals a judgment convicting him of possession of a firearm as a felon. Howell argues that police lacked reasonable suspicion for the stop that led to his arrest. Based

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

The reasonable suspicion standard requires that police have a particularized and objective basis for suspecting criminal activity. *State v. Washington*, 2005 WI App 123, ¶16, 284 Wis. 2d 456, 700 N.W.2d 305. Reasonable suspicion cannot be based on an inchoate suspicion or hunch. *Id.*

Here, according to the suppression hearing testimony, the officers who stopped Howell were responding to an armed robbery when they observed Howell walking approximately one mile from the robbery location. The robbery suspect was described as a black male, and Howell was a black male. One of the officers noticed a black object protruding from Howell's waistband that the officer believed was the butt of a handgun. The officers initiated an investigative stop of Howell and, as they suspected, the partially concealed object in Howell's waistband was a handgun.

Howell argues that he was the victim of racial profiling and that the police lacked reasonable suspicion to stop him. He asserts that, apart from his gender and race, he did not match the description of the robbery suspect. The State argues that, when Howell's gender and race are considered along with other circumstances, the police reasonably suspected that Howell was involved in the robbery. In the alternative, the State argues that the police reasonably suspected that Howell was unlawfully carrying a concealed weapon in violation of WIS. STAT. § 941.23. Section 941.23 sets forth a general prohibition on carrying a concealed weapon,

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

subject to limited exceptions, including an exception for individuals with a valid license to carry a concealed weapon. *See* WIS. STAT. § 941.23(2); *State v. Grandberry*, 2018 WI 29, ¶¶15-17, 380 Wis. 2d 541, 910 N.W.2d 214.

We uphold the constitutionality of the stop based on the State’s alternative argument. Howell has not filed a reply brief or otherwise refuted this argument. On the contrary, to the extent Howell addresses the argument, he concedes that police may initiate an investigative stop once they become aware that an individual is carrying a concealed weapon. Howell states:

Once an officer becomes aware of the presence of a gun, then and only then can an officer inquire about a defendant’s permit. However, until that point in time, the Carrying a Concealed [Weapon] Statute does not give an officer any extra authority to stop, detain and search an individual without reasonable suspicion that he is involved in any criminal activity.

Howell asserts that “there was no testimony that the Officers saw any gun” prior to the stop. This assertion is not accurate. As already noted, one of the officers testified that, prior to the stop, he noticed a black object protruding from Howell’s waistband that the officer believed was the butt of a handgun. Further, the circuit court found, based on the officer’s testimony, that the officer observed that the object was a gun. This finding is not clearly erroneous. *See State v. Kelley*, 2005 WI App 199, ¶8, 285 Wis. 2d 756, 704 N.W.2d 377 (we uphold the circuit court’s fact findings unless they are clearly erroneous).

Therefore,

IT IS ORDERED that the circuit court’s judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals