COURT OF APPEALS
DECISION
DATED AND FILED

October 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP43-CR **Cir. Ct. No. 2011CF3643**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES LOUIS GOODVINE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed*.

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

¶1 PER CURIAM. James L. Goodvine appeals from a judgment of conviction, entered after a jury trial, for one count of possession with intent to deliver cocaine (more than five and less than fifteen grams) and one count of possession of THC, contrary to WIS. STAT. § 961.41(1m)(cm)2. and (3g)(e) (2011-

12).[1] Goodvine argues that his pretrial suppression motion should have been granted because the police officers "did not have reasonable suspicion to stop and detain" him. We reject Goodvine's argument and affirm.

BACKGROUND

¶2 Four police officers in two squad cars were patrolling a high-crime area in Milwaukee. As they drove down an alley, they saw five men, including Goodvine, standing around the bed of a pickup truck that was parked behind a home. The officers conducted a stop and eventually recovered cocaine and marijuana from the truck, which belonged to Goodvine. Goodvine was arrested and charged. He moved to suppress the evidence seized from his truck.[2]

¶3 At the suppression hearing, Officer Michael Martin testified that he and his partner were assigned to patrol "high crime areas" that are "usually known to have the highest volume of robberies, shots fired, shootings, homicides, or drug related offenses." Martin, who was driving, and his partner drove down an alley, with a second squad car immediately behind them.

¶4 Martin saw the five men, four of whom were drinking from clear plastic cups. Martin also saw a corked bottle wrapped in a paper bag sitting on the open tailgate. Martin testified that he believed the men might be drinking alcohol in a public area and continued to observe them. Martin said that a fifth man—later

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] Goodvine also moved to suppress statements he made to one officer during questioning. At the conclusion of the suppression hearing, trial counsel indicated that Goodvine was no longer asserting that his statement should be suppressed.

identified as Quantrell Bounds—was "leaning up against the actual side of the bed area" and that as the squad cars "came closer … he dropped a cigar; and then he dropped a small object which I thought was a corner cut of marijuana." Martin said he "stopped the squad car and conducted a field interview of the subjects around the truck."

¶5 Martin said that he asked all the men, including Goodvine, for identification. Martin said Goodvine told him that his identification "was inside his wallet which was inside the truck." As Martin went to retrieve the wallet—which is his standard practice, for safety reasons—he "detected an odor of fresh marijuana which appeared to be coming from … outside of the passenger compartment from that open sliding window" that separates the passenger cabin from the truck bed. Martin said the smell was stronger when he opened the passenger-side door. He searched a container on the seat and ultimately found marijuana, cocaine, and a digital scale. He also found Goodvine's wallet "in that area of the compartment."

¶6 A second officer, Rachel Goldbeck, testified that she was driving her squad car directly behind Martin's squad car. She said that as they drove toward the truck, she focused on Bounds "because he had in his hand what I believed, just by sight, to be a marijuana cigarette, so I just wanted to see what he was gonna do with it as we passed [be]cause typically when people possess things that they're

not supposed to, when the police pass, they try to get rid of it."[3] Goldbeck continued:

> As we approached, he just kind of nonchalantly dropped the marijuana cigarette, which was later found [to contain] marijuana, out of his left hand. And my focus stayed on him, and out of his right hand he just kind of nonchalantly dropped … a corner cut of marijuana out of his right hand.

¶7 Goldbeck also testified about what happened immediately after she exited her squad car: "I looked at Bounds, and I said, 'What? You try to be slick dropping it like that," just kind of being playful with him. And he was like, 'Yeah. I was just smoking some marijuana.'" Goldbeck said they searched Bounds for other illegal items and then put him in a squad car.

¶8 Bounds testified that when the officers drove down the alley, he "was breaking a cigar down to fill it up with weed." He said that he "set it down in the [truck's] cab as the police pulled up." Bounds testified that he did not possess or drop any marijuana. However, he acknowledged that he did not contest a civil ticket for possession of marijuana that he was issued based on this incident.

¶9 Goodvine testified that when the police officers pulled up, they went "straight to Mr. Bounds and handcuff[ed]" him. Goodvine said that the officers "asked … who everybody was," but Goodvine denied that the officers talked with him before entering his truck. He said: "They was in the car before they talked to me. I asked why they were in the car. You know, I'm asking, 'Why are you going

[3] Goldbeck referred to a "marijuana cigarette," but later explained that it was "wrapped in a cigar-type paper." This is commonly referred to as a "blunt." *See* ***State v. Hughes***, 2000 WI 24, ¶8, 233 Wis. 2d 280, 607 N.W.2d 621 (A blunt is "a cigar used to smoke marijuana by hollowing out the center and inserting the drug.").

in the truck?'" Goodvine also said that he did not smell any marijuana as he stood next to his truck.

¶10 Following the hearing, both Goodvine and the State submitted written arguments. Goodvine argued that the officers lacked reasonable suspicion to stop Goodvine because the men were drinking on private property, rather than public property, and because Goldbeck's testimony that she could see "Bounds drop something as small as a cornercut from her position" was incredible. Goodvine also argued that the search of the truck was not a lawful identification search or a valid search based on the odor of marijuana.

¶11 The trial court denied the motion in an oral ruling. To the extent the testimony of the officers varied from that of other witnesses, the trial court found the officers to be more credible. First, the trial court found that the stop was valid, stating:

> Regarding why the officers initially stopped, the credible testimony is that Officers Martin and Goldbeck saw Mr. Bounds with what they believed to be a blunt and suspected marijuana as they drove through the alley. Officers Martin and Goldbeck both testified they saw Mr. Bounds holding a marijuana cigarette in his left hand and a corner-cut of marijuana in his right hand.
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> Each saw him drop the cigarette and then the bag. Officer Goldbeck focused on Mr. Bounds as she drove through the alley. That's why the officers stopped the vehicle, and there's nothing impermissible about that stop.

¶12 The trial court further found that the search of the truck was justified on two bases. First, Goodvine indicated that his identification was in his wallet in the truck. The trial court said that for safety reasons, it was reasonable for the officer to retrieve the identification himself, rather than allow Goodvine to enter the vehicle and potentially obtain a weapon. Second, Martin smelled "the odor of

fresh marijuana coming from inside of the truck, and the odor was stronger when he was inside the truck looking for [Goodvine's] identification." The trial court recognized that Martin was entitled to search the vehicle based on the smell of marijuana, pursuant to ***State v. Secrist***, 224 Wis. 2d 201, 210, 589 N.W.2d 387 (1999) ("The unmistakable odor of marijuana coming from an automobile provides probable cause for an officer to believe that the automobile contains evidence of a crime" and the officer therefore has probable cause to search the automobile.).

¶13 The case proceeded to trial and a jury found Goodvine guilty of both charges. For the cocaine charge, the trial court imposed and stayed a sentence of one year of initial confinement and two years of extended supervision, and it placed Goodvine on probation for two years. For the marijuana charge, the trial court sentenced Goodvine to six months in the house of correction, consecutive to his other sentence. This appeal follows.

STANDARD OF REVIEW

¶14 We apply a two-step standard of review in a challenge to a ruling on a motion to suppress. ***State v. Martin***, 2012 WI 96, ¶28, 343 Wis. 2d 278, 816 N.W.2d 270. "When reviewing a trial court's ruling on a motion to suppress evidence on Fourth Amendment grounds, we will uphold the trial court's factual findings unless [they are] clearly erroneous." ***State v. Eskridge***, 2002 WI App 158, ¶9, 256 Wis. 2d 314, 647 N.W.2d 434. We independently decide, however, whether the facts establish that a particular search or seizure occurred and, if so, whether it violated constitutional standards. *See* ***State v. Richardson***, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990). Where an unlawful stop occurs, the remedy is to suppress the evidence it produced. *See* ***State v. Washington***, 2005 WI App

123, ¶10, 284 Wis. 2d 456, 700 N.W.2d 305; *see also* ***Wong Sun v. United States***, 371 U.S. 471, 487-88 (1963).

DISCUSSION

¶15 Goodvine argues that the suppression motion should have been granted because the officers "did not have reasonable suspicion to stop and detain Goodvine." (Bolding omitted.) He argues that the facts known to the officers did not provide a "particularized basis" to suspect that the men gathered around the truck were involved in criminal activity and, alternatively, even if there was "reasonable suspicion to stop and detain Bounds, [the facts] did not give the officers reasonable suspicion to stop and detain Goodvine."[4]

¶16 We begin with the applicable constitutional law. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. A seizure occurs whenever a law enforcement officer "accosts an individual and restrains his freedom to walk away." ***Terry v. Ohio***, 392 U.S. 1, 16 (1968). Law enforcement officers may lawfully seize an individual "if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime." ***State v. Guzy***, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). This standard is flexible enough "to allow law enforcement officers under certain circumstances, the opportunity to temporarily freeze a situation, particularly where failure to act will result in the disappearance of a potential suspect." ***Id.*** at 676. Reasonable suspicion is

[4] Goodvine also states that although his pretrial motion "also sought to suppress the evidence on the basis that the police lacked probable cause to search his vehicle," he "does not pursue these issues as part of this appeal." Therefore, we will not discuss the legality of the vehicle search.

evaluated under the totality of the circumstances. ***State v. Amos***, 220 Wis. 2d 793, 800, 584 N.W.2d 170 (Ct. App. 1998). Factors that courts should consider in determining whether an investigatory stop is reasonable include:

> "(1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation."

Guzy, 139 Wis. 2d at 676-77 (citation omitted).

¶17 Goodvine first argues that the officers lacked reasonable suspicion to stop any of the men standing around the pick-up truck. He asserts that the only possible ***Guzy*** factors that would justify the stop are factors (5) and (6), as they relate to the officers' observations of Bounds possessing marijuana. *See* ***id.*** Goodvine's brief continues:

> Goodvine concedes that Martin's and Goldbeck's observations may have allowed for a hunch or a general suspicion, but reasonable suspicion cannot be based merely on an "inchoate and unparticularized suspicion or hunch." *See* ***State v. Alexander***, 2005 WI App 231[, ¶8, 287 Wis. 2d 645, 706 N.W.2d 191]. Neither Martin nor Gol[d]beck knew for certain that the item dropped was marijuana. They simply had a suspicion or a hunch. The item dropped by Bounds was very small. Plus, the officers had only a second or two to watch it drop from Bounds'[s] hand. As such, from a distance of 15 to 20 feet, and with such a short time frame for observation, the officers could not have determined with any reasonable certainty what the object was that Bounds dropped. It could have been a match case, a lighter, a cigar cutter, a bag of tobacco, a crumpled piece of paper, plastic or some other form of trash. It could have been any number of innocuous things. And while Martin's and Goldbeck's suspicions turned out

> to be correct, the end result of the search is not the standard by which the validity of its preceding stop is measured.

¶18 To the extent Goodvine is implicitly challenging the trial court's factual finding that Martin and Goldbeck "saw Mr. Bounds with what they believed to be a blunt and suspected marijuana as they drove through the alley," we reject Goodvine's argument because the trial court's findings are not "clearly erroneous." *See* ***Eskridge***, 256 Wis. 2d 314, ¶9. As noted, both officers testified that they saw Bounds drop what appeared to be "a corner cut of marijuana." Goldbeck also said that it was still light outside as they drove down the alley at seven o'clock on that August evening. She also testified that she had seen "[t]housands" of corner cuts of marijuana pursuant to her ten years of work as a police officer. Based on the officers' testimony, which the trial court accepted as credible, the trial court's finding that the officers saw Bounds with what they believed was marijuana was not clearly erroneous.

¶19 Goodvine's argument also suggests that the officers had to know with "reasonable certainty what the object was that Bounds dropped." The State responds:

> Goodvine's argument fails to consider the totality of the circumstances within the officers' knowledge.
>
> Reasonable suspicion is evaluated under the totality of the circumstances. Once the totality of the circumstances is considered, the specific articulable facts coupled with reasonable inferences establish reasonable suspicion to perform the investigatory stop. First, the officers observed five individuals drinking around a parked pickup truck in a high crime area in the early evening. Wisconsin courts have concluded that the reputation of an area as "high-crime" is highly relevant in balancing the reasonableness of an investigative stop. *See, e.g.*, ***State v. Allen***, 226 Wis. 2d 66, 74, 593 N.W.2d 504 (Ct. App. 1999); ***State v. Morgan***, 197 Wis. 2d 200, 211-12, 539 N.W.2d 887 (1995).

> Second, the officers observed behavior that was consistent with an individual trying to hide drug use…. [T]wo officers saw one of the men drop a cigar or cigarette, which they believed to be a joint or blunt. Both officers also saw the same individual drop what the officers believed to be a corner-cut bag of marijuana. The man did so as the two marked squad cars approached the location. This type of behavior, in light of the officers' training and experience, is consistent with attempting to dispose of or hide contraband. After observing behavior consistent with possession and use of marijuana the officers stopped and approached the men.
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> Goodvine's argument implies that the officers needed certainty of criminal activity to perform the investigatory stop. This is contrary to the well established principles of ***Terry*** stops. So long as the facts support a reasonable inference of unlawful conduct, the officers may temporarily detain the individual to investigate.

(Citations and record citations omitted.)

¶20 We agree with the State that the officers did not have to be certain that Bounds possessed marijuana in order to conduct the stop. As our supreme court explained in ***State v. Eason***, 2001 WI 98, ¶19, 245 Wis. 2d 206, 629 N.W.2d 625: "The information necessary to establish reasonable suspicion can be less in both content and reliability than the information needed to establish probable cause. In other words, the required showing of reasonable suspicion is low, and depends upon the facts and circumstances of each case." (Citation omitted.) We further agree with the State and the trial court that when we consider the totality of the circumstances, the officers had reasonable suspicion to conduct the stop to investigate whether Bounds possessed marijuana. Specific facts supporting that conclusion include: the officers were patrolling in a high-crime area, they saw Bounds with what appeared to be a marijuana cigarette and a corner-cut bag of marijuana, and they saw Bounds drop those items as the squad cars approached.

¶21 Goodvine disagrees with this conclusion and urges this court to follow the reasoning of an Ohio case, ***City of London v. Edley***, 598 N.E.2d 851 (Ohio Ct. App. 1991). ***London*** concerned a police stop where a police officer saw a man "alone in a parked car outside a bar making furtive gestures," including putting "a hand-rolled cigarette to his lips and lick[ing] it." *See* ***id.*** at 851. Suspecting the man was using marijuana, the officer moved towards the car, peered into the vehicle, and "caught a brief glimpse of a 'baggie.'" ***Id.*** As the car drove away, the officer stopped it and ultimately discovered marijuana. ***Id.*** The trial court suppressed the evidence "for lack of articulable and reasonable suspicion." ***Id.*** On appeal, the court affirmed, concluding that "the factors … used to justify the stop, specifically [the defendant's] furtive gestures and the [officer's] viewing of both a baggie and a hand-rolled cigarette containing an unknown substance, are not sufficient to establish reasonable suspicion that [the defendant] was engaged in criminal activity." ***Id.*** at 853.

¶22 ***London*** is distinguishable from this case. Here, two officers on patrol in a high-crime area saw a man holding what they believed—based on their training and experience—to be a marijuana cigarette and a corner-cut of marijuana. They also saw that man drop both the cigarette and marijuana as the squad cars approached. The totality of the circumstances was not the same as in ***London***, and ***London***'s reasoning does not justify a reversal in this case.

¶23 Finally, Goodvine argues that even if there was "reasonable suspicion to stop and detain *Bounds*, [the facts] did not give the officers reasonable suspicion to stop and detain *Goodvine*." (Emphasis added.) He explains:

> There was no testimony that the officers observed Goodvine doing anything illegal or even suspicious. There was no testimony that the officers observed Goodvine with a cigar or cigarette. There was no testimony that the

> officers observed Goodvine dropping or discarding any item much less an item that was illegal or suspicious. All the officers observed from Goodvine was his presence around a pickup on private property with four other men. While the police observed what they thought to be a bottle of alcohol on the tailgate, there was no testimony that the police suspected any of the men to be underage. And as the trial court noted, the fact that the men were not on public property defeats any public drinking argument. As such, Goodvine maintains that if the officers had only a hunch or suspicion that Bounds was engaging in criminal activity, they had even less against him. Indeed, they had no facts which demonstrated a "particularized basis" for suspecting that Goodvine had been engaged in criminal activity.

(Record citation omitted.)

¶24 In response, the State "assumes, without conceding, that Goodvine was seized for the purpose of argument,"[5] and it asserts that as long as the officers had reasonable suspicion to stop and investigate Bounds, they were justified in stopping and talking to all five men gathered around the truck. We agree. As the State notes, we have previously recognized that an officer does not have to believe that every member of a group has engaged in criminal activity in order to conduct an investigatory stop. *See* ***State v. Harris***, 206 Wis. 2d 243, 260, 557 N.W.2d 245 (1996) ("The State need not establish that the police had reasonable, articulable suspicion to seize the particular defendant before the court, but only that the police possessed reasonable, articulable suspicion to seize someone in the vehicle."). Further, the Wisconsin Supreme Court has held "that there is a general public interest in attempting to obtain identifying information from witnesses to police-citizen encounters," and that "[i]f questions later arise about police conduct during the stop, passengers may be able to provide information about what occurred

[5] Like the State, we will assume for purposes of this opinion that Goodvine was seized when the police officers stopped their squad cars behind his truck.

during the stop." ***State v. Griffith***, 2000 WI 72, ¶48, 236 Wis. 2d 48, 613 N.W.2d 72. We are unconvinced that it was inappropriate for the officers to talk with Goodvine and ask him for identification after he witnessed Bounds possessing marijuana and being arrested.

¶25 For the foregoing reasons, we reject Goodvine's argument that his stop and detention were illegal. The trial court did not err when it denied Goodvine's motion to suppress.

By the Court.—Judgment affirmed.

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