COURT OF APPEALS
DECISION
DATED AND FILED

August 31, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-1130

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

IN THE INTEREST OF QUENTIN D.,
A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

QUENTIN D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

FINE, J. Quentin D., a juvenile, appeals from an adjudication of delinquency for violating § 948.60(2), STATS., which makes it unlawful for a child to possess a dangerous weapon. He claims that the trial court improperly refused to suppress the gun that police officers found in his possession. We affirm.

Two police officers saw Quentin D. out of school in a high-crime area in Milwaukee at approximately 1 or 1:40 p.m. on a weekday, and school day, afternoon.[1] Section 938.19(1)(d)10, STATS., permits a law enforcement officer to take a juvenile "into custody" if the "juvenile is absent from school without an acceptable excuse" under another provision of the Wisconsin statutes. One of the officers knew Quentin D. and knew that he was fifteen years old. Subject to various exceptions not material here, children between the ages of six and eighteen must attend school during regular school hours. Section 118.15(1), STATS.

The officers went over to Quentin D. to ask him about his possible truancy. According to the testimony of one of the officers, Quentin D. had his hands in his pockets. The officer asked him to take his hands out of his pockets, which he did. The officer testified that at that point he, the officer, "was concerned about my safety, if he had a gun on him or not," and "conducted a pat-down search" over Quentin D.'s outer clothing. The officer testified that he "felt a very hard object in [Quentin's] left front pants pocket that I believed to be a gun." It was a gun.

Quentin D. claims that the pat-down search was unlawful and that the trial court should have suppressed the gun because the officers had no reason to believe that Quentin D. was involved in any criminal activity, and because the officer who did not do the pat-down search testified that he had no reason to believe that Quentin D. was armed. The trial court found that the officers stopped Quentin D. because they believed that he might be truant from school, and that they did the pat-down search "to protect themselves when they felt that their safety

[1] One of the officers testified that it was at 1 p.m.; the other officer testified that it was at 1:40 p.m. The difference is not material.

was in jeopardy." Although our review of the trial court's legal conclusions is *de novo, see* ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991), we agree.

Law enforcement officers may stop a person to investigate when they reasonably suspect, considering the totality of the circumstances, that some type of unlawful activity either is taking place or has occurred. *See* ***Terry v. Ohio***, 392 U.S. 1, 22 (1968). Contrary to Quentin D.'s argument, it is not necessary that the officers suspect that the unlawful activity is a *crime* in the technical sense of that word; it is enough that the officers have a reasonable basis to believe that "something unlawful" is "afoot." *See* ***State v. Waldner***, 206 Wis.2d 51, 58, 556 N.W.2d 681, 685 (1996). "Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." ***Alabama v. White***, 496 U.S. 325, 330 (1990). Here, the officers had ample justification under § 938.19(1)(d)10, STATS., to stop Quentin D. to investigate whether he was, in fact, truant from school.

Having determined that the officers' stopping Quentin D. was lawful, we now turn to the pat-down search. ***Terry*** recognized that law enforcement officers are potentially at risk whenever they investigate suspicious activity. ***Terry***, 392 U.S. at 23–24. Thus, a pat-down search for weapons is permitted when the officer is justified in believing that the person he or she confronts may be armed. ***Id.***, 392 U.S. at 24–27. "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety

or that of others was in danger." ***Id.***, 392 U.S. at 27. The test is objective. ***Florida v. Royer***, 460 U.S. 491, 498 (1983). Stated another way, a frisk is lawful when "a reasonably prudent person in the circumstances of the officer would be warranted in the belief that the action taken was appropriate." ***State v. Anderson***, 155 Wis.2d 77, 88, 454 N.W.2d 763, 768 (1990). As the Wisconsin Supreme Court recently recognized, "an officer making a *Terry* stop need not reasonably believe that an individual is armed; rather, the test is whether the officer 'has a reasonable suspicion that a suspect may be armed.'" ***State v. Morgan***, 197 Wis.2d 200, 209, 539 N.W.2d 887, 891 (1995) (quoted source omitted). In making this determination, the officer may consider whether the area is "high crime" or not. ***Id.***, 197 Wis.2d at 211–212, 539 N.W.2d at 892. Given the prevalence of unlawful possession of guns in our community, the officers were justified in patting-down Quentin D. to see if he, a suspected truant from school, was armed. The minimal intrusion on Fourth Amendment values by such an outer-clothing pat-down is significantly outweighed by the dangers of a secreted weapon. *See* ***State v. Williamson***, 58 Wis.2d 514, 519–520, 206 N.W.2d 613, 616 (1973).

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.