

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 21, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-1216-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CALVIN SHIELDS,

DEFENDANT-APPELLANT.

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

SCHUDSON, J.¹ Calvin Shields appeals from the judgment of conviction entered after he pled guilty to possession of THC, contrary to § 961.41(3g)(e), STATS. Shields argues that his “constitutional right to be free from an unreasonable seizure was violated when police stopped him without

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

reasonable suspicion that he was one of the robbery suspects” described in a radio dispatch. This court rejects his argument and affirms.

The facts are undisputed. At approximately 2:30 a.m. on August 22, 1998, Milwaukee Police Officer Steven Herrmann received a dispatch to his squad car stating that three black males, ages 20-25, had robbed a tavern located at 5319 West Center Street. The dispatch further related that the men were armed; that they were wearing athletic clothing; that one was wearing a red shirt; and that the three suspects, who had fled on foot, were “last seen going east and then southbound” from the tavern. Officer Herrmann testified that he arrived in the vicinity of the robbery approximately five minutes after receiving the dispatch and that, upon his arrival, he observed a black male, later identified as Shields, walking two blocks south of the tavern, wearing a black and orange Baltimore Orioles jersey. Officer Herrmann stated that he then exited his squad car and, with his weapon drawn, approached Shields and patted him down. While conducting the patdown, Officer Herrmann felt a lump in Shields’s left front pocket. Officer Herrmann asked Shields what it was, and Shields replied that it was marijuana. Officer Herrmann then arrested Shields.

In reviewing a denial of a motion to suppress, this court must uphold the trial court’s findings of fact unless they are clearly erroneous. *See State v. Richardson*, 156 Wis.2d 128, 137-38, 456 N.W.2d 830, 833 (1990). Whether those facts satisfy the constitutional requirement of reasonableness under the Fourth Amendment, however, presents a question of law subject to *de novo* review. *See State v. Gaulrapp*, 207 Wis.2d 598, 603, 558 N.W.2d 696, 697 (Ct. App. 1996).

The Fourth Amendment of the United States Constitution protects “[t]he rights of the people . . . against unreasonable searches and seizures.” U.S. CONST. amend. IV. “In *Terry v. Ohio*, 392 U.S. 1, 22 (1968), the United States Supreme Court recognized that although an investigative stop is technically a ‘seizure’ under the Fourth Amendment, a police officer may, under appropriate circumstances, detain a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest.” *State v. Waldner*, 206 Wis.2d 51, 54-55, 556 N.W.2d 681, 683-84 (1996). Wisconsin has adopted the *Terry* rule, see *State v. Chambers*, 55 Wis.2d 289, 294, 198 N.W.2d 377, 379 (1972), and has codified it in § 968.24, STATS.²

Addressing the constitutionality of a *Terry* stop, this court recently reiterated that “[t]he fundamental focus of the Fourth Amendment and § 968.24, STATS., is on [the] reasonableness” of the officer’s actions. See *State v. Taylor*, 226 Wis.2d 490, 495, 595 N.W.2d 56, 59 (1999). “The question of what constitutes reasonableness is a commonsense test which considers what a reasonable police officer would reasonably suspect in light of his or her training and experience.” *Id.* Determining the reasonableness of the officer’s actions

² Section 968.24, STATS., provides:

Temporary questioning without arrest. After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such a person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be conducted in the vicinity of where the person was stopped.

depends on the totality of the circumstances that existed at the time of the incident. *See Richardson*, 156 Wis.2d at 139, 456 N.W.2d at 834.

Shields argues that the dispatched description of the robbery suspects was far too general to support Officer Herrmann's stop. This court disagrees. As the trial court noted in its decision denying the motion to suppress, Shields's apparel, age and race matched those of the suspects. Further, Shields's proximity to the tavern within walking distance of the robbery, as well as his direction of travel from the area of the tavern, supported Officer Herrmann's suspicion that Shields was one of the robbers. Therefore, this court concludes that the officer had reasonable suspicion to conduct the *Terry* stop and, accordingly, affirms the trial court's denial of Shields's motion to suppress.

By the Court.—Judgment affirmed.

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

