COURT OF APPEALS
DECISION
DATED AND RELEASED

March 11, 1997

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.

NOTICE

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

No. 96-1040-CR

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

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

KAREM SCOTT,

Defendant-Respondent.

APPEAL from an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Reversed and cause remanded with directions*.

Before Fine, Schudson and Curley, JJ.

PER CURIAM. The State of Wisconsin appeals from a trial court order that: (1) granted Karem Scott's motion to suppress the evidence police obtained during a stop and search of Scott; and (2) dismissed the criminal complaint charging him with possession with intent to deliver a controlled substance—cocaine. Because we conclude that the trial court erred when it

granted the suppression motion, we reverse and remand the matter for further proceedings consistent with this opinion.

I. BACKGROUND.

The following facts were presented by the arresting police officer at the hearing on Scott's suppression motion. City of Milwaukee police officers traveling in an unmarked squad car spotted a man exiting from what was described as a known drug house. The man walked across the street and entered the back seat of a parked car. The officers parked the squad car, and the arresting officer walked on the sidewalk towards the passenger side of the vehicle. The officer was "curious" and intended to conduct a "field interview" of the man seen exiting the house. He later testified that as he approached to within two feet of the car, he saw the following:

> I observed a black male seated in the front passenger seat having his hands by his front waistband area. At the time, I couldn't discern whether he was attempting to put something in his waistband, but there was definitely a motion of his right hand by his front waistband area.

The officer advised the front-seat passenger, later identified as Scott, to place his hands on the car dashboard. The officer testified that he made this order out of a "safety concern," and that, based on past circumstances, he could not tell whether Scott possessed a weapon and was either reaching for such a weapon, or possibly trying to conceal one. When Scott did not immediately comply, the officer stepped back from the car and drew his handgun, repeatedly shouting at Scott to place his hands on the front dash board. Scott complied the third time the officer requested him to do so.

The officer then opened the car door, "made a quick cursory check of [Scott's] front waistband area," and asked him to exit the vehicle slowly and place his hands on the car hood. Scott complied and the officer conducted a pat-down search. A small baggie of white substance fell out of Scott's pant leg during the search. The officer suspected it was cocaine base and he arrested

Scott. The entire scenario lasted twenty seconds according to the officer. Although the substance recovered later tested negative for cocaine, during Scott's custodial search the police recovered several packets of substance that tested positive for cocaine secreted in Scott's clothing. This substance was the basis of the criminal complaint charging Scott with possession with intent to deliver a controlled substance—cocaine.

Scott moved to suppress the evidence obtained in his stop and search and all fruits of that evidence later discovered by the police. After an evidentiary hearing, the trial court granted Scott's motion, concluding that the police stop did not comport with the mandates of the Fourth Amendment because the State had not shown that the police had stopped Scott based on reasonable and articulable suspicion of criminal activity.

II. ANALYSIS.

In reviewing an order suppressing evidence, we will uphold a trial court's findings of historical fact unless they are clearly erroneous; however, we review a trial court's conclusion on whether a stop and search comported with the mandates of the Fourth Amendment *de novo.* ***State v. Harris,*** ___ Wis.2d ___, ___, 557 N.W.2d 245, 248 (1996). Under both the Fourth Amendment and the Wisconsin Constitution police "`may only infringe on an individual's interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime.'" ***Id.*** at ___, 557 N.W.2d at 252 (citations omitted). "This is an objective test." ***Id.***

The State contends that the officer's original approach to the car in which Scott was a passenger was nothing more than a routine police encounter allowable under the Constitution. We agree. "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the street." ***Terry v. Ohio,*** 392 U.S. 1, 34 (1968) (White, J., concurring). Further, "a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required." ***Florida v. Bostick,*** 501 U.S. 429, 434 (1991) (citation omitted). Thus, "[o]nly when the officer, by means

of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." ***Terry,*** 392 U.S. at 19 n.16.

The State concedes that at the moment the officer drew his handgun and ordered Scott to place his hands on the dashboard, a seizure had occurred for purposes of Fourth Amendment analysis. We agree. Therefore, the real issue in this case is whether the police had a reasonable suspicion to "seize" Scott when he did not immediately comply with the officer's original command to place his hands on the dashboard of the car.

The trial court found that the officer watched a single male exit a known drug house and enter the back seat of a car parked on the street outside that house. The officer was familiar with the house because "either personally, directly, or from his knowledge of search warrant executions, he knew that drug activity had been reported, discovered, examined ... by the police at that particular address." The trial court also found that although the house was connected with drug dealing, "there was no nexus between the house except for the one male who exited the house and went out to the car." Further, "[t]here was no hand-to-hand type of activity that was observed, no large crowd in the front, no other activity, it was pretty lonely or lonesome on the street except for this car ... which contained the defendant and was parked across from the house."

The trial court, however, then found that it was reasonable for Scott to be apprehensive about the plain-clothes police officer approaching the parked car at night. Additionally, the court found that Scott's "furtive motion" with his hand in his waistband, and his hesitancy in responding to the officer's command to place his hands on the dash board was reasonable under the circumstances—that is, he was unaware who the officer was and that he was apprehensive about this unknown person's actions.

The court then concluded that the facts recited by the officer supporting his curiosity about drug dealing had nothing to do with Scott. Those facts were connected only to the back seat passenger who the officer had spotted exiting from the drug house. Further, the officer had not observed any connection between drug dealing and Scott. Based upon these findings and

conclusions, the trial court determined that the police had not established reasonable suspicion to stop and seize Scott.

We disagree with the trial court's conclusion that the police did not have reasonable suspicion to seize Scott. We first note that the trial court incorrectly premised part of its reasoning on its conclusions about whether Scott's "furtive" actions were reasonable from *his* point of view. Under the case law, however, the question is not whether Scott's actions were reasonable from his point of view, the question is whether *the police officer* had "a suspicion grounded in specific, articulable facts and reasonable inferences from those facts." ***Harris,*** ___ Wis.2d at ___, 557 N.W.2d at 252 (citations omitted).

Here, the officer stated that when he approached the car to conduct a field investigation, he saw the front passenger "having his hands by his front waistband area." The officer testified that he was concerned for his "safety" and that, based on past circumstances, he could not tell whether Scott possessed a weapon and was either reaching for such a weapon, or possibly trying to conceal one. Accordingly, when Scott did not comply with the officer's command to place his hands on the dash board, the officer drew his weapon and ordered Scott to comply. The officer testified that even after he drew his weapon, Scott "refused to remove his hands," and that this led the officer to believe that Scott had a weapon.

In sum, the officer knew that an individual exiting a known drug house had entered the car, and that a passenger in that car was making furtive motions in his waistband as the officer approached the car. Further, the officer knew of the connection between weapons and the drug trade. Given these facts and Scott's continued refusal to move his hands to a location where the officer could see them, we have no problem concluding that the officer had reasonable suspicion to "seize" Scott and ensure that the officer's safety was not endangered.

The officer's concern for his safety was reasonable given the facts known to him at the time he approached the parked car. "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety or that of others was in danger." ***Terry,*** 392 U.S. at 27. Our

supreme court has noted that "weapons are often 'tools of the trade' for drug dealers" and that "`[t]he violence associated with drug trafficking today places law enforcement officers in extreme danger.'" ***State v. Guy,*** 172 Wis.2d 86, 96, 492 N.W.2d 311, 315 (1992). Moreover, in a different context this court has noted the danger of concealed weapons in automobiles and "the particular vulnerability of police officers approaching the unilluminated passenger compartment of a vehicle at night." ***State v. Walls,*** 190 Wis.2d 65, 71, 526 N.W.2d 765, 767 (Ct. App. 1994). The United States Supreme Court has also acknowledged the danger police officers face when approaching the passengers inside a car. *See* ***Maryland v. Wilson,*** 65 U.S.L.W. 4124, 4125-26 (U.S. Feb. 19, 1997) (holding that officer may order passengers out of car based on safety concerns).

As such, the officer's actions in opening the car door, ordering Scott to exit, and conducting a pat-down search were reasonable given this concern for his safety. *See* ***Guy,*** 172 Wis.2d at 96-97, 492 N.W.2d at 315 (discussing basis for officer's reasonable belief that her safety was in danger). The suspected drugs were only recovered during this legitimate pat-down for weapons. Accordingly, we conclude that the stop and seizure of Scott did comport with the Fourth Amendment. We reverse the order suppressing the evidence and dismissing the complaint and remand the matter to the trial court for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded with directions.

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