COURT OF APPEALS
DECISION
DATED AND FILED

July 29, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1909-CR **Cir. Ct. No. 2011CF4431**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LOUIS MANUEL HERNANDEZ,

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. Louis Manuel Hernandez appeals a judgment convicting him of possession of heroin with intent to deliver. He argues: (1) that the police did not have grounds to conduct an investigatory stop; and (2) that the

"plain view" exception to the warrant requirement did not allow the police to seize the heroin they found in his car. We affirm.

¶2 Hernandez first argues that the police violated the Fourth Amendment by stopping him because they did not have a reasonable suspicion that he was engaged in criminal activity. The touchstone of Fourth Amendment analysis is reasonableness, which is measured in objective terms. ***State v. Gaulrapp***, 207 Wis. 2d 600, 607, 558 N.W.2d 696 (Ct. App. 1996). The police may "approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." ***Terry v. Ohio***, 392 U.S. 1, 22 (1968). "In order to execute a valid investigatory stop, ***Terry*** requires that a police officer reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place." ***State v. Allen***, 226 Wis. 2d 66, 71, 593 N.W.2d 504 (Ct. App. 1999). In determining whether the police had an objectively reasonable suspicion that criminal activity was afoot, we consider the totality of the circumstances. ***Id.*** at 74.

¶3 At the suppression hearings, Police Officers Michael Vagnini and Joseph Serio, both experienced officers, testified that they were patrolling the area when they saw Hernandez walking down a driveway from a building toward the street. When Hernandez saw them, he began to walk more quickly. When the police pulled parallel to him on the street, Hernandez turned and ran back toward the driveway, even though they had said nothing to him up to that point. He ran into the backyard and climbed over a fence, trying to get away as they chased him. They testified that Hernandez threw his keys, his cell phone and some plastic bags as he ran, even though they told him to stop after identifying themselves as police officers. Officer Vagnini also testified that the area was known for violent crimes and drug activity, which was the reason they were on patrol in that area.

¶4 Under the totality of the circumstances, the police had an objectively reasonable suspicion that Hernandez was engaged in criminal activity. He ran from the police when he saw them. Unprovoked flight from the police is a pertinent factor in determining whether there is a reasonable suspicion that criminal activity is occurring. *See* ***Illinois v. Wardlow***, 528 U.S. 119, 124 (2000). Hernandez was in an area that was known for drug trafficking and other serious crimes; in fact, the officers who stopped Hernandez were tasked with patrolling the area for precisely that reason. We have held that the reputation of an area for criminal activity is an important consideration in deciding whether an investigatory stop is reasonable. ***Allen***, 226 Wis. 2d at 74. Based on Hernandez's unprovoked decision to flee the police in an area known for crime, we conclude that the police had a reasonable suspicion that there was criminal activity occurring and acted properly under the Fourth Amendment by investigating.

¶5 Hernandez next argues that the police should not have seized heroin from his car, which was parked in the driveway he ran up, because they were not lawfully in a position where they could see the heroin in his car. The police may seize contraband without a warrant if it is within plain view and they had "a right to be in the position to have that view." ***State v. Johnston***, 184 Wis. 2d 794, 809, 518 N.W.2d 759 (1994) (citation and quotation marks omitted). Police Officer Vagnini testified that after Hernandez fled back up the driveway and over the fence, he saw a bag of suspected heroin in the storage area between the front seats of a car parked in the driveway, which turned out to be Hernandez's car, through the front windshield. Officer Vagnini had a right to be in the driveway because he was conducting a lawful ***Terry*** stop. Therefore, we reject Hernandez's

argument that the police did not have the right to seize the heroin under the plain view exception to the search warrant requirement.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).