COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP554-CR **Cir. Ct. No. 2012CF6076**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES P. ABBOTT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JONATHAN D. WATTS, Judge. *Affirmed*.

Before Lundsten, Higginbotham and Kloppenburg, JJ.

¶1 PER CURIAM. The State charged James Abbott with possession of a firearm as a felon, as a repeater. The circuit court denied Abbott's motion to suppress the firearm, and Abbott entered a guilty plea. Abbott appeals, arguing that the court erred in denying his suppression motion. We conclude that the stop

that yielded the firearm was justified by reasonable suspicion, and we therefore affirm.

BACKGROUND

¶2 Abbott moved to suppress the firearm on the basis that it was seized after he was illegally stopped by police officers in violation of his right to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution and the state constitutional counterpart, Wisconsin Constitution, Article I, Section 11.

¶3 City of Milwaukee police Officers Kyle Mrozinski and Matthew Rittner, each with seven years' experience with the Milwaukee Police Department, testified at the hearing on Abbott's suppression motion. Their testimony established the following undisputed facts.

¶4 On the evening of December 18, 2012, the officers were in their squad cars patrolling an area defined as "39th Street to the west and then to the east, Teutonia Avenue from Villard Avenue to the south to Silver Spring to the ... north," because that area had, in the preceding one to two weeks, seen an increase in robberies and burglaries, including numerous strong armed and armed robberies. As described by "all" the victims of the reported robberies, the robberies were committed by a group of five to six black males wearing all dark clothing.

¶5 At approximately 8:30 that night, the officers saw a group of six black males wearing all dark clothing standing near a closed school in the area. One of the men had a hairstyle that was similar to that reported by the victims. After making eye contact with the officers, the men split into two groups and

walked past the school. As the men exited the school's parking lot and joined back together, Officer Rittner exited his vehicle, approached the men, said, "Stop," and asked what they were doing.[1] Rittner then saw Abbott's arm extended out, as if Abbott had just thrown something, and at the same time saw an object hit the ground. After the object hit the ground, Abbott fell next to the object.

¶6 Before or as Abbott fell, Officer Mrozinski exited his vehicle. Mrozinski approached Abbott and asked if he was all right. As Abbott began to stand up, Officer Rittner told Officer Mrozinski that he believed that Abbott had discarded an object on the ground. Mrozinski then looked and saw a black semiautomatic handgun at Abbott's feet.

¶7 The question before the circuit court was whether the officers possessed reasonable suspicion supporting a temporary investigative stop when Officer Rittner directed the men to "Stop." The circuit court found that the officers were trained, experienced, and familiar with the area, and that their testimony was highly credible. The court found that the seizure was supported by the reasonable suspicion that the men might have been involved in committing the

[1] Officer Rittner actually testified that he "may have said, Stop," and the circuit court assumed that a seizure took place when Rittner said, "Stop." Abbott argued at the hearing that the State, with the burden of proof, did not show that Rittner did not say, "Stop." While the circuit court considered the scenario without Rittner saying, "Stop," the court's finding indicates that it accepted Abbott's argument and assumed that the State, with the burden of proof, did not prove that the stop occurred at some later point. On appeal, the State does not argue otherwise. Accordingly, we assume for purposes of this opinion that the officer did say, "Stop," and that a seizure occurred at that point in time.

previously reported robberies nearby, and might break into the closed school.[2] The circuit court denied Abbott's motion to suppress the firearm.

DISCUSSION

¶8 "In reviewing a denial of a motion to suppress, we will uphold the circuit court's findings of fact unless they are clearly erroneous. Whether those facts satisfy the constitutional requirement of reasonableness is a question of law, which we review de novo." ***State v. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

¶9 The law governing the legality of a temporary investigative seizure is well established.

> A brief investigatory stop is a seizure and is therefore subject to the requirement of the Fourth Amendment to the United States Constitution that all searches and seizures be reasonable. ***Terry v. Ohio***, 392 U.S. 1, 20-22 (1968). To execute a valid investigatory stop consistent with the Fourth Amendment, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. The officer must be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant the intrusion. The standard is the same under Article I, Section 11 of the Wisconsin Constitution. The question of what constitutes reasonable

[2] The circuit court also found that the stop was justified because the officers had probable cause to arrest the men for violation of the municipal ordinance that prohibits loitering and prowling. Because we affirm the court's determination that the stop was justified by reasonable suspicion of criminal activity, we do not address Abbott's challenge to the court's alternative basis for denying his motion to suppress. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (declining to consider alternative arguments where resolution of one issue disposes of the appeal).

For the same reason, we do not address Abbott's argument that, because the stop was unlawful, the discovery of the firearm must be suppressed because Abbott did not voluntarily abandon the firearm.

> suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience.

Young, 212 Wis. 2d at 423-24 (some citations omitted). In other words, when viewed objectively, the facts and reasonable inferences from those facts must be sufficient for an officer to reasonably conclude, in light of his or her experience, that criminal activity may be afoot. ***Terry v. Ohio***, 392 U.S. 1, 21-22, 30 (1968).

¶10 In this case, the key facts, as found by the circuit court and not disputed by the parties, are that the police, while patrolling in a defined area that had in the previous one to two weeks seen numerous robberies and burglaries by a group of five to six black men wearing all dark clothing (as described by the victims of those crimes), saw a group of five to six black men wearing all dark clothing near a closed school in that area. One of the men had a hairstyle that resembled the hairstyle reported by the victims. The police then saw the men split into two groups as they passed the school, after the men noticed the police presence. It was as the men reunited and continued into the neighborhood, that Officer Rittner stopped the group to investigate what they were doing. From these facts, a reasonable officer could infer that the men may be the men described by crime victims and, thus, that the men had committed or were about to commit a robbery or burglary. "[A] reasonable police officer who is charged with enforcing the law as well as maintaining peace and order cannot ignore the inference that criminal activity may well be afoot." ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶11 Abbott argues that "the facts do not provide reasonable suspicion that the men were committing or about to commit a robbery or burglary," because to so conclude would justify the police stopping any group of black men dressed in

dark clothing. Abbott's argument ignores the additional clarifying and narrowing facts that justify the stop here: the pre-defined circumscribed area; the very recent spate of robberies and burglaries in that area; the victims' descriptions of the perpetrators of those crimes as a specified number of black men dressed in dark clothing, which closely resembled the number and dress of the group observed by the police on the night of December 18; the resemblance in hairstyle to one of the perpetrators, as reported by the victims; the group's presence on school property after hours; and their splitting up upon noticing the police. These specific and articulable facts, along with rational inferences from those facts, sufficed to reasonably support Officer Rittner's conclusion, based on his experience, that criminal activity might be afoot, so as to warrant his investigative stop.

¶12 The circumstances do not, as Abbott suggests, involve the impermissible practice of simply stopping black men in a high-crime area in hopes of detecting something incriminating. Rather, this is an instance where people living in this area had reported crimes, and there were articulable reasons to think that these particular men might be the perpetrators.

CONCLUSION

¶13 Because the stop that led to the discovery of Abbott's firearm was supported by reasonable suspicion, the circuit court properly denied Abbott's motion to suppress, and we affirm his conviction.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2011-12).[3]

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