

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 9, 2000

Cornelia G. Clark
Acting 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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1336-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PATRICK LYNCH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Patrick Lynch appeals from a judgment convicting him of possession of cocaine with intent to deliver and sentencing him to forty-two months in prison. He claims the trial court erred in denying his motion to suppress evidence gathered after he was arrested for attempting to flee from an

investigatory stop.¹ We conclude there were adequate grounds for the stop and arrest and therefore affirm.

BACKGROUND

¶2 A Milwaukee police officer observed Lynch sitting slightly crouched down in a car parked near the John Marshall High School, approximately an hour after the time the officer knew classes began. The officer thought Lynch looked young and might be truant. He also wondered whether Lynch's posture and failure to leave the car after several minutes of surveillance indicated he might be having a physical problem.

¶3 The officer approached the car and made contact with Lynch. He observed that Lynch had breakfast items from a fast food restaurant on his lap. Lynch told the officer that he was eighteen and was planning to go to class after he finished eating. The officer asked for identification and verified that Lynch was eighteen. During this time, the officer also observed Lynch reaching toward his waistband or pocket. The officer asked Lynch to keep his hands out, but noticed him again reaching toward his waistband or pocket several times while he was questioning him.

¶4 These repeated gestures caused the officer to think that Lynch might have a weapon, so he asked Lynch to step out of the car. Lynch did so, but immediately tried to run away. The officer grabbed Lynch and, after a brief struggle, subdued him and placed him under arrest. The officer then attempted to

¹ WISCONSIN STAT. § 971.31(10) (1997-98) permits review of suppression motions notwithstanding a defendant's plea of guilty. All further references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

search Lynch. Lynch resisted the search, but admitted that he had a large amount of cocaine in his underwear. Lynch was transported to the police station where the drugs were recovered.

STANDARD OF REVIEW

¶5 When we review a suppression motion, we will uphold the circuit court's findings of fact unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2); *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). We will independently determine, however, whether the facts establish that a particular search or seizure violated constitutional standards. *See State v. Richardson*, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990).

ANALYSIS

¶6 The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures.² *See State v. Drogsvold*, 104 Wis. 2d 247, 264, 311 N.W.2d 243 (Ct. App. 1981). The detention of an individual by a law enforcement officer constitutes a “seizure” of the person within the meaning of the Fourth Amendment. *See Berkemer v. McCarty*, 468 U.S. 420, 436-37 (1984). However, such detention is not “unreasonable” if the stop is brief in nature, and justified by a reasonable suspicion that the individual has committed, or is about to commit, a crime. *See* U.S. CONST. amend. IV; *Berkemer*, 468 U.S. at 439; *see also* WIS. CONST. art. I, § 11; WIS. STAT. § 968.24.

² Due to the similarity of these provisions, Wisconsin courts look to the Supreme Court's interpretation of the Fourth Amendment for guidance in construing the state constitution. *See State v. Roberts*, 196 Wis. 2d 445, 452-53, 538 N.W.2d 825 (Ct. App. 1995).

¶7 Lynch contends that any reasonable suspicion that he was truant or in need of assistance dissolved once the officer learned that he was eighteen and merely eating breakfast. Consequently, he argues, the officer had no grounds to prolong his detention by asking him to get out of the car, and the evidence gained after that point should be inadmissible.

¶8 However, the fact that the officer's original suspicions may have been allayed does not preclude new suspicions from arising during the investigatory stop. Here, Lynch's furtive gestures and nervous demeanor could reasonably have led the officer to suspect that Lynch was hiding a weapon in his waistband. The officer was therefore justified in prolonging the stop to attempt to dispel his new suspicion. And, because the continuation of the investigatory stop was justified, Lynch's subsequent flight provided probable cause to arrest him for obstructing an officer. *See* WIS. STAT. § 946.41. The suppression motion was properly denied.

By the Court.—Judgment affirmed.

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

