COURT OF APPEALS
DECISION
DATED AND FILED

February 22, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP275-CR **Cir. Ct. No. 2014CF2665**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JIMALE ALONZO LAWS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM S. POCAN, Judge. *Affirmed*.

Before Lundsten, P.J., Blanchard and Fitzpatrick, JJ.

¶1 PER CURIAM. Jimale Alonzo Laws appeals a judgment of conviction for possession of a firearm by a felon. Laws argues that the circuit court erred in denying his motion to suppress evidence on the ground that the evidence was obtained through an unreasonable seizure. We reject Laws' arguments and affirm.

BACKGROUND

¶2 Laws was charged with possession of a firearm by a felon, carrying a concealed weapon, and possession of THC after an investigatory stop in which police found drugs and a gun in the pockets of his gym shorts. Laws moved to suppress this evidence, arguing that police lacked reasonable suspicion to stop and frisk him. The circuit court denied Laws' motion after a hearing. Laws pled guilty to possession of a firearm by a felon, and the remaining counts were dismissed and read in for sentencing purposes. Laws was sentenced to 18 months of initial confinement and 24 months of extended supervision. Laws appeals, arguing that the circuit court should have granted his motion to suppress the gun and the drugs.

DISCUSSION

¶3 The United States and Wisconsin Constitutions "protect people from unreasonable searches and seizures." ***State v. Young***, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729. An officer may conduct a brief investigatory stop of a person upon "reasonable suspicion that a crime has been committed, is being committed, or is about to be committed." ***Id.***, ¶20. "Reasonable suspicion requires … specific and articulable facts that warrant a reasonable belief that criminal activity is afoot." ***Id.***, ¶21. "During an investigative stop, an officer is authorized to conduct a search of the outer clothing of a person to determine

whether the person is armed if the officer is 'able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" ***State v. Johnson***, 2007 WI 32, ¶21, 299 Wis. 2d 675, 729 N.W.2d 182 (quoting ***Terry v. Ohio***, 392 U.S. 1, 21 (1968)). To determine whether an officer has reasonable suspicion, "those facts known to the officer at the time of the stop must be taken together with any rational inferences, and considered under the totality of the circumstances." ***State v. Washington***, 2005 WI App 123, ¶16, 284 Wis. 2d 456, 700 N.W.2d 305.

¶4 We apply a two-step standard of review to the denial of a motion to suppress evidence. *See* ***State v. Lonkoski***, 2013 WI 30, ¶21, 346 Wis. 2d 523, 828 N.W.2d 552. "We uphold the circuit court's findings of fact unless they are clearly erroneous. We then review de novo the application of the facts to the constitutional principles." ***Id.*** (citations omitted).

¶5 In denying Laws' motion to suppress, the circuit court relied on the testimony of Officer Anthony Milone, whose testimony the court found credible. The court referred to the following facts in its oral ruling. Officer Milone encountered Laws at around 3:00 a.m. in a high crime area of Milwaukee, where police often respond to reports of shots fired and robberies. Officer Milone had responded to approximately 20 such calls over the past year from this area. Officer Milone was in a marked squad car that was traveling approximately 15 to 20 miles per hour when he observed Laws and another individual coming out of an alley. When Laws observed the squad car, his eyes widened and then he conducted a "security check," placing his right hand on his front pants pocket. Laws proceeded to "blade" his body by turning his left shoulder forward and turning his right side away from police view. The other individual kept walking and, after about three seconds, Laws started walking behind him. Laws put his

hands in front of his body, as if trying to, in the words of the circuit court, make himself "look smaller." Laws also looked left and right, as if considering whether to flee. Officers asked to see Laws' hands, and then Officer Milone patted him down. Officer Milone felt a firearm in Laws' right-side pants pocket.

¶6 The circuit court determined that the totality of the circumstances gave the officers reasonable suspicion to stop Laws. In particular, the court relied on Laws' actions after observing the squad car, which included stopping briefly to pat his pocket (the "security check") and then turning his body away from police view (the "blading"). The court also found it significant that the encounter occurred in a high crime area very early in the morning.

¶7 Laws does not dispute the findings of fact made by the circuit court. We therefore proceed to the second step of the analysis, which is to determine whether the officers had reasonable suspicion for the investigative stop.

¶8 Laws argues that the circuit court's determination that the officers had reasonable suspicion is inconsistent with our decision in ***State v. Gordon***, 2014 WI App 44, 353 Wis. 2d 468, 846 N.W.2d 483. In ***Gordon***, we reversed a circuit court determination that officers had reasonable suspicion to conduct an investigatory stop after they observed the defendant making a "security adjustment"—in other words, briefly touching his pants pocket—in a "dangerous" area of Milwaukee. ***Id.***, ¶¶1, 3-6, 18. We explained that it is common for people to occasionally pat their pockets in order to check for their possessions, and that this instinct would likely be heightened in a high crime area. ***Id.***, ¶17. We concluded that the facts relied on by the circuit court were "far too common to support the requisite individualized suspicion" necessary to justify the investigative stop. ***Id.***

¶9 The problem for Laws is that the facts in this case go beyond the bare-bones facts in ***Gordon***. Indeed, we explained in ***Gordon*** that a defendant's "security adjustment" could support reasonable suspicion in conjunction with additional facts, such as flight or attempted flight. ***Id.*** Laws argues that no such "flight" facts are present here. That is true, but here there is other suspicious behavior.

¶10 Laws looked from left to right, which suggested that he was considering whether to try to flee. Laws also turned the right side of his body away from the officer after patting his right pants pocket, and he did all of this immediately after noticing the squad car. He then proceeded to try to make himself "look smaller" by putting his hands in front of his body and walking behind his companion. When taken together, these additional facts go beyond the apparently innocent and ordinary facts addressed in ***Gordon***.

¶11 Laws further argues that our analysis should not consider the officer's perception that this was a high crime area. He points out that an officer's perception that an area is "high crime" does not independently give rise to "'a reasonable, particularized suspicion that [a] person is committing a crime.'" *See* ***id.***, ¶¶16-18 (quoted source omitted). But here, we consider the officer's perception as part of the totality of the circumstances. *See* ***Washington***, 284 Wis. 2d 456, ¶16. We have long held that "an officer's perception of an area as 'high crime' can be a factor in justifying a search." *See* ***State v. Morgan***, 197 Wis. 2d 200, 211, 539 N.W.2d 887 (1995).

¶12 Laws also points out that the officers were not investigating a particular crime at the time they encountered Laws. But this argument goes nowhere because an active investigation is not a prerequisite for an investigative

stop. *See* ***State v. Krier***, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991) (rejecting the argument that police must "have *knowledge* of criminal activity rather than mere *suspicion* of criminal activity before performing an investigative stop").

¶13 Laws further contends that we should not consider the officer's testimony that he "bladed" his body, citing ***State v. Pugh***, 2013 WI App 12, 345 Wis. 2d 832, 826 N.W.2d 418 (2012). In ***Pugh***, the circuit court determined that officers had reasonable suspicion to conduct an investigative stop based on testimony that the defendant "bladed" his body away from police. *See* ***id.***, ¶6. We reversed, explaining that Pugh had the right to walk away from the officers, and that he had to turn his body away from police in order to do so. *See* ***id.***, ¶12. We further noted that "[c]alling a movement that would accompany *any* walking away 'blading' adds nothing to the calculus except a false patina of objectivity." ***Id.***

¶14 ***Pugh*** is of no help to Laws because Laws was not changing direction at the time of the so-called blading. Instead, Laws paused to pat his pants pocket and turn his body away from the officer and resumed walking in the same direction. Laws also seemed to be trying to make himself inconspicuous by putting his hands in front of his body to look smaller and walking behind his companion. Given this sequence of events, we conclude that the "blading" observed by the officers is a proper part of the totality of the circumstances constituting reasonable suspicion.

¶15 Finally, Laws points out that it is legal to carry a concealed firearm in Wisconsin, with a permit. Laws appears to be suggesting that officers could not have reasonable suspicion to conduct an investigatory stop until they determined that he did not have a permit for a concealed weapon. However, the facts do not

support a reasonable inference that Laws was engaging in the lawful activity of carrying a concealed weapon with a permit. Specifically, Laws told officers, before the pat down, that he did not have a gun, but he engaged in suspicious movements designed to hide his right pants pocket from officers. *See* ***State v. Sumner***, 2008 WI 94, ¶39 n.20, 312 Wis. 2d 292, 752 N.W.2d 783 (factors supporting reasonable suspicion that a suspect is armed may include "'an otherwise inexplicable sudden movement toward a pocket or other place where a weapon could be concealed'" or "'awkward movements manifesting an apparent effort to conceal something'" (quoted source omitted)). In any event, "'officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.'" ***Young***, 294 Wis. 2d 1, ¶21 (quoted source omitted).

CONCLUSION

¶16 Because the officers had reasonable suspicion to conduct an investigative stop under the totality of the circumstances, the circuit court properly denied Laws' motion to suppress. We therefore affirm the judgment of conviction.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).