COURT OF APPEALS
DECISION
DATED AND FILED

September 26, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1219-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIE M. THOMAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Reversed.*

¶1 SCHUDSON, J.[1] Willie M. Thomas appeals from a judgment convicting him of possession of cocaine, contrary to WIS. STAT. § 961.41(3g)(c).[2]

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

He argues that police stopped him unlawfully and, therefore, that the trial court erred in denying his motion to suppress the evidence seized following the stop. This court agrees and, accordingly, reverses.

¶2 The material facts are undisputed. At approximately 2:30 p.m. on September 8, 1999, City of Milwaukee Police officers were sent to conduct a "knock and talk," or a preliminary investigation, of a suspected drug house. When the police arrived at the location, they exited their vehicles and observed Thomas exit the passenger side of a parked car, whose engine was running, and walk toward the "suspected drug house." Officer John Spence and his partner, Officer Michael Garcia, "stopped [Thomas] and performed a field investigation." The officers asked Thomas whether he had any illegal items; Thomas said he did not. Officer Spence asked whether he could search him; Thomas consented. Officer Spence found cocaine on Thomas.

¶3 Thomas contends that "there are absolutely no 'specific and articulable facts' which reasonably lead to the conclusion that [he] was engaged in any illegal conduct when he was subjected to the police stop …." The State responds:

> Here, the police stopped the defendant because they observed him exit a running vehicle, walk rapidly away from them and toward a known drug house, which happened to be the same *house they were there to investigate*. Considering that background information along with the defendant's evasive action toward that house supplies the necessary justification for reasonably suspecting that criminal activity was afoot.

In reply, Thomas, highlighting similar passages from the State's brief, observes: "Not surprisingly, the district attorney offers no record citation for this statement,

because no police witness ever suggested that Thomas was in any way acting in an 'evasive' manner." Thomas is correct.

¶4 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,'" is committing, or is about to commit a crime. ***State v. Harris***, 206 Wis. 2d 243, 259, 557 N.W.2d 245 (1996) (quoted source omitted); *see also* WIS. STAT. § 968.24. "Such reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." ***Alabama v. White***, 496 U.S. 325, 330 (1990). The question of what constitutes reasonable suspicion is a common-sense test: What would a reasonable police officer reasonably suspect in light of his or her training and experience. *See* ***State v. Waldner***, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). "Determining whether there was reasonable suspicion requires [this court] to consider the totality of the circumstances." ***State v. Allen***, 226 Wis. 2d 66, 74, 593 N.W.2d 504 (Ct. App. 1999).

¶5 In reviewing an order denying a motion to suppress, this court will uphold the trial court's findings of historical facts unless they are clearly erroneous. *See* ***Harris***, 206 Wis. 2d at 249-50. "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 (1997).

¶6 Neither Officer Spence nor Officer Garcia identified anything that would reasonably lead one to conclude that Thomas had committed, was committing, or was about to commit a crime. First, the officers testified that they were conducting a preliminary investigation of a suspected drug house, not, as the State maintains, a "known drug house." Second, Officer Spence said that he and the other officers had just arrived at the target location when he observed Thomas exit the parked car and walk toward the house, not, as the State argues, that he observed Thomas "walk rapidly *away from them*" and take an "*evasive action* toward [the] house." (Emphases added.) Third, contrary to the State's representation, Officer Spence never testified that he stopped Thomas for suspicious behavior; rather, he testified that he stopped Thomas because he was walking rapidly toward the targeted house. Indeed, the State takes creative license with the record by arguing that "[t]he police decided to investigate the defendant after observing this evasive conduct," and by suggesting that the defendant was taking flight to warn the occupants of the home.

¶7 Nothing in the trial court's factual findings or decision supports any suggestion of evasiveness by Thomas. In fact, the trial court determined that Thomas was already going towards the house when the police arrived. Thus, this court rejects the State's arguments and reminds counsel not to embellish the record.[3]

¶8 The question remains, however, whether the facts support the stop. This court concludes that they do not. Officer Spence conceded that he did not

[3] Indeed, this court admonishes counsel for the State that all factual references must be supported by citations to the record, *see* WIS. STAT. RULE 809.19(1)(d), and that all assertions in a brief to this court must be accurate, *see* SCR 20:3.3 (a)(1).

observe Thomas engage in any suspicious activity or have contact with anyone. Although Thomas was in a high drug-trafficking neighborhood, he did nothing more than exit a vehicle and approach a building police had targeted for a knock and talk investigation. As we have explained, mere presence in an area known for drug trafficking does not, by itself, permit a stop. *See* ***Young***, 212 Wis. 2d at 427. This court concludes, therefore, that nothing in the record supports a reasonable inference that Thomas had committed, was committing, or was about to commit a crime.

¶9 In reaching this conclusion, this court does not require the slightest retreat from excellent police efforts to apprehend drug dealers, and certainly does not discourage concerned citizens from aiding police with tips such as the one in this case. Indeed, particularly in cases of drug dealing, excellent police work consists, in part, of surveillance leading not only to solid evidence against a targeted suspect, or a drug house, but also to additional arrests of those the police observe engaging in drug transactions with the suspect or at the drug house. Thus, under such circumstances, the Fourth Amendment, drawing the critical line between a citizen's liberty and the government's intrusion, promotes police work that is both effective and constitutional. The facts here, however, do not support the stop. Accordingly, this court concludes the trial court erred in denying Thomas's motion to suppress.

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.