COURT OF APPEALS
DECISION
DATED AND FILED

November 26, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP356-CR **Cir. Ct. No. 2012CF774**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BILLY J. INGRAM,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County: KATHRYN W. FOSTER, Judge. *Affirm*.

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. Billy J. Ingram appeals his conviction for first-degree intentional homicide, armed robbery with use of force, possession of a firearm by a felon, and possession of tetrahydrocannabinols (THC). Ingram

challenges the trial court's denial of his suppression motion and also the sufficiency of the evidence to support the jury's verdict. We affirm.

BACKGROUND

¶2 On May 30, 2012, at around 2:00 a.m., Officer Jesse Hart of the City of Brookfield Police Department was dispatched to an address in Brookfield regarding a residential burglary. When Hart reached the residence of the burglary, another officer was already on the scene, and Hart was told to check the surrounding area for anyone on foot. Within minutes, Hart saw Ingram walking alone, carrying a skateboard and a plastic bag, approximately 1200 feet from the house that had been burglarized. At one point Ingram put the skateboard on the ground and it appeared to Hart that Ingram might try to ride away. Hart activated his emergency lights, pulled his squad car over, and got out and approached Ingram. Hart asked Ingram "where he was going, what he was up to, and if he needed anything." Ingram told Hart that he was walking to his residence in Waukesha, but Hart noted that Ingram was going in the wrong direction. Ingram later indicated that he was going to catch a bus home, but the last bus had passed that area about two hours earlier. When asked where he was coming from, Ingram said Bayshore Mall, which Hart testified was probably twenty to thirty minutes away by car from where they were. Ingram consented to a weapons pat-down search, during which Hart found Ingram's ID card in his front left jean pocket.[1] When Officer Skemp, who by this time had arrived on the scene, ran the identification, he found a warrant out for Ingram's arrest. Hart arrested Ingram.

[1] Hart also testified that Ingram gave him his ID card prior to the pat-down search. The trial court noted that Hart located Ingram's ID card during the pat-down search.

When the officers searched Ingram, they found, among other things, a black, right-handed glove, two cell phones, and over two hundred dollars in cash. Ingram had an intact .40 caliber Smith & Wesson cartridge in his pants pocket. At this point, Ingram told the officers that he was on his way to retrieve a red backpack or duffel bag that he had left near a bus stop.

¶3 Meanwhile, Officer Natalie Hudzinski had found a red duffel bag and a black backpack abandoned near a bus stop in the same area. She took them back to the police department and inventoried them. In the black backpack she found about $100 in rolled coins, at least some with the word "Loomis" printed on the wrapper, a marijuana pipe, keys with a UW-Madison housing lanyard, and numerous individually wrapped Swisher Sweet cigars and unopened boxes of Newport and Kool cigarettes. The red duffel bag contained men's clothing and a credit card with the name Billy J. Ingram on it.

¶4 It turned out that one of the cell phones found on Ingram belonged to Nayyer Rana, who had been fatally shot the day before during a robbery at the Petro Mart Gas Station in Waukesha. The keys found in the black backpack had the same type of lanyard that Rana used for his keys and discount fobs belonging to the Rana family. The .40 caliber Smith & Wesson brand casing found on Ingram was the same caliber and brand that was recovered at the Petro Mart. The police also recovered a left-handed black glove along railroad tracks near the Petro Mart. Next to the glove were boxes of cigars, including a box of Swishers, the brand found in the black backpack. A search of Ingram's apartment revealed a .40 caliber Smith & Wesson gun in the couch underneath the cushions; the gun belonged to Ingram's roommate.

¶5 Ingram was charged with first-degree intentional homicide, armed robbery with use of force, possession of a firearm by a felon, and possession of THC, all as a repeater. He was convicted on all counts following a six-day jury trial.

DISCUSSION

¶6 Ingram makes two arguments on appeal. First, he argues that the trial court erred in denying his motion to suppress because Hart did not have reasonable suspicion to stop him and, further, because Hart's removal of Ingram's ID card during the pat-down search was unconstitutional. After finding no weapons, Ingram says, Hart no longer had reasonable suspicion to search further. Second, Ingram argues that the evidence was insufficient, as a matter of law, to convict him of first-degree intentional homicide.[2]

Stop and Seizure of ID Card

¶7 Ingram argues that Hart did not have reasonable suspicion to stop him, that the pat-down search was too broad, that he was detained for too long, and that the evidence thus should have been suppressed.

¶8 A police officer may temporarily detain an individual to investigate possible criminal behavior when the officer has reasonable suspicion that the individual has committed or is about to commit a crime. WIS. STAT. § 968.24

[2] In his motion to suppress in the trial court, Ingram also argued that the search of the bags found at the bus stop was unconstitutional. Ingram has abandoned this argument on appeal and has thus conceded that he did not have a reasonable expectation of privacy in the abandoned bags.

(2011-12);[3] ***State v. Post***, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. The detention is a seizure within the meaning of the Fourth Amendment of the United States Constitution and article I, section 11 of the Wisconsin Constitution and triggers their protections. *See* ***State v. Harris***, 206 Wis. 2d 243, 253, 256, 557 N.W.2d 245 (1996). For an investigatory stop to be constitutionally valid, the officer's suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion" on the citizen's liberty. ***Terry v. Ohio***, 392 U.S. 1, 21 (1968). What constitutes reasonable suspicion in a given situation depends on the totality of the circumstances. ***Post***, 301 Wis. 2d 1, ¶¶37-38. There need not be a violation of the law to support an investigative stop. ***State v. Anagnos***, 2012 WI 64, ¶47, 341 Wis. 2d 576, 815 N.W.2d 675. Further, police officers are not required to rule out innocent behavior before initiating a stop. ***State v. Waldner***, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996).

¶9 Whether there was reasonable suspicion to conduct a stop is a question of constitutional fact, to which we apply a two-step standard of review. ***Post***, 301 Wis. 2d 1, ¶8. First, we review the trial court's findings of historical fact under the clearly erroneous standard. ***Id.*** Second, we review de novo the application of those historical facts to the constitutional principles. ***Id.***

¶10 Here, there were sufficient reasons to justify Hart's stop. Hart saw Ingram within four to five minutes after he had been dispatched to a residential burglary. Ingram was the only person seen on foot near the burglarized residence.

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

Ingram was walking in the middle of the night, carrying a bag. Under the totality of the circumstances, Hart had reasonable suspicion that Ingram had committed a crime.

¶11 Ingram also argues that Hart's search of his person and taking of his ID card were beyond the scope of a permissible pat-down search for weapons. *See* WIS. STAT. § 968.25 (permitting search for weapons for officer's safety). Hart felt Ingram's ID card in Ingram's front left jean pocket while he was patting him down for weapons. Hart removed the ID card and gave Ingram's identification to Skemp. It is uncontested that Ingram consented to the pat-down. Nevertheless, Ingram argues that once Hart had determined Ingram did not have any weapons, the pat-down search should have ended. We disagree.

¶12 Under WIS. STAT. § 968.24, a police officer may ask a detained person for his or her name and address. Here, Hart located Ingram's ID card when conducting the consensual pat-down. Indeed, had Ingram refused, the officer could have removed the ID card to ascertain his identity. ***State v. Flynn***, 92 Wis. 2d 427, 446, 285 N.W.2d 710 (1979). Otherwise,

> [t]o accept defendant's contention that the officer can stop the suspect and request identification, but that the suspect can turn right around and refuse to provide it, would reduce the authority of the officer granted by [§] 968.24 … and recognized by the United States Supreme Court in ***Adams v. Williams***, 407 U.S. 143 (1972), to identify a person lawfully stopped by him to a mere fiction.

Flynn, 92 Wis. 2d at 444. The facts in ***Flynn*** are similar to those in the case before us. The arresting officer saw Flynn at 3:15 a.m., on foot, in the vicinity of a recent burglary. ***Id.*** at 431. The officer stopped Flynn and frisked him, and in the course of the frisk, removed his ID card from his pants pocket. ***Id.*** at 431-32. The officer radioed in Flynn's identity and discovered that a "pick-up" order had been

issued on him. ***Id.*** at 432. In upholding Flynn's conviction, the Wisconsin Supreme Court noted:

> Indeed, unless the officer is entitled to at least ascertain the identity of the suspect, the right to stop him [or her] can serve no useful purpose at all. The suspect need only wait for what may be presumed to be a reasonable time, and then proceed on his way. Ignorant of even the person's name, the officer must either attempt to follow the suspect in the hope that he [or she] will discover some clue as to his [or her] identity, or surrender the potential lead and continue his [or her] investigation along other lines.

Id. at 442. Here, as in ***Flynn***, Hart was entitled to learn Ingram's identity. There was no constitutional violation in the taking of Ingram's ID card.

¶13 Finally, with regard to the stop, Ingram argues that even if the initial stop was permissible, it was impermissibly prolonged. A couple minutes after Hart stopped Ingram, Hart got word that the burglary suspect did not match Ingram's description. Ingram argues that the extension of the stop to run his identification was unconstitutional, given that Hart already knew he did not match the description of the suspect. We need not address this argument at length. All the reasons Hart had to suspect Ingram initially—on foot near a burglary scene in the middle of the night—plus Ingram's suspicious responses to questions about where he had been and where he was going, gave reasonable suspicion to justify the continued detention of Ingram to run his identification. Furthermore, Ingram could have been an accomplice. The extension of the stop was permissible given the totality of the circumstances.

Sufficiency of Evidence

¶14 Ingram next argues that the evidence was insufficient to support the verdict. "[A]n appellate court may not reverse a conviction unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). "If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it." ***Id.*** at 507.

¶15 Ingram argues that there was no direct evidence that he intended to kill Rana and no circumstantial evidence to permit such an inference. We disagree. The jury instructions included the point that "[i]ntent to kill must be found, if found at all, from the defendant's acts, words and statements, if any, and from all the facts and circumstances in this case bearing upon intent." Regarding the facts and circumstances in this case, we note that Rana was killed by four gunshot wounds, including a contact wound to the abdomen. The bullets fired in the store and the spent cartridge found on Ingram matched the gun found in Ingram's apartment. Testimony from the owner of the Petro Mart was that items stolen from the store included Newport cigarettes, Swisher cigars, and Loomis coin rolls, all of which were found on Ingram or in the black backpack. Surveillance videos captured images of Ingram carrying a red duffel bag and black backpack, like those abandoned at the bus stop that contained Rana's keys and Ingram's credit card. Ingram had Rana's cell phone. Finally, a forensic scientist

testified that she found Rana's blood on one of the black gloves and on Ingram's jeans.

¶16 The evidence linking Ingram to first-degree intentional homicide was substantial. Ingram has not established that the evidence was so lacking in probative value and force that no jury, acting reasonably, could have found guilt beyond a reasonable doubt.

By the Court.—Judgment affirmed.

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