COURT OF APPEALS
DECISION
DATED AND RELEASED

February 4, 1997

NOTICE

No. 96-0977-CR

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

State of Wisconsin,

Plaintiff-Respondent,

v.

Alfred L. Davenport, Jr.,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Alfred L. Davenport, Jr., appeals from a judgment entered after he pled guilty to one count of possession of a firearm by a felon, contrary to § 941.29(2), STATS. He claims the trial court erred in denying his

motion to suppress. Because the trial court did not err in denying Davenport's suppression motion, we affirm.[1]

I. BACKGROUND

On May 26, 1995, at approximately 1:40 a.m., City of Milwaukee Police Officer John Bryda and several other officers went to 3123 North Buffum Street as part of a homicide investigation. They were looking for a suspect, Nick Allen. As Bryda approached the home, he observed several individuals on the porch. One individual, who was later identified as Davenport, moved quickly to the door of the home upon seeing the police. Bryda testified at the suppression hearing that Davenport appeared to force open the door to the residence.

Bryda, who at the time believed Davenport may have been the suspect the police were looking for, became suspicious when Davenport moved quickly toward the door and forced it open. Bryda announced that he was the police and ordered Davenport to stop. Davenport did not stop. Bryda followed Davenport through the door into a common hallway of the residence. Bryda observed him removing two guns from under his coat. Davenport set both weapons down on a window sill. At that point, Bryda arrested Davenport for carrying a concealed weapon.

Although Bryda had had prior contact with Davenport, he did not immediately recognize him. When Davenport entered the home, all Bryda had seen was his profile and his back. Davenport was charged with carrying a concealed weapon and possession of a firearm by a felon. He moved to suppress the evidence, claiming that Bryda did not have reasonable suspicion to follow Davenport into the home or conduct a ***Terry*** stop.[2] The trial court

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[1] Davenport also invites this court to conclude that the Wisconsin Constitution affords greater protection against search and seizure than the United States Constitution. He argues that even if his rights under the United States Constitution were not violated, his rights pursuant to the Wisconsin Constitution were violated. We decline his invitation. Our state supreme court has consistently conformed the law of search and seizure under the Wisconsin Constitution to the law developed by the United States Supreme Court under the Fourth Amendment. *See* ***State v. Morgan***, 197 Wis.2d 200, 207-08, 539 N.W.2d 887, 890-91 (1995).

[2] *See* ***Terry v. Ohio***, 392 U.S. 1 (1968).

concluded that Davenport's activities, together with the officer's belief that Davenport was a fleeing suspect, aroused sufficient suspicion to justify the ***Terry*** stop. It denied the motion to suppress. Davenport pled guilty to the possession charge, and the carrying a concealed weapon charge was dismissed. Judgment was entered. Davenport now appeals.

II. DISCUSSION

Davenport argues that the trial court should have granted his motion to dismiss because Officer Bryda did not have reasonable suspicion to conduct an investigatory stop. The trial court denied the motion, ruling that under the totality of the circumstances, Bryda had reasonable suspicion to believe that Davenport had committed a crime. We affirm the trial court's ruling.

A motion to suppress evidence raises a constitutional question, which presents a mixed question of fact and law. To the extent the trial court's decision involves findings of evidentiary or historical facts, those findings will not be overturned unless they are clearly erroneous. ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The application of constitutional and statutory principles to the facts found by the trial court, however, presents a matter for independent appellate review. ***Id.***

In order to execute a valid investigatory stop, ***Terry v. Ohio***, 392 U.S. 1 (1968) and its progeny require that a law enforcement officer reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken, is taking, or is about to take place. ***State v. Richardson***, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990); *see* § 968.24, STATS. The focus of an investigatory stop is on reasonableness, and the determination of reasonableness depends on the totality of the circumstances. ***Id.***

The trial court found the following facts. Bryda went to the Buffum address looking for a suspect in a homicide. As he approached, he saw an individual, who he felt may be the suspect, move quickly toward the door of the residence. Bryda yelled to the suspect to stop. Instead of following the order, the suspect forced open the door and entered the residence. When Bryda followed the suspect into the home, he observed the suspect remove two weapons from his clothing and place them on the window sill. These findings

are not clearly erroneous. Officer Bryda's testimony at the suppression hearing supports the trial court's findings.

Based on these facts, the trial court concluded that Bryda had reasonable suspicion to conduct the investigatory stop. We agree. Davenport's flight from Bryda alone provides reasonable suspicion for the police to stop him. *See* ***State v. Anderson***, 155 Wis.2d 77, 87, 454 N.W.2d 763, 767 (1990) (flight upon seeing an officer is sufficient to justify a temporary stop). Davenport admitted that he knew Bryda was a police officer and that he left the porch when he saw the police approaching. The instant case presents additional facts to uphold the trial court's ruling. Davenport not only quickly left the group upon seeing the police, but also disregarded Bryda's order to stop, and appeared to force open the door of the residence. Moreover, Davenport generally fit the description of the homicide suspect that the police had come to the residence to find. Under the totality of the circumstances, we agree that Bryda had reasonable suspicion to justify a ***Terry*** stop. Once Bryda observed Davenport attempting to discard concealed weapons, he had probable cause to arrest. Therefore, the trial court did not err in denying Davenport's motion to suppress.

By the Court. – Judgment affirmed.

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