COURT OF APPEALS
DECISION
DATED AND RELEASED

July 24, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-0212-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

OLLIE H. CHRISTOPHER, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: MARK J. FARNUM, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

DYKMAN, P.J. Ollie H. Christopher Jr. appeals from a judgment convicting him of possession of cocaine with intent to deliver within 1000 feet of a park and of obstructing an officer. He argues that: (1) the cocaine should have been suppressed because the police did not have reasonable suspicion to stop him; and (2) he was not guilty of obstructing an officer because the police were not

acting with lawful authority when the alleged obstruction occurred. We disagree and therefore affirm.

BACKGROUND

The relevant facts are not in dispute. On January 22, 1996, at about 11:55 p.m., Officer Nathan Shoate noticed Christopher and another man walking around in a high-crime area of Beloit. Shoate had noticed the same two men in the same area about twenty-five minutes earlier. Shoate stopped his vehicle, exited and asked Christopher and his companion if they would come over. Shoate asked the men for their names and if they had any identification on them. Christopher gave his correct name, but stated that he did not have any identification with him. Shoate asked the men what they were doing in the area, and they responded that they were in the area visiting their girlfriends. Upon further inquiry, neither was able to tell Shoate his girlfriend's address. Shoate asked Christopher for his address. Christopher first stated that he lived at 906 Brooks, but later changed his answer to 913 St. Lawrence.

At that time Officers Pamela Summers and Chad Reynolds arrived on the scene. Shoats told Summers that Christopher claimed to have no identification and that he wanted to detain Christopher until he was positively identified. It appeared to the officers that Christopher was acting suspiciously and might want to flee, so they decided to place him in the squad car until he was positively identified. Reynolds performed a pat down search for weapons on Christopher, and Christopher stated that his identification was in his back pocket. On Christopher's request, Reynolds removed the identification. Christopher was arrested for obstructing an officer because he originally stated that he did not have

any identification on him. Reynolds continued his search of Christopher and found cocaine.

Christopher was charged with possession of cocaine with intent to deliver within 1000 feet of a park and obstructing an officer. He moved the trial court to suppress the evidence seized from him on the grounds that the police did not have reasonable suspicion to stop him. The trial court denied his motion. After a jury trial, Christopher was found guilty of both offenses. He appeals from these convictions.

DISCUSSION

Christopher first argues that the trial court erred in denying his suppression motion. In reviewing the denial of Christopher's motion to suppress, we will uphold the trial court's findings of fact unless they are clearly erroneous. *See* ***State v. Eckert***, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). The application of constitutional and statutory principles to these facts, however, is a question of law that we review without deference to the trial court. ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

Christopher argues that Officer Shoate did not have the reasonable suspicion necessary to question him. The State, on the other hand, argues that Shoate's original encounter with Christopher was consensual and therefore did not trigger Christopher's Fourth Amendment protections. The State argues that a "seizure" did not occur for Fourth Amendment purposes until the other two officers arrived on the scene.

"[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person

would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required." ***Florida v. Bostick***, 501 U.S. 429, 434 (1991) (citation omitted). Thus, "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." ***Terry v. Ohio***, 392 U.S. 1, 19 n.16 (1968). "[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual [and] ask to examine the individual's identification …—as long as the police do not convey a message that compliance with their requests is required." ***Bostick***, 501 U.S. at 434-35 (citations omitted).

When Shoate drove past Christopher and his companion at 11:55 p.m., he shined his spotlight on them to see who they were. Shoate came by a second time without his spotlight on and pulled over. Shoate then asked the two men if they would come over to his location so he could talk to them. Christopher and his companion agreed. Shoate did not have any physical contact with Christopher, tell Christopher he could not leave the scene or pull out his gun.

Shoate did not restrain Christopher's liberty by means of physical force or show of authority. Shoate asked Christopher questions without conveying a message that compliance was required. Therefore, Christopher was not "seized" for Fourth Amendment purposes when Shoate questioned him, and a reasonable suspicion of criminal activity at this point was not required.

Christopher argues that this case is analogous to ***Brown v. Texas***, 443 U.S. 47 (1979). In ***Brown***, a police officer observed Brown walking in an alley and asked Brown to identify himself and explain what he was doing there. ***Id.*** at 48-49. The officer stopped Brown because he had never seen him in the

area before and because the situation looked suspicious, but did not suspect Brown of any specific misconduct. ***Id.*** at 49. Brown refused to identify himself and angrily asserted that the officers had no right to stop him. ***Id.*** After Brown continued to refuse to identify himself, he was arrested for refusing to give his name to an officer who has lawfully stopped him and requested the information, in violation of the Texas Penal Code. ***Id.*** The Supreme Court reversed Brown's conviction because the officer lacked any reasonable suspicion to believe that he was committing or had committed a criminal act. ***Id.*** at 53.

Brown is distinguishable from the case at hand because Brown did not consent to giving his name to the officer, while Christopher consented to his encounter with Officer Shoate. In ***INS v. Delgado***, 466 U.S. 210 (1984), the Supreme Court distinguished ***Brown*** from ***Florida v. Royer***, 460 U.S. 491 (1983), in which the Court held that an officer's request for identification did not constitute a Fourth Amendment seizure. The Court stated:

> Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed that he was not free to leave if he had not responded, one cannot say that the questioning resulted in a detention under the Fourth Amendment. But if the person refuses to answer and the police take additional steps—such as those taken in ***Brown***—to obtain an answer, then the Fourth Amendment imposes some minimal level of objective justification to validate the detention of seizure.

Delgado, 466 U.S. at 216-17. Here, Christopher responded freely to the officer's questions and the officer did need to take additional steps to obtain answers. Therefore, ***Brown*** is inapplicable.

Christopher argues that "if the court … believes it is possible there was no seizure in this case under ***Bostick***, the case should be remanded to circuit

court for further fact-finding on this question." Christopher contends that the question of whether a reasonable person in his situation would feel free to leave or compelled to answer the officer's questions was not adequately developed in the trial court record. We do not agree that a remand is warranted. Christopher had the initial burden to establish that he had been seized for Fourth Amendment purposes. *See* ***State v. Howard***, 176 Wis.2d 921, 926, 501 N.W.2d 9, 11 (1993). If Christopher believed that he was "seized" when Officer Shoate initiated contact, he had the burden to elicit facts establishing this seizure at his suppression hearing.

The State concedes that a seizure occurred when Officers Summers and Reynolds arrived. Christopher argues that at this point, the officers still did not have reasonable suspicion to stop him. All searches and seizures must be reasonable under the Fourth Amendment. *See* ***Terry v. Ohio***, 392 U.S. 1, 20-22 (1968). For a police officer to make an investigative stop, he she must possess a reasonable suspicion that the person is committing, has committed, or is about to commit an offense. ***State v. Jackson***, 147 Wis.2d 824, 833-34, 434 N.W.2d 386, 390 (1989). The officer's reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts reasonably warrant th[e] intrusion." ***Terry***, 392 U.S. at 21. The facts must be "judged against an objective standard: would the facts available to the officer at the moment of the seizure . . . 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" ***Id.*** at 21-22.

Officer Shoate encountered Christopher and his companion in a high-crime area late at night.[1] The two men told Shoate that they were in the area

[1] An officer's perception of an area as "high-crime" and the time of day are relevant considerations. *See* ***State v. Morgan***, 197 Wis.2d 200, 211-14, 539 N.W.2d 887, 892-93 (1995).

to visit their girlfriends. However, the two men were in the same area twenty-five minutes earlier and did not know the addresses of their supposed girlfriends, which would lead a reasonable police officer to conclude that they were in the area for some other purpose. And Christopher gave Shoate two different addresses when Shoate asked him where he lived, which would raise the suspicions of a reasonable police officer. Based on the totality of the circumstances known to Shoate, we conclude that it was reasonable for the officers to suspect that Christopher was involved in criminal activity. Therefore, the stop of Christopher was justified under the Fourth Amendment.

Finally, Christopher argues that the evidence adduced at trial was insufficient to prove beyond a reasonable doubt that he was guilty of obstructing an officer because there was insufficient proof that the officers were acting with lawful authority. Section 946.41(1), STATS., provides that "[w]hoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority, is guilty of a Class A misdemeanor." "Obstructs" includes "knowingly giving false information to the officer … with intent to mislead the officer in the performance of his or her duty." Section 946.41(2)(a). Christopher was arrested for obstruction for telling Officer Shoate that he did not have any identification on him when he actually did.

The standard for determining whether the evidence is sufficient to support a conviction is as follows:

> The burden of proof is upon the state to prove every essential element of the crime charged beyond reasonable doubt. The test is not whether this court or any member is convinced of the guilt of the defendant beyond a reasonable doubt but whether this court can conclude that a trier of facts could, acting reasonably, be convinced to the required degree of certitude by the evidence which it had a right to believe and accept as true. On review we view the

> evidence in the light most favorable to sustaining the conviction. Reasonable inferences drawn from the evidence can be used to support a conviction; if more than one reasonable inference can be drawn from the evidence, the inference which supports the conviction is the one that the reviewing court must adopt.

State v. Hamilton, 120 Wis.2d 532, 540-41, 356 N.W.2d 169, 173-74 (1984).

At trial, Officer Shoate testified that he asked Christopher and his companion if they would come over to his location so he could talk to them and that the two men agreed. Shoate testified that he did not pull out his gun, have any physical contact with Christopher, tell Christopher he could not leave the scene or shine his flashlight in Christopher's face. Based on this evidence, a reasonable jury could conclude that the contact between Christopher and Shoate was consensual. And because the contact was consensual, Shoate did not need to have a reasonable suspicion of criminal activity when he asked Christopher if he had any identification on him. As a result, the evidence is sufficient to prove that Shoate was acting with lawful authority when Christopher falsely told him that he did not have any identification on his person. The State proved that Christopher was guilty of obstructing an officer beyond a reasonable doubt.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.