COURT OF APPEALS
DECISION
DATED AND FILED

April 10, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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

No. 00-1452-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

QUINCY J. WHITE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. Quincy J. White appeals from a judgment entered on his guilty plea to possession of cocaine with intent to deliver, *see* WIS. STAT. § 961.41(1m)(cm)1, and from the trial court's order denying his motion for postconviction relief. He asserts two claims of trial-court error. First he argues

that the police arrested him illegally and, therefore, the trial court should have granted his motion to suppress the incriminating evidence that was the fruit of the allegedly unlawful arrest. *See* ***Wong Sun v. United States***, 371 U.S. 471 (1963) (applying exclusionary rule to fruits of unlawful police activity).[1] Second, he claims that the trial court erroneously denied without a hearing his postconviction motion to withdraw his plea. We affirm.

1. Suppression.

¶2 At 11 a.m. on a Tuesday morning, Milwaukee police officers were sent to investigate a reported shooting. On the scene, they spoke to a woman who told them that shots had been fired into her home. As one of the officers testified, she said that there were "a bunch of kids running around outside, young males, and they were kids who [*sic*] she all recognized from the neighborhood." She told the officer that one of the young men was named "Quince." The woman's granddaughter said that she had seen Quince running from the house after the shots were fired, and told the officers that he was then in the alley. She pointed to a young man who was wearing a red shirt. The officer testified that he then told other officers to arrest the young man in the red shirt, calling out to them: "'Hey, the guy in the red shirt, get him.'" At the suppression hearing, he identified White as the young man.

¶3 After White was taken into custody, he was put in the back of a squad car. According to the officer, White was in the squad car for no more than thirty seconds before the woman's daughter told him that she had seen White with

[1] A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. WIS. STAT. § 971.31(10).

a gun. Later, when interviewed by a police detective, White said that he had a gun, but that he had not had it with him that morning. The officers searched White's residence with consent and found the gun and the cocaine. The trial court found that the officers had probable cause to arrest White, and, accordingly, denied White's motion to suppress.

¶4 White argues that the officers did not have probable cause to arrest him when they did because the woman's daughter had not yet told them that she had seen White with a gun. The State disagrees, but offers an alternative ground to affirm the trial court, namely that the thirty-second detention in the back of the squad car was an investigatory stop authorized by ***Terry v. Ohio***, 392 U.S. 1 (1968). *See* ***State v. Holt***, 128 Wis. 2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985) (an appellate court may affirm on a ground other than that relied on by the trial court). We agree that irrespective of the officer's subjective intent in directing the other officers to "'get'" White, White was lawfully detained under ***Terry***. Thus, his statements to them and the evidence found pursuant to the information he gave them were not the products of an unlawful arrest.[2]

¶5 ***Terry*** recognized that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest" ***Id.***, 392 U.S. at 22. It is enough that the officers have a reasonable basis to believe that "something unlawful" is "afoot." *See* ***State v. Waldner***, 206 Wis. 2d 51, 58, 556 N.W.2d 681, 685 (1996). The legality

[2] White does not argue that anything he told the officers was suppressible under ***Miranda v. Arizona***, 384 U.S. 436 (1966).

of an investigatory stop is an issue of law that we decide *de novo*. ***State v. Krier***, 165 Wis. 2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

¶6 Under the circumstances of this case, as testified to by the officer and not rebutted by any evidence presented to the trial court by White, the officers, investigating shots fired into a house, and having been told that White was with a group of young men whom the residents of the house associated with the shooting, properly investigated the shooting by stopping White and talking to him. That the officer thought that he had enough information to "arrest" White, and directed other officers to "arrest" White does not affect the lawfulness of the investigatory stop. *See* ***Whren v. United States***, 517 U.S. 806, 813 (1996) (mere subjective intent of officer does not make illegal otherwise lawful conduct by that officer); ***United States v. Jackson***, 652 F.2d 244, 250 (2d Cir. 1981) (subjective belief that partner had placed defendant under arrest does not convert an otherwise valid ***Terry*** stop into an arrest; "Objective rather than subjective factors govern the propriety of both stops and arrests."); ***People v. DeFares***, 619 N.Y.S.2d 375, 377 (N.Y. App. Div. 1994) (intent to arrest does not invalidate lawful ***Terry*** stop; propriety of police conduct is based upon whether objective facts justify the level of police intrusion, rather than the officers' subjective intent). Additionally, the thirty-second detention in the squad car before the officers had enough information to lawfully arrest White did not turn the valid ***Terry*** stop into an arrest—the brief limitations on White's freedom of movement were justified by the officer's suspicion that White might be armed with a gun, and the need to isolate him from other participants in the volatile and dangerous situation described to the officers by the women into whose house bullets were fired. *See* ***State v. Wilkens***, 159 Wis. 2d 618, 625–628, 465 N.W.2d 206, 209–211 (Ct. App. 1990) (handcuffed detention of more than one hour in squad car did not turn stop

into an arrest; ineffective-assistance-of-counsel analysis); ***United States v. Tilmon***, 19 F.3d 1221, 1224–1225 (7th Cir. 1994) (lawful ***Terry*** stop not transmuted into an arrest by "use of handcuffs, the placing of suspects in police cruisers, the drawing of weapons and other measures of force more traditionally associated with arrest than with investigatory detention") (review of general legal principles) (whether "degree of intrusion" in connection with ***Terry*** stop depends on circumstances faced by officers). We affirm the trial court's denial of White's motion to suppress.

2. Request to withdraw plea.

¶7 After he was sentenced by the trial court, White filed a motion to withdraw his guilty plea. He claimed in an affidavit submitted to the trial court that it never told him, and that he did not understand, that if he went to trial, the State would have to prove him guilty to the satisfaction of all twelve jurors, and that he did not understand the meaning of the word "unanimous." He claimed that he thought that he could be convicted if nine out of the twelve jurors agreed on his guilt. The trial court denied the motion without a hearing, pointing out in a written decision that the guilty-plea questionnaire and waiver-of-rights form signed by White explained that "in a jury trial my case would be decided by 12 people" and that "all 12 people would have to agree in order to reach a verdict."

¶8 After sentence has been imposed, "a defendant who seeks to withdraw a guilty or *nolo contendere* plea carries the heavy burden of establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct a 'manifest injustice.'" ***State v. Washington***, 176 Wis. 2d 205, 213, 500 N.W.2d 331, 335 (Ct. App. 1993) (quoted source omitted). A plea made in ignorance of one's rights is not knowing and voluntary, and, under

those circumstances, there is a right to withdraw that plea. ***State v. Brandt***, 226 Wis. 2d 610, 617–618, 594 N.W.2d 759, 763 (1999).

¶9 A trial court may, consistent with preserving a defendant's constitutional right when taking a guilty plea from that defendant, use a form that the defendant reads and signs attesting that he or she has read it, that explains the rights the defendant relinquishes by pleading guilty. ***State v. Moederndorfer***, 141 Wis. 2d 823, 826–829, 416 N.W.2d 627, 629–630 (Ct. App. 1987). Here, as in ***Moederndorfer***, the trial court carefully made certain that White had read the form and understood the form before it accepted White's guilty plea. Additionally, White's attorney told the trial court that he had discussed the form with White and that he was satisfied that White understood the rights that he was giving up by entering his plea. Indeed, the form itself was signed by both White and his lawyer—both attested that White understood the rights that he was giving up by entering his plea. Under these circumstances, White's claim that he did not understand those rights is wholly without support in the record. Accordingly, the trial court was not required to hold an evidentiary hearing before denying White's motion to withdraw his guilty plea. *See* ***Washington***, 176 Wis. 2d at 215, 500 N.W.2d at 336 (evidentiary hearing not required "if the record conclusively demonstrates that the defendant is not entitled to relief"). We affirm the trial court's order denying White's motion for postconviction relief.

By the Court.—Judgment and order affirmed.

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