COURT OF APPEALS
DECISION
DATED AND FILED

October 28, 2008

David R. Schanker
Clerk of Court of Appeals

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.

Appeal No. 2008AP619-CR **Cir. Ct. No. 2007CF2979**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMY S. DAUBON,

DEFENDANT-APPELLANT.

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

Before Curley, P.J., Fine, J., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. Jeremy S. Daubon appeals from the judgment of conviction entered against him. He argues that the circuit court erred when it denied his motion to suppress evidence obtained as the result of a pat-down frisk.

Because we conclude that the police acted reasonably when they conducted a pat-down search of Daubon, we also conclude that the circuit court properly denied the motion to suppress. Consequently, we affirm the judgment of conviction.

¶2 Daubon pled guilty to possession of methadone. Prior to entering the plea, Daubon moved to suppress the evidence the police obtained when they stopped him. The evidence at the suppression hearing established that the police were responding to a report that a stolen car had been found, through the use of a navigational system, at a laundromat. Officers went to the laundromat and saw the stolen car in the parking lot. The officers were not sure whether anyone was in the car. As they went to investigate further, Daubon came walking out of the laundromat. The officer who testified at the suppression hearing said that he saw that Daubon was carrying a suitcase, and believed he was walking towards the car. The officer asked Daubon if he had a car parked in the lot. Daubon answered "no," that he had not driven to the laundromat, but had been dropped off by someone.[1] Daubon also told the officers that he did not have any car keys.

¶3 The officer testified that Daubon seemed to be getting "increasingly nervous," and that he took a couple of steps backwards, "eyes looking left and right," while he answered questions. The officer stated that, in his opinion, "that's usually when oftentimes someone is ready to run from us." Daubon made a motion with his hand towards his waistband. Because of this behavior, the officers reached out to grab Daubon's wrists. An officer then patted-down the outside of Daubon's clothing for the officers' own safety. During this search, the

[1] The officer did not remember whether Daubon had said that he was dropped off by his uncle or his grandfather.

officer felt an object in Daubon's pocket that felt like a key. The officer removed it, and it was a car key. The officers determined that the key was to the stolen car parked in the lot by pressing the key fob. The officers arrested Daubon, and then searched him incident to the arrest. During this search, the officers found a plastic bag containing large white tablets. The circuit court concluded that, based on the totality of the circumstances, the officers acted reasonably when they searched Daubon. The court denied the motion to suppress.

¶4 Daubon argues that the officers did not have a reasonable suspicion to frisk him, and that the circuit court should have suppressed the evidence obtained as a result of that frisk.

> During an investigative stop, an officer is authorized to conduct a search of the outer clothing of a person to determine whether the person is armed if the officer is "able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."

State v. Johnson, 2007 WI 32, ¶21, 299 Wis. 2d 675, 729 N.W.2d 182 (quoting ***Terry v. Ohio***, 392 U.S. 1, 21 (1968)).

> The test is an objective one: "[W]hether a reasonably prudent [officer] in the circumstances would be warranted in the belief that his [or her] safety or that of others was in danger" because the person may be armed with a weapon and dangerous. "[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to [the officer's] inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he [or she] is entitled to draw from the facts in light of his [or her] experience."
>
> Circuit courts must "decide on a case-by-case basis, evaluating the totality of the circumstances, whether an officer had reasonable suspicion to effectuate a protective search for weapons in a particular case." The requirement that an officer conducting a protective search have a reasonable suspicion to believe that the person is dangerous

> and may have immediate access to a weapon strikes a proper balance between two important interests: the safety of law enforcement officers and the right of persons to be free from unreasonable government intrusions.

Id., ¶¶21-22 (citations omitted).

¶5 An officer conducts a pat-down search during an investigative stop to discover weapons that might be used to hurt the officer. *See* ***State v. Guy***, 172 Wis. 2d 86, 100, 492 N.W.2d 311(1992). If during such a search, an officer feels something that does not feel like a weapon, he or she may be justified in continuing the search. *See* ***id.*** Under the "plain touch" doctrine, an officer may continue to search when the feel of the object combined with "other suspicious circumstances" creates probable cause that the object is contraband or some other item that could be seized. ***Id.***

¶6 In this case, the circuit court found that Daubon hesitated before he answered the officers' questions, his responses were not fluid, he was looking around, he took a few steps backwards, and his hand was by his waistband. Based on these circumstances, the court concluded that the officers' initial decision to pat-down Daubon was reasonable. We agree. Further, given Daubon's proximity to the stolen car, and the fact that the officer touched an object in Daubon's pocket that felt like a car key, the plain touch doctrine applies. Under these circumstances, the officer was justified in removing the key from Daubon's pocket, and pressing the key fob to see if it worked on the car he knew to be stolen. We conclude that the circuit court properly denied Daubon's motion to suppress. We affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).