COURT OF APPEALS
DECISION
DATED AND FILED

November 17, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP75-CR **Cir. Ct. No. 2007CF1078**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CARMELO R. DOBBERPUHL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: WILLIAM M. ATKINSON, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Carmelo Dobberpuhl appeals a judgment of conviction for possession of cocaine with intent to deliver. Dobberpuhl argues the evidence was obtained only after he was unlawfully seized. We affirm.

BACKGROUND

¶2 On October 22, 2007, officer Bradley Dernbach and special agent Al Hunsader went to the Excel Inn in the Village of Ashwaubenon to investigate a matter unrelated to their eventual contact with Dobberpuhl. The manager told them that the night before a female guest came to the front desk to ask for extra towels and told the desk clerk her boyfriend had been shot. The manager also told them another employee had seen a male guest—later identified as Dobberpuhl—wearing a wrapping on his arm. The male guest also told the employee he had been shot. Dernbach notified lieutenant Mike Haines of these reports, and Haines informed him he would send additional officers. While waiting for backup, Dernbach and Hunsader surveilled Dobberpuhl's room from the hallway.

¶3 While outside Dobberpuhl's room, Dernbach heard a male voice telling someone "he was down in Chicago … looking for some shit. And he was knocking on a side door, and then an individual came out and started firing off rounds, and he stated he was shot in the hand." Dernbach testified he did not want to confront Dobberpuhl in his room because he might have a weapon or try to destroy contraband. Accordingly, Dernbach told Haines to call Dobberpuhl's room from the front desk, inform Dobberpuhl an individual had just hit his car, and ask him to come down and look at the damage.

¶4 As Dernbach planned, Dobberpuhl exited his room after receiving the phone call and proceeded toward the staircase. Hunsader was at the top of the staircase in plain clothes and uniformed officers were stationed on the lower level. Dobberpuhl asked Hunsader if he was the person who hit his vehicle. Hunsader replied that he was. Dobberpuhl then proceeded down the first two or three steps, but then turned around, said, "I don't have time for this," and attempted to return

to his room. Hunsader placed his hands on Dobberpuhl and identified himself as a police officer. Dobberpuhl resisted, so Dernbach also approached and the officers wrestled him to the ground. While Dobberpuhl was struggling with the officers, he dropped a cell phone and a sock. Dernbach picked up the sock and detected several hard rocks, which he believed to be crack cocaine. The officers arrested Dobberpuhl and executed a warrant to search his room, where they found marijuana, cocaine residue, and drug paraphernalia.

¶5 Dobberpuhl moved to suppress the evidence, arguing he was illegally seized when Hunsader and Dernbach stopped him from returning to his room. The circuit court denied the motion, concluding the officers had reasonable suspicion to stop and question Dobberpuhl after receiving multiple reports he had been shot.

DISCUSSION

¶6 There is no dispute that Dobberpuhl was seized when Hunsader placed his hands on Dobberpuhl and identified himself as a police officer. Therefore, the only issue on appeal is whether this seizure was supported by reasonable suspicion. When reviewing a circuit court's ruling whether to suppress evidence, we uphold the circuit court's findings of fact unless clearly erroneous. ***State v. Vorburger***, 2002 WI 105, ¶32, 255 Wis. 2d 537, 648 N.W.2d 829. The application of those facts to constitutional principles, however, is a question of law we decide independently. ***Id.***

¶7 The United States and Wisconsin Constitutions both protect the right to be free from unreasonable searches and seizures. U.S. CONST. Amend. IV, WIS. CONST. art. I, § 11. However, police may "in appropriate circumstances and in an appropriate manner approach a person for the purposes of investigating

possibly criminal behavior ….” ***Terry v. Ohio***, 392 U.S. 1, 22 (1968). To conduct a valid investigatory stop, “a police officer [must] reasonably suspect … that some kind of criminal activity has taken or is taking place.” ***State v. Allen***, 226 Wis. 2d 66, 71, 593 N.W.2d 504 (Ct. App. 1999) (citation omitted). Such reasonable suspicion must be based on specific articulable facts and reasonable inferences drawn from those facts. ***Terry***, 392 U.S. at 21.

¶8 Dobberpuhl argues the officers did not have reasonable suspicion to detain him because there was nothing suspicious about his attempt to return to his room. He contends that because Hunsader was in plain clothes, as far as the officers knew, Dobberpuhl thought he was turning away from another citizen, not fleeing police officers. The State counters that Dobberpuhl’s argument understates the facts that led the police to reasonably suspect Dobberpuhl had committed or was committing a crime. We agree with the State.

¶9 Prior to confronting Dobberpuhl, the officers received multiple reports Dobberpuhl had been shot and overheard him tell someone this occurred while looking for some “shit” in Chicago. Indeed, it was these facts that initially aroused the officers’ suspicions. Dobberpuhl neither addresses these facts nor refutes the State’s argument they support the officers’ reasonable belief Dobberpuhl had committed or was committing a crime. He therefore concedes this argument. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (arguments not refuted are deemed conceded).

¶10 Dobberpuhl’s argument that his conduct was not evasive because he did not know officers were present is unsupported by the record. Dobberpuhl did not testify. Dernbach, however, testified he believed Dobberpuhl attempted to

leave after seeing the uniformed officers. Because it is undisputed there were uniformed officers within Dobberpuhl's view, it is reasonable to infer he attempted to leave because he saw them—particularly in light of the lack of testimony to the contrary.

¶11 In any event, the officers' reasonable suspicion to detain Dobberpuhl does not hinge on whether he was actually attempting to evade police. The reasonableness of an investigatory stop "depends on the totality of the circumstances." ***State v. Richardson***, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990). Here, the officers seized Dobberpuhl only after receiving multiple reports he had a gunshot wound, overhearing him talking about the wound being related to looking for "shit," and observing what they believed was an attempt to evade contact with law enforcement. The essential question, then, is whether they could reasonably conclude Dobberpuhl was committing or had committed a crime "under *all* [of these] facts and circumstances …." ***State v. Jackson***, 147 Wis. 2d 824, 831, 434 N.W.2d 386 (1989) (emphasis added). We conclude they could.

By the Court.—Judgment affirmed.

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