

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2014

Diane M. Fremgen
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. 2013AP2000-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2012CF1292

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MIGUEL NAVARRETE, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
TIMOTHY D. BOYLE, Judge. *Affirmed.*

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. Miguel Navarrete, Jr., appeals from a judgment of conviction entered upon his no contest plea to one count of felon in possession of a firearm following the trial court's denial of his suppression motion. Navarrete challenges the scope of his temporary detention and the legality of the officers'

protective frisk of his person. We conclude that the officers did not unreasonably extend the scope of the detention by running a computer check of Navarrete's paper identification and that the pat-down frisk for weapons was reasonable under the totality of the circumstances.

¶2 The following facts are taken from the trial court's hearing on the suppression motion. Officer Donald Rybarik testified that while on patrol in a "high crime, high drug area," he and his partner, Officer Cisler, were specifically tasked with looking for suspicious persons based on multiple reports of residential burglaries by "school age kids" during school hours. At 9:30 a.m., during school hours, the officers spotted Navarrete on the sidewalk and observed that he appeared to be school-aged. The officers decided to stop Navarrete to make sure he was not truant and due to the reports of daytime burglaries in the area during school hours.

¶3 As the officers approached, Navarrete appeared startled and took several steps back. They asked how old he was and whether he was supposed to be in school. Navarrete told officers he was eighteen years old and produced a paper printout from the Department of Motor Vehicles (DMV) containing his name, age and a picture that was not "very good." Navarrete explained that his regular ID was lost or stolen, and Cisler went back to the squad to verify the DMV printout information. Rybarik testified that, from the outset, Navarrete assumed an aggressive and confrontational tone with the officers and acted nervously by rocking back and forth, wiggling and tapping his fingers at his sides, and constantly making "security checks" of his pockets indicating concern about what might be inside. Rybarik interpreted Navarrete's repeated "security checks" as akin to "an involuntary response to someone who's nervous who may have something illegal on them and they just check to make sure it's secure."

¶4 With Cisler back at the squad, Rybarik asked Navarrete if he had anything illegal on his person. Navarrete paused, looked down on the ground, and in what Rybarik described as an angry and “very aggressive tone,” responded with a question of his own: “Why are you asking me?” Because Navarrete did not deny having a weapon and appeared nervous and confrontational, Rybarik testified that he felt “nervous to stand there with him” and decided to perform a protective frisk. He discovered a revolver tucked into Navarrete’s waistband. Rybarik called out to Cisler, and they searched Navarrete’s backpack where they found a semi-automatic handgun.

¶5 At the close of the suppression hearing, the trial court found that when stopped, Navarrete immediately acted nervously and assumed an aggressive, confrontational tone with police. The court found that the officers’ suspicions were further aroused when Navarrete was unable to produce an identification card and continued to perform what appeared to be “security checks” of whatever was in his pockets. When asked, Navarrete never denied possessing contraband and instead responded with his own indignant question. The entire investigative detention lasted five minutes. Based on these findings, the trial court concluded that the length and scope of the investigative stop was reasonable and that Rybarik acted reasonably in performing a pat-down search for weapons. After the trial court denied his suppression motion, Navarrete pled no contest and received a six-year bifurcated sentence.

¶6 In reviewing a motion to suppress, we apply a two-step standard of review. *State v. Eason*, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. We will uphold a trial court’s factual findings unless they are clearly erroneous. *Id.* We decide independently whether those facts violate constitutional principles. *Id.*

¶7 An officer may lawfully perform a traffic stop where, based on specific and articulable facts, he or she reasonably suspects that criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 21, 30 (1968). The determination of reasonableness is a commonsense test based on the totality of the facts and circumstances. “This common sense approach balances the interests of the State in detecting, preventing, and investigating crime and the rights of individuals to be free from unreasonable intrusions.” *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. Here, Navarrete does not challenge the propriety of the original stop, but argues that it was unlawfully extended because officers should have released him once he provided the DMV printout with his age, without running any further check of the paper identification. We disagree.

¶8 A traffic stop may lawfully be extended to allow for additional investigation if, during the stop, an officer becomes aware of facts supporting a reasonable suspicion that a separate crime is afoot. *State v. Colstad*, 2003 WI App 25, ¶19, 260 Wis. 2d 406, 659 N.W.2d 394. The validity of the extension is evaluated under the same criteria as the initial stop. *Id.* In this case, we are hard pressed to conclude that the initial stop was extended at all. The detention was limited in scope to the proper purpose of determining Navarrete’s age and identity, and ascertaining whether he was truant or might be involved in the recent rash of daytime burglaries in the high-crime area. Though Navarrete produced a printout stating his age as eighteen, it was perfectly reasonable under the circumstances for Cisler to quickly verify the information provided, including Navarrete’s identity and whether he had any outstanding warrants. Cisler was still in the process of doing so when Rybarik performed the frisk outside. The entire detention, from stop to arrest, lasted no more than five minutes. Under the facts and circumstances of this case, the officers acted reasonably in detaining Navarrete for a brief time

while Cisler verified his identifying information. *See State v. Williams*, 2001 WI 21, ¶¶23, 241 Wis. 2d 631, 623 N.W.2d 106 (“The essential question is whether the action of the law enforcement officer was reasonable under all the facts and circumstances present.” (citation omitted)).

¶19 We also conclude that Rybarik acted reasonably in performing a protective frisk of Navarrete’s person. As part of a lawful *Terry* stop, an officer may perform a pat-down search for weapons if he or she possesses an articulable reasonable suspicion that the suspect may be armed. The relevant test is objective and asks whether a reasonably prudent person in the circumstances would be warranted in the belief that his or her safety or the safety of others is in danger. *Terry*, 392 U.S. at 27. Here, Cisler was in the squad while Rybarik stood alone and outside in a high-crime area with Navarrete. *See State v. Kyles*, 2004 WI 15, ¶¶62, 269 Wis. 2d 1, 675 N.W.2d 449 (whether the geographic area is perceived as a high-crime area is a relevant factor). Officers were investigating a rash of daytime burglaries in the area. *See State v. Flynn*, 92 Wis. 2d 427, 435, 285 N.W.2d 710 (1979) (burglary is the type of offense that would “warrant a man of reasonable caution in the belief” that the offender may be armed (citation omitted)). Navarrete was overtly nervous, which is “a legitimate factor to consider in determining whether a protective frisk [is] justified.” *See State v. McGill*, 2000 WI 38, ¶¶29, 234 Wis. 2d 560, 609 N.W.2d 795. Navarrete was wiggling his fingers and repeatedly performing “security checks” of his pockets. *Id.*, ¶¶31, 37 (that a suspect “twitched and acted nervous with his hands” and kept reaching for his pockets “reinforced the officer’s reasonable belief that the defendant was concealing something, perhaps a weapon, in that pocket”). Navarrete’s tone was confrontational and when directly asked if he had anything illegal on his person, Navarrete deflected the question with an indignant response. Rybarik testified that

he feared for his safety. *See Kyles*, 269 Wis.2d 1, ¶¶37, 39 (though not determinative, an officer’s subjective fear is a permissible consideration in determining the lawfulness of a frisk). The totality of the circumstances supported an objectively reasonable belief that Navarrete was armed and dangerous.

¶10 Navarrete argues that permitting a search on the facts in this case would allow officers to “stop and frisk any school age person in the area because their task for the day involved a general investigation of a recent unspecified increase in burglaries in the area.” This ignores the fact that the trial court’s determination was not based on any single factor, but on the totality of all of the circumstances presented. *Id.*, ¶49 (“Circuit courts are aptly positioned to 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.”). Here, the reasonableness of the frisk was not based solely on Navarrete’s age and the geographic area, but also on Rybarik’s subjective fear as they stood alone on the sidewalk, Navarrete’s nervousness, specific hand movements, constant “security checks,” confrontational tone, and responses to the officers’ questions, including his lack of denial when asked whether he was carrying contraband.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

