COURT OF APPEALS
DECISION
DATED AND FILED

May 29, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2018AP1174-CR **Cir. Ct. No. 2016CF3403**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THADDEUS K. MCLAURIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JOSEPH R. WALL, Judge. *Affirmed*.

Before Kessler,P.J., Kloppenburg and Dugan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Thaddeus K. McLaurin appeals a judgment of conviction for possession of a firearm by a person adjudicated delinquent for an

act that would be a felony if committed by an adult. *See* WIS. STAT. § 941.29(1m)(bm) (2015-16).[1] McLaurin asserts the circuit court erred when it denied his motion to suppress. Because McLaurin was not seized for Fourth Amendment purposes until he was physically apprehended, we affirm.

I. BACKGROUND

¶2 The State charged McLaurin with possession of a firearm by a person adjudicated delinquent, carrying a concealed weapon, and obstructing an officer. The charges stemmed from an incident that occurred the afternoon of July 30, 2016.

¶3 McLaurin moved to suppress the evidence against him arguing the police had no legal basis to stop him. At the suppression hearing, the police officer who arrested McLaurin was the only person to testify.

¶4 The officer testified that he had been employed with the Milwaukee Police Department for over fifteen years and was a bicycle beat patrol officer. The officer further testified that he had received training on bicycle safety and municipal ordinances and that as a police officer, he has the authority to enforce the City of Milwaukee's ordinance code.

¶5 Around 3:00 p.m. on July 30, 2016, the officer was on bicycle beat patrol. He recalled seeing a group of individuals outside a cell phone store. McLaurin was on a bicycle on the sidewalk.

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

¶6 The officer testified that he and two other officers approached the group, at which point McLaurin "got off his bike and entered the store" with another person. The officer testified that the person with McLaurin was a known drug dealer.

¶7 The officer then made contact with the individuals who remained outside the store. As the officer did so, McLaurin exited the store, got on his bicycle, and started "riding southbound on the sidewalk[.]" During his interview with the other individuals, the officer noticed that McLaurin had stopped at a corner store and "was kind of peeking around the corner at me." At that point, the officer testified that he "advised [his] partners that [he] was going to go make a stop on [McLaurin] for a bicycle violation."

¶8 According to the officer, as he proceeded toward McLaurin, McLaurin immediately disappeared. The officer followed McLaurin on his bike and asked him to stop multiple times but he did not do so. The officer saw a bulge in McLaurin's shorts in the shape of a gun and, during the pursuit, he observed McLaurin reach toward that pocket, pull out what looked like a gun, throw it on the ground, and bike away. Ultimately, the officer found McLaurin hiding behind a restaurant and took him into custody. Police later recovered a gun in the area where the officer saw McLaurin throw an object.

¶9 Based on the officer's testimony and the video from the officer's body camera, the circuit court made fact findings and denied the suppression motion. The circuit court specifically concluded:

> Number one, the defendant committed a bicycle ordinance violation, so the officer had reason to stop Mr. McLaurin; number two, the defendant nevertheless fled, not submitting to the command to stop; number three, while fleeing, the defendant tossed what was later found to be a

> gun into the bushes before he was seized. The contraband was abandoned; [and] number four, the defendant was seized only when he was couched down near the restaurant[.]

¶10 McLaurin then pled guilty to possession of a firearm by a person adjudicated delinquent. The charges for carrying a concealed weapon and obstructing an officer were dismissed and read in for purposes of sentencing. The circuit court accepted McLaurin's plea and ordered him to serve three years of probation with a stayed one-year sentence at the House of Correction.

¶11 McLaurin now appeals the circuit court's denial of his suppression motion.

II. DISCUSSION

¶12 We apply a two-step standard of review to the denial of a motion to suppress evidence. *See* ***State v. Lonkoski***, 2013 WI 30, ¶21, 346 Wis. 2d 523, 828 N.W.2d 552. "We uphold the circuit court's findings of fact unless they are clearly erroneous. We then review *de novo* the application of the facts to the constitutional principles." *See* ***id.*** (internal citation omitted).

¶13 Under the Fourth Amendment of the United States Constitution, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" The Wisconsin Constitution contains the same language, and we generally have applied our state constitutional protections in the same way as the United States Supreme Court has applied the protections under the Fourth Amendment. *See* ***State v. Kramer***, 2009 WI 14, ¶18, 315 Wis. 2d 414, 759 N.W.2d 598.

¶14 The protections against unreasonable seizures have bearing only when a government agent "seizes" a person. ***State v. Young***, 2006 WI 98, ¶23, 294 Wis. 2d 1, 717 N.W.2d 729. Not every encounter with police is a seizure under the Fourth Amendment. ***Florida v. Bostick***, 501 U.S. 429, 434 (1991). Courts have recognized two types of seizures: an investigatory or ***Terry*** stop and an arrest. ***County of Grant v. Vogt***, 2014 WI 76, ¶¶27-28, 356 Wis. 2d 343, 850 N.W.2d 253; *see* ***Terry v. Ohio***, 392 U.S. 1, 30 (1968). An investigatory stop typically entails only temporary questioning and is constitutional if police have a reasonable suspicion that a crime has been or is about to be committed. ***Young***, 294 Wis. 2d 1, ¶20. An arrest is a more permanent seizure, often leading to a criminal prosecution, and is constitutional if police have probable cause to suspect that a crime has been committed. ***Id.***, ¶22.

¶15 A seizure occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen[.]" ***United States v. Mendenhall***, 446 U.S. 544, 552 (1980) (citation omitted). A person has been seized for constitutional purposes "only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." ***Id.*** at 554; *see* ***Vogt***, 356 Wis. 2d 343, ¶30 (noting that our supreme court has adopted the ***Mendenhall*** test for determining whether a seizure took place).

¶16 The parties dispute when the seizure occurred. McLaurin contends that he was seized when the officer initially approached him in front of the cell phone store, not when he was apprehended. McLaurin goes on to argue that because the officer had no basis for approaching, stopping, and seizing McLaurin, the results of the warrantless chase of McLaurin (i.e., the gun) must be suppressed.

The State, in contrast, argues that McLaurin was not seized until he was physically apprehended.

¶17 We agree with the State.[2] Pursuant to WIS. STAT. § 800.02(6), a police officer may stop and arrest an individual without a warrant when the officer has reasonable grounds to believe that an individual is violating or has violated a municipal ordinance. In this case, the officer saw McLaurin violate the municipal ordinance that prohibits a person from operating a bicycle on public sidewalks. *See* MILWAUKEE, WIS., CODE § 102-7(1) (2016) (providing, with limited exceptions, that "[n]o bicycle shall be operated upon any public sidewalk"). The officer then pursued McLaurin, who refused multiple orders to stop. During the pursuit, the officer saw McLaurin discard what appeared to be a gun. The officer eventually caught and arrested McLaurin, and police found a handgun in the same area where the officer saw McLaurin throw an object.

¶18 In ***Young***, our supreme court determined "***Mendenhall*** is the appropriate test for situations where the question is whether a person submitted to a police show of authority because, under all the circumstances surrounding the incident, a reasonable person would not have felt free to leave." ***Young***, 294 Wis. 2d 1, ¶37. However, it determined ***California v. Hodari D.***, 499 U.S. 621, 628 (1991), "supplements the ***Mendenhall*** test to address situations where a person flees in response to a police show of authority." ***Young***, 294 Wis. 2d 1, ¶38. The ***Young*** court concluded that, because the defendant fled in response to a

[2] McLaurin's analysis does not hold up, particularly when we account for the circuit court's finding that after the officers approached, McLaurin and another individual proceeded to go into the cell phone store, then McLaurin left the cell phone store and biked away. These facts show that the officer did not stop, let alone seize, McLaurin at the outset.

show of authority, ***Hodari D.*** governed, and the defendant was not seized until the officer physically apprehended him. ***Young***, 294 Wis. 2d 1, ¶52.

¶19 Here, McLaurin was not seized until the officer physically apprehended him. He discarded the gun prior to being seized; consequently, suppression under the Fourth Amendment was not warranted. *See* ***Hodari D.***, 499 U.S. at 629 (explaining that "Hodari … was not seized until he was tackled. The cocaine abandoned while he was running was in this case not the fruit of a seizure, and his motion to exclude evidence of it was properly denied").

By the Court.—Judgment affirmed.

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