STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT I

Case No. 2015AP2307-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

SAMUEL K. DIXON,

Defendant-Appellant.

On Notice of Appeal from a Judgment of Conviction
Entered in the Milwaukee County Circuit Court, the
Honorable Thomas J. McAdams Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

LEON W. TODD
Assistant State Public Defender
State Bar No. 1050407

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202
(414) 227-4805
toddl@opd.wi.gov

Attorney for Defendant-Appellant

TABLE OF CONTENTS

CASES CITED

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

OTHER AUTHORITIES CITED

ISSUE PRESENTED

Did police have reasonable suspicion to stop and detain Samuel Dixon based on the fact that he was talking to a woman for five minutes, in an area where there had been complaints of prostitution during the past thirty days?

The circuit court denied Dixon's motion to suppress evidence discovered during the stop, concluding that police had reasonable suspicion to stop him.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Dixon would welcome oral argument if the court would find it helpful. *See* Wis. Stat. § 809.22. He does not request publication because the case can be resolved by applying established legal precedent to the facts. *See* Wis. Stat. § 809.23(1)(b)1., 3.

STATEMENT OF THE CASE AND FACTS

A. Allegations of the criminal complaint.

On October 10, 2014, the State filed a criminal complaint charging Dixon with one count of possession of a firearm by a felon, contrary to Wis. Stat. § 941.29(2)(a). (2:1). The complaint alleged on August 17, 2014, Police Officer Alvin Hannah was on patrol in the city of Milwaukee when he observed Dixon standing near a woman in front of a "no loitering" sign affixed to a store located at 2900 West Lisbon Avenue. (2:1). According to Hannah, he approached Dixon, who turned his body away and began to reach into his

pockets. (2:1). Hannah alleged that he then observed the handle of a handgun protruding from Dixon's back pocket. (2:1). He also alleged that Dixon told him that he was a convicted felon, so Hannah retrieved the gun and arrested Dixon. (2:1).

B. Plea and sentencing hearing.

On April 30, 2015, Dixon pled guilty as charged in the complaint. (27:4). That same day, the Milwaukee County Circuit Court, the Honorable Thomas J. McAdams presiding, conducted Dixon's sentencing hearing. The State recommended a prison sentence to the court, without specifying an exact duration. (27:11). Defense counsel asked the court to impose two years of initial confinement and two years of extended supervision, concurrent with a three-year revocation sentence Dixon was currently serving. (27:14-15, 19). As counsel pointed out, this was not a prostitution case; the woman Dixon was talking to that day was his girlfriend, Andrea Anderson. (27:16). The couple was simply returning from a party where they had been celebrating Dixon's birthday. When they stopped to talk for a few minutes, however, they were confronted by police. (27:16-17, 21). Counsel noted that Anderson was present in the courtroom and had attended all the hearings in the case. (27:16). Counsel further explained that Dixon did not have the gun for purposes of doing harm to anyone; he simply feared for his safety because he lived in a high-crime area. (27:17).

After hearing the parties' recommendations, the court made its remarks and then imposed a sentence of four years of initial confinement and two years of extended supervision, concurrent with the sentence Dixon was already serving. (27:26-27).

C. Motion to suppress and evidence at the suppression hearing.

Before entering his plea, Dixon filed a motion to suppress the evidence obtained during the stop, alleging that police stopped and frisked him without reasonable suspicion in violation of his Fourth Amendment rights. (8).

On February 6, 2015, the circuit court conducted a suppression hearing. (25; App. 101-135). The State called one witness: Officer Alvin Hannah. Hannah testified that during the morning of August 17, 2014, he and his partner, Officer Lafayette Emmons, were on patrol performing a special overtime assignment that involved investigating prostitution complaints. (25:3, 16; App. 103, 116). The two were in an unmarked squad car that Hannah was driving. (25:4; App. 104). Hannah was in plain clothes, and Emmons was in uniform. (25:4; App. 104).

Hannah testified that before daylight on August 17th, between 5:30 a.m. and 5:50 a.m., he drove past 2900 West Lisbon Avenue and observed Dixon standing there by a woman. (25:4-5, 10; App. 104-05, 110). According to Hannah, there had been several complaints from citizens and aldermen of prostitution in this general area, as well as the specific area of North 29th Street and West Lisbon Avenue. (25:8; App. 108). Hannah described the general area as spanning from North 27th Street to North 35th Street, between West Lisbon Avenue and West North Avenue. According to Hannah, this is an area of four or five city blocks running from north to south, and eight blocks from east to west. (25:17; App. 117).

Hannah also explained, however, that there had actually been no prostitution complaints that day. (25:17-18; App. 117-18). Rather, the complaints he described were

received at some point during the previous thirty days. (25:17-18; App. 117-18). He elaborated as follows:

> Actually we get complaints in that area – for that area probably for the whole year, but the complaints started getting worse because citizens start seeing johns and prostitutes engaging in sex on the street.

(25:18; App. 118). Hannah also stated that during the previous thirty days, he and his partners had made several arrests in the area of North 29th Street and West Lisbon Avenue for loitering and prostitution. (25:8; App. 108).

Hannah further testified that after he drove past 2900 West Lisbon Avenue, he circled around and parked on the 1700 block of North 29th Street, about half a block away from where Dixon and the woman were standing. (25:6; App. 106). Hannah stated that he then observed Dixon from his squad car using a pair of binoculars for approximately five minutes. (25:6-8; App. 106-08). According to Hannah, Dixon was "walking, engaged in conversation with a black female." (25:6). Hannah said that Dixon and the female were not arguing, but were smiling and "chitchatting." (25:25; App. 125). He also stated that he had never seen Dixon or the woman before. (25:25; App. 125). He described the woman as "a thicker black female." (25:7; App. 107). Regarding Dixon, Hannah said he was wearing "gray pants and like a gray shirt and smaller, trimmed Afro. And I think he had a clean – a goatee." (25:11; App. 111).

Hannah indicated that the two did not appear to be going anywhere. Instead, they were walking back and forth on the northwest corner of West Lisbon Avenue and North 29th Street near a liquor store called Davidson Liquor. (25:7; App. 107). In front of the store were two signs that said "no loitering or prowling"; however, the store was closed at the

time. (25:10; App. 110). Hannah stated that during the five minutes he observed Dixon and the woman, they walked back and forth three or four times. (25:7-8; App. 107-08).

Hannah stated that as he was watching Dixon and the woman, "a couple things ran through [his] head":

> I thought either that one of them was trying to buy drugs or that Mr. Dixon was trying to pick up the black female, or that he was trying to pimp the black female.

(25:9; App. 109). Hannah said he based this belief on the fact that Dixon "was well dressed" and "clean cut," as well as the prostitution complaints the police had received during the previous thirty days. (25:9; App. 109).

After observing Dixon for approximately five minutes, Hannah decided to conduct an investigatory stop.

> I informed my partner that we were going to conduct an F.I. stop regarding [sic]. I had my headlights up, so I pulled up to the corner, looked to make sure no traffic was coming. Then I pulled straight up to the northeast – excuse me – the northwest corner with my squad car. Then I activated my lights.

(25:10; App. 110). Hannah also stated that when he pulled up his squad car, he drove the car onto the sidewalk, stopped about two feet from Dixon, and activated the car's red and blue emergency lights. (25:15, 26, 28; App. 115, 126, 128). He then immediately exited the vehicle. (25:26, 28; App. 126, 128).

Upon exiting his squad car, Hannah stated that he observed Dixon reach into his pants pocket:

> When I pulled up, I observed Mr. Dixon trying to reach into the back which is the right pants pocket, and I

> ordered him several times not to reach into his back pocket.
>
> Then he tried to reach again, but I ordered him again, and Mr. Dixon – I ordered him to put his hands up, and that's what he did.

(25:11; App. 111). Hannah later clarified that Dixon did not reach into his pocket until after Hannah activated his emergency lights and exited the vehicle. (25:26-28; App. 126-28).

Hannah stated that after Dixon put his hands up, he told Dixon to turn around, so that he could pat him down for weapons. (25:12, 27; App. 112, 127). When Dixon turned around, Hannah claimed he saw what he thought was a handgun in Dixon's back pants pocket. (25:12; App. 112).

Hannah also alleged that after seeing the gun, he asked Dixon if he was a felon, and Dixon stated that he was. According to Hannah, he then drew his gun, ordered Dixon to the ground, and placed him under arrest. (25:12-13; App. 112-13).

At an oral ruling on March 19, 2015, the circuit court denied Dixon's motion to suppress, concluding that there was reasonable suspicion for the stop. (26:11-17; App. 146-52). The court first made factual findings consistent with Hannah's testimony, finding him to be a credible witness. (26:4-7, 16; App. 139-42, 151). Based on those facts, the court concluded that Hannah had seized Dixon for purposes of the Fourth Amendment when he ordered him "to raise his arms and turn around." (26:11; App. 146). In doing so, the court rejected the notion that the stop had occurred before that, when Hannah activated his squad car's emergency lights, stating that "[t]urning on the car light itself is not a seizure." (26:13; App. 148).

The court further concluded that at the time Hannah ordered Dixon to put his hands up, there was reasonable suspicion to conduct an investigatory stop (26:11-13; App. 146-48). In this regard, the court noted the following "suspicious" factors:

1. There had been reports about prostitution, including sexual activity, taking place at the location during the past thirty days.

2. Dixon was talking to a woman outside a liquor store at approximately 5:55 a.m.

3. The store had "no loitering" signs.[1]

4. Hannah had seen Dixon reach into to his back pocket.

(26:11-13; App. 146-48).

The court stated that given these factors, it was reasonable for Hannah to approach Dixon and conduct a stop. (26:12-13; App. 147-48). The court also stated that there was a "reasonable basis" to perform a pat down, as Hannah had seen Dixon reach into his pocket. However, the court noted that there was no actual "frisk or pat down which produced a weapon" in this case. (26:15-16; App. 150-51). Rather, the observation of the gun, coupled with Dixon's admission that he was a felon, provided probable cause for arrest. (26:13; App. 148).

[1] The court stated that it was "unnecessary for [it] to decide if this case involves a violation of the City of Milwaukee's loitering or prowling ordinance," noting that Hannah's testimony "didn't really focus on that." Instead, Hannah's testimony focused on "the State's prostitution's law." (26:14).

Dixon subsequently filed a notice of intent to pursue postconviction relief, undersigned counsel was appointed, and this appeal follows.[2] (19; 20).

ARGUMENT

I. The Police Lacked Reasonable Suspicion To Stop And Detain Dixon Based On the Fact He Was Talking To a Woman For Five Minutes In an Area Where There Had Been Prostitution Complaints In the Last Thirty Days.

In this case, Officer Hannah was on a mission to find prostitution. His observations of Dixon, however, failed to provide reasonable suspicion that Dixon was actually soliciting prostitution or engaging in any other criminal activity. Dixon was simply talking to his girlfriend for five minutes on a public sidewalk. The fact that this was a "high-crime" or "high-prostitution" area did not make Hannah's actions reasonable. People who live in high-crime neighborhoods are entitled to the same level of constitutional protection as anyone else. Dixon therefore respectfully requests that this court reverse the circuit court's decision denying his motion to suppress.

A. Standard of review and general legal principles.

The right to be free from unreasonable searches and seizures is guaranteed by the Fourth Amendment to the United States Constitution, and Article I, § 11 of the Wisconsin Constitution. This court consistently follows the United States Supreme Court's interpretation of the Fourth

[2] A defendant may appeal an order denying a suppression motion despite a guilty plea. Wis. Stat. § 971.31(10).

Amendment in construing Article I, § 11. ***State v. Betterley***, 191 Wis. 2d 407, 417, 529 N.W.2d 216 (1995).

The Fourth Amendment governs all police intrusions, including investigative stops. ***Terry v. Ohio***, 392 U.S. 1 (1968). Where an unlawful stop occurs, the remedy is to suppress the evidence it produced. ***State v. Washington***, 2005 WI App 123, ¶ 10, 284 Wis. 2d 456, 700 N.W.2d 305 (2005); ***Wong Sun v. United States***, 371 U.S. 471, 487-88 (1963).

Whether a person has been seized is question of constitutional fact. ***State v. Williams***, 2002 WI 94, ¶ 17, 255 Wis. 2d 1, 646 N.W.2d 834. As such, this court accepts the circuit court's findings of evidentiary or historical fact unless they are clearly erroneous, but it determines independently whether or when a seizure occurred. *See* ***id.*** Similarly, in reviewing a motion to suppress, this court applies a two-step standard. ***State v. Martin***, 2012 WI 96, ¶ 28, 343 Wis. 2d 278, 816 N.W.2d 270. First, it upholds the circuit court's findings of fact, unless clearly erroneous. Second, it independently reviews whether the facts meet the constitutional standard. ***Id.***

In this case, Dixon does not challenge the circuit court's factual findings. Therefore, the sole issue is whether the facts supplied reasonable suspicion for the stop.

B. The police lacked reasonable suspicion to stop Dixon; therefore, the circuit court erred in denying his motion to suppress.

An investigatory stop must be based on more than an "inchoate and unparticularized suspicion or 'hunch.'" ***Terry***, 392 U.S. at 27. To conduct a lawful stop, an officer must have a reasonable suspicion, based on specific and articulable

facts, to believe that the person is engaged in criminal activity. ***Ornelas v. United States***, 517 U.S. 690, 696 (1996).

Determining whether an officer had reasonable suspicion to stop a defendant involves an objective analysis of the totality of the circumstances, considering the facts in the record and rational inferences from those facts. ***Ohio v. Robinette***, 519 U.S. 33, 34 (1996). However, "to accommodate public and private interests some quantum of *individualized* suspicion is usually a prerequisite to a constitutional search or seizure." ***United States v. Martinez-Fuente***, 428 U.S. 543, 560 (1976) (emphasis added); *see also* ***Michigan v. Summers***, 452 U.S. 692, 699, n.9 (1981).

In the instant case, the circuit court determined that Dixon was seized for purposes of the Fourth Amendment when Hannah ordered him to raise his arms and turn around. (26:11; App. 146). That conclusion was erroneous.[3] A stop or seizure occurs when a police officer restrains a person's liberty by means of physical force or a show of authority, such that a reasonable person under the circumstances would not feel free to leave. ***State v. Harris***, 206 Wis. 2d 243, 252-53, 557 N.W.2d 245 (1996). Deciding when a stop occurs is important because the moment of a stop limits what facts a court may consider in determining the existence of reasonable suspicion for that stop. ***Young***, 294 Wis. 2d 1, ¶ 39.

---

[3] The circuit court cited ***State v. Young***, 2006 WI 98, 294 Wis. 2d 1, 717 N.W.2d 729, as support for its conclusion that activating the car's emergency lights was not a seizure. (26:11-13; App. 146-48). ***Young*** does not support that conclusion. In ***Young***, the officer activated his flashing hazard lights and illuminated Young's car with his spotlight, but he never activated the car's red and blue emergency lights. ***Id.*** ¶¶ 10, 68. Also, because Young subsequently fled the scene, he was not considered seized until police physically apprehended him. ***Id.*** ¶ 52 (applying ***California v. Hodari D.***, 499 U.S. 621, 626 (1991)).

Here, the stop took place before Hannah exited his vehicle and ordered Dixon to raise his hands and turn around. It occurred the moment Hannah activated his squad car's red and blue emergency lights. No reasonable person would feel free to leave after a police officer drove his squad car up on the sidewalk, stopped two feet from the person, and then activated the car's red and blue emergency lights. Dixon was certainly not free to "terminate the encounter" and leave the scene at that point. *See* ***United States v. Drayton***, 536 U.S. 194, 202 (2002). He was seized for purposes of the Fourth Amendment, and for purposes of common sense.

Any ruling to the contrary would also be at odds with public safety, as it would send a message that people should feel free to leave or otherwise ignore a similar show of police authority. Fourth Amendment jurisprudence has created incentives for people to obey police orders, not the other way around. *See* ***Hodari D.***, 499 U.S. at 626; ***Young***, 294 Wis. 2d 1, ¶ 50.

Because the circuit court erred in determining when the stop actually occurred, it also erred in considering the fact that Dixon reached into pocket multiple times in deciding whether there was reasonable suspicion. Dixon did not reach into his pocket, according to Hannah, until after Hannah activated his emergency lights and exited the vehicle. (25:26-28; App. 126-28). This fact thus could not have provided reasonable suspicion for Hannah to conduct the stop.

As such, the relevant facts at the time of the stop were as follows: (1) it was a "high-prostitution" area; (2) Dixon was talking to a female for five minutes at 5:55 a.m.; and (3) there were "no loitering" signs outside the nearby liquor store. None of these facts alone or taken together amount to

reasonable suspicion that Dixon was engaging in any unlawful activity.

First, the fact that this was a "high-prostitution" or "high-crime" area should add nothing to the reasonable suspicion analysis. *See* ***Washington***, 284 Wis. 2d 456 (there was insufficient basis for a stop where the defendant was standing in front of a vacant house in a high-crime area, the police knew he did not live there, he had been previously arrested for narcotics, and a citizen had called to complain about drug dealing and loitering at the house). As this court recently noted in ***State v. Gordon***, 2014 WI App 44, 353 Wis. 2d 468, 846 N.W.2d 483:

> sadly, many, many folks, innocent of any crime, are by circumstances forced to live in areas that are not safe – either for themselves or their loved ones. Thus, the routine mantra of "high crime area" has the tendency to condemn a whole population to police intrusion that, with the same additional facts, would not happen in other parts of our community. "An individual's presence in an area of expected criminal activity, standing along, is not enough to support a reasonable, particularized suspicion that the person is committing a crime."

Id. ¶ 15 (citing ***Illinois v. Wardlow***, 528 U.S. 119, 124 (2000)); *see also* ***State v. Morgan***, 197 Wis. 2d 200, 212-13, 539 N.W.2d 887 (1995) ("We recognize . . . that many persons 'are forced to live in areas that have 'high crime' rates or they come to these areas to shop, work, play, transact business, or visit relatives or friends. The spectrum of legitimate human behavior occurs every day in so-called high crimes areas.' Furthermore, Professor LaFave warns that 'simply being about in a high-crime area should not by itself ever be viewed as a sufficient basis to make an investigative stop.'").

In addition, this court "must be particularly careful to ensure that a 'high crime' area factor is not used with respect to entire neighborhoods or communities in which members of minority groups regularly go about their daily business." ***Gordon***, 353 Wis. 2d 468, ¶ 15 (citing ***Sims v. Stanton***, 706 F.3d 954, 963 (9th Cir. 2013). This court can take judicial notice that the area described by Hannah – from North 27th Street to North 35th Street, between North Avenue and Lisbon – is both a minority and low-income neighborhood.[4] Wis. Stat. § 902.01(2)(a). Police should not be permitted to simply stereotype people in such a neighborhood as criminals, just because the neighborhood is considered a "high-crime" area. The Fourth Amendment's protections apply equally to members of every race and class. It is thus this court's duty to safeguard constitutional rights in areas that are considered high-crime, low-income, or minority neighborhoods with the same force as in all other parts of the community. To conclude that Dixon's mere presence in a "high-crime" area was a sufficient justification for the stop in this case would be to abandon that duty.

Furthermore, the notion that this case is somehow different because it involves a "high-prostitution" area, instead of a "high-crime" area in general, is a red herring. While there may be certain "hot spots," prostitution is no doubt a problem that occurs in many parts of the city of Milwaukee. Dixon submits, however, that generalized complaints about prostitution in certain other areas of the city – which there very well may be – would not create reasonable

[4] This court can also take judicial notice that Milwaukee is consistently one of the most racially segregated major cities in the country. Wis. Stat. § 902.01(2)(b); *see also* William H. Frey, *Census Shows Modest Declines in Black-White Segregation*, The Brookings Institute, Dec. 8, 2015, *available at* http://www.brookings.edu/blogs/the-avenue/posts/2015/12/08-census-black-white-segregation-frey.

suspicion under similar circumstances. For example, would generalized complaints about prostitution in areas such as Water Street in Downtown Milwaukee or Brady Street on Milwaukee's Eastside be sufficient to warrant a stop and frisk of any man in these areas seen talking to a female for more than a few minutes? Almost certainly not. And the same should be true for any other area of the city. An individual's presence in a "high-prostitution" area, even when talking to a member of the opposite sex, does not create a reasonable, individualized suspicion of criminal wrongdoing.

Second, the fact that Dixon was talking to Anderson (who was unknown to police at that point) for five minutes around 6:00 a.m. was not suspicious, even when coupled with the "high-prostitution" area factor. As an initial matter, the prostitution complaints that Hannah testified to were not specific to Dixon or Anderson, or anyone who matched their descriptions. Also, no complaints had been received on the day in question. Instead, they came in at some point over the previous thirty days. According to Hannah, at least some of those complaints were not even specific to this particular area; they covered a general area of the city that was eight by four blocks in size. The prostitution complaints therefore provided no reasonable, individualized basis to suspect Dixon or Anderson of criminal wrongdoing.

The time of day was also not particularly odd. It was not "bar time," or late at night when most people are sleeping. Many people begin their day or go to work at 6:00 in the morning. As the State noted at sentencing in this case, this was "a time of day and a place where many people are heading downtown or other places to work." (27:12).

Most importantly, the behavior that Hannah actually observed was not suspicious either. Hannah did not see

Dixon arguing with Anderson. He did not see him exchange money, drugs, or any other item with her. He did not see him beckon for her to come over by him. He did not see him direct her to get in a car or talk to another man. In fact, he did not see or overhear Dixon do or say anything that would have reasonably suggested Dixon was soliciting prostitution, directing Anderson to engage in prostitution, or engaging (or about to engage) in a sexual or otherwise indecent act with her.

Instead, Hannah merely saw Dixon smiling and "chitchatting" with Anderson on a public sidewalk for a few minutes. This is far too common an activity to support the required individualized suspicion needed here. It is something that any man on this planet might do, whether with his wife, girlfriend, sister, aunt, mother, daughter, or female friend. To permit a ***Terry*** stop of a man who briefly engages in friendly conversation with a woman in a public place – even in a high-crime/prostitution area – would expand the notion of reasonable suspicion so far as to render it meaningless.

Third, the fact that there were "no loitering" signs on the nearby liquor store also did not create reasonable suspicion of criminal wrongdoing. Dixon had only been talking to Anderson for about five minutes at the time Hannah initiated the ***Terry*** stop. They were standing on a public sidewalk, and the liquor store was closed. This is not loitering, as that term is legally defined.

The city of Milwaukee has a number of ordinances that prohibit "loitering" under various circumstances. However, none of the ordinances are applicable in this case. For example, according to Milwaukee City Ordinance § 106-31.1, it is illegal for any person to loiter or prowl "in a place, at a

time, or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity." In determining whether "alarm is warranted" officers may consider, among other factors, whether "the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object."[5]

Hannah did not have reasonable suspicion to believe that Dixon was behaving in a manner that would "warrant alarm for the safety of persons or property in the vicinity." According to Hannah, Dixon was merely standing on a public sidewalk talking to a woman for a relatively short period of time. He made no attempt to flee or conceal anything, nor did he refuse to identify himself.

Milwaukee City Ordinance § 106.31.6 also prohibits loitering "in or about a restaurant, tavern, convenience store, filling station or other public building." As used in that section, "loiter" means to, "without just cause, remain in a restaurant, tavern, convenience store, filling station or public building or to remain upon the property immediately adjacent thereto after being asked to leave by the owner or person entitled to possession or in control thereof, or where 'no loitering' signs are present."

Dixon was never inside the liquor store in violation of this ordinance. The store was closed. Nor did he remain

---

[5] This ordinance also provides that prior to any arrest, a police officer shall "afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct." It further states that "[n]o person shall be convicted of an offense under this section if the officer did not" afford the actor the opportunity to dispel alarm. The other ordinances subsequently described in this brief contain similar provisions, as well.

upon any of the liquor store's property immediately adjacent to its building, such as the curtilage, parking lot, front steps/entrance, or any other part of the adjacent property owned by the liquor store, from which a person entitled to possession could legitimately request that he leave. He was standing on a public sidewalk. He was not even on the part of the sidewalk directly in front of store's entrance or loitering signs. (30). He was standing/walking on the sidewalk near the exterior corner of the liquor store. (25:13-14; 30).

Additionally, Milwaukee City Ordinance § 106.31.7 prohibits loitering "in or near any thorough fare or place open to the public in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to commit an act of prostitution." In determining whether such purpose is manifested, officers may consider, among other circumstances, "that such person is a known prostitute or panderer, repeatedly beckons to stop or attempts to stop, or engages male or female passersby in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waiving of arms or any other bodily gesture." Further, "violator's conduct must be such as to demonstrate a specific intent to induce, entice, solicit or procure another to commit an act of prostitution."[6]

Again, none of Dixon's actions demonstrated the requisite "specific intent to induce, entice, solicit or procure another to commit an act of prostitution." Dixon and Anderson were not known by Hannah to be prostitutes or panderers. Dixon was not observed repeatedly beckoning or engaging known prostitutes or passersby in conversation, or stopping or attempting to stop motor vehicles. Nor was he

[6] *See also* Milwaukee City Ordinance § 106.35 ("Loitering-Soliciting Prostitutes"), prohibiting nearly identical conduct.

seen frequenting this area. As such, there was no reasonable basis for Hannah to conclude that Dixon was loitering, as prohibited by any of these ordinances. The ***Terry*** stop therefore could not have been justified based on the "no loitering" signs.

Finally, even if the circuit court had not erred in considering the fact that Dixon reached into his pocket after Hannah existed his squad car, that additional fact still would not have justified the stop. Reaching into a pocket in no way, shape, or form creates reasonable suspicion that a person is soliciting prostitution or engaging in any other type of crime. If reasonable suspicion has already been established, such a fact might be relevant in deciding whether an officer had a "particularized and objective basis" to believe that a person is armed and dangerous, such that a pat-down might be performed. ***Terry***, 392 U.S. at 27; *see also* ***State v. Johnson***, 2007 WI 32, ¶ 21, 299 Wis. 2d 675, 729 N.W.2d 182. However, the fact that someone reaches into his or her pocket is irrelevant to the actual reasonable suspicion analysis.

In sum, none of the facts in this case provided reasonable suspicion that Dixon was engaging in criminal activity of any kind. Again, at the suppression hearing, Officer Hannah stated as follows:

> I thought either that one of them was trying to buy drugs or that Mr. Dixon was trying to pick up the black female, or that he was trying to pimp the black female.

(25:9; App. 109). This was not a conclusion reasonably derived from specific and articulable facts. At best, the statement shows that Hannah simply acted on a hunch when he decided to stop Dixon. At worst, it reflects an assumption of criminality placed on Dixon because of his status as a member of a particular community – a stereotype that

individuals who live in "high-crime" areas (which tend to be minority neighborhoods), are likely to be committing crimes.[7]

Either way, the stop was unreasonable under the Fourth Amendment. The evidence it produced should therefore be suppressed.

[7] Dixon does not assert that this stereotyping, if it in fact occurred, was necessarily the result of invidious motive. Police officers, like everyone else, are susceptible to implicit biases. *See* National Center for State Courts, Implicit Bias: Frequently Asked Questions, *available at* http://www.ncsc.org/~/media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/Implicit%20Bias%20FAQs%20rev.ashx.

CONCLUSION

The police stop of Samuel Dixon in this case was unreasonable and unconstitutional. Dixon therefore respectfully requests that this court reverse the judgment and order of the circuit court, order the evidence obtained as a result of the unlawful stop to be suppressed, and remand the case to the circuit court for further proceedings consistent with this court's opinion.

Dated this 15th day of February 2016.

Respectfully submitted,

LEON W. TODD
Assistant State Public Defender
State Bar No. 1050407

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202
(414) 227-4805
toddl@opd.wi.gov

Attorney for Defendant-Appellant

CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 5,240 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 15th day of February 2016.

Signed:

LEON W. TODD
Assistant State Public Defender
State Bar No. 1050407

Office of State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202
(414) 227-4805
toddl@opd.wi.gov
Attorney for Defendant-Appellant

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 15th day of February 2016.

Signed:

LEON W. TODD
Assistant State Public Defender
State Bar No. 1050407
Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202
(414) 227-4805
toddl@opd.wi.gov
Attorney for Defendant-Appellant

A P P E N D I X

I N D E X
T O
A P P E N D I X

Page