STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2019AP001796-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LARRY ALEXANDER NORTON,

Defendant-Appellant.

On Appeal from a Judgment of Conviction Entered
in Milwaukee County Circuit Court,
the Honorable Kristy Yang Presiding.

REPLY BRIEF OF DEFENDANT-APPELLANT

CHRISTOPHER P. AUGUST
Assistant State Public Defender
State Bar No. 1087502

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4805
augustc@opd.wi.gov

Attorney for Defendant-Appellant

TABLE OF CONTENTS

OTHER AUTHORITIES CITED

ARGUMENT

I. The police detention was unsupported by reasonable suspicion.

The State argues that the testimony at the suppression hearing adequately "established that the officers had the requisite reasonable suspicion to detain Mr. Norton." (State's Br. at 5). They base that conclusion on three factors: the existence of a shots fired complaint, Mr. Norton's presence in a high crime area, and Mr. Norton's ostensibly "furtive" movements. (State's Br. at 5-6). Mr. Norton's brief-in-chief already considered these factors and asserted that, even when aggregated, they do not establish constitutionally requisite reasonable suspicion. Mr. Norton will therefore only briefly respond to the State's four-page argument in this reply.

The State first points to the shots fired complaint, which they assert occurred "around 11:28 P.M. at E. Locust St. and N. Booth St." (State's Br. at 5). However, the testimony establishes that the 11:28 marker was when the officers were on their way to that reported shots fired complaint; the record does not actually concretely establish when these shots were fired, if they were in fact actually fired at all (recall that the record establishes no evidence of shots being fired beyond a conclusory assertion to that effect). Moreover, there is scant evidence in the record establishing where the shots were fired or what the witness who reported those shots heard

and/or witnessed. Thus, while the State claims that Mr. Norton was "very close in proximity to where the gunshots were heard," (State's Br. at 5), we cannot actually know this, as the testifying officer was only able to give a general vicinity, not a precise location. More to the point, this shots fired complaint occurred in an urban setting, with many other vehicles present. It strains credulity to assert that Mr. Norton's presence near this vaguely described complaint is in any way sufficiently suggestive such that a violation of his liberty was justified.

The State then moves swiftly to Mr. Norton's movements, which the State claims to be suggestive in light of the shots fired complaint. (State's Br. at 5). Mr. Norton takes the position, however, that these are two inherently ambiguous data points which cannot independently support one another, as the State suggests. The existence of Mr. Norton's movements, without more, does not make the shots fired evidence stronger, just as the existence of a vaguely described shots fired complaint does not make these movements inherently suspicious.

The State relies on testimony that Mr. Norton's actions were somehow abnormal, (State's Br. at 6), yet that conclusion is debatable. After all, the responding officer agreed that there could be an innocent explanation for Mr. Norton's movements. (35:31).

Finally, the State falls back on its claim that this was a high crime area. (State's Br. at 6). The

State argues that the high crime area does not independently support the stop but, rather, adds some weight to the calculus. (State's Br. at 6). Yet, the testimony does not actually establish that this was a "high crime area," just a location that was "becoming troublesome." (State's Br. at 6). The stop was conducted in an area of Milwaukee's Riverwest neighborhood near several popular restaurants and breweries, in an area of the city designated as "diverse" and "offbeat" by Milwaukee's tourism website.[1] There was insufficient testimony to impugn this neighborhood as essentially crime-ridden and then to infer that Mr. Norton's presence therein was somehow suggestive. This factor contributes negligible weight to the calculus, contrary to the State's assertion.

Overall, the record is clear that responding officers lacked essential information as to why they were being dispatched, such as where the alleged shots had been fired and, more importantly, when in relation to their arrival they had been fired. Officers did no investigation after arriving on scene, instead preferring to begin spotlighting cars at random. When Mr. Norton responded to having a law enforcement spotlight being shined in his car with an ambiguous movement, officers moved in to detain him—without any evidence whatsoever that his presence in the area was linked to the vaguely-stated

---

[1] https://www.visitmilwaukee.org/neighborhoods/riverwest/

shots fired complaint. What happened to Mr. Norton could have happened to any hypothetical resident of this Riverwest neighborhood who happened to be in their vehicle at the moment law enforcement began their sweep. This conduct is inconsistent with the Fourth Amendment and therefore requires suppression.

CONCLUSION

Mr. Norton therefore respectfully requests that this Court reverse the circuit court and remand for further proceedings.

Dated this 10th day of February, 2020.

Respectfully submitted,

CHRISTOPHER P. AUGUST
Assistant State Public Defender
State Bar No. 1087502

Office of the State Public Defender
735 N. Water Street - Suite 912
Milwaukee, WI 53202-4116
(414) 227-4805
augustc@opd.wi.gov

Attorney for Defendant-Appellant

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 734 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 10th day of February, 2020.

Signed:

Christopher P. August
Assistant State Public Defender