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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2020AP878-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

AVAN RONDELL NIMMER,

Defendant-Appellant.

ON REVIEW FROM A DECISION OF THE COURT OF APPEALS REVERSING A DECISION AND JUDGMENT OF CONVICTION ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE GLENN H. YAMAHIRO, PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT-PETITIONER

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ISSUE PRESENTED

Did law enforcement, within a minute of receiving a ShotSpotter report of shots fired at a residential address, have reasonable suspicion to stop the only person outside the address, where the person reacted to the police by grabbing at his waistband, angling one side of his body away from the officers, and speeding his pace away from them?

The circuit court concluded that police had reasonable suspicion to stop Avan Rondell Nimmer under the totality of those circumstances.

The court of appeals reversed, holding that each of the individual actions that police observed, without more, could not support reasonable suspicion.

This Court should reverse the court of appeals.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

As with any case in which this Court grants review, both oral argument and publication are customary and warranted.

INTRODUCTION

The facts here demonstrate that law enforcement had reasonable suspicion to stop Nimmer. The officers had received a ShotSpotter report of shots fired in a city neighborhood, they arrived at the reported address within a minute of the report, the only person they saw at the address was Nimmer, and Nimmer reacted to the police by walking quickly away, grabbing at something at his waist, and angling that side of his body away from police. Those facts, combined with the fact that police were investigating a crime implicating significant public safety concerns, justified the

stop in this case. This Court should reverse the court of appeals.

STATEMENT OF THE CASE

In June 2019, the State charged Nimmer with possession of a firearm by a felon. (R. 1.) The charge resulted from a police investigation of a ShotSpotter report of shots fired at a particular address in Milwaukee. Officers drove to the location of the shots within a minute of the report, where they encountered Nimmer standing outside with his right hand in his pocket. (R. 1:1.) Upon seeing police, Nimmer began walking quickly away, keeping his left hand on his waistband, and angling that side of his body away from police. (R. 1:1.) After conducting a *Terry*[1] stop and frisk, police found a gun in the waistband of Nimmer's pants and arrested him for violating the felon-in-possession statute. (R. 1:1.)

Nimmer moved to suppress the firearm that police recovered during the stop. (R. 5:3.) He argued that the stop was unsupported by reasonable suspicion that he was engaged in criminal activity. (R. 5:2.)

At a hearing on the motion, Milwaukee Police Officer Anthony Milone testified that he was on duty on June 15, 2019, with his partner, Officer Chad Boyack. (R. 25:4–6.) Milone and Boyack were traveling in a marked squad car when they received a ShotSpotter alert of four rounds fired a few blocks away at 3390 North 21st Street. (R. 25:7.)

Officer Milone explained that ShotSpotter is a gunshot location system that uses acoustic sensors to identify gunfire and alert law enforcement to its location. (R. 25:4–5.) Milone had responded to over a thousand such alerts in his nine years as a police officer. (R. 25:6.) When responding to these alerts,

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[1] *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

Milone looks for potential victims, suspects, witnesses, or other evidence identifying the source of the shots. (R. 25:6.) When Officer Milone finds individuals at the reported location of the shots, he observes "what their response is upon sight of police, see[s] if they are shot, see[s] if they take off running, see[s] if they start grabbing any part of their clothing, any part of their body." (R. 25:6.)

Within a minute of receiving the ShotSpotter alert, Milone and Boyack observed Nimmer at the intersection of 21st and Townsend, which was "basically the exact location where the ShotSpotter came in." (R. 25:7–8, 12.) Nimmer was the only person officers saw. (R. 25:8.) Milone noticed that Nimmer, who had not yet seen the police, had his right hand in his pants pocket. (R. 25:8.) When Nimmer turned and saw the squad car, he "immediately looked away and began accelerating his walking pace." (R. 25:8.) Milone stated that based on those observations and his experience, he believed Nimmer was possibly trying to flee from them. (R. 25:8–9.)

After Nimmer sped up, he "began digging around his left side with his left hand." (R. 25:9.) At that point, Milone got out of the squad car and approached Nimmer from behind. As he did so, Nimmer turned his left side away from Milone. (R. 25:9.) In the meantime, Officer Boyack drove the squad car past Nimmer, stopped it, and stepped out. When that happened, Nimmer stopped walking. (R. 25:9–10.) Based on the ShotSpotter alert and their observations of Nimmer, the officers conducted a *Terry* stop. (R. 25:10.)

Nimmer complied, and when Milone patted Nimmer down, Nimmer informed Milone that he had a gun. (R. 25:10.) Milone then retrieved a .40 caliber pistol from Nimmer's waistband on his left side. (R. 25:10.) After learning that Nimmer had a felony conviction, the officers arrested him. (R. 25:11.)

The circuit court denied Nimmer's motion to suppress. It found Officer Milone to be credible and made findings consistent with his testimony. (R. 25:35.) It found that the officers encountered Nimmer alone at the location of the ShotSpotter alert within a minute of receiving the alert. (R. 25:35; Pet-App. 112.) It found that Nimmer sped up his walking pace in reaction to seeing the officers and bladed his body to conceal his weapon. (R. 25:35–36; Pet-App. 112–13.) The key, the court found, was the close timing of the officers' observations of Nimmer following the ShotSpotter alert. (R. 25:36.) In all, the court determined, the officers were "completely appropriate in their investigation [of] the ShotSpotter complaint." (R. 25:37; Pet-App. 114.)

Nimmer pleaded guilty and was sentenced to two years' initial confinement followed by two years' extended supervision. (R. 14:1–2.)

Nimmer appealed to the court of appeals, arguing that the circuit court's decision on reasonable suspicion was wrong. The court of appeals agreed with Nimmer and reversed. *State v. Avan Rondell Nimmer*, No. 2020AP878-CR (Wis. Ct. App. Dec. 15, 2020) (per curiam) (Pet-App. 101–11). In reversing, the court isolated each of the facts present here and matched them to cases holding that those circumstances, without more, did not support reasonable suspicion. (Pet-App. 106–11.)

The State petitioned for review, which this Court granted.

STANDARD OF REVIEW

Ultimately, this Court is reviewing the circuit court's denial of Nimmer's motion to suppress. This Court will uphold the circuit court's findings of fact unless they are clearly erroneous, but it reviews de novo whether those facts

constitute reasonable suspicion. *State v. Young*, 2006 WI 98, ¶ 17, 294 Wis. 2d 1, 717 N.W.2d 729 (cited source omitted).

ARGUMENT

Based on the ShotSpotter alert, Nimmer's location at the alerted-to address, and his evasive behavior upon seeing law enforcement, police had reasonable suspicion to stop him.

A. Reasonable suspicion requires a totality-of-the-circumstances analysis.

The Fourth Amendment permits law enforcement to conduct a brief investigatory *Terry* stop of a person when that action is supported by reasonable suspicion. *State v. Roy S. Anderson*, 2019 WI 97, ¶ 32, 389 Wis. 2d 106, 935 N.W.2d 285. Reasonable suspicion means that a police officer "possess[es] specific and articulable facts that warrant a reasonable belief that criminal activity is afoot." *Young*, 294 Wis. 2d 1, ¶ 21 (citation omitted). "Reasonable suspicion is a fairly low standard to meet." *Roy S. Anderson*, 389 Wis. 2d 106, ¶ 33. What constitutes reasonable suspicion is a common-sense, totality-of-the-circumstances test that asks, under all the facts and circumstances present, "[w]hat would a reasonable police officer reasonably suspect in light of his or her training and experience"? *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996) (citing *State v. David Paul Anderson*, 155 Wis. 2d 77, 83–84, 454 N.W.2d 763 (1990)).

Since the test focuses on the totality of the circumstances, police officers have reasonable suspicion to stop a person when they observe acts that may be individually lawful, but when taken together, allow the officers to objectively discern "a reasonable inference of unlawful conduct." *Waldner*, 206 Wis. 2d at 60. Police do not need "to rule out the possibility of innocent behavior before initiating a brief stop." *Id.* at 59 (citing *David Paul Anderson*, 155

Wis. 2d at 84). In weighing reasonable suspicion, courts consider the information police receive—i.e., tips or witness reports—directing them to investigate a particular location or person. *See State v. Miller*, 2012 WI 61, ¶ 31, 341 Wis. 2d 307, 815 N.W.2d 349.

The totality of the circumstances here includes the ShotSpotter report identifying four rounds shot at a particular address, police arriving at that address within a minute of the report, police seeing Nimmer alone at that address, Nimmer's reaction speeding his pace away when seeing police, and Nimmer's grabbing at his waist and angling that side of his body away from the officers.

B. The officers here had reasonable suspicion to conduct a *Terry* stop of Nimmer based on the totality of the circumstances.

1. The ShotSpotter report should be weighed as a reliable tip.

This case does not involve a human tip, but rather a technological one. ShotSpotter is a sensor-based system that uses acoustic technology to recognize the specific sound of gunfire and pinpoint its location. (R. 25:4–5.) Based on the locations of the sensors, ShotSpotter can identify within 80 feet, and often closer, of where gunfire discharged. *See* Alexandra S. Gecas, Note, *Gunfire Game Changer or Big Brother's Hidden Ears?: Fourth Amendment and Admissibility Quandaries Relating to ShotSpotter Technology*, 2016 U. Ill. L. Rev. 1073, 1079–80 (2016). Identifying such gunfire "takes about forty seconds," and the system then immediately relays the gunfire's location to local police. *Id.* at 1080.

ShotSpotter serves numerous functions, from pinpointing instances of gunfire quickly to law enforcement and allowing them to efficiently respond to and investigate

such reports, to deterring instances of shots fired and promoting community safety and trust. *Id.* at 1083–84. At least one study revealed that "ShotSpotter correctly detected 99.6 percent of 234 gunshots at 23 firing locations" and that it pinpointed over 90 percent of those shots within 40 feet. *Id.* at 1083.

To be sure, ShotSpotter provides no information on the identity of possible shooters or their exact whereabouts. But in a reasonable suspicion analysis, a ShotSpotter report should carry the same weight as a tip from a reliable informant.[2] And like any other factor in the analysis, a ShotSpotter report alone cannot likely supply reasonable suspicion for officers to conduct a *Terry* stop of every individual they see at the reported location. Yet the report reflects a potentially ongoing crime. Because of that, police following up on a ShotSpotter or any shots-fired report are duty-bound to approach or look closer at the individuals they find in the reported location.

2. The immediate timing of the police response likewise supports reasonable suspicion.

In addition, the police response to the ShotSpotter report was nearly immediate—within a minute of the report. Given that timing, and the likelihood that the shooter or witnesses with information would still be near that address

[2] Nimmer's suppression motion did not raise a challenge to the reliability of ShotSpotter, so there is little in this record regarding its accuracy and methodology. Still, the State is not aware of any successful legal challenges to its reliability or commentary questioning it. And at least one court has held that the ShotSpotter "system is, in effect, the equivalent of a reliable informant, and . . . is objectively more reliable than an anonymous report of gunfire." *State v. Bellamy*, No. A-2978-16T2, 2018 WL 2925724, at *4 (N.J. Super. Ct. App. Div. June 12, 2018).

in that time, Officers Milone and Boyack were justified in focusing on any individuals present at that address. And here, the only individual was Nimmer. As Officer Milone testified, when responding to ShotSpotter reports, he typically will try to identify whether there are any victims and the source of the shots, which by necessity also requires him to read the body language and response of those present at the scene. (R. 25:6.) Officers Milone and Boyack did those precise things here. Accordingly, at that point, Officers Milone and Boyack reasonably approached Nimmer to investigate the shots fired report and were also entitled to draw inferences from how Nimmer reacted to them, which, as discussed, also supported reasonable suspicion.

3. The officers' observations of Nimmer's reaction to them likewise supported reasonable suspicion.

Here, the circuit court found Officer Milone to be credible and made findings consistent with his testimony. (R. 25:35; Pet-App. 112.) It found that the officers encountered Nimmer, and no one else, at the location of the ShotSpotter alert within a minute of receiving the alert. (R. 25:35; Pet-App. 112.) It found that Nimmer sped up his walking pace in reaction to seeing the officers, dug at his waistband, and angled his body in a manner to conceal his weapon. (R. 25:35–36; Pet-App. 112–13.)

The circuit court's findings were not clearly erroneous and they support its determination that the officers were "completely appropriate in their investigation [of] the ShotSpotter complaint." (R. 25:37; Pet-App. 114.) And while those actions by Nimmer each could have had innocent explanations, those actions, in context with the entire encounter, allowed the officers to reasonably infer that Nimmer had a connection to the shooting. The officers were

justified in stopping him. Indeed, they would have been derelict in their jobs had they allowed him to simply walk away. *See David Paul Anderson*, 155 Wis. 2d at 84 (citing *Terry v. Ohio*, 392 U.S. 1, 23 (1968)) (noting that officer's failure to investigate a person's flight from police "would have been poor police work").

4. The nature of the crime investigated also weighs toward reasonable suspicion.

One additional factor supports reasonable suspicion here: police were investigating a shots-fired report, which implicated immediate public-safety concerns. The seriousness of the crime investigation can factor into the reasonable suspicion analysis. For example, this Court has noted that police may be justified in engaging with suspects quicker when the reported crime poses a danger to public safety:

> [W]here the allegations in the tip suggest an imminent threat to the public safety or other exigency that warrants immediate police investigation[, i]n such circumstances, the Fourth Amendment and Article I, Section 11 do not require the police to idly stand by in hopes that their observations reveal suspicious behavior before the imminent threat comes to its fruition. Rather, it may be reasonable for an officer in such a situation to conclude that the potential for danger caused by a delay in immediate action justifies stopping the suspect without any further observation.

State v. Rutzinski, 2001 WI 22, ¶ 26, 241 Wis. 2d 729, 623 N.W.2d 516; *see also Commonwealth v. Meneus*, 66 N.E.3d 1019, 1026 (Mass. 2017) (holding that "the fact that the crime under investigation was a shooting, with implications for public safety" is a relevant factor in determining the reasonableness of the stop).

In all, the circuit court correctly determined, consistent with its factual findings, that the officers had reasonable suspicion to conduct a *Terry* stop of Nimmer. Accordingly, it soundly denied his motion to suppress the gun that police recovered from him.[3]

C. The court of appeals failed to apply the totality-of-the-circumstances test when it omitted and isolated relevant facts.

The court of appeals' analysis was flawed. For one, it disregarded the circuit court's findings and conclusion that the officers had reasonable suspicion based on the totality of the circumstances, including the reasons that police came to the address where Nimmer was found and their observations of Nimmer's response to them. And contrary to the court of appeals' view, the circuit court's comment that officers could have reasonably stopped anyone in the area in response to a shots-fired report (R. 25:36; Pet-App. 113), did not drive its decision. (Pet-App. 111.) Rather, the circuit court's decision was guided by its determination that Officer Milone's testimony was credible and that the totality of the circumstances established individualized reasonable suspicion to stop Nimmer in this case.

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[3] Nimmer did not challenge the reasonableness of Officer Milone's pat-down search, nor did he appear to have a basis to challenge it. Officers may frisk a person during a *Terry* stop if the officer reasonably believes that the person is armed and poses a safety risk. *See State v. Young*, 2006 WI 98, ¶ 55, 294 Wis. 2d 1, 717 N.W.2d 729. Given that Officers Milone and Boyack had reasonable suspicion to believe Nimmer was involved in gun-related criminal activity, they had a basis to frisk him and retrieve the gun.

Second, the court of appeals did not address facts relevant to the analysis—including the nature of the police investigation (a minute-old ShotSpotter report of shots fired at a particular address) and Nimmer's being the only person present outside the address. Instead, the court seemed to home in on the individual acts by Nimmer that Officer Milone observed after arriving at the scene. But leaving out that the report of gunshots—a significant public safety concern—drew officers to the location, that the gunshots occurred a minute earlier at that location, and that Nimmer was the only person there omits important context informing the officers' subsequent observations and actions.

Third, the court isolated each of Milone's observations and deemed each to be insufficient to support reasonable suspicion. (Pet-App. 109–11.) But "[t]he totality-of-the-circumstances test 'precludes this sort of divide-and-conquer analysis.'" *D.C. v. Wesby*, 138 S. Ct. 577, 588 (2018) (citation omitted); *see also Roy S. Anderson*, 389 Wis. 2d 106, ¶ 33 (stating that reasonable suspicion "is a fairly low standard to meet" and is based on the totality of the circumstances).

Contrary to the court of appeals' reasoning, this wasn't a case where Nimmer was in the location of a suspected crime, without more; or was walking away from police, without more; or was blading his body, without more; or was grabbing at his waistband, without more; or was walking quickly away from police, without more. Rather, all of those facts, along with the ShotSpotter report, inform each other and the inferences that law enforcement reasonably drew. Taking all of those facts together, the police had reasonable suspicion to stop Nimmer as they did.

D. The circuit court's ruling was consistent with Wisconsin's Fourth-Amendment jurisprudence.

Reasonable suspicion must be individualized. Thus, the totality-of-the-circumstances analysis requires careful consideration of the facts of the case before it. Because no two cases will feature identical circumstances, fact-matching with other cases can have limited utility. Still, the circuit court's reasoning and analysis were consistent with precedent from this Court and the court of appeals.

1. The circuit court's reasoning and analysis comported with controlling precedent.

Although the State could not identify any published Wisconsin cases involving when police have reasonable suspicion to stop after receiving a shots-fired report, other cases governing reasonable suspicion to stop provide guidance.

In *Roy S. Anderson*, for example, police had reasonable suspicion to stop Anderson where the officer "received two tips from an unnamed informant indicating that Anderson was selling cocaine in the alleyway behind" the address where Anderson was living, where the officer had arrested Anderson in the past for dealing drugs, where Anderson's alleged conduct was occurring in a high drug-trafficking area, and where Anderson reacted to seeing police by abruptly changing direction on his bicycle, repeatedly looking over his shoulder at the officers, and removing a hand from the handlebars, and placing it in his pocket. 389 Wis. 2d 106, ¶¶ 34, 49. As this Court noted, none of those facts standing alone would supply reasonable suspicion, but considering them together, in context, did. *Id.* ¶¶ 49–52.

Similarly, here, the officers had a timely and reliable tip that sent them to the address to investigate a shots-fired report; Nimmer, as the only person outside that address, reasonably attracted the officers' attention; and Nimmer, upon seeing police, engaged in a series of conduct—walking quickly away from them, blading his body, and grabbing at his waistband—that further roused the officers' suspicion.

The totality of the circumstances here also differs from precedent in which appellate courts have determined that reasonable suspicion was lacking.

For example, in *State v. Pugh*, 2013 WI App 12, ¶¶ 2–4, 345 Wis. 2d 832, 826 N.W.2d 418, officers on patrol spotted Pugh outside a vacant building next to one that had been known for drug dealing. The officers approached Pugh, asked why he was there, and asked if he had any information about a drug house nearby. Pugh responded that he parked his car at the vacant building and he did not have any information about the drug house. *Id.* ¶¶ 4–5. One officer then grabbed Pugh; they asked whether he had anything illegal, and he told them that he had a gun. *Id.* ¶ 6. The officers said that while speaking with them, Pugh had slowly walked backward and bladed the right side of his body away from them, which made them believe that he was concealing a firearm. *Id.*

The court of appeals held that the police lacked reasonable suspicion to stop Pugh under those circumstances because "without more, backing away from a police officer is not sufficient objective evidence supporting a reasonable suspicion that criminal activity is afoot or that [Pugh] was a threat." *Id.* ¶ 12. Additionally, Pugh's presence in an area of expected criminal activity was not enough to support reasonable suspicion. *Id.* And finally, given that those other facts under the circumstances did not support reasonable suspicion, the blading alone was likewise not enough. *Id.*; *accord State v. Gordon*, 2014 WI App 44, ¶ 18, 353 Wis. 2d

468, 846 N.W.2d 483 (no individualized reasonable suspicion where only basis was presence in high crime area and Gordon's adjusting his waistband when he saw police cruiser).

Likewise, in *State v. Washington*, 2005 WI App 123, ¶¶ 14, 17, 284 Wis. 2d 456, 700 N.W.2d 305, there was no reasonable suspicion where officers stopped and seized Washington under the following circumstances: (1) they were investigating a vague complaint of loitering, which implicated no immediate public safety concerns; (2) Washington was near a vacant building; (3) officers had no reason to believe that Washington was engaged in criminal activity; and (4) Washington's taking a few steps backwards from police was not enough to "equate his actions with fleeing."

The circumstances in this case are distinguishable from those in *Pugh*, *Gordon* and *Washington*. The officers here were investigating a report of shots fired at a specific location, not simply patrolling like the officers in *Pugh* and *Gordon* or following up on a vague complaint of a minor offense as in *Washington*. The timing of the investigation here was important: the shots had been fired just a minute earlier, whereas in *Pugh*, *Gordon*, and *Washington*, there was nothing to suggest that level of immediacy. Further, the stops in *Pugh* and *Washington* appeared to be premised almost entirely on Washington's and Pugh's slowly stepping away from police; in *Gordon*, it was simply Gordon's reaction to seeing police in a high-crime area.

Here, there were significantly more circumstances at play. In addition to his being the sole person outside the address where police had received a reliable tip (through ShotSpotter) that shots had been fired a minute earlier, and in response to police officers approaching him, Nimmer sped up his pace as he walked away, grabbed at his left side, and bladed his left side away as if to hide a weapon. That potential

weapon could have been related to the crime that the police were justifiably investigating.

In Fourth Amendment cases, "small differences often become dispositive." *State v. St. Martin*, 2011 WI 44, ¶ 21, 334 Wis. 2d 290, 800 N.W.2d 858. This case features several additional significant suspicious circumstances that distinguish it from *Pugh*, *Gordon*, and *Washington*.

2. The circuit court's ruling was consistent with unpublished Wisconsin cases involving police response to a shots-fired report.

While there are no published Wisconsin cases involving reasonable suspicion for a stop when police are responding to a shots-fired or ShotSpotter report, several unpublished decisions illustrate that the court of appeals' reversal in this case represented a departure from similar rulings in similar factual situations.

In *State v. Tally-Clayborne*, No. 2016AP1912-CR, 2017 WL 4676647 (Wis. Ct. App. Oct. 17, 2017) (unpublished) (Pet-App. 118–20), patrol officers had reasonable suspicion supporting a stop where they heard two gunshots from about a block away and responded in the direction of those shots:

> [Officer] Dillman traveled in the direction of the gunshots and within twenty to twenty-five seconds, Dillman saw Tally-Clayborne and two other individuals. Dillman did not see anyone else. Given the potential safety risk, the potential ordinance violation, the time of night the shots were fired, the fact that Tally-Clayborne and his companions were the only individuals visibly present in the area of the shooting, and the fact that Tally-Clayborne attempted to walk away from the officers patting down his companions while reaching for his waistband, Dillman could reasonably suspect that Tally-Clayborne was involved in some sort of criminal activity.

Id. ¶ 10 (Pet-App. 119). The circumstances in *Tally-Clayborne*—the officers responded within a minute of shots fired, the officers saw only three people in the vicinity, Tally-Clayborne attempted to walk away and reached for his waistband—are not sensibly distinguishable from the circumstances here.

Similarly, in *State v. Norton*, No. 2019AP1796-CR, 2020 WL 2049123 (Wis. Ct. App. Apr. 14, 2020) (unpublished) (Pet-App. 121–24), police had reasonable suspicion to stop Norton in a shots-fired investigation when Norton, who was sitting in a car, made furtive movements after police illuminated him with a spotlight:

> In October 2017, Milwaukee police officers responded to a call of shots fired in the area of Locust Street and North Booth Street. Two officers, who were part of the anti-gang unit and on patrol nearby, responded to the call at approximately 11:30 p.m. The caller had reported hearing approximately eight "rapid gunfire shots" in that area. However, there was no description of the shooter, nor did the report include information relating to a vehicle that may be involved.
>
> When they got to that area, the officers observed a vehicle legally parked on North Booth Street. The officers utilized their squad spotlight to see into the vehicle, and observed two people inside. According to the officers, the man in the driver's seat—later identified as Norton—became "startled" when the spotlight illuminated the car, and "began moving as if he was . . . placing something, or trying to place something behind his back.

Id. ¶¶ 3–4 (Pet-App. 121). The court of appeals in *Norton* held that the combined circumstances, including the shots-fired report, the officers' seeing Norton's car, their shining a light in it, and their observing Norton's reaction and furtive movements, supplied reasonable suspicion for the officers to stop Norton. *Id.* ¶¶ 17–21 (Pet-App. 123).

In contrast, *State v. Lewis*, No. 2017AP234-CR, 2017 WL 3149755 (Wis. Ct. App. July 25, 2017) (unpublished) (Pet-App. 115–17), which the court of appeals found persuasive here, is easily distinguishable. In that case, police were following up on a shots-fired report in which several suspects were described to have been "fleeing southbound." *Id.* ¶ 2 (Pet-App. 115). Officers stopped Lewis after seeing him walking in the general area of the report and holding his waistband, yet Lewis did not react to the police presence, he did not appear to be running, and his clothing did not match what one of the suspects allegedly wore. *Id. Lewis* does not offer persuasive support for Nimmer's position here because (1) the State conceded that the officer lacked reasonable suspicion to stop *Lewis* and (2) the "officers stopped Lewis simply based on the fact that he was walking in a high crime area shortly after receiving an alert of 'shots fired' and that Lewis touched his waistband. Lewis was not running, was not looking over his shoulder for police, and did not match the description of the one suspect police had information about." *Id.* ¶ 8 (Pet-App. 116).

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Reversal in this case will align it with Wisconsin's published and unpublished case law and help ensure uniform outcomes in future cases. Here, the officers had objective reasonable suspicion to stop Nimmer. They received a reliable shots-fired report, a crime that implicates public safety; they arrived at the reported address within a minute of the report; and the sole individual they saw immediately reacted to their presence by walking quickly away, holding his left waistband, and turning his left side away from police in a way that was consistent with concealing a firearm. Even if Nimmer's actions could have had innocent explanations, they created a reasonable inference that Nimmer was involved in a crime. The officers were justified in stopping him.

CONCLUSION

This Court should reverse the decision of the court of appeals.

Dated this 24th day of May 2021.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,695 words.

Dated this 24th day of May 2021.

SARAH L. BURGUNDY
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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 Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of 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 24th day of May 2021.

SARAH L. BURGUNDY
Assistant Attorney General

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Case No. 2020AP878-CR

APPENDIX CERTIFICATION

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 Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) 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.

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Dated this 24th day of May 2021.

SARAH L. BURGUNDY
Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(13)

I hereby certify that:

I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. § (Rule) 809.19(13).

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

Dated this 24th day of May 2021.

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