

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 9, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0245-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PHILLIP G. ROBINSON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
PATRICK J. FIEDLER, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. Phillip G. Robinson appeals from a judgment of conviction resulting from a no-contest plea he entered to charges of possessing cocaine with intent to deliver, as a repeater, contrary to §§ 161.41(1m)(cm)4 and 161.48(3), STATS.¹ Specifically, Robinson appeals a circuit court ruling denying

¹ Chapter 161 was renumbered in part and repealed in part by 1995 Act 448, §§ 243 to 266, effective July 9, 1996. The applicable provisions are now § 961.48(3) and

his motion to suppress evidence. For the reasons set forth below, we affirm the conviction.

BACKGROUND

In the evening of March 30, 1995, Robinson disembarked at Madison's Badger bus station from a bus originating in Chicago. He carried no luggage, but hand-held a plastic bag. According to police testimony later adduced at a hearing, Robinson looked nervously about him, scanned the bus parking lot repeatedly, set off on foot in one direction, then changed direction. A plain-clothes police officer watching him believed Robinson's behavior was suspicious. The plain-clothes officer maintained radio contact with uniformed officers. A uniformed officer approached Robinson and asked if he would be willing to talk. Robinson responded by running away into the path of oncoming traffic. Police pursued. Robinson appeared to be reaching for something about his body. Police, fearing a gun, drew weapons and shouted at him to stop. Robinson fell, and when subdued, was revealed to be carrying a cellular phone, a pager, a quantity of U.S. currency and 100.1 grams of cocaine.

ANALYSIS

Robinson argues that he was improperly subjected to a *Terry*²-stop based upon his race. We disagree for several reasons.

First, Robinson failed to raise this argument at the circuit court.³ We do not consider arguments raised for the first time before this court. *Zeller*

(..continued)
§ 961.41(1m)(cm)4.

² *Terry v. Ohio*, 392 U.S. 1 (1968).

³ More accurately, Robinson affirmatively eliminated race as an issue at the circuit court, as shown by the following colloquy:

Q [Defense Counsel] You're not going to tell the Court that simply because my client is a black male that that in and of itself is suspicious, are you?

v. Northrup King Co., 125 Wis.2d 31, 35, 370 N.W.2d 809, 812 (Ct. App. 1985). Second, even if we were to consider this argument, nothing in the record supports it. Rather, the police testimony made clear that Robinson's suspicious behavior, not his race, is what focused their attention upon him.

In addition, we conclude that Robinson was not subjected to any sort of stop until after he fled. Under *Terry*, a police officer may "in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Id.* at 22. One who is clearly identified as a fully uniformed police officer, and who asks a citizen if the citizen would be willing to talk, is not engaging in a citizen in a "stop." Conversely, an officer pursuing a citizen who flees for no apparent reason is justified in believing that this unusual behavior demonstrates criminal behavior is afoot. *Id.* We conclude that no stop took place until after Robinson fled, at which time a *Terry*-stop was fully justified by Robinson's flight.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

(.continued)

A [Police witness] No.