

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 30, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 97-3424-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ROBERT L. DUMAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
EDWIN C. DAHLBERG, Judge. *Affirmed.*

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

PER CURIAM. Robert Dumas appeals a judgment convicting him of possession of cocaine with intent to deliver, contrary to § 161.41(1m)(cm), STATS., 1993-94, and possession of a firearm by a felon, contrary to § 941.29(2), STATS. He claims that the circuit court erred when it denied his motion to

suppress¹ on the theory that his arrest and the search of his car were illegal. We conclude that the police had probable cause for the search and arrest. Therefore, we affirm.

According to the testimony adduced at the suppression hearing, Beloit police detectives Mark Smith and Oliver Kreitzman were on routine patrol on July 17, 1995, when they received an anonymous call from a citizen informant through the Crime Stopper program.² The caller informed the officers that Dumas was selling crack cocaine from his maroon-colored car in the 1100 block of Randall. The officers, one of whom knew Dumas and had suspected him of selling drugs from his home in the past, drove to the area, but did not see him. Over the course of the evening, the informant called another five or six times to report personal observations of drug deals by Dumas, but the officers were unable to respond quickly enough to find Dumas until shortly after 11:00 p.m., when they finally observed his maroon Cadillac driving away from the 1100 block of Randall.

The officers stopped Dumas. He was dressed as the informant had described. While Smith performed a pat down search for weapons, Kreitzman looked in the car with his flashlight and observed a plastic bag of the type commonly used for packaging cocaine, sticking out of a backpack on the front seat. Kreitzman pulled the backpack to the edge of the seat to look for drugs and discovered a .22 revolver and a semi-automatic weapon instead. The officers

¹ Section 971.31(10), STATS., permits review of suppression motions notwithstanding a defendant's plea of guilty.

² AT&T had provided law enforcement officers throughout the community with cellular phones to facilitate citizen contact with police.

arrested Dumas and transported him to the police station, where an inventory search of his person revealed ten separately packaged rocks of crack cocaine.

When we review a suppression motion, we will uphold the circuit court's findings of fact unless they are clearly erroneous. Section 805.17(2), STATS.; *State v. Eckert*, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). We will independently determine, however, whether the facts establish that a particular search or seizure violated constitutional standards. *State v. Richardson*, 156 Wis.2d 128, 137-38, 456 N.W.2d 830, 833 (1990).

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures.³ *State v. Drogsvold*, 104 Wis.2d 247, 264, 311 N.W.2d 243, 251 (Ct. App. 1981). “A search implies a prying into hidden places for that which is concealed.” *Edwards v. State*, 38 Wis.2d 332, 338, 156 N.W.2d 397, 401 (1968) (citation omitted). As the defendant correctly notes, warrantless searches are presumptively unreasonable, and evidence seized without a warrant may be inadmissible at trial. *Welsh v. Wisconsin*, 466 U.S. 740, 749-50 (1984). A handful of exceptions have been “jealously and carefully drawn,” however, to balance the interests of the individual with those of the State. *State v. Gonzalez*, 147 Wis.2d 165, 168, 432 N.W.2d 651, 652 (Ct. App. 1988) (citation omitted).

One such exception applies to automobiles, where the expectation of privacy is considerably lower than in a home or office. *State v. Weber*, 163 Wis.2d 116, 138, 471 N.W.2d 187, 196 (1991). A police officer may reasonably

³ Due to the similarity of these provisions, Wisconsin courts look to the Supreme Court's interpretation of the Fourth Amendment for guidance in construing the state constitution. *State v. Roberts*, 196 Wis.2d 445, 452-53, 538 N.W.2d 825, 828 (Ct. App. 1995).

search an automobile located in a public place whenever there is “probable cause to believe the vehicle contain[s] contraband or evidence of a committed crime.” *State v. Tompkins*, 144 Wis.2d 116, 137, 423 N.W.2d 823, 832 (1988). The test for a court to apply is “whether the circumstances would warrant a person of reasonable caution to hold the same belief.” *Id.*

Dumas concedes that the police had reasonable suspicion sufficient to justify an investigatory stop under *Terry v. Ohio*, 392 U.S. 1 (1968) and § 968.24, STATS. He contends that Kreitzman exceeded the lawful scope of the stop, however, when he reached into the car to examine the backpack. We disagree.

We first note that the facts found by the circuit court were supported by the hearing testimony and are not clearly erroneous. We will not disturb them. We turn, then, to consider the constitutionality of the officer’s actions. A person of reasonable caution, having personally observed Dumas participate in suspected drug activity in the past, having learned from a citizen informant that Dumas was selling cocaine out of his car that day, and having seen a plastic bag of the type typically used to package drugs in the car, would reasonably believe that there was contraband in the car. The defendant argues that none of these facts alone would be sufficient to support probable cause. However, it is the totality of the circumstances within the officer’s knowledge which determines the reasonableness of a search. *Richardson*, 156 Wis.2d at 139, 456 N.W.2d at 834.

Because the officers had probable cause to look into the backpack for contraband, the weapons they discovered were properly considered in their determination that they had probable cause to arrest the defendant, and the cocaine

they later discovered on his person was pursuant to a valid search incident to arrest. The suppression motion was properly denied.

By the Court.—Judgment affirmed.

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

