**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**November 14, 2006**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2004AP2759-CR** **Cir. Ct. No. 2003CF5501**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JEREMY TRUVELLE WILLIAMS,**
**A/K/A MALONE COREY BROSHAWN,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed*.

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Jeremy Truvelle Williams, a/k/a Malone Corey Broshawn, challenges the denial of his suppression motion by appealing from a judgment of conviction for possessing an electric weapon. The issues are whether the investigative stop and protective frisk of Williams were constitutionally

permissible. We conclude that the dispatch and the citizen's tip given to Milwaukee Police Officer George Valovik provided a reasonable suspicion for him to stop Williams, as one of the suspects in a recent car break-in, and that Valovik's protective search of Williams was constitutionally justified because Valovik's suspicion that someone breaking into cars may be armed was reasonable. Therefore, we affirm.

¶2 Before pleading guilty to possessing an electric weapon, in violation of WIS. STAT. § 941.295(1) (amended Feb. 1, 2003), Williams moved to suppress the gun recovered from him in a protective search. Officer Valovik, who stopped and frisked Williams, was the sole witness at the suppression hearing; he testified as follows: At approximately 11:00 on the morning of September 22, 2003, Valovik and his partner responded to assist another officer who had been dispatched to a nearby location to investigate a complaint of "subjects entering autos." The computer-aided dispatch report, which was communicated to the officers, described the suspects as "two black males, one wearing a baseball cap, white pants, [and a] black top." When Valovik and his partner arrived at the scene, they were "flagged down by a citizen that stated that the two black males that were breaking into the auto just turned the corner."[1] Valovik and his partner then drove around the identified corner and "saw two black males. As soon as they saw us, one of them took off running and the other one stayed behind." Valovik further testified that the man who "stayed behind" (Williams) "looked

[1] Valovik later described more specifically the citizen's tip, which was that "the two guys breaking into the car – that vehicle that was actually broken into was on Clarke [Street]. He pointed toward the direction where the car was parked. He said the people breaking into the car just walked around that corner." Valovik also testified that he discovered the two suspects "in the place where that person indicated."

shocked just to see us and that's roughly where the second subject took off running."

¶3 Valovik had three-and-a-half years of experience on the Milwaukee police force, and when asked why he frisked Williams, he responded that he did so "[b]asically for officer safety. With the type of thing that was going on and the second subject took off running would arise to, you know, our suspicion and possibly to make sure the subject didn't have a weapon." Valovik testified that during the frisk he recovered "a black stun gun, electric stun gun, and also a gray knit hat that had two holes cut out for the eyes."

¶4 A constitutionally valid investigative stop is described as follows:

> To execute a valid investigatory stop, *Terry* [*v. Ohio*, 392 U.S. 1, 30 (1968)] and its progeny require that a law enforcement officer reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. Such reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." [*Terry*, 392 U.S.] at 21. These facts must be judged against an "objective standard: would the facts available to the officer at the moment of the seizure … 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Id.* at 21-22.

***State v. Richardson***, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990).[2] The reasonableness of the officer's suspicion is assessed in the context of the totality of the circumstances at the time of the stop. *See* ***State v. Waldner***, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996).

[2] WISCONSIN STAT. § 968.24 (2003-04) codifies ***Terry v. Ohio***, 392 U.S. 1 (1968) and its progeny.

¶5 "[P]rotective frisks are justified when an officer has a reasonable suspicion that a suspect may be armed." ***State v. McGill***, 2000 WI 38, ¶22, 234 Wis. 2d 560, 609 N.W.2d 795 (citations omitted).

> In *Terry*, the Court authorized a protective search of an individual suspected of criminal activity in order to determine whether the person [wa]s in fact carrying a weapon and to neutralize the threat of physical harm. In order to limit the state's power to intrude upon individual rights, however, the Court held that to justify a particular intrusion, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. The Court went on to explain that due weight must be given, not to his [the officer's] inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.
>
> The reasonableness of a protective search for weapons is an objective standard, that is, "whether a reasonably prudent man [under those] circumstances would be warranted in the belief that his safety and that of others was in danger" because the individual may be armed with a weapon and dangerous. In determining whether a frisk was reasonable, a court may look "to any fact in the record, as long as it was known to the officer at the time he conducted the frisk and is otherwise supported by his testimony at the suppression hearing.

***State v. Kyles***, 2004 WI 15, ¶¶9-10, 269 Wis. 2d 1, 675 N.W.2d 449 (footnotes omitted).

¶6 We apply a mixed standard of review to an order granting or denying a suppression motion. "[T]he findings of fact, if any, of the trial court will be sustained unless against the great weight and clear preponderance of the evidence. However, this court will independently examine the circumstances of the case to determine whether the constitutional requirement of reasonableness is satisfied." ***Bies v. State***, 76 Wis. 2d 457, 469, 251 N.W.2d 461 (1977) (citations omitted).

¶7 In deciding the constitutionality of the investigative stop, the trial court began by determining that the police's suspicions were reasonable when they stopped Williams, after being informed by a citizen at the scene (where they were responding to a dispatch complaint of men breaking into cars) that "the guys who are breaking into cars just walked around the corner." When police rounded the identified corner, they saw two men, one who immediately fled, and another, Williams, who "looked shocked" and was standing on the grass between the sidewalk and the curb. The trial court, in assessing the reasonableness of Valovik's suspicion and the totality of the circumstances, reasoned that:

> [T]here is sufficient concern there for a police officer and for the community that a police officer in that position has the right just to stop and ask you questions to determine further whether you know that guy who r[a]n away, whether there's an explanation for you being there, whether you might have seen somebody who is breaking into cars and walking passed you or even somebody walking passed you without knowing what they were doing.
>
> The look of shock on your face that the officer observed [the trial court] think[s] would be further evidence that would support – and the series of acts – the officer's discretion to stop and ask some questions.
>
> So [the trial court is] quite satisfied that the stop in this case was lawful, and it didn't violate your rights for the police to stop you.

¶8 The undisputed facts are that police were responding to a dispatch regarding men breaking into cars, were then "flagged down by a citizen" and told that "the guys who are breaking into cars just walked around the corner," and when the police rounded the corner, they saw one man flee while the other "looked shocked." These facts support the reasonableness of Valovik's suspicion and justify his investigative stop of Williams. We independently determine that the investigative stop of Williams was constitutional.

¶9 The trial court then explained the competing concerns of community protection and individual rights in its analysis of the constitutionality of a protective search for weapons. The trial court assessed the undisputed facts and analyzed whether Valovik had an "individualized suspicion" or whether "[he] ha[d] a reason to believe that [Williams] might be armed." The trial court explained that

> [t]he question … comes down to whether a police officer who discovers somebody that they reasonably suspect of breaking into a car whose partner – apparent partner has fled and who has a shocked look on his face is a person that that police officer should reasonably suspect to be armed.

It then explained that armed does not necessarily mean a weapon, but means "anything that could hurt the police officer." Valovik testified that he was concerned for his safety, and the trial court reasoned that:

> [Y]ou don't break into a car unless you have something hard and potentially thin or sharp.
>
> And our experience as judges in car thief cases is people usually use a tool like a screwdriver or a flat piece of metal or a knife or a crowbar or a tire iron or a chisel or something along those lines to do the breaking in, and [the trial court] think[s] it's just a fact of life that those are the kind of tools that can also hurt police officers.

¶10 Valovik testified that he frisked Williams "[b]asically for officer safety. With the type of thing that was going on and the second subject took off running would arise to, you know, our suspicion and possibly to make sure the subject didn't have a weapon." He referred to the "type of thing that was going on," namely, breaking into cars, and the other man fleeing, as reasons he was concerned for his safety. We independently conclude that Valovik's suspicion that Williams may have been armed with a tool that may have jeopardized Valovik's

safety was reasonable in the circumstances and context of the investigation described above. *See* ***McGill***, 234 Wis. 2d 560, ¶22.

¶11 We therefore independently determine that Valovik's investigative stop and protective search of Williams were constitutional, and affirm the trial court's denial of Williams's suppression motion. Consequently, we affirm the judgment of conviction.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2003-04).