

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 12, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

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

**Appeal No. 2005AP95-CR**

**Cir. Ct. No. 2003CF7090**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JARRET L. ROBERTS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Jarret L. Roberts appeals from a judgment of conviction for possessing marijuana with intent to deliver, and from a postconviction order confirming the denial of his suppression motion. The issue is whether the police's investigative stop of Roberts was constitutionally permissible.

We conclude that the citizen's tip about activity with occupants of a parked van with its motor running in a neighborhood known for drug dealing, then independently observed by police, provided a reasonable suspicion to conduct a constitutionally permissible investigative stop. Therefore, we affirm.

¶2 Before pleading guilty to possessing no more than two hundred grams of tetrahydrocannabinols ("marijuana") with intent to deliver, in violation of WIS. STAT. § 961.41(1m)(h)1. (amended Feb. 1, 2003), Roberts moved to suppress the marijuana found during a protective search, and his related statements. Milwaukee Police Officers Alfonzo Glover and Ray Harris were the only witnesses who testified at the suppression hearing. Glover testified that at about 10:00 on the evening of December 8, 2003, he and his partner Harris "were flagged down by a citizen and, [sic] who wanted to report drug dealing." Glover continued:

She [the citizen] basically sa[id] that she lives in the area. She's real frustrated with the drug dealing and the loitering that's going on. And she has seen a vehicle parked just around the corner from where we were. She described this vehicle as being silver and black I believe in color, and it had at least three occupants in it, and they were dealing drugs at the time.

I asked her if she can explain a little bit more about their activities in the vehicle. She couldn't remember the license plate. She could only remember the first numbers or so, 757 I believe she said. There were people walking up to the van, and it looked like they were buying drugs.

The citizen also told Glover that the parked van's engine was on. Although the citizen wanted to remain anonymous, she was talking directly to the officer.

¶3 After their conversation, Glover and Harris "decided to find a place to watch this vehicle at a distance to see whether or not [they] thought there w[as] drug dealing going on." Within five minutes they found a van matching the

citizen's description about a block and a half away, at the location she described. There were three occupants inside, the van's engine was running, but it remained parked. Glover and Harris observed the van from a distance for about the next ten minutes. Glover described their surveillance:

We saw several individuals approach the van from the passenger's side, the window was down, and reach in as if they were giving or receiving something to the passenger. And we could also see the rear, I could see the rear passenger reaching to, over the front seat of the front passenger giving or receiving something.

Glover explained that he could see the individuals' hands who were reaching into the van, but he "could not see what was in their hands." Glover believed that he was watching drug dealing, basing his opinion on "[t]he amount of time spent from the persons that approached the van, the hand-to-hand transaction, and the time was maybe five or six, maybe ten seconds each time, which is consistent with drug dealing." Glover also testified that he was familiar with this particular neighborhood where "there's a lot of reported drug dealing, robberies, violent crime, loitering," which led him and Harris to believe that the citizen's information was true.

¶4 After observing the activity for about ten minutes, Glover and Harris approached the van, and asked the occupants to exit one at a time. They asked the occupants their names, "conducted routine wanted checks," and determined that Roberts had an outstanding commitment for his arrest. Once the commitment was discovered, they arrested Roberts and then searched him incident to that arrest, seizing "[s]everal individually wrapped baggies containing a green, leafy plant-like substance that we suspected to be marijuana."

¶5 Roberts challenges the investigative stop. 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) (citations omitted).<sup>1</sup> 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).

¶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 The trial court’s findings were predicated on the testimony of Glover and Harris, and Glover’s written report from Roberts’s arrest. The trial court

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<sup>1</sup> WISCONSIN STAT. § 968.24 (2003-04) codifies *Terry v. Ohio*, 392 U.S. 1 (1968) and its progeny.

found Glover credible and sincere. It also found that he had an independent recollection of the incident, apart from what he had written in his report. At the suppression hearing and on appeal, Roberts challenged Glover's credibility, emphasizing the differences between his written report and his testimony. Consequently, the trial court refuted any alleged discrepancies between Glover's testimony and his report.<sup>2</sup> The trial court rejected Roberts's criticism that Glover's report never mentioned "drug dealing." The trial court explained

we live in a community where stopping to interact with persons in a van has become almost a short-hand for drug dealing in a high-crime area. So [the trial court] think[s] the fact that Officer Glover did not use the words "drug dealing" in his report, that that does not undermine his credibility today with respect to her statements to him, the citizen's statements to Officer Glover on the day in question.

This unnamed woman stated that she lives in the area, that she wanted to remain anonymous because she's concerned about retaliation, that she is frustrated by drug dealing and loitering in the area.

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<sup>2</sup> According to the trial court, Glover's report stated:

This report is written by P.O. Alfonzo Glover, assigned to District 3, early power shift. On December 8, '03 at 10 p.m. I along with P.O. Ray Harris were on patrol in the area of North 29<sup>th</sup> and West Cherry Street when we were approached by an anonymous female citizen, who stated that she lived in the area and noticed a black and silver full-sized van parked in front of 1532 North 29<sup>th</sup> Street.

The citizen stated that there were at least two people in the van, and it had been there for some time running, and she observed passers-by stopping to interact with the individuals inside.

It should be noted that this is an area known for high drug-related activity and police have made several drug-related arrests on that block for numerous drug[-]related offenses.

She informed Officer Glover that she had just seen a silver and black vehicle parked, running, and that persons were stopping by to interact with the persons in the van.

She identified the vehicle also with a partial recollection as to the number of the plate, but stated she could not remember the plate. She said people were going up to the van, and the officers decided immediately to look for the van and found the van parked around the corner where she had said about a block, a block and a half away.

The officers decided to park and watch, and found – and observed as individuals walked up to the van, several individuals walked up to the van, reached in, and Officer Glover more specifically stated that he saw the rear passenger giving or receiving something. Officer Glover stated that from the distance that he made the observations, about one or one and a half blocks away, he was unable to see precisely what was being handed.

He could see, Officer Glover could see the person's hands but could not see what was being handed.... Officer Glover believed drug dealing to be taking place from the number of persons who approached the van and the amount of time spent at the van.

The officers activated their lights, approached the vehicle, and their guns were not drawn. They spoke with the – first they told everyone to remain in the vehicle, and then they asked them to leave one-by-one for officer safety. Officer Glover spoke with the rear passenger, and Officer Harris spoke with the defendant who was seated at the front. They ran the names and found that the defendant had a commitment outstanding.

Officer Harris also testified, and [the trial court] thought also testified credibly. He was impeached with his testimony before the administrative law judge ... [when] he stated that the lady in question said that the van looked very suspicious and did not give more specific information.

Of course, the word “suspicious” has acquired a bad reputation after *Terry*. In the courts we want always more specific information than suspicious, why suspicious. Suspicious is not enough. That's what we mean about an articulable suspicion. But the fact that Officer Harris' recollection or ability to hear – recollection of the conversation with the citizen or ability to hear what was being said was not as good as Officer Glover's [the trial

court] do[es]n't think undermines the credibility of Officer Glover's testimony.

So [the trial court] think[s] that the stop is good. [The trial court] think[s] that even putting aside the anonymous tipster issue the officer's observations were of the sort that warranted an investigative stop; and [the trial court] think[s] that's the way that they handled this.

The trial court then analyzed *Florida v. J.L.*, 529 U.S. 266 (2000), the case cited by Roberts, which held that an anonymous tip does not justify an investigative stop unless accompanied by sufficient indicia of reliability, and explained why *J.L.* did not affect its ruling on the validity of this investigative stop. *See id.* at 274.

¶8 We are satisfied that the trial court's findings are not clearly erroneous. Glover and Harris were approached by a citizen who alerted them to a parked van with its motor running, with people approaching that van and interacting with its occupants. She explained to the officers that this was a problematic neighborhood, which they also knew from their personal experience patrolling that area. She described the van by its color, the number of occupants, and identified several of the numbers on its license plate. Glover and Harris found a van matching that description a short distance away. They conducted their own surveillance and watched individuals approach the van, stick their hands inside, and then leave a short time later. Their observations confirmed the woman's information, which led them to believe, from the conduct they observed and their familiarity with the neighborhood, that the occupants were dealing drugs. We conclude that the officers' suspicion of criminal activity was reasonable, justifying the investigative stop.

¶9 Roberts contends that *J.L.* supports the unconstitutionality of his investigative stop. We disagree. In *J.L.*,

an anonymous caller reported to the ... [p]olice that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. So far as the record reveals, there is no audio recording of the tip, and nothing is known about the informant. Sometime after the police received the tip – the record does not say how long – two officers were instructed to respond. They arrived at the bus stop about six minutes later and saw three black males “just hanging out [there].” One of the three, respondent J.L., was wearing a plaid shirt. Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct. The officers did not see a firearm, and J.L. made no threatening or otherwise unusual movements. One of the officers approached J.L., told him to put his hands up on the bus stop, frisked him, and seized a gun from J.L.’s pocket.

*Id.* at 268 (citations omitted). The Supreme Court held that “an anonymous tip that a person is carrying a gun is, without more, [in]sufficient to justify a police officer’s stop and frisk of that person.” *Id.*

¶10 This case is distinguishable from *J.L.* because here there are sufficient “indicia of reliability” accompanying the anonymous tip. *Id.* at 274. First, the citizen in *J.L.* anonymously telephoned police, whereas the citizen in this case did not want to be identified by name, however she spoke directly (face-to-face) with Glover and Harris, identifying herself as living in the immediate neighborhood. Second, carrying a gun (as in *J.L.*) is not necessarily criminal conduct; dealing drugs (as in this case) is. Third, the police in *J.L.* observed no suspicious conduct when they discovered and identified the “young black male standing at [the] bus stop and wearing a plaid shirt,” whereas the police here conducted their own independent surveillance of the van, identified as to description, location and activity by the citizen informant, and personally observed suspicious activity (which appeared to be drug dealing).



¶11 We therefore agree with the trial court that the police had reasonable suspicion (from the citizen's information and from their own independent observations) to conduct an investigative stop of Roberts. The constitutionality of the stop led the officers to discover the outstanding commitment on Roberts, rendering his arrest and subsequent search constitutionally permissible.

*By the Court.*—Judgment and order affirmed.

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

