

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 4, 2008

David R. Schanker
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP2802-CR

Cir. Ct. No. 2007CF13

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER SHANNON COPELAND,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marinette County:
DAVID G. MIRON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Christopher Copeland appeals a judgment, entered upon his no contest plea, convicting him of possession with intent to deliver between five and fifteen grams of cocaine, as party to a crime, contrary to WIS. STAT. §§ 961.41(1m)(cm)2 and 939.05 (2005-06). Copeland argues the circuit

court erred by denying his suppression motion because the police lacked: (1) reasonable suspicion to stop the vehicle in which he was a passenger; and (2) probable cause to arrest him. We reject Copeland's arguments. Because the circuit court properly denied Copeland's suppression motion, we affirm the judgment of conviction.

BACKGROUND

¶2 The State charged Copeland with delivering more than fifteen but not more than forty grams of cocaine, as party to a crime. Copeland filed a motion to suppress evidence on grounds that the officers lacked reasonable suspicion to stop the vehicle in which Copeland was a passenger. At the suppression motion hearing, Marinette County sheriff's deputy Rick Berlin testified about information he received regarding cocaine dealing in the Marinette area.

¶3 In October 2006, Berlin received information about a black male named Dee or Davon selling cocaine out of a home located at 1311 Marinette Avenue. A few weeks later, a Crime Stoppers caller reported that a black male and a female "came up from the Green Bay area," had a large amount of crack cocaine and were selling the drugs from a trailer park near the Brothers Three Restaurant on Marinette Avenue. The tip included a description of the vehicle the female was driving and further indicated that the female was making deliveries to a bar called Mark's Place. Police conducted surveillance in the area and saw a woman driving the described vehicle between the trailer park, 1311 Marinette Avenue and Mark's Place. The woman was stopped and found to be in possession of crack cocaine and between \$2,500 and \$2,700.

¶4 On December 7, 2006, police received a Crime Stoppers tip indicating that a black male named Dee or Davon and his son were selling cocaine

out of Mark's Place and in the parking lots of Subway and Hometown Restaurant. According to the tipster, Dee resided in a bed and breakfast located next to 1311 Marinette Avenue and might be driving a green Cadillac or a blue Blazer.

¶5 On December 13, 2006, another Crime Stoppers tip indicated Dee or Davon was going to Green Bay twice a day to pick up cocaine, and that he may be accompanied by another black male named Tim, and an unidentified "Indian" male. The tipster claimed Dee would bring "about twenty bags at a time" to Patti Bird, who was staying at the Marinette Inn and selling drugs out of her room. Berlin knew Bird from his previous investigation of a cocaine conspiracy.

¶6 On December 14, 2006, Berlin conducted surveillance in the area of the Marinette Inn and saw a blue pickup truck outside of what he believed was Bird's room. The truck was registered to Anthony Smith, another person whom Berlin knew from prior cocaine conspiracy investigations. During continued surveillance of the area on December 15, Berlin saw a blue Blazer parked at 1311 Marinette Avenue.

¶7 On January 3, 2007, another officer described to Berlin his interview with Brooke Ryan. During the interview on an unrelated matter, Ryan told the officer that a man named Davon was selling powder and crack cocaine out of a room at the Marinette Inn. Ryan indicated that Davon and another black male identified as Dexter would go to Green Bay to pick up cocaine, but because neither had a driver's license, others would drive them around. Ryan further indicated that Margie Hensley was driving the men. Berlin knew Hensley from past investigations of cocaine activity in the area.

¶8 On January 15, 2007, Berlin received a phone call from Andy Holder, a man Berlin knew from past contacts on unrelated criminal matters.

Holder indicated a black male named Davon was involved with cocaine trafficking and would bring the cocaine to “Patti’s” room at either the Chalet Motel or the Marinette Inn. Holder further indicated Patti was the “pharmacist,” responsible for converting the cocaine into crack cocaine for resale. Holder stated Davon was selling cocaine out of Mark’s Place with two other black men, Dex and Tim. Holder also stated Davon would travel to Green Bay two or three times daily to pick up cocaine.

¶9 On January 22, 2007, a Crime Stoppers caller reported Davon and his cousin were selling cocaine out of Mark’s Place, as well as two residences in Menominee that Berlin knew as drug houses that had been under past police surveillance. The tipster further reported that Hensley was driving Davon to pick up cocaine in Green Bay two or three times daily. According to the tipster, Davon would bring the cocaine to Bird at the Marinette Inn, the Chalet Motel or the Super 8 Motel. Bird would then convert the cocaine into crack cocaine for resale.

¶10 On January 24, 2007, Lieutenant Greg Nast from the Menominee Police Department informed Berlin that he had been conducting surveillance in an area of Menominee that a Crime Stoppers tip had identified as a cocaine trafficking area. Nast reported seeing a black male make a hand-to-hand exchange with a white male. Nast also reported seeing a maroon Pontiac Grand Am with a temporary Wisconsin license plate that Berlin learned was registered to Hensley.

¶11 On January 25, 2007, Berlin spoke with Marcella Elias, a woman who had contacted the police regarding her daughter’s drug use. At the suppression motion hearing, Elias relayed what she told Berlin—specifically, that her daughter said she was getting cocaine from a man named Davon, who was picking the drugs up from Green Bay several times daily. Elias recounted that

Davon was black, that he had come to her home, and that she had seen him in a maroon Pontiac with temporary license plates. Elias further indicated that a woman named Patti frequently called her home, saying that Elias's daughter owed her money. According to Elias, the caller identification indicated the call originated at the Marinette Inn.

¶12 On January 26, 2007, Berlin conducted surveillance near the Marinette Inn and Mark's Place. Berlin saw the Pontiac registered to Hensley leave the Marinette Inn with a white male driving, a female passenger and a black male, later identified as Copeland, in the back seat. The Pontiac traveled to the Super 8 Motel and Mark's Place, where it stayed for approximately one hour. The car, with an additional passenger in the back seat, then left Mark's Place and headed south on a route that would take the car to Green Bay. When the car returned approximately four hours later, law enforcement stopped the vehicle and, upon their approach, saw three sandwich bags containing cocaine in plain view on the floor in front of the back seat.

¶13 Based on the hearing testimony, the court denied the suppression motion, concluding there was both reasonable suspicion to stop the vehicle and probable cause to arrest Copeland. Copeland ultimately pled no contest to a reduced charge of possession with the intent to deliver between five and fifteen grams of cocaine, as party to a crime. The court imposed a ten-year sentence consisting of five years' initial confinement and five years' extended supervision. This appeal follows.

DISCUSSION

¶14 Copeland argues the police lacked reasonable suspicion to stop the vehicle in which he was a passenger. Officers may stop and detain an individual if

they have reasonable suspicion the individual committed a crime. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). When determining if the standard of reasonable suspicion was met, those facts known to the officer must be considered together as a totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990). An informant's tip may provide a law enforcement officer reasonable suspicion to effectuate a *Terry* stop. *See State v. Rutzinski*, 2001 WI 22, ¶17, 241 Wis. 2d 729, 623 N.W.2d 516. Because informants' tips vary greatly in reliability, the police must consider the tip's reliability and content before it can provide grounds for an investigative stop. *Id.*

Tips should exhibit reasonable indicia of reliability. In assessing the reliability of a tip, due weight must be given to: (1) the informant's veracity; and (2) the informant's basis of knowledge. These considerations should be viewed in light of the "totality of the circumstances," and not as discrete elements of a more rigid test: "[A] deficiency in one [consideration] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." Although there is no per se rule of reliability, these considerations outline a general spectrum of potential types of tips that, under specific circumstances, can give rise to a reasonable suspicion.

Id., ¶18 (citing *Illinois v. Gates*, 462 U.S. 213, 233 (1983) (internal citations omitted)).

¶15 When police receive a tip from an informant that they are reasonably justified in believing to be truthful, police may rely solely on the tip to provide reasonable suspicion for a stop. *Rutzinski*, 241 Wis. 2d 729, ¶¶19-21. The reasonable justification often arises where the police know the informant's identity and perhaps have received reliable tips in the past. *Id.* In turn, a citizen informant, who happens upon a crime or suspicious activity and reports it to

police, is subject to a much less stringent standard of reliability. *State v. Kolk*, 2006 WI App 261, ¶12, 298 Wis. 2d 99, 726 N.W.2d 337. The reliability of a citizen informant is “evaluated from the nature of his report, his opportunity to hear and see the matters reported, and the extent to which it can be verified by independent police investigation.” *Id.* ¶13. Finally, when the tip is totally anonymous, the police must corroborate the information in the tip through independent investigation. *Rutzinski*, 241 Wis. 2d 729, ¶22. “[I]f a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.” *Id.*, ¶23 (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)). A tip from an unidentified informant may nonetheless be “deemed reliable if it contains ‘inside information’ or a similar verifiable explanation of how the informant came to know of the information in the tip, which the police in turn independently corroborate.” *Id.*, ¶25. In other words, “if a tip contains strong indicia of an informant’s basis of knowledge, there need not necessarily be any indicia of the informant’s veracity.” *Id.* Further, the corroborated details of the tip need not be “inherently suspicious or criminal in and of themselves.” *Richardson*, 156 Wis. 2d at 142. Rather, “the corroboration by police of innocent details of an anonymous tip may under the totality of the circumstances give rise to reasonable suspicion to make a stop.” *Id.*

¶16 Here, Copeland claims the tips on which the police relied were not sufficiently reliable to warrant the stop, largely because police did not adequately corroborate the tips before stopping the vehicle. We are not persuaded.

¶17 Copeland argues the police failed to adequately corroborate the information Elias provided. Specifically, Copeland faults the police for not examining the suspected drugs and paraphernalia Elias found in her house, and for

not having Elias identify Davon from a photo array. Copeland likewise claims Berlin failed to sufficiently corroborate details such as the identity of the black male involved in the hand-to-hand exchange reported by Nast, as well as the relevance of Crime Stopper references to a green Cadillac and blue Blazer. The issue is not, however, what the police could have corroborated but, rather, what they did corroborate and whether the corroborated information established reasonable suspicion for the stop. That the police did not corroborate certain aspects of certain tips does not prevent them from conducting a stop based on the information that *was* corroborated.

¶18 Copeland also challenges the information provided by Holder and Ryan on grounds that they had no history of providing reliable information to the police and did not reveal their basis of knowledge. While an informant may be considered more reliable if he or she has provided a reliable tip in the past and reveals the basis of his or her knowledge, a tip is not necessarily unreliable due to the absence of these factors. There are “no specific prerequisites to a finding of confidential informant reliability.” *State v. Jones*, 2002 WI App 196, ¶13, 257 Wis. 2d 319, 651 N.W.2d 305. Here, Ryan and Holder provided information about the trips to purchase cocaine in Green Bay, and the drug activity at the Marinette Inn—information corroborated through police surveillance and other sources. We discern no error.

¶19 Copeland also challenges Berlin’s failure to identify Hensley or Davon at any of the places Hensley’s car was seen or any of the places drugs were alleged to have been sold. Copeland likewise contends Berlin should have been able to identify Hensley on the day of the stop, as he knew her from previous police contact. Even in the absence of a positive identification of either Hensley or Davon, the police had reasonable suspicion to stop the vehicle.

¶20 At the time of the stop, law enforcement had received information about cocaine dealing in the area from at least five sources: Ryan, Holder, Nast, Elias and the tipster or tipsters who called Crime Stoppers. With the exception of Nast, all of the informants reported that a man named Dee or Davon was dealing cocaine near 1311 Marinette Avenue or out of the Marinette Inn. Again, with the exception of Nast, all the informants indicated Davon was obtaining the cocaine during several daily trips to Green Bay. Both Ryan and a Crime Stoppers tipster indicated Hensley was driving Davon to Green Bay, and Nast related seeing Hensley's car parked at a Menominee residence, in an area suspected of cocaine trafficking. Hensley's maroon Pontiac with temporary license plates matched the description of a vehicle in which Elias had seen Davon at her home. Police were familiar with Hensley and Bird, as both had histories of involvement with cocaine. Police observed Hensley's vehicle at several places suspected of drug trafficking and further observed the vehicle leave town and return in a manner consistent with the multiple tips received. That neither Davon nor Hensley were positively identified on the day of the stop did not preclude the police from reasonably believing that criminal activity was occurring in Hensley's vehicle when they stopped it. Given the interlocking and overlapping tips the police received, and the extent to which the information was corroborated, we conclude the officers had reasonable suspicion to stop the vehicle.

¶21 Alternatively, Copeland argues the police lacked probable cause to arrest him. Whether the facts of a given case constitute probable cause to arrest is a question of law that we decide independently. *See State v. Kasian*, 207 Wis. 2d 611, 621, 558 N.W.2d 687 (Ct. App. 1996). "Probable cause exists where the totality of the circumstances within the arresting officer's knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant

probably committed a crime.” *State v. Riddle*, 192 Wis. 2d 470, 476, 531 N.W.2d 408 (Ct. App. 1995).

¶22 Copeland appears to challenge the sufficiency of the evidence to support the court’s conclusion that probable cause existed for his arrest. Specifically, Copeland claims the State failed to establish how the cocaine could have been in plain view after 6 p.m. in January. Copeland, however, failed to raise this argument in the circuit court. Copeland cannot challenge what he claims is a lack of evidence on the State’s part when he failed to raise the argument below. *See Terpstra v. Soiltest, Inc.*, 63 Wis. 2d 585, 593, 218 N.W.2d 129 (1974). In the absence of any cross-examination to the contrary, the court had a right to believe Berlin’s testimony that the cocaine was found in plain view. The record therefore supports the conclusion that there was probable cause to arrest Copeland.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

