

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 9, 2001

Cornelia G. Clark
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.

No. 01-1375-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM F. BASKIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Reversed.*

¶1 FINE, J. William F. Baskin appeals from a judgment, entered on his guilty pleas, convicting him of unlawfully carrying a concealed weapon, *see* WIS. STAT. § 941.23, and possession of tetrahydrocannabinols, *see* WIS. STAT.

§ 961.41(3g)(e). He challenges the trial court's denial of his suppression motion.¹
We reverse.

I.

¶2 At 6:00 p.m. in early January, two Milwaukee police officers were sitting in their marked squad car when a woman drove up and, according to the testimony of one of the officers at the suppression hearing, said that “there was a man with a gun on 26th and Hadley.” The officers were approximately one block away from 26th and Hadley. The only description the woman could give was that the man was black and, again as testified to by the officer, was “wearing a light or white-color coat.” Other than that, the woman did not tell the officers anything that would help them “uniquely identify” the man she saw. One of the officers got out of the squad car and walked to 26th Street. The other officer drove.

¶3 When the officer on foot reached 26th Street, he saw Baskin “walking down the middle of 26th Street towards Hadley.” Baskin was, according to the officer, “four houses to the north of Hadley Street.” The officer walked over to Baskin. When the officer saw Baskin put his hands in his coat pocket, he told him to remove them. Baskin did. Baskin was wearing a Green Bay Packers jacket, which the officer described in his testimony as “predominantly” the “yellow” of a legal pad with, according to the officer's recollection, “green” on it: “I believe a little yellow on the sleeves and maybe the emblem on the back.”

¹ A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. WIS. STAT. § 971.31(10).

¶4 The officer on foot then patted Baskin’s outer clothing and turned up a gun. Baskin had the marijuana, which contained the tetrahydrocannabinols, in a pants pocket. Only the lawfulness of the stop is at issue here.

¶5 The trial court upheld the stop, finding that the woman was a reliable citizen informant. The trial court also noted that, although it was “true that many black males would be wearing light-colored jackets,” Baskin was in “the very close proximity” to the area where the woman indicated she had just seen the man with a gun.

II

¶6 The question of whether an investigatory stop was legally justified presents a question of law that we decide *de novo*. *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). An investigatory stop is permissible if the law enforcement officer reasonably suspects, considering the totality of the circumstances, that some type of criminal activity either is taking place or has occurred. *Terry v. Ohio*, 392 U.S. 1, 22 (1968); *see also Alabama v. White*, 496 U.S. 325, 328–330 (1990); *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830, 834 (1990). This is an objective test. *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548, 554 (1987).

¶7 Although both the trial court and the parties analyze in some detail whether the woman was a “reliable” informant, we assume that she was. *See State v. Rutzinski*, 2001 WI 22, ¶¶ 18–26, 241 Wis. 2d 729, 739–743, 623 N.W.2d 516, 521–524 (2001). The issue then turns on whether the officers had sufficient facts

to objectively have a reasonable suspicion that Baskin was involved in some sort of criminal activity when they stopped him.²

¶8 *Guzy* adopted five factors that should, if the circumstances of a particular case warrants, be considered in determining whether an officer who stops a person has the requisite reasonable suspicion:

“1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender’s flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.”

Id., 139 Wis. 2d at 677, 407 N.W.2d at 554 (quoted source omitted). These factors are neither exhaustive nor dispositive. *Id.*, 139 Wis. 2d at 677, 407 N.W.2d at 555.

¶9 Here, Baskin was alone on a street very close to where the officers first received the information that there was a man with a gun. He was, however, walking *towards* the place where the woman said she saw the man with a gun, rather than away from it. Critically, however, the description was so general as to be essentially worthless without more. As the trial court recognized, it could have fit almost anyone in that neighborhood who was not either a woman or a child. The Constitution requires more. Accordingly, we reverse.

² Although Baskin was walking down the middle of the street, not the sidewalk, when the officer on foot first saw him, the officer testified that he did not approach Baskin because of where he was walking, but, rather, because of the information that led him to suspect that Baskin was the man described by the woman moments earlier.

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)4.

