

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 9, 2002

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.

**Appeal No. 02-1016-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CM-1435

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

STACY WAYNE WILLIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Racine County: GERALD P. PTACEK, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Stacy Wayne Willis appeals a circuit court order denying his motion to suppress physical evidence and a subsequent judgment of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

conviction for possession of cocaine, as a habitual offender, contrary to WIS. STAT. §§ 961.41(3g)(c) and 939.62. Willis alleges that the investigating officers lacked reasonable suspicion to warrant a *Terry*² stop based upon a tip from an anonymous citizen informant when the officers did not observe suspicious activity. Because we disagree, we affirm.

FACTS

¶2 The relevant facts are undisputed. At the suppression motion hearing held on August 28, 2001, Officer Dennis Cecchini and Officer Jacobson testified that they were on bike patrol on June 28, 2001, from 3:00 p.m. to 11:00 p.m. The officers stated that an unidentified woman flagged them down at approximately 9:12 p.m. to report a drug transaction that had just taken place outside her home in the 700 block of Hamilton Street. The woman, standing on her porch, stated that the two men involved, one black and one white, had just turned down Jackson Street.

¶3 The officers immediately proceeded to the 700 block of Jackson Street where they observed a white man and a black man walking side by side. The two men were the only two people in sight on the street and did not appear to be involved in any criminal activity.

¶4 The officers approached the men, identified themselves as officers, and asked the men to discuss an incident that had just occurred on Hamilton Street. The men spoke willingly to the officers and did not ask to leave or attempt to leave the scene.

² *Terry v. Ohio*, 392 U.S. 1 (1968).

¶5 Upon obtaining identification from both men, the officers ran their information through dispatch and were advised that one of the men, Willis, was wanted. Willis was immediately arrested. Cecchini placed Willis in handcuffs and began an in-custody search.

¶6 It was during the in-custody search that Cecchini discovered a baggie containing a yellow chalky substance in Willis' left pants pocket. A field test confirmed the presence of cocaine. Cecchini testified that within five minutes of his initial contact with Willis, the defendant was in custody.

¶7 The trial court found that the officers had reasonable suspicion to stop Willis. The suppression motion was denied. Willis pled guilty to a charge of possession of cocaine as a habitual offender. He was subsequently sentenced to twenty days in the Racine county jail concurrent to time he was serving on a probation revocation, a \$300 fine plus costs, and a six month driver's license suspension. Willis appeals.

Standard of Review

¶8 We apply a two-step standard of review to questions of constitutional fact. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. Reasonable suspicion for an investigatory stop is a constitutional fact because it relates to the constitutional protections against unreasonable searches and seizures afforded by the United States Constitution and article I, section 11 of the Wisconsin Constitution. *Id.* The first step in the two-step standard of review is to “review the circuit court’s findings of historical fact, and uphold them unless they are clearly erroneous.” *Id.* The second step is to “review the determination of reasonable suspicion de novo.” *Id.*

Findings of Fact

¶9 In support of its determination that there was reasonable suspicion to stop and detain Willis, the trial court made a number of findings of fact. The trial court described the situation as one in which an anonymous citizen informant flagged down officers to report a drug transaction that she had just witnessed outside of her home. The citizen told the officers that the male suspects, one white and one black, had turned down Jackson Street. The officers reported the incident to dispatch and proceeded to Jackson Street where they observed the only two people on the street, a black man and a white man. The court found and the record verifies that the officers reached the two men approximately one minute after receiving the tip from the citizen informant.

¶10 The facts as stated are supported by the record and thus they cannot be clearly erroneous. Consequently, we uphold the trial court's findings. This satisfies the first step of the two-step standard of review in determining reasonable suspicion.

De Novo Review

¶11 We next determine upon de novo review of the record whether there was reasonable suspicion. We begin by examining the statutory provisions of a valid *Terry* stop. According to WIS. STAT. § 968.24, a codification of *Terry*, a specific protocol must be followed when conducting a *Terry* stop.

After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and

temporary questioning shall be conducted in the vicinity where the person was stopped.

¶12 The *Terry* stop conducted in this case conformed to the statutory protocol. After the officers received the tip, they immediately proceeded to Jackson Street where they observed two men, one black and one white, walking side by side on an empty street. The officers approached the men and identified themselves as law enforcement officers. Based on the tip from the anonymous citizen informant, the officers reasonably believed that the two men had committed a crime and asked for their identification. The entire stop occurred in public within a short distance from the original location and was completed in approximately five minutes. Further consideration, however, must be given to the totality of the circumstances in which the *Terry* stop was prompted.

¶13 De novo review of reasonable suspicion is based on consideration of the totality of the circumstances. *Williams*, 2001 WI 21 at ¶22. “Reasonable suspicion ... is dependent upon both the content of information possessed by police and its degree of reliability.” *Id.* Both the quantity and quality of these factors is important to the totality of the circumstances, particularly because they are inversely proportional to each other. *Id.* For example, a tip with a low degree of reliability will require additional information to establish a reasonable degree of suspicion. *Id.* Likewise, a tip with a high degree of reliability will require less additional information to establish reasonable suspicion. *Id.*

¶14 The determinative issue in considering the totality of the circumstances is whether the officer’s actions were reasonable under the circumstances. *Id.* at ¶23. In this particular case, we must consider the circumstances surrounding the anonymous tip from the citizen informant.

¶15 The relevant criteria for the reliability of an unnamed informant “requires that the officer must establish: (1) [t]he underlying circumstances from which he concludes that the information is reliable; and (2) that the underlying circumstances or manner in which the informant obtained his information is reliable.” *State v. Paszek*, 50 Wis. 2d 619, 627, 184 N.W.2d 836 (1971). In the case of a citizen informant, however, Wisconsin holds that the test for reliability shifts from personal reliability to “observational” reliability. *State v. Boggess*, 110 Wis. 2d 309, 316, 328 N.W.2d 878 (Ct. App. 1982).

¶16 Our supreme court defined the element of observational reliability as “the reliability of the circumstances underlying the means by which the [informant] obtained the information.” *Sanders v. State*, 69 Wis. 2d 242, 259, 230 N.W.2d 845 (1975). This element is satisfied when the means is “direct personal observation.” *Id.* In short, our supreme court views citizens who purport to have witnessed a crime as reliable. *Williams*, 2001 WI 21 at ¶36.

¶17 Further reliability is afforded to anonymous citizen informants who place their anonymity at risk. *Id.* at ¶35. “Risking one’s identification intimates that, more likely than not, the informant is a genuinely concerned citizen as opposed to a fallacious prankster.” *Id.*

¶18 In the case before us, an unidentified woman flagged down passing officers to report a drug transaction that she had just witnessed outside of her home. The woman, standing on her own porch, stated that the two men involved, one black and one white, had just turned down Jackson Street. The officers immediately proceeded to the 700 block of Jackson Street. There they found only two people on the street, one black male and one white male, walking side by side.

¶19 The officers approached the men, identified themselves as law enforcement officers, and asked the men to speak with them about an incident that occurred on Hamilton Street. The men spoke willingly to the officers and did not ask to leave or attempt to leave at any point during the conversation.

¶20 After providing identification to the officers, the men's information was run through dispatch and one of the men, Willis, was reported as wanted. He was arrested immediately. Cecchini placed him in handcuffs and began an in-custody search.

¶21 Cecchini discovered a baggie containing a yellow chalky substance in Willis' left pants pocket that field testing confirmed as containing cocaine.

¶22 Under the totality of the circumstances review of whether reasonable suspicion existed, the quality and quantity of the information must be weighed. In this case, we began by examining the anonymous citizen informant. The record indicates that the unidentified woman was standing on her porch when she flagged down the officers. She then indicated that a drug transaction had just taken place outside of her home. The reliability of this information is high because (1) she witnessed the transaction and (2) she could be identified at a later time. *See Williams*, 2001 WI 21 at ¶¶33-34.

¶23 The second issue we considered was the circumstances surrounding the *Terry* stop. The unidentified woman stated that the suspects involved in the drug transaction that just occurred outside her house were male, one black and one white, and that they had just turned down Jackson Street. Within one minute of the tip, the police arrived on Jackson Street and observed and approached a black man and a white man walking side by side. The men were the only two people present on the street.

¶24 We have already established the high degree of reliability afforded the anonymous citizen informant. This information, taken together with the circumstances surrounding the *Terry* stop, confirms our holding of reasonable suspicion. We find it highly improbable that another pair of men, one white and one black, would be walking down Jackson Street within one minute of a drug transaction that just happened, particularly at a time when no other people were present. The timing, proximity, gender, and race combined with the reliability of the tip convince this court that the officers had reasonable suspicion to conduct a *Terry* stop of Willis based on a tip from an anonymous citizen informant.

By the Court.—Judgment and order affirmed.

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