

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 18, 2014**

Diane M. Fremgen  
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. 2013AP1507-CR**

**Cir. Ct. No. 2011CF609**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JAMES TERRELL HARRIS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

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

¶1 PER CURIAM. James Terrell Harris appeals from an amended judgment of conviction, entered on his guilty plea, for one count of possession

with intent to deliver between ten and fifty grams of heroin. *See* WIS. STAT. § 961.41(1m)(d)3. (2011–12).<sup>1</sup> Harris argues that his motion to suppress drug evidence found on his person after a traffic stop should have been granted. We affirm.

## BACKGROUND

¶2 Harris was charged with possession with intent to deliver heroin after police officers pulled Harris’s car over, patted him down, and found a plastic bag containing 102 bindles of heroin in his pants. Harris moved to suppress the drug evidence on grounds that his car should not have been stopped.<sup>2</sup>

¶3 The trial court conducted an evidentiary hearing. Wisconsin Department of Justice Special Agent Raymond Taylor testified about the circumstances that led officers to pull Harris over and arrest him. Taylor said that a couple of weeks before Harris was pulled over, Taylor met with a confidential informant who had been arrested for drug-related offenses by the Lake Winnebago Area Metropolitan Enforcement Group and had agreed to cooperate with law enforcement.<sup>3</sup>

¶4 Taylor said that the confidential informant told him that for a “few months,” he had driven to Milwaukee “daily [to] purchase thirty to fifty bindles of

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011–12 version unless otherwise noted.

<sup>2</sup> Harris also moved to suppress statements he made to the police. This opinion will discuss only Harris’s arguments with respect to the stop.

<sup>3</sup> The identity of the confidential informant has not been revealed. For simplicity’s sake, this opinion will refer to the confidential informant as a male.

heroin per day.” The confidential informant bought the heroin “[o]ver twenty times” from two men, whom he knew as “Red” and “Bear,” and whom he later identified from photographs as Harris and a man named Dwayne Jones, respectively. Taylor said that the confidential informant told him that he bought the heroin “[p]rimarily from Mr. Jones; but on occasion, from Mr. Harris.” The confidential informant showed Taylor where Harris and Jones lived, and also the location of a “stash location” where the men packaged the heroin.

¶5 Taylor testified that the confidential informant told him about one time when the confidential informant purchased drugs directly from Harris. Taylor stated: “[T]he informant recalled on one occasion that Mr. Harris forgot his keys [to the stash location], and they went back to [Harris’s apartment] and then traveled back to the stash location ... to conduct a heroin purchase.”

¶6 Taylor said that based on the information the confidential informant provided, law enforcement “decided to do a series of controlled purchases with the informant.” During each of three purchases, the confidential informant was observed by law enforcement officers. For the first and third purchases, the confidential informant bought the heroin from Jones at his home. For the second purchase, which occurred on January 11, 2011, the confidential informant went to Jones’s home and then traveled with Jones to Harris’s apartment building “to get additional quantities of heroin which were provided by Mr. Harris.” Jones went into Harris’s apartment building and then returned outside and gave the confidential informant the heroin. Taylor said that although the confidential informant did not see Harris that day, the confidential informant said that Jones indicated that the heroin came from Harris.

¶7 Based on the controlled purchases and the information provided by the confidential informant, Taylor obtained search warrants for the homes of Jones and Harris and the stash location. The warrants for Harris's home and the stash location—the upper unit of a duplex—indicated that Harris was the occupant. Law enforcement officers made plans to execute all three search warrants on January 18, 2011.

¶8 On that day, officers went to Harris's apartment building, which contained eight apartments. The officers set up surveillance and waited about ninety minutes for a tactical team to arrive. During that time, they saw three individuals enter the apartment building and leave shortly afterward, but they could not determine if the individuals went to Harris's apartment. Shortly after the third person left, Harris exited the apartment building, got into his girlfriend's car, and drove away. Taylor directed officers to stop the car.

¶9 Todd Bohlen, one of the officers who stopped Harris's car, testified that he pulled Harris over about twelve blocks from Harris's apartment building. Bohlen said that he stopped Harris at the direction of a detective, not because he observed any traffic violations.<sup>4</sup> Bohlen said that he and his partner patted Harris down, placed him in handcuffs, and ultimately recovered a plastic bag of heroin from Harris's pants, plus over \$3300 in cash from Harris's wallet and pocket.

¶10 Harris also testified concerning the stop. His testimony was generally consistent with Bohlen's testimony discussed above, although Harris

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<sup>4</sup> The State later acknowledged that the stop was not based on any observed traffic violations.

asserted that he was pulled from the car and that one of the officers hit Harris's buttocks during the pat-down.

¶11 The State presented several legal theories justifying the stop, search, and arrest of Harris, including a theory based on the existence of a warrant to search Harris's home. Ultimately, however, the trial court concluded that it did not need to determine whether the planned execution of the search warrants justified the stop, because "at the time the defendant was stopped by police on January 18th, the police had probable cause to arrest him with respect to involvement in the January 11th controlled buy."<sup>5</sup> The trial court denied the suppression motion on that basis.

¶12 Harris subsequently pled guilty and was sentenced. There was postconviction litigation in the trial court concerning the DNA surcharge and Harris's eligibility for the earned release program. Harris's motions were successful and he does not raise any issues related to his plea or sentencing on appeal.

## DISCUSSION

¶13 At issue on appeal is whether the stop was constitutional. Stopping a car is a seizure and must be reasonable under the United States and Wisconsin Constitutions. See *State v. Post*, 2007 WI 60, ¶¶10–12, 301 Wis. 2d 1, 7–9, 733 N.W.2d 634, 637–638. *Post* explained:

The determination of reasonableness is a common sense test. The crucial question is whether the facts of the

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<sup>5</sup> On appeal, the State likewise indicates that it does not need to rely on the existence of the search warrants to justify the stop.

case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.

*Id.*, 2007 WI 60, ¶13, 301 Wis. 2d at 9, 733 N.W.2d at 638.

¶14 “Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact.” *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 126, 765 N.W.2d 569, 573. “A finding of constitutional fact consists of the [trial] court’s findings of historical fact, which we review under the ‘clearly erroneous standard,’ and the application of these historical facts to constitutional principles, which we review *de novo*.” *Ibid.* (citation omitted and italics added).

¶15 The parties implicitly agree that if the officers had probable cause to arrest Harris for the January 11, 2011 drug transaction when they pulled Harris over, then the stop was constitutional. “The question of probable cause must be assessed on a case-by-case basis, looking at the totality of the circumstances.” *State v. Lange*, 2009 WI 49, ¶20, 317 Wis. 2d 383, 392, 766 N.W.2d 551, 555. “Probable cause to arrest is the quantum of evidence within the arresting officer’s knowledge at the time of the arrest which would lead a reasonable police officer to believe that the defendant probably committed or was committing a crime.” *State v. Secrist*, 224 Wis. 2d 201, 212, 589 N.W.2d 387, 392 (1999).

¶16 “In determining whether probable cause exists, the court applies an objective standard, and is not bound by the officer’s subjective assessment or motivation.” *State v. Kutz*, 2003 WI App 205, ¶12, 267 Wis. 2d 531, 545, 671 N.W.2d 660, 667 (citation omitted). “The court is to consider the information available to the officer from the standpoint of one versed in law enforcement, taking the officer’s training and experience into account.” *Ibid.* “The officer’s

belief may be predicated in part upon hearsay information, and the officer may rely on the collective knowledge of the officer's entire department." *Ibid.*

¶17 With those standards in mind, we consider the trial court's conclusion that the stop was constitutional because the officers had probable cause to arrest Harris for involvement in the January 11, 2011 drug transaction. Harris does not specifically challenge the trial court's findings of fact, which were based on Taylor's and Bohlen's testimony. Instead, Harris argues that under those facts, there was no probable cause to arrest Harris.

¶18 Specifically, Harris notes that the confidential informant bought the drugs from Jones, not Harris, and that the confidential informant did not see Harris on January 11, 2011. He asserts that "officers never independently verified the potential of Mr. Harris's involvement in drug transactions." He states: "[O]fficers observed absolutely no illegal activity by Mr. Harris; there was no suggestion that Harris was fleeing from some crime; and they had no knowledge of Harris's prior criminality." Harris also argues that the confidential informant's reliability can be questioned because he did not give a detailed description of the wrongdoing, because he had multiple pending felony charges, and because in a written statement regarding the January 11, 2011 transaction, the confidential informant identified the wrong intersection near Harris's home.

¶19 In response, the State argues that the officers "had probable cause to arrest Harris based on all the information describing a connection between [Harris's home] address and drug trafficking, as well as the information regarding Harris'[s] involvement in the January 11, 2011 controlled buy." As for the confidential informant's reliability, the State asserts that "[b]ased on the specificity of the informant's information and the informant's willingness to

cooperate in controlled buys, there is nothing to indicate that the information supplied by the informant was unreliable.”

¶20 We agree with the trial court that the officers had probable cause to arrest Harris for his involvement in the January 11, 2011 drug transaction. We begin with the information supplied by the confidential informant. “Probable cause to arrest may be based on hearsay information that is ‘shown to be reliable and emanating from a credible source.’” *State v. McAttee*, 2001 WI App 262, ¶9, 248 Wis. 2d 865, 872, 637 N.W.2d 774, 778 (citation omitted). *McAttee* explained:

[I]nformation from a confidential informant may supply probable cause to arrest if police know the informant and “from their own direct knowledge know the informant to be reliable.” Whether information from a confidential informant is sufficient to establish probable cause to arrest depends on the totality of the circumstances, including the informant’s “veracity, reliability, and basis of knowledge.”

*Id.*, 2001 WI App 262, ¶9, 248 Wis. 2d at 872–873, 637 N.W.2d at 778 (citations omitted).

¶21 In this case, the trial court accepted Taylor’s testimony concerning his interactions with the confidential informant and his belief that the confidential informant was supplying reliable information. The confidential informant told Taylor that he bought thirty to fifty bindles of heroin from Jones and Harris on a daily basis. The confidential informant was able to identify photographs of both men, their home addresses, and their stash location. The confidential informant also provided specific information on one purchase that he made directly from Harris. The confidential informant participated in three controlled buys, using marked bills, while under surveillance by law enforcement officers, and what the officers observed confirmed information previously provided by the confidential



informant. For instance, the second buy included contact with the homes of both Jones and Harris. The fact that the confidential informant was facing criminal charges and misidentified an intersection in a written report does not undermine our conclusion that law enforcement and the trial court could find the confidential informant's information reliable.

¶22 The information provided by the confidential informant concerning his purchases before and after the controlled buys, in combination with the officers' observations of the confidential informant's controlled buys—which corroborated the information from the confidential informant—provided probable cause for the officers to arrest Harris for participation in the January 11, 2011 drug transaction. Specifically, the circumstances of the transaction and the fact that Jones told the confidential informant that he retrieved the drugs from Harris provided probable cause that Harris was involved in that transaction. Based on this probable cause to arrest, the stop did not violate Harris's constitutional rights and he was not entitled to suppress the evidence seized from his person incident to his lawful arrest. Accordingly, we affirm.

*By the Court.*—Judgment affirmed.

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

