

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 30, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. **99-0231-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MAURICE D. WRIGHT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Reversed and cause remanded.*

Before Dykman, P.J., Eich and Deininger, JJ.

PER CURIAM. Maurice D. Wright appeals from a judgment of conviction for possession of a controlled substance with intent to deliver. The dispositive issue is whether police officers had reasonable suspicion to conduct an investigatory stop. We conclude they did not, and we reverse.

The stop occurred at the Badger bus depot in Madison, which is also used by Greyhound buses. Wright was a passenger on a Greyhound bus travelling from Chicago to Minneapolis. Without attempting to recount here the minute details of the testimony, the general series of events was that Wright got off the bus during a short layover, went to a nearby tavern, had a drink or two, returned to the bus station area, and went into the bathroom. The investigatory stop occurred there.

Wright was ultimately arrested on an outstanding warrant, and a search of his luggage on the bus turned up a controlled substance. Wright moved to suppress the evidence. The trial court denied the motion, and Wright then pleaded no contest. The standards for reviewing an investigatory detention, also known as a *Terry* stop, are well-established and need not be repeated here. *See, e.g., State v. Young*, 212 Wis.2d 417, 423-24, 569 N.W.2d 84, 88 (Ct. App. 1997).

To show the specific and articulable facts necessary to support a reasonable suspicion, the State relies partly on the officers' testimony that Chicago is a source city for controlled substances, that this particular bus route is heavily used for trafficking, and that this stop occurred at a time of the month at which trafficking is most likely to occur. However, these facts, although things we may consider, do not provide a basis to stop Wright, rather than any other passenger. The articulable facts related specifically to Wright boil down essentially to conduct which led the officers to believe that he was nervous and attempting to avoid police contact. This consisted of Wright's avoidance of eye contact with officers, allegedly nervous behaviors, and specific movements during the layover that might have indicated a desire to avoid close contact with the officers.

We conclude that the record does not show sufficient grounds to stop Wright. Although the State discusses case law to the effect that flight from police is sufficient to justify a stop, the State also concedes that “Wright’s behavior may not have risen to the level of actual flight.” The State cites no cases in which nervousness or a desire not to be in close proximity to police officers has been held sufficient grounds for a stop. None of Wright’s conduct, either separately or in sum, was so out of the ordinary, or sufficiently ambiguous, as to justify a *Terry* stop.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

