**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

December 29, 1999

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 99-1973-CR**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MARK H. BROOKS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Racine County: DENNIS J. BARRY, Judge. *Affirmed.*

¶1 SNYDER, J. Mark H. Brooks appeals from an order denying his motion to suppress drug evidence seized during an investigatory stop and from a conviction for one count of possessing tetrahydrocannabinols (THC) as a repeater contrary to §§ 939.62 and 961.14(4)(t), STATS. Brooks contends that the police officers lacked reasonable suspicion to stop him based upon an unsubstantiated drug sale tip. Brooks consented to a search of his person during the stop but

contends that the consent was invalid because it was preceded by an illegal stop. Neither of Brooks's arguments is persuasive. Accordingly, we affirm the judgment of conviction and the order.

¶2 Officer Stuart R. Van Swol of the City of Racine Police Department testified at the suppression hearing that on December 17, 1998, at approximately 11:59 p.m., he and two other officers were dispatched to the front of Steven B's tavern, located at 1224 Sixteenth Street, to investigate a complaint of two males selling drugs. The two individuals were described as "male blacks," one wearing a red coat and the other wearing a dark-colored coat with white on the sleeves and a dark hat. The officers arrived at Steven B's a "minute or two" after the dispatch. Upon arriving at the scene, Van Swol observed one individual matching the dispatch description standing in front of the tavern and identified the individual as Brooks.

¶3 Van Swol informed Brooks that he was going to pat him down for the officer's safety and asked Brooks if it was all right if he searched inside Brooks's clothing. Van Swol testified that Brooks said "go ahead" and that "I have got nothing to hide." Van Swol found $151 in U.S. currency in Brooks's left front pocket and "a clear knotted plastic baggie which contained a greenish brown vegetable substance" in his right front pocket that tested positive for THC. Brooks told Van Swol that the substance was for his personal use.

¶4 Van Swol testified that Brooks matched the dispatch description of one of the individuals selling drugs because he was wearing a dark coat with white on the sleeves and a dark hat. Van Swol further described Brooks's coat as "actually a dark gray color, the majority, and it had some white on the sleeves." During the hearing Van Swol identified a "dark gray winter coat with, I believe

that's the FUBU brand name" and "on the back number five, zero five" as looking like Brooks's coat.

¶5 Lynn Gartner, the police dispatcher who took the Steven B's drug sale complaint on December 17, 1998, testified that she had asked the caller for descriptions of the drug sellers and that the complainant stated that there were seven people in front of the tavern selling drugs, that one person was wearing a red jacket and red hat, and that another was wearing a white jacket with blue on the sleeves and a blue hat.

¶6 Brooks contends that because his clothing did not fit the description provided by the complainant to the dispatcher, the officers did not have a reasonable suspicion to stop him. Concerning Brooks's consent to search his clothing, he argues that the illegal stop invalidates the consent as being voluntary and cites to ***State v. Bermudez***, 221 Wis.2d 338, 585 N.W.2d 628 (Ct. App. 1998). The initial issue is whether the temporary questioning of Brooks was allowable under ***Terry v. Ohio***, 392 U.S. 1 (1968), and § 968.24, STATS.

¶7 A police officer may stop a person for a reasonable period of time and question that person if the officer reasonably suspects that the person is committing, is about to commit or has committed a crime. *See* § 968.24, STATS.; ***Terry***, 392 U.S. at 21-22. The standard is one of reasonableness, which is an objective question. *See* ***State v. Williamson***, 113 Wis.2d 389, 401, 335 N.W.2d 814, 820 (1983). The officer must point to specific and articulable facts which, together with rational inferences from the facts, reasonably warrant the intrusion. *See* ***id***. The trial court's findings of fact must be upheld unless they are against the great weight and clear preponderance of the evidence, but whether a seizure passes statutory and constitutional muster are questions of law that we review

independently. *See* ***State v. Richardson***, 156 Wis.2d 128, 137-38, 456 N.W.2d 830, 833 (1990).

¶8 In its findings, the trial court noted the difference in the coat description as related by the complainant to the dispatcher (a white jacket with blue on the sleeves and a blue hat) and as received by Van Swol in the dispatch (a dark-colored coat with white on the sleeves and a dark hat). The trial court found that Brooks was wearing a blue jacket with white lettering. The trial court found that dispatcher Gartner received a complaint about people dealing drugs in front of Steven B's tavern, that the dispatched officers arrived at Steven B's in a short period of time, that Brooks was in front of Steven B's and that Brooks was wearing a bluish-grayish coat with white lettering and a large FUBU logo. The trial court concluded that under the circumstances the officer's observations provided lawful authority for the further investigation of Brooks concerning reported drug activities. We are satisfied that the trial court's findings are not against the great weight and clear preponderance of the evidence. We disagree with Brooks that none of the details provided by the drug sale tip were corroborated. The record facts, coupled with the officer's being advised of possible drug transactions taking place or about to take place at the Steven B's tavern location, support the officers' temporary stop of Brooks as warranted and reasonable under ***Terry*** and § 968.24, STATS.

¶9 We next address whether a pat-down search of Brooks was proper. A pat-down search is allowable if the officer reasonably believes that the person being questioned is armed and presently dangerous. *See* ***Terry***, 392 U.S. at 30; § 968.25, STATS. In this case, the officers asked for identification and determined that Brooks had a Tennessee driver's license. Van Swol then told Brooks that he was going to pat him down for police safety reasons.

¶10 An officer must have a reasonable fear for his or her personal safety before effectuating a frisk. *See* ***Williamson***, 113 Wis.2d at 403-04, 335 N.W.2d at 821. The existing circumstances attending the officers' information and observations indicated the possibility of drug sales. The officers could reasonably believe that persons involved in drug sales may be armed. An officer may pat down a person that the officer reasonably suspects may be armed. *See* ***State v. Morgan***, 197 Wis.2d 200, 208-09, 539 N.W.2d 887, 891 (1995). The dispatch received by the officers had also indicated that there might be as many as six other persons in the area involved in drug activity. Van Swol was justified in performing a pat-down search of Brooks. No constitutional or statutory right was violated.

¶11 We now turn to Brooks's contention that the consent search of his clothing was invalid. Brooks concedes that his consent was voluntary if the consent was not exploited by a prior illegal stop and pat-down search. A consent to search obtained as the fruit of an illegal stop is invalid. *See* ***Florida v. Royer***, 460 U.S. 491, 507-08 (1983). Here, however, we conclude that the prior stop and pat down were warranted and legal. Where a stop and frisk is legal, an accompanying consent to search is not tainted by illegality as was the case in ***Royer***. Nor is it necessary that the consent be attenuated from a prior police illegality as required by ***Bermudez***, 221 Wis.2d at 352, 585 N.W.2d at 634 (quoting ***State v. Phillips***, 218 Wis.2d 180, 204-05, 577 N.W.2d 794, 805 (1998) ("a sufficient break in the causal chain between the illegality and the seizure of evidence" must be shown)).

¶12 The stop and pat down of Brooks by the police officers were legal and warranted by the totality of the circumstances. Because the stop and pat down were warranted, Brooks's consent to search his person was untainted by prior

police illegalities and was therefore voluntary and legal. The trial court correctly denied Brooks's motion to suppress the drug evidence obtained during the investigation of reported drug sale activity occurring in front of Steven B's tavern, and we affirm the judgment of conviction and the order.

*By the Court.*—Judgment and order affirmed.

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