

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 11, 1998

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. 97-1395-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOMINIC D. ROBINSON,

DEFENDANT-APPELLANT,

KELVIN D. PETIS,

DEFENDANT.

APPEAL from a judgment of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Affirmed.*

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

PER CURIAM. Dominic Robinson appeals from the judgment of conviction entered after he pleaded guilty to three counts of armed robbery, party

to a crime, contrary to §§ 943.32(1)(b), 943.32(2) & 939.05, STATS., and one count of attempted armed robbery, party to a crime, contrary to §§ 943.32(1)(b), 943.32(2), 939.05 & 939.32, STATS. Before pleading guilty, Robinson filed a motion to suppress physical evidence of the armed robberies found in a car in which he was a passenger, and a custodial statement which Robinson subsequently made implicating himself in the crimes. The trial court denied the motion. Robinson claims that the trial court erred in denying his motion to suppress because the police lacked reasonable suspicion to stop the car in which he was a passenger, and as a consequence, the physical evidence and his subsequent custodial statement should have been suppressed as the fruits of an illegal search. We determine that the officers who stopped the car in which Robinson was riding had a reasonable suspicion, based on specific, articulable facts, that the occupants of the car had committed a number of armed robberies. Therefore, because the stop was lawful, neither the physical evidence nor Robinson's custodial statement was the fruit of an illegal search, and we affirm.

I. BACKGROUND.

At the hearing regarding Robinson's suppression motion, Milwaukee Police Officer Anthony Wurth testified that on May 26, 1995, at approximately 9:20 p.m., he observed a black male walking southbound on Bartlett Avenue near Geneva Street with a revolver in his waistband. Officer Wurth testified that when the man saw him, he quickly covered the gun with his shirt and entered the passenger side of a white automobile. Officer Wurth testified that he was only able to see the rear of the vehicle, which he believed to be a Ford product, possibly a Mustang or a Capri. Although he could not see another individual, he suspected there were two people in the car, since the man with the gun had entered the passenger side of the car before it drove off. Officer Wurth testified that he

pursued the vehicle and broadcasted over the police radio that he had observed a black male with a handgun flee in a white Ford automobile, possibly a Mustang or a Capri, and that there were possibly two subjects in the vehicle. Officer Wurth also testified that he radioed that he had observed the man possibly “getting ready to rob someone” before fleeing in the white vehicle. Finally, Officer Wurth testified that within a few minutes he lost sight of the vehicle.

Officer James Black testified that he was on duty on the night of May 26, 1995, and that he heard Officer Wurth’s broadcast. After midnight, Officer Black also heard radio reports of more armed robberies in the area where Officer Wurth had reported the attempted armed robbery. At about 1:00 a.m., Officer Black rebroadcasted Officer Wurth’s earlier report for late shift squads who were not working when Wurth made his initial broadcast. Officer Black testified that he stated in his broadcast that there was a white car, possibly a Ford Mustang or Capri, occupied by black males suspected of being used in the armed robberies.

At the time of Officer Black’s broadcast of a white Ford automobile possibly involved in an attempted armed robbery, Officer Jeffrey Sullivan and Officer John Rupcic were patrolling Milwaukee’s east side, in the general vicinity of the location of the attempted armed robbery witnessed by Officer Wurth. During the evening, Officer Sullivan and Officer Rupcic also heard reports of armed robberies: (1) at 12:15 a.m., at 2775 North Oakland Avenue; (2) at 1:08 a.m., at 2623 East Bellevue Street; and (3) at 2:30 a.m., at 2011 East Bradford Street. Officer Sullivan and Officer Rupcic testified that one of the three reports described the robbers as four to five black males, one of whom had worn a green and white bandanna and a red beret-style hat. None of these three reports, however, mentioned an automobile.

Officer Sullivan testified that, shortly before 2:40 a.m., while at a stoplight on Oakland Avenue, he and Officer Rucpic saw a white car containing at least three black males traveling east on Locust Street. Based on the information from Officer Black's broadcast, and the three other broadcasts, the two officers followed the car for a few blocks and observed that the car was a Ford product, although they could not identify the model. Eventually, the officers stopped the car at 3100 East Newberry Street, within blocks of where the three armed robberies had occurred. Both Officer Sullivan and Officer Rucpic testified that their only reason for stopping the car was their suspicion that it was involved in the armed robberies. Upon closer inspection, the car was identified as a white Ford Tempo with a black driver's side door.

As he approached the driver, Officer Sullivan noted that there were four occupants, all black males, who he ordered out of the car. Robinson was one of the occupants of the car. At the same time, Officer Rucpic approached the car and, before searching it, he looked through the window and saw a bandanna and a red hat. The officers then searched the car and found two guns. Robinson was arrested and taken to the police station, where he eventually made a statement implicating himself in the armed robberies.

Robinson was charged with six counts of armed robbery, party to a crime, and one count of attempted armed robbery, party to a crime. Robinson filed motions to suppress the physical evidence found in the car and his custodial statement implicating himself in the robberies, on the grounds that the officers' stop of the car was illegal. The trial court denied Robinson's motions, and Robinson subsequently pleaded guilty to three counts of armed robbery, party to a crime, and one count of attempted armed robbery, party to a crime. Robinson now appeals.

II. ANALYSIS.

Robinson claims that the trial court erred by denying his motion to suppress because the officers' stop of the car in which he was a passenger was illegal. We are not persuaded.

When reviewing a trial court's denial of a motion to suppress, this court "will uphold a trial court's findings of fact unless they are against the great weight and clear preponderance of the evidence." *State v. Richardson*, 156 Wis.2d 128, 137, 456 N.W.2d 830, 833 (1990) (citation omitted). However, whether a search or seizure passes statutory and constitutional muster are questions of law which we review *de novo*. *Id.* at 137-38, 456 N.W.2d at 833.

The Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution proscribe unreasonable searches and seizures.¹ The United States Supreme Court held in *Terry v. Ohio*, 392 U.S. 1 (1968), that police officers may "in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly

¹ The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, sec. 11 of the Wisconsin Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

criminal behavior even though there is no probable cause to make an arrest.” *Id.* at 22. To execute a valid investigatory stop, a law enforcement officer must reasonably suspect, in light of his or her experience, that criminal activity has, is or is about to take place. *See Richardson*, 156 Wis.2d at 139, 456 N.W.2d at 834. Such reasonable suspicion must be based on specific and articulable facts which, taken together with rational inferences from those facts, and judged against an objective standard, would warrant a person of reasonable caution in the belief that the action taken was appropriate. *See id.* This test applies to an investigatory stop of a vehicle and the detention of its occupants. *See id.* An officer’s ability to execute an investigatory stop based on reasonable suspicion has also been codified in Wisconsin. *See* § 968.24, STATS. The Wisconsin Supreme Court has stated that the focus is on reasonableness and depends on the totality of the circumstances. *See Richardson*, 156 Wis.2d at 139-40, 456 N.W.2d at 834.

In *State v. Guzy*, 139 Wis.2d 663, 407 N.W.2d 548 (1987), the Wisconsin Supreme Court adopted Professor LaFave’s six factor analysis for use in determining the reasonableness of *Terry* stops:

“(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. at 677, 407 N.W.2d at 554 (citation omitted). The *Guzy* court, in addition to citing Professor LaFave’s six factor test, determined that three additional factors, all valid under these facts, were relevant to a determination of reasonableness:

(1) alternative means available to the officer to investigate short of making the stop; (2) the opportunity for further investigation, if action was not taken immediately; and (3) whether the description of the individual known to the officer would allow him to quickly identify the individual so that there would be minimal intrusion. *See id.* at 678, 407 N.W.2d at 555. Additionally, the severity or inherently dangerous nature of the reported criminal activity is a relevant consideration in determining the reasonableness of a *Terry* stop. *See State v. King*, 175 Wis.2d 146, 153, 499 N.W.2d 190, 193 (Ct. App. 1993). After reviewing the evidence in light of these considerations, we conclude that the officers' investigatory stop of the vehicle in which Robinson was a passenger was reasonable, and, therefore, legal.

Officer Sullivan and Officer Rupcic stopped the car in which Robinson was a passenger because they believed that it had been involved in a number of armed robberies within the preceding few hours and within blocks of where the car was stopped. Officer Sullivan and Officer Rupcic's decision to stop the car was based on the information they had received from Officer Black's broadcast concerning an attempted armed robbery, and the three other broadcasts concerning other armed robberies. According to Officer Black's broadcast, there was a white Ford automobile, possibly a Mustang, being used by black males committing armed robberies. According to the three other broadcasts, four to five black males, one of whom had been wearing a green and white bandanna and a red beret-style hat, had committed armed robberies in the same geographic area, within the span of a few hours. Although the three other broadcasts did not refer to an automobile, the fact that the robberies occurred within a short time period made it reasonable to believe that the robbers were using an automobile. Approximately ten to twenty minutes following the last reported robbery, Officer

Sullivan and Officer Rupcic observed an automobile matching the description given by Officer Black, occupied by at least three black males, located within blocks of the three reported armed robberies. Although the descriptions of the vehicle and the offenders provided by the four dispatches were not exact, they included a description of the color, make and approximate model of the vehicle, and the race, gender and number of suspected offenders. The car was stopped within blocks of the addresses where the three reported robberies had occurred, and within approximately ten to twenty minutes of the last reported robbery. Therefore, the first two *Guzy* factors support the reasonableness of the stop.

Because the robberies occurred in the middle of the city, the number of persons matching the description of the offenders and the probable direction of the suspects' flight was unknown. The officers admitted that they did not stop the automobile because of any observed activities of the vehicle, or a belief that the vehicle or its occupants had been involved in other criminal activities other than the armed robberies of that evening and early morning. Therefore, the third through sixth *Guzy* factors do not lend additional support to the reasonableness of the stop.

The last three *Guzy* factors, however, do support the officers' decision to stop the car. First, the officers did not have effective means available to investigate short of making the stop. Although Robinson claims that the officers could have checked the car's license plate, such action would not have helped to determine whether the car or its occupants had been involved in the attempted armed robbery or the armed robberies because there was no report of a license plate on the white car that Officer Wurth observed. Second, if the police had not stopped the car immediately, they may have lost sight of the car, as Officer Wurth had done, and therefore, may have lost the opportunity for further

investigation. Third, stopping the car gave the officers the opportunity to quickly observe the occupants and to determine whether they possessed guns, or the green bandanna or red hat which had been reported. As it turns out, Officer Rucpic saw the green bandanna and the red hat just by looking through the window and without conducting a search. Therefore, the description of the robbers allowed the officers to identify the suspects with minimal intrusion. Finally, the crimes being investigated by Officer Sullivan and Officer Rucpic were attempted armed robbery and armed robberies, which are severely and inherently dangerous crimes. Consequently, viewing the evidence as a whole, we conclude that the officers' investigatory stop of the car in which Robinson was a passenger was based on a reasonable suspicion that the occupants had committed a number of recent armed robberies.

Both the United States Supreme Court and the Wisconsin Supreme Court have held that, during a *Terry* vehicle stop, officers may, in certain situations, search the passenger compartment of the vehicle for weapons. In *Michigan v. Long*, 463 U.S. 1032 (1983), the Supreme Court held that police officers can search for weapons in a passenger compartment of an automobile under certain circumstances. *Id.* at 1049. In *State v. Moretto*, 144 Wis.2d 171, 423 N.W.2d 841 (1988), the Wisconsin Supreme Court held that the result reached in *Long* would be the same under state constitutional law. *See id.* at 182, 423 N.W.2d at 845. The supreme court held that:

[T]he scope of a search for weapons under sec. 968.25, Stats. is not limited to the search of the person but may, in accordance with *Long*, encompass the search of the passenger compartment of the person's vehicle where the officer "reasonably suspects that he or another is in danger of physical injury."

Id. at 177-78, 423 N.W.2d at 843.

In the instant case, Officer Sullivan and Officer Rupcic had a reasonable suspicion that the occupants of the vehicle had committed armed robbery, and therefore, reasonably believed that the vehicle may have contained weapons within the suspects' immediate control. Thus, the officers had a right not only to stop, but also to search, the vehicle. Because the search of the car was legal, neither the physical evidence found during that search nor Robinson's custodial statement implicating himself in the armed robberies were fruits of an illegal search. Therefore, the trial court properly denied Robinson's motion to suppress that evidence.

By the Court.—Judgment affirmed.

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

