

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 5, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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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. 97-3793-CR

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT I

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STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN C. JACKSON,

DEFENDANT-APPELLANT.

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

CURLEY, J. John C. Jackson appeals from a judgment of conviction entered after he pleaded guilty to misdemeanor possession of cocaine in violation of §§ 961.16(2)(b)1 and 961.41(3g)(c), STATS. Jackson claims that the trial court erred by denying his motion to suppress because the officer who

found the cocaine on Jackson's person lacked reasonable suspicion to conduct a *Terry* stop.<sup>1</sup> We affirm.

### I. BACKGROUND.

At the hearing on Jackson's motion to suppress, City of Greenfield Police Officer Patrick Martin testified that on March 17, 1997, at approximately 12:55 a.m., he was on patrol traveling in an unmarked squad car northbound on South 68th Street. Officer Martin testified that he saw a male, who he identified at the suppression hearing as Jackson, walking through the front yard of a house in the 4100 block of 68th Street. Officer Martin noted that he decided to stop Jackson for two reasons: (1) there had been burglaries in the area, and although he did not see where Martin came from, he assumed he came from the backyard area, which concerned him; and (2) Martin was "pretty small of stature," leading him to believe that he might be an underage juvenile violating curfew.<sup>2</sup>

Officer Martin passed Jackson and stopped his squad car in the parking lot of a gas station. As Jackson entered the parking lot and walked toward the squad, Officer Martin got out and approached him. Officer Martin identified himself, stopped Jackson and asked where he was going. Jackson told Officer Martin that he was going to Jack Jammers, a local bar. Officer Martin testified that Jack Jammers was known to be a "drug and gang hang out," and that he knew Jack Jammers was located in the direction Jackson was coming from. Officer

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<sup>1</sup> See *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>2</sup> Officer Martin testified at the suppression hearing that the City of Greenfield has an 11:00 p.m. curfew for persons under seventeen.

Martin then asked Jackson where he was coming from, and Jackson told him a gas station.

Officer Martin testified that, upon getting “face-to-face” with Jackson, he realized that Jackson was not underage. Officer Martin, however, also testified that the fact that Jackson said he was going to Jack Jammers, which was located in the opposite direction from where Jackson was going, led him to ask Jackson more questions.

Officer Martin testified that he next asked Jackson for identification, and Jackson said he did not have any, but verbally identified himself as John Jackson and provided a date of birth indicating he was twenty-two years old. Officer Martin had the dispatch run a record and wanted check on Jackson, and another officer arrived as back-up. Officer Martin then asked Jackson if he had anything on him he shouldn't have. Jackson responded, “I don't know.” Officer Martin repeated the question, and Jackson again responded, “I don't know.” Officer Martin then asked Martin if he had any weapons, and Jackson said, “No.” Officer Martin asked Jackson if he had any drugs, and Jackson stated something like, “Yeah.” Officer Martin asked Jackson what he had, and Jackson said that he had a “dime-bag.” Officer Martin then patted down Jackson for weapons and drugs and found a small plastic baggie containing a white crumbly substance that he believed to be cocaine. Jackson was then taken into custody.

Jackson was charged with misdemeanor possession of cocaine and filed a motion to suppress the cocaine, alleging that Officer Martin lacked reasonable suspicion to conduct a *Terry* stop. The trial court denied Jackson's motion, and Jackson now appeals.

## II. ANALYSIS.

Jackson claims that the trial court erred by denying his motion to suppress the cocaine found on his person because Officer Martin lacked reasonable suspicion to conduct a *Terry* stop. We affirm.

The validity of an investigatory stop and temporary detention is governed by *Terry v. Ohio*, 392 U.S. 1 (1968), and is codified in § 968.24, STATS. *See State v. King*, 175 Wis.2d 146, 150, 499 N.W.2d 190, 191 (Ct. App. 1993). *Terry* requires that an officer must reasonably suspect “in light of his or her experience” that some criminal activity has taken place or is taking place before stopping an individual. *See id.* A determination of whether a temporary detention is reasonable is based on the totality of the circumstances. *See id.* If an officer has a suspicion, grounded in specific, articulable facts and reasonable inferences drawn from those facts, that an individual has committed a crime, the officer may conduct a temporary detention of the individual in order to investigate further. *See id.*

Questions asked during an investigative stop must be “reasonably related in scope to the justification for their initiation.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975). Thus, a stop which is lawful at its inception may develop into an unlawful seizure if an officer detains an individual after the purpose of the stop is completed. *See Valance v. Wisel*, 110 F.3d 1269, 1276 (7th Cir. 1997). However, if something occurs during the stop which gives the officer the reasonable suspicion to support a further detention, the officer may continue the *Terry* stop. *See id.*; *see also United States v. Perez*, 37 F.3d 510, 513 (9th Cir. 1994) (although stop must be reasonably related in scope to justification for its

initiation, officer may broaden his or her line of questioning if he or she notices additional suspicious factors).

When reviewing the trial court's denial of a motion to suppress, the trial court's findings of fact are upheld unless clearly erroneous. However, whether those facts meet the constitutional test of reasonableness is a question of law which this court reviews *de novo*. See **King**, 175 Wis.2d at 150, 499 N.W.2d at 191.

In the instant case, Officer Martin testified that, when he first saw Jackson walking across the yard, he believed that Jackson may have been a juvenile violating curfew because of his "small stature." The fact that Jackson appeared to be a juvenile violating curfew was a specific and articulable fact justifying Officer Martin's initial **Terry** stop of Jackson. Officer Martin testified, however, that he only thought Jackson was underage until he "got face-to-face" with Jackson. Thus, after Officer Martin realized that Jackson was not a juvenile, the possibility that Jackson was violating curfew no longer provided justification for Jackson's continued detention. See **Valance**, 110 F.3d at 1276.

Officer Martin also testified, however, that upon getting face-to-face with Jackson, he asked Jackson where he was going, and that Jackson responded that he was going to Jack Jammers. Officer Martin testified that he knew Jack Jammers to be a "drug and gang hangout," and he noted that Jackson was traveling in the wrong direction to get to Jack Jammers. These specific and articulable facts, combined with Officer Martin's knowledge that burglaries had occurred in the area, and his previous observation of Jackson walking across a private homeowner's lawn at almost 1:00 a.m. in the morning, provided Officer Martin with a reasonable suspicion that some type of criminal activity had been or was

taking place. Therefore, although Officer Martin's initial justification for stopping Jackson was dispelled during the time that Officer Martin spoke to Jackson, new facts which came to light at the beginning of their conversation provided Officer Martin with a different, but equally valid, justification for Jackson's continued detention. *See id.*; *see also Perez*, 37 F.3d at 513. At that point, given the totality of the circumstances, it was reasonable for Officer Martin to continue his questioning of Jackson, which led to Jackson's admission that he was in possession of drugs, and Officer Martin's discovery of the cocaine. Thus, the trial court properly denied Jackson's suppression motion.

*By the Court.*—Judgment affirmed.

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

