

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

July 6, 2001

Cornelia G. Clark  
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-2496-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DEVALDIS A. GARTH,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dane County:  
ROBERT A. DeCHAMBEAU, Judge. *Affirmed.*

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

¶1 PER CURIAM. Devaldis Garth appeals a judgment convicting him on one felony and two misdemeanor counts. The issue is whether the trial court properly denied his motion to suppress the evidence used to prosecute him. We affirm.

¶2 On an evening in January 1998, police were observing the vicinity of 2613 Granada Way in the Town of Madison. The surveillance was prompted by a tip that individuals were selling drugs on the street in front of that address. Additionally, police knew that the neighborhood experienced a high volume of drug activity.

¶3 At approximately 11:20 p.m. Officer Weiss spotted Garth talking to another individual on the sidewalk in front of the building at 2613. It was then 32 degrees Fahrenheit, and the street was otherwise deserted. A few minutes later two unmarked police cars drove by, and Weiss saw Garth and his companion closely watching them.

¶4 When one of the police cars turned around and parked thirty feet south of Garth, he began walking to the north. Officer Weiss left the place from which he had been watching and approached Garth as he walked. Garth stopped and, for the moment, a consensual encounter occurred. Weiss asked Garth where he was going, and Garth said he was going to the store. However, the nearby PDQ, which Weiss understood to be the store in question, was in a different direction. Additionally, there were no retail stores open in the direction Garth was heading. Weiss also noticed that Garth became visibly nervous during the conversation as another officer approached. Garth then failed to respond when that officer told him to take his hand out of his pocket, and Weiss became concerned that Garth had a weapon.

¶5 At that point, Weiss detained Garth. Subsequent events led to the discovery of drugs on Garth's person and charges of possessing cocaine with intent to deliver it, possessing marijuana and resisting an officer. Garth moved to suppress the drug evidence on the grounds that Weiss did not have sufficient

reason to detain him during the encounter on Granada Way. The trial court denied the motion and Garth subsequently entered no contest pleas.

¶6 An officer may detain an individual for investigative reasons upon reasonable suspicion that the individual is engaged in illegal activity. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968); WIS. STAT. § 968.24 (1999-2000).<sup>1</sup> Reasonable suspicion consists of “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant an intrusion.” *Terry*, 392 U.S. at 21. Reasonableness is an objective standard that is measured by looking at the totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). Where, as here, the material facts are undisputed, whether reasonable suspicion existed is a question of law that we review de novo. *See State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

¶7 An officer could reasonably suspect that Garth was involved in illegal activity when he was detained. Garth was standing out-of-doors on a cold night in an area known to police as one where drug activity frequently occurred. Police had recently received information about drug dealing in the precise location where Garth stood. When a police car parked nearby, Garth promptly left. When approached he gave what a knowledgeable officer, such as Weiss, could reasonably believe was a false statement about where he was going. He appeared nervous. These factors, in combination, allowed Officer Weiss to reasonably suspect that Garth was involved in illegal activity, even if the acts might plausibly be those of an innocent person as well. *See State v. Anderson*, 155 Wis. 2d 77,

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

84, 454 N.W.2d 763 (1990) (An officer need not rule out all possibility of innocent behavior before initiating a ***Terry*** stop.).

*By the Court.*—Judgment affirmed.

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

