

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 5, 2007

David R. Schanker
Clerk of Court of Appeals

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.

Appeal No. 2006AP2035-CR

Cir. Ct. No. 2005CF3250

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOAQUIN G. SALAS,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Joaquin G. Salas appeals from a judgment of conviction for delivering marijuana to challenge the denial of his suppression motion. The issues are whether the police had reasonable suspicion for an investigative stop of Salas, and probable cause to arrest him. We conclude that the

police had reasonable suspicion to stop Salas: they saw him engaging in activity consistent with, in their experience, drug trafficking near a residence for which they had obtained a search warrant relating to drug activity. Police also had probable cause to arrest him based on the totality of the circumstances including their experience in drug investigations and their observations of Salas's vehicle and another vehicle in relation to the target residence, which we conclude would lead reasonable police officers to believe that Salas had probably committed a crime. Therefore, we affirm.

¶2 The facts are largely undisputed; it is the inferences from those facts with which the parties disagree. West Allis Police Officer Daniel Ditorrice was the lone witness at the suppression hearing. Ditorrice has been a police officer for thirteen years; he had been assigned to the Milwaukee Metro Drug Enforcement Unit for the past two years. He testified that during his career he had dealt with approximately two hundred confidential informants, participated in more than one hundred drug investigations and in approximately fifty incidents involving search warrants. Ditorrice was investigating drug trafficking and had undertaken surveillance of a residence he suspected was a drug house, also known as a stash house, where drug dealers kept large quantities of drugs separate from their personal residences or from where they traffic their drugs. Ditorrice had been meeting with a confidential informant and had observed activities he believed were drug trafficking in and near a duplex he believed was a stash house for marijuana, and for which he had obtained a search warrant.

¶3 After getting the search warrant, Ditorrice and other officers observed a white Dodge pickup truck backing into the targeted duplex's garage for a short time, and then exiting the garage. Once on the street, a red Chevrolet Malibu with temporary Illinois license plates followed the Dodge truck for less

than two miles into an alley where both remained for less than two minutes. Both vehicles then exited the alley. The Chevrolet pulled to the side of the road; the Dodge pulled next to it. The driver of the Chevrolet exited his vehicle and spoke to the driver of the Dodge through the Dodge's passenger window for less than a minute. Both vehicles then "split up in different directions." At that point, Ditorrice testified that the officers decided to stop both vehicles and arrest their drivers "[i]n our anticipation that a drug deal had just occurred in the alley prior to them meeting, talking together, and then splitting up."

¶4 Although Ditorrice actually stopped and arrested the driver of the Chevrolet, he testified that another officer stopped the Dodge truck, driven by Salas, and arrested Salas for conspiracy. Although no drugs or marijuana were found on Salas when he was arrested, with Salas's cooperation, police later discovered marijuana at his home, and took a statement from him.

¶5 Salas moved to suppress the marijuana seized from his residence and his statements to police. He asserts that police had no reasonable suspicion to stop him, but his principal challenge is to the validity of his arrest. He claims that the seizure of marijuana and his subsequent statement were incident to an unlawful stop and arrest.

¶6 A constitutionally valid investigative stop is described as follows:

To execute a valid investigatory stop, *Terry* [*v. Ohio*, 392 U.S. 1, 30 (1968)] and its progeny require that a law enforcement officer reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. *Terry*, 392 U.S. at 30; sec. 968.24, Stats. Such reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." [*Terry*, 392 U.S.] at 21. These facts must be judged against an "objective standard: would the facts available to the officer at the moment of the seizure ...

‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate?” *Id.* at 21-22.

State v. Richardson, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (omission in *Richardson*).¹ The reasonableness of the officer’s suspicion is assessed in the context of the totality of the circumstances at the time of the stop. *See State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996).

¶7 Ditorrice had obtained (although not yet executed) a search warrant for a targeted unit of a duplex where he observed individuals coming and going. He observed a truck backing into the garage for that unit for a few minutes and then driving off. He observed the truck leading and then partnering with a car near the duplex, in an alley, and then each drove off in different directions. His personal observations, his knowledge from a confidential informant with personal knowledge that this targeted unit of the duplex may be a stash house, and his experience in more than one hundred drug investigations were sufficient to constitute “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[ed] that [investigative stop.]” *Terry*, 392 U.S. at 21; *see also* WIS. STAT. § 968.24 (2005-06).²

¶8 Salas argues that Ditorrice did not see anything being loaded onto the truck, or any drug dealing in the alley. He also emphasizes that Ditorrice had not yet executed the search warrant, thus, his suspicions that the targeted unit of the duplex was a stash house had not yet been confirmed. The conduct on which

¹ WISCONSIN STAT. § 968.24 (2005-06) codifies *Terry v. Ohio*, 392 U.S. 1 (1968) and its progeny.

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

the reasonable suspicion was based is considered in the totality of the circumstances, not in parsed detail. *See Richardson*, 156 Wis. 2d at 139-40. Additionally, it is not necessary that the conduct be criminal or even suspicious. *See id.* at 142. “Rather, the cumulative detail, along with reasonable inferences and deductions which a reasonable officer could glean therefrom, is sufficient to supply the reasonable suspicion that crime is afoot and to justify the stop.” *Id.*

¶9 Salas’s principal challenge is that police had no probable cause to arrest him. A lawful arrest must be based on probable cause. *See State v. Kutz*, 2003 WI App 205, ¶11, 267 Wis. 2d 531, 671 N.W.2d 660. Probable cause to arrest is “when the totality of the circumstances within the arresting officer’s knowledge would lead a reasonable police officer to believe that the defendant probably committed a crime.” *Id.* Probable cause to arrest does not even require information that would indicate that the suspect’s involvement in criminal activity is more likely than not. *See id.*

¶10 Salas parses the facts, emphasizing the arguable innocence of each fact, reiterating that no marijuana was found on his person, or in the truck he was driving, and that the search warrant did not refer to Salas, the driver of the Chevrolet, or either the Dodge or the Chevrolet. At the suppression hearing, Ditorrice was asked for the basis of his determination to stop and arrest these two individuals (in the Dodge and the Chevrolet). Ditorrice testified that he made both determinations contemporaneously; consequently, his explanation is for both the stop and the arrest. He testified, “[b]ecause I have had prior contact with the residence and found that there ha[ve] been vehicles that go to that location.” He continued:

because the [Dodge] truck was the one that had backed up into the garage. We anticipated at that time there was narcotics being loaded on this ... truck. Consequently, we kept the vehicle under consistent and constant surveillance to the alley. It was in there for a very short period of time. We weren't able to keep that under surveillance because of the proximity of where the vehicle was parked and because of the situation, how it occurred, the totality of everything leading up to that, we felt that a drug deal had just occurred and that both vehicles were involved in that.

¶11 Ditorrice's explanation, coupled with his concerns as expressed as the basis for obtaining a search warrant, met the probable cause to arrest standard. Circumstances within Ditorrice's knowledge, bolstered by his observations of the targeted unit in the duplex and the activities of the two vehicles, when considered in the totality of the circumstances "would lead a reasonable police officer to believe that the defendant probably committed a crime." *Kutz*, 267 Wis. 2d 531, ¶11. In fact, "[w]hen a police officer is confronted with two reasonable competing inferences, one justifying arrest and the other not, the officer is entitled to rely on the reasonable inference justifying arrest." *Id.*, ¶12. Consequently, there was probable cause to arrest Salas for conspiring to possess and/or deliver illegal substances including marijuana.

¶12 Police had a reasonable suspicion to conduct an investigative stop of Salas; police had probable cause to arrest Salas. Consequently, the search and seizure of marijuana incident to Salas's arrest was lawful, as was the admissibility of Salas's statements to police following his arrest.

By the Court.—Judgment affirmed.

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

