

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 21, 1999

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. 99-1919

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN THE INTEREST OF ROMEL D.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

ROMEL D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
THOMAS R. COOPER, Judge. *Affirmed.*

¶1 CURLEY, J. Romel D. appeals the trial court's order finding him delinquent after he entered a plea of guilty to possessing cocaine with intent to deliver, contrary to §§ 961.16(2)(b)1 and 961.41(lm)(cm)1, STATS. Romel D. contends that the trial court erred in denying his motion to suppress because the

police did not have a reasonable suspicion to initially stop him and, thus, the subsequent search yielding cocaine was illegal. Because the combination of Romel D.'s actions and his presence at a known drug-trafficking area were adequate to support a reasonable suspicion that Romel D. had or was about to commit a crime, the officer's initial stop of Romel D. was warranted. The search of Romel D. was also valid because Romel D. volunteered that he was in possession of illegal drugs, thus giving the officer probable cause to search Romel D. Consequently, this court affirms.¹

I. BACKGROUND.

¶2 While on routine patrol at approximately 9:30 p.m., Officer Robert Clark and his partner observed Romel D. standing in the parking lot of a gas station that was a known drug-trafficking location. Officer Clark observed Romel D. nervously glance at the marked squad car several times. Officer Clark then watched as Romel D. walked to a pay phone, picked up the receiver, and began talking into it. Officer Clark noticed that the phone had not been ringing when Romel D. first picked it up, nor did Romel D. dial any numbers in order to place a call. After talking into the phone, Romel D. then placed the receiver back on the hook and walked away from the parking lot. Officer Clark, thinking that Romel D.'s actions were suspicious, drove up behind Romel D., exited his vehicle, and called out to him. Romel D. stopped and turned around. After asking for and receiving Romel D.'s address, Officer Clark asked him about the pay phone, and then asked him if he had any guns, knives or drugs on his person. In response,

¹ This is a one-judge appeal pursuant to § 752.31(3), STATS. Further, this court notes that the state has requested publication, but under § 809.23(4)(b), STATS., the publication of one judge appeals is prohibited.

Romel D. put his hands in the air, but said nothing. The officer then became concerned that Romel D. was carrying a weapon, and he repeatedly asked: “Is it a gun? What is it? What do you have on you?” Romel D. then told the officer that he had some “work” in his pocket. Knowing the word “work” to be a slang term for illegal drugs, the officer handcuffed Romel D., searched his pocket, and recovered a plastic baggie containing an off-white chunky substance in five smaller corner-cut baggies. The substance later tested positive for cocaine.

¶3 Romel D. was taken to the police station where he confessed that he had been dealing drugs and that the money found on his person came from the drug sales. Juvenile delinquency proceedings were initiated, charging Romel D. with the commission of the crime of possession with intent to deliver-cocaine. Romel D. filed a motion to suppress, arguing that the officer’s initial stop and search of him was illegal. The trial court denied the motion. Romel D. then entered a plea of guilty. He was found delinquent and placed under the supervision of the Milwaukee County Department of Human Services for one year. This appeal follows.

Standard of Review

¶4 “In reviewing a denial of a motion to suppress, [this court] will uphold the trial court’s findings of fact unless they are clearly erroneous. Whether those facts satisfy the constitutional requirement of reasonableness is a question of law, which [is reviewed] *de novo*.” *State v. Young*, 212 Wis.2d 417, 424, 569 N.W.2d 84, 88 (Ct. App. 1997).

II. ANALYSIS.

A. Romel D.'s actions in a parking lot known for drug-trafficking were sufficiently suspicious to allow the officer to temporarily stop Romel D.

¶5 Romel D. argues that the officer's initial stop of him was unreasonable because the officer did not have a reasonable suspicion to stop him. The seminal case authorizing a brief investigatory stop by police, *Terry v. Ohio*, 392 U.S. 1 (1968), permits such stops under certain specific conditions. The standards set forth in *Terry* permitting an investigatory stop have been codified in § 968.24, STATS. See *State v. King*, 175 Wis.2d 146, 150, 499 N.W.2d 190, 191 (Ct. App. 1993) (“The validity of an investigatory stop is governed by *Terry v. Ohio*, 392 U.S. 1 [], as codified by sec. 968.24, STATS.”). Section 968.24 provides:

Temporary questioning without arrest. After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

With respect to temporary stops, our supreme court has commented that “[t]o execute a valid investigatory stop, *Terry* 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.” *State v. Richardson*, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990). Moreover, the supreme court has stated that the question of what constitutes reasonable suspicion is a common sense test: “Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and

experience?” *State v. Jackson*, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989).

¶6 Here, the officer knew that Romel D. was in a location where drug trafficking had occurred in the past. Presence in an area known to be used by drug dealers can contribute to reasonable suspicion. *See Young*, 212 Wis.2d at 427, 569 N.W.2d at 89; *see also U.S. v. Sharpe*, 470 U.S. 675, 682 n.3 (1985). Romel D. also appeared nervous and repeatedly glanced at the officer’s car. It is appropriate to use a suspect’s nervousness as a factor in a *de novo* determination of the legality of a pat-down search. *See State v. Morgan*, 197 Wis.2d 200, 215, 539 N.W.2d 887, 893 (1995). Thus, this court reasons that a suspect’s nervousness may also be a factor that contributes to an officer’s suspicion that a person has or may be committing a crime, justifying an investigatory stop. Finally, Romel D.’s actions in picking up a pay phone and pretending to talk to someone on the phone and then hanging up and walking away were also suspicious. The officer believed Romel D.’s actions were a ruse. Thus, the officer became suspicious because innocent people have no need to feign phone calls at pay phones and then walk away.

¶7 The totality of the facts are to be taken together when deciding whether a police officer had a reasonable basis for temporarily stopping a person. *See State v Waldner*, 206 Wis.2d 51, 57-62, 556 N.W.2d 681, 684-86 (1996). Here, the officer saw Romel D. in a known drug-trafficking location, looking very nervous and repeatedly glancing at the squad car. Romel D. then pretended to engage in a phone call before walking away from the area. The combination of all three factors, when viewed under the totality of the circumstances, gave rise to the officer’s reasonable suspicion that Romel D. had committed or may be committing

a crime, justifying a temporary stop of Romel D. As a consequence, this court concludes that the initial stop of Romel D. by the officer was valid.

B. The officer had probable cause to search Romel D. for drugs because Romel D. volunteered that he possessed illegal drugs.

¶8 Romel D. argues that the officer's search of his pocket, where he found packets of cocaine, was unlawful because it exceeded the scope of a *Terry* pat-down search.² This court disagrees. When the officer searched Romel D.'s pocket, the officer was not conducting a search pursuant to § 968.25, STATS. Rather, the officer searched Romel D.'s pocket only after he had obtained probable cause to believe that Romel D. possessed contraband. Probable cause is present when the facts and circumstances are sufficient to warrant a reasonable person to conclude that a person has committed or is in the process of committing an offense. See *Richardson*, 156 Wis.2d at 148, 456 N.W.2d at 838. Probable cause has been defined as facts and circumstances known to the officer that lead the officer to believe that guilt is more than a possibility. See *State v. Koch*, 175

² While an officer is conducting a temporary search pursuant to § 968.24, STATS., commonly called a *Terry* stop, the officer also may search the person for weapons if the officer suspects he or she is in danger of physical injury. Section 968.25, STATS., authorizes this type of search. Section 968.25 provides:

Search during temporary questioning. When a law enforcement officer has stopped a person for temporary questioning pursuant to s. 968.24 and reasonably suspects that he or she or another is in danger of physical injury, the law enforcement officer may search such person for weapons or any instrument or article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. If the law enforcement officer finds such a weapon or instrument, or any other property possession of which the law enforcement officer reasonably believes may constitute the commission of a crime, or which may constitute a threat to his or her safety, the law enforcement officer may take it and keep it until the completion of the questioning, at which time the law enforcement officer shall either return it, if lawfully possessed, or arrest the person so questioned.

Wis.2d 684, 701, 499 N.W.2d 152, 161 (1993) (quoting *State v. Paszek*, 50 Wis.2d 619, 624-25, 184 N.W.2d 836, 839-40 (1971)). Under the circumstances presented here, the officer was entitled to believe Romel D.'s statement that he possessed illegal drugs. Thus, the officer did not conduct a search of Romel D. until after Romel D. had told the officer that he had illegal drugs in his possession. It was not until Romel D.'s admission was made that the officer handcuffed him and searched his pocket, finding the cocaine. Thus, Romel D. was never subjected to a search pursuant to § 968.25. Romel D. was searched after the officer had obtained probable cause to believe Romel D. was committing a crime.

¶9 As a result, this court affirms the trial court's order denying Romel D.'s motion to suppress.

By the Court.—Order affirmed.

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

