

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 15, 2008

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. 2007AP380-CR
2007AP440-CR**

**Cir. Ct. No. 2003CF559
2003CF722**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

COURTNEY L. COBBS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
DOROTHY L. BAIN, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Courtney Cobbs appeals a judgment, entered upon his guilty plea, convicting him of possession with intent to deliver cocaine as party

to a crime. Cobbs challenges the denial of his pretrial motion to suppress evidence. We reject Cobbs's arguments and affirm the judgment.

BACKGROUND

¶2 In Marathon County Circuit Court case No. 2003CF559, an Information charged Cobbs with possession with intent to deliver cocaine, possession with intent to deliver THC, possession of a short-barreled shotgun, obstructing an officer, two counts of possession of a firearm by a felon and two drug tax stamp violations, all but the obstruction count as a repeater and as party to a crime. In Marathon County Circuit Court case No. 2003CF722, an Information charged Cobbs with one count of attempted escape and one count of criminal damage to property, both counts as party to a crime.

¶3 The circuit court denied Cobbs's pretrial motion to suppress evidence. In exchange for his guilty plea to party to the crime of possession with intent to deliver cocaine, the State agreed to dismiss the remaining charges from both cases. Cobbs was convicted upon his guilty plea and sentenced to four years' initial confinement and five years' extended supervision. This appeal follows.

DISCUSSION

¶4 Cobbs argues the circuit court erred by denying his pretrial motion to suppress evidence. When reviewing a ruling on a suppression motion, an appellate court "will uphold the circuit court's findings of fact unless they are against the great weight and clear preponderance of the evidence." *State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). At the same time, this court "independently examines the circumstances of the case to determine whether

the constitutional requirements of reasonableness have been satisfied.” *State v. Allen*, 226 Wis. 2d 66, 70, 593 N.W.2d 504 (Ct. App. 1999).

¶5 Cobbs contends the police lacked reasonable suspicion to stop his vehicle. At the suppression motion hearing, officers testified that while on patrol, they passed a mini-mart gas station and observed three black men and one white man standing near two vehicles. The officers became suspicious after noting that all of the men appeared to be “very nervous” and showed an overt interest in the passing of the marked squad car. The officers found an observation point behind a nearby business and observed the men with binoculars. Other than observing a bag passed from one vehicle to the other, the officers observed no other suspicious activity. The officers eventually followed the vehicles as they left the gas station and stopped one of the vehicles after seeing a violation of the littering statute—specifically, a lit cigarette thrown from the driver’s side window.

¶6 Cobbs argues that the officers’ stated rationale for the stop—a violation of the littering statute—did not justify the stop because littering is not a “traffic violation.” Cobbs, however, provides no authority for his contention that the reasonable suspicion must concern a traffic violation. Officers may stop and detain individuals if they have reasonable suspicion that the individual committed a crime. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). *Terry* and its progeny have been codified by WIS. STAT. § 968.24,¹ which governs temporary questioning without arrest. The statute provides, in relevant part, that “a law enforcement officer may stop a

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

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[.]” WIS. STAT. § 968.24. The statute’s “has committed a crime” language has been interpreted to encompass individuals who police reasonably suspect are committing either a crime or a civil violation. *State v. Krier*, 165 Wis. 2d 673, 478 N.W.2d 63 (Ct. App. 1991). Here, a violation of the littering statute justified the stop.

¶7 Cobbs nevertheless claims that the stop of his vehicle was racially motivated. Although the Constitution prohibits selective enforcement of the law based on considerations such as race, *Whren v. United States*, 517 U.S. 806, 813 (1996), the record does not support Cobbs’s claim. The officers denied that race was a motivating factor for following and stopping the vehicle. The circuit court noted that “four young men of any race who nervously and suspiciously watch a passing squad car may give rise to the officers’ actions in following them[.]” Ultimately, the court found, based on the evidence, that race was not a factor. Cobbs has failed to establish that the circuit court’s finding was clearly erroneous.

¶8 Finally, Cobbs claims the search of his vehicle was unjustified under the circumstances. We are not persuaded. At the suppression motion hearing, one of the officers testified that as he approached the vehicle after the stop, he noticed a gun case, some loose ammunition and half a bottle of alcohol on the rear seat. As the officer reached the passenger-side window, the officer detected the odors of tobacco, marijuana and alcohol. The officers asked for canine assistance and, while waiting for assistance to arrive, the officers conducted a preliminary search of the vehicle and found a sawed-off shotgun. Cobbs and the other occupant of the vehicle were then taken into custody and arrested for possession of this illegal

weapon. A subsequent search of the vehicle revealed two pounds of marijuana and a golf ball-sized cache of cocaine.

¶9 The police may, under the proper circumstances, conduct a protective search of the passenger compartment of a vehicle during a traffic stop. *Michigan v. Long*, 463 U.S. 1032 (1983). Such a search is justified when an officer reasonably suspects that the person “is dangerous and ... may gain immediate control of weapons” placed or hidden in the passenger compartment. *Id.* at 1049. The gun case and loose ammo in combination with evidence of drug and alcohol use based on what the officers smelled justified the protective search for weapons. Thereafter, Cobbs was arrested and a more thorough search of the vehicle was valid incident to the arrest. *See State v. Fry*, 131 Wis. 2d 153, 388 N.W.2d 565 (1986) (the search of a vehicle’s passenger compartment is permissible when an occupant of the vehicle is under arrest).

By the Court.—Judgment affirmed.

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

