

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 9, 2014

Diane M. Fremgen
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. 2013AP2569-CR

Cir. Ct. No. 2012CF190

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GARY LYLE GIBSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Gary Gibson appeals a judgment, entered upon his guilty plea, convicting him of the manufacture/delivery of between 200 and 1000 grams of THC, as party to a crime. Gibson argues the circuit court erred by

denying his suppression motion because the officer lacked reasonable suspicion to stop him. We reject Gibson’s argument, and affirm.

BACKGROUND

¶2 On June 5, 2012, James Mikla, an investigator with the St. Croix County Sheriff’s Department, was informed by a Town of Cady official of an “anonymous” complaint regarding a possible marijuana grow in the town.¹ Mikla investigated the site and observed five to six marijuana plants rooted in boxes with topsoil and what appeared to be fertilizer. The plants were in good health, varying in size from one foot to three feet tall. Mikla observed branches at the site that appeared to have been cut with a pruning shear in an apparent attempt to allow sunlight for the marijuana plants.

¶3 Mikla subsequently learned from the same complainant of a second grow site approximately two- to three-tenths of a mile away from the first site.² The complainant had observed people in and around these areas carrying buckets, as well as a “suspicious” male with a backpack riding a red-colored bicycle. One week later, the complainant contacted Mikla and again reported observing “a suspicious bicycle in the area with saddle bags, with a suspicious male on it.”

¹ We have taken the facts from transcripts of both the preliminary hearing and the suppression hearing. When reviewing a suppression order, an appellate court can consider not only the facts adduced at the suppression hearing, but also facts brought out at other proceedings, including the preliminary hearing. *State v. Gaines*, 197 Wis. 2d 102, 106-07 n.1, 539 N.W.2d 723 (Ct. App. 1995).

² Although the complainant preferred not to have his or her identity publicly disclosed, this person was not an anonymous informer because Mikla apparently knew the person’s identity and was able to contact him or her. See *State v. Kolk*, 2006 WI App 261, ¶12, 298 Wis. 2d 99, 726 N.W.2d 337 (anonymous informer one whose identity unknown even to police).

Mikla responded to the sites, noting they both remained intact, with water in one of the plant holes.

¶4 Approximately three- to four-tenths of a mile from the second grow site, Mikla observed a male, later identified as Gibson, wearing a backpack and riding a red bicycle with saddle bags. Mikla observed what he believed to be pruning shears sticking out of the backpack. Mikla also noticed water dripping from the saddle bags. Mikla stopped Gibson and arrested him after learning Gibson had several outstanding warrants.

¶5 Gibson was charged with the manufacture/delivery of between 200 and 1000 grams of THC, as party to a crime. After the circuit court denied his motion to suppress evidence, Gibson pleaded guilty to the crime charged. The court withheld sentence, and placed Gibson on three years' probation. This appeal follows.

DISCUSSION

¶6 A police officer may conduct a traffic stop if the officer has reasonable suspicion, based on specific and articulable facts, that a crime or traffic violation has been or will be committed. *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. Whether reasonable suspicion exists is a question of constitutional fact. *Id.*, ¶10. We uphold the circuit court's factual findings unless they are clearly erroneous; however, we independently apply those facts to constitutional principles. *Id.*

¶7 Gibson contends that the complainant's hunches about a "suspicious" man on a bicycle, in combination with Mikla's own observations, did not create reasonable suspicion for the stop. We disagree. It is well-established

that reasonable suspicion can be based on an informant's tip, provided the tip is sufficiently reliable. *See State v. Williams*, 2001 WI 21, ¶36, 241 Wis. 2d 631, 623 N.W.2d 106. Because there is no indication the complainant was seeking something of value in return for the information provided, he or she was a citizen informer. *See State v. Kolk*, 2006 WI App 261, ¶12, 298 Wis. 2d 99, 726 N.W.2d 337 (distinguishing altruistic citizen informer from police informer who expects gain). A citizen informer who reports having witnessed a crime is presumed to be reliable. *Id.*, ¶15.

¶8 Moreover, corroboration by police of innocent details of even an anonymous tip “may under the totality of the circumstances give rise to reasonable suspicion to make a stop.” *State v. Richardson*, 156 Wis. 2d 128, 142, 456 N.W.2d 830 (1990). Corroborated actions of a suspect, when viewed by police acting on an anonymous tip, need not be inherently suspicious or criminal in and of themselves. *Id.* “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 Here, the complainant provided information about the existence of the grow sites and Mikla could reasonably rely on the complainant's statements that he or she saw a man with a backpack riding a red bicycle with saddlebags in the vicinity of the sites at least twice. The rest of the relevant facts were personally observed by Mikla. Because branches had been pruned at one of the grow sites and the complainant reported seeing a man with a backpack riding a red bicycle with saddle bags near the sites, Mikla could reasonably infer that Gibson—who was riding a red bicycle in the vicinity with what appeared to be pruning shears sticking out of his backpack—could be the man who pruned the

branches. Having observed water in one of the plant holes, Mikla could reasonably infer the plants were recently watered. When Mikla spotted Gibson with saddlebags dripping water, he could also reasonably infer that Gibson had watered the plants. We conclude the cumulative detail, along with reasonable inferences and deductions Mikla could glean therefrom, was sufficient to supply the reasonable suspicion that criminal activity may have been afoot, thus justifying the stop.

By the Court.—Judgment affirmed.

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

