

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 4, 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. 2007AP2458-CR

Cir. Ct. No. 2006CF809

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER ALLEN GREER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOSEPH R. WALL and KEVIN E. MARTENS, Judges.
Affirmed.

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Christopher Greer appeals from a judgment of conviction and an order denying his motion for postconviction relief. We affirm.

¶2 Greer moved to suppress physical evidence obtained from his arrest. A hearing was held to determine probable cause to arrest. The court denied the suppression motion, and Greer then pled guilty to a controlled substance charge. Greer raised the issue again in a postconviction motion, along with a claim of ineffective assistance of counsel, but the motion was denied without a hearing. Greer now appeals.

¶3 The parties agree that the central issue in this case is whether the arrest was lawful. They also agree on the applicable legal standards. The historical facts do not appear disputed in this case, and the legal determination of the lawfulness of the arrest is one we review *de novo*. See *State v. Hughes*, 2000 WI 24, ¶15, 233 Wis. 2d 280, 607 N.W.2d 621. Probable cause to arrest exists when a reasonable officer would believe that the person probably committed or was committing a crime. *State v. Secrist*, 224 Wis. 2d 201, 212, 589 N.W.2d 387 (1999).

¶4 In general, the testimony at the suppression hearing was that police received information from a confidential informant who had been arrested for heroin possession. The informant gave them information alleged to be about a person named “Chris.” Under police supervision, the informant called Chris and arranged a heroin purchase at a mall. Police did not intend to allow that meeting to occur, and once Chris told the informant by phone that he was at the mall, the informant called off the purchase. Meanwhile, detectives in the mall parking lot had located a car matching certain information the informant had given. A person matching the physical description of Chris returned to the car shortly after the cancellation of the purchase, and police stopped that car later and arrested defendant Greer.

¶5 On appeal, Greer’s argument focuses mainly on the questionable reliability of this informant due to lack of prior police experience with him. However, as the State points out, prior experience is just one factor to weigh. *See State v. Jones*, 2002 WI App 196, ¶¶13-16, 257 Wis. 2d 319, 651 N.W.2d 305. Moreover, as will become clear from our discussion below, the probable cause to arrest in this case does not require any great belief in the credibility of the informant, because probable cause was based more on facts at the mall that the police were able to perceive for themselves.

¶6 The State argues that the informant was reliable because he provided specific information that was “all” not known by the general public and was also corroborated by police. However, much of the descriptive information the State relies on would, in fact, be available to the general public, and is of little significance by itself. For example, the informant provided only a first name of “Chris,” and therefore the police did not actually know before the arrest who the informant was describing. The informant provided a general physical description of a slim, black male, in his early thirties and of a particular height, all of which would be known to anyone who knew Greer.¹ The informant provided a description of two vehicles Chris might be likely to drive; told police that Chris lived with his girlfriend in an apartment near a certain intersection; and said that Chris was on probation or parole. All these facts could be generally known or, as to probation or parole, learned from the Internet by anyone who knew Greer’s last name.

¹ We do not know what that height was, because the transcript shows the officer as having testified to two different numbers during the hearing.

¶7 The State asserts that the informant provided police with Greer's cell phone number, but there is no indication in the record that police verified this information before the arrest. Furthermore, a person's phone number might also be widely known. The informant reported that Chris's transactions were likely to occur at Mayfair Mall, but the record does not show that police obtained any independent confirmation of this before the arrest. But the record is ambiguous as to whether it was actually Chris, or instead the informant, who suggested meeting at the mall.² The informant also said Chris sold heroin in small aluminum foil packets for \$10, but this was not independently confirmed before the arrest and, in any event, may well be a standard method of selling this substance, not specific to Chris.

¶8 Based on the information so far, then, there is little in the way of probable cause to arrest. What makes the case far more compelling is that, in response to the informant's call to the cell phone number, a person generally matching the physical description of Chris was present at the proposed transaction location and, with a female, got into a car matching one of the informant's descriptions, and the car was registered to a female at a residence near the intersection where Chris supposedly lived with his girlfriend.

¶9 If this was all a coincidence, and the person arrested turned out not to have been at the mall in response to the informant's phone call, it would have been an extraordinary one. Instead, a far more reasonable inference is that the

² The officer who overheard the informant's conversation testified that Chris "said that he would be able to come out and meet him ... at Mayfair Mall." It is not clear whether the officer actually overheard Chris say this, or whether it was reported to him later by the informant. But, in either event, the above quote from testimony leaves it unclear whether Chris proposed Mayfair Mall, or whether he was merely responding agreeably to a suggestion by the informant.

person arrested had responded to the informant's phone call and arrived at the mall carrying a controlled substance, with intent to deliver that substance to the informant. Thus, we conclude that the probable cause to arrest lies less in the general descriptive information given by the informant, and much more in the fact that a person matching several reasonably specific parts of that description was at the mall at a time that appeared to be in response to the informant's request to bring heroin and was observed leaving the mall when the informant called off the transaction.

¶10 Finally, Greer argues that his trial counsel was ineffective by failing to also move to suppress Greer's statement that followed the unlawful arrest. As Greer appears to recognize, this argument hinges on a determination that the arrest was indeed unlawful, an argument we have now rejected.

By the Court.—Judgment and order affirmed.

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

