

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 2, 2009

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. 2007AP2856-CR

Cir. Ct. No. 2005CF2617

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEIK D. ROMERO,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jeik Romero appeals a judgment convicting him of first-degree intentional homicide as a party to the crime. Before charging Romero, police searched his residence and a vehicle parked outside his residence. On appeal, Romero contends that the circuit court erred by denying his motion to

suppress the evidence seized during those searches. We conclude that the circuit court properly allowed the State to use the evidence found in the vehicle. We also conclude that, if the circuit court erred by refusing to suppress the evidence found in the house, the court's error was harmless. We therefore affirm.

¶2 Alex Ortiz was shot to death in September 2003. Months later, police searched Romero's residence in connection with the investigation into a severe beating assault on Ramon Cruz Delvalle committed in April 2004. During the assault investigation, police also seized a van parked outside Romero's residence, and subsequently searched that van pursuant to a warrant.

¶3 After the State charged Romero in the Ortiz homicide, Romero unsuccessfully moved to suppress the evidence seized from both the residence and the van. At trial, in its decision from the bench, the circuit court identified evidence seized from the van as material to its guilty verdict.

¶4 On appeal, Romero contends that the facts in support of the warrant to search his residence did not establish probable cause for the warrant. As to the van search, he contends that the police lacked probable cause to seize the van, and then obtained their warrant to search the van based on information gained from the unlawful seizure.

¶5 We need not decide whether the warrant to search Romero's home was supported by probable cause because any error in admitting evidence from the residence was harmless. The State asserts, without dispute from Romero, that the only evidence from the home introduced at trial was Romero's social security card. The State further asserts, without dispute, that the card's only relevance was to show Romero's middle name, which made it cumulative because other evidence also proved his middle name. As noted, Romero does not refute the State's

assertions, and makes no attempt to argue that the card was material to the court's verdict. An alleged error is harmless if its beneficiary proves beyond a reasonable doubt that it did not contribute to the verdict. *State v. Mayo*, 2007 WI 78, ¶47, 301 Wis. 2d 642, 734 N.W.2d 115. The State has met that burden on this issue. *See Fischer v. Wisconsin Patients Comp. Fund*, 2002 WI App 192, ¶1 n.1, 256 Wis. 2d 848, 650 N.W.2d 75 (“An argument asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted.”).

¶6 We turn our attention to the evidence obtained from Romero's van. Police officers may lawfully seize a vehicle if there is probable cause to search it, and it is readily mobile. *See State v. Marquardt*, 2001 WI App 219, ¶¶30-33, 247 Wis. 2d 765, 635 N.W.2d 188. Probable cause requires only that there is a “fair probability” that evidence of a crime will be found. *State v. Hughes*, 2000 WI 24, ¶21, 233 Wis. 2d 280, 607 N.W.2d 621. The test is what a reasonable police officer would reasonably believe under the circumstances. *State v. Erickson*, 2003 WI App 43, ¶14, 260 Wis. 2d 279, 659 N.W.2d 407. Whether probable cause exists on the established facts is a constitutional issue that we resolve independently of the circuit court's ruling. *State v. Gaines*, 197 Wis. 2d 102, 110, 539 N.W.2d 723 (Ct. App. 1995).

¶7 Here, the victim of the assault that the police were investigating had named Romero as one of his assailants, and stated that Romero was armed the night of the assault. The investigating officers received information from a named informant that, on the night of the assault, the informant witnessed Romero and others take firearms from a purple minivan parked behind Romero's apartment building. After the assault, the men returned the weapons to the van. Police found the described van in the same location a week after the assault, and seized it.

¶8 Romero contends that it was unreasonable to rely on the informant's information without further corroboration of its accuracy. However, the fact that the officers were able to locate a matching van where the informant observed it justified a reasonable belief that the informant's tip was reliable. As the State notes, additional corroboration was provided by the fact that the investigating officers knew the informant. Additionally, the tip was not stale. The officers could reasonably believe that if the firearms were present seven days earlier, that either the firearms, or evidence of the firearms, remained in the van.

¶9 Romero also contends that the van's seizure failed the second part of the vehicle test, because there was no indication that the van was "readily mobile." However, even a vehicle found stationary in a parking lot may be "readily mobile." See *State v. Pallone*, 2000 WI 77, ¶60, 236 Wis. 2d 162, 613 N.W.2d 568. The test is whether an objective observer would observe the vehicle in its setting and conclude that the vehicle is being used for transportation. See *California v. Carney*, 471 U.S. 386, 393-94 (1985). Here, an objective observer could readily conclude that a van, parked in an apartment parking lot, was there as a means of transportation. Consequently, the seizure was lawful because officers could reasonably believe that there was evidence of a crime in a readily mobile vehicle.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

