

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 23, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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No. 99-0506-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES A. KREUTZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed.*

SNYDER, P.J. James A. Kreutz appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OWI) contrary to § 346.63(1)(a), STATS. Kreutz maintains that the arresting officer lacked reasonable suspicion to detain him because the officer relied on an anonymous tip that provided only readily observable facts. Because we conclude that the totality of the circumstances supports the officer's suspicion, we affirm.

The facts are undisputed. At approximately 4:50 p.m. on June 12, 1998, City of Sheboygan Police Officer Tony Fietzer was informed that a possibly intoxicated driver was leaving the area of 15th Street and Division Avenue. The dispatch described the vehicle as a tan station wagon with wood grain carrying a white male occupant and a dog and bearing a license plate number of “CPT 310.” The address of the vehicle’s registered owner was also given. Fietzer drove to the address and noticed a vehicle across the street matching the description provided.

Fietzer then observed the driver “falling out of the vehicle. He was supported by his left hand on the blacktop and had his right hand in the area as he was falling which had some keys in it.” When Fietzer exited his squad car, he noticed that the driver “was able to stand up, but fell back against the vehicle.” Fietzer walked over to the driver, who appeared confused and smelled of intoxicants. The driver was identified as James A. Kreutz. Fietzer then conducted field sobriety tests, which Kreutz performed unsatisfactorily.

Kreutz was arrested and charged with OWI. He moved to suppress the evidence on Fourth Amendment grounds, but his motion was denied. He appeals.

Kreutz argues that Fietzer lacked reasonable suspicion to temporarily detain him because the anonymous tip upon which Fietzer relied was unreliable. He claims that the tip gave only readily observable information and failed to make any predictions of future actions. We conclude that Fietzer had reasonable suspicion to stop Kreutz.

When reviewing a trial court’s denial of a suppression motion, an appellate court “will uphold a trial court’s findings of fact unless they are against the great weight and clear preponderance of the evidence.” *State v. Richardson*,

156 Wis.2d 128, 137, 456 N.W.2d 830, 833 (1990). Whether a search or seizure passes statutory and constitutional standards, however, are questions of law this court reviews de novo. *See id.* at 137-38, 456 N.W.2d at 833.

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution guarantee citizens the right to be free from unreasonable searches and seizures. Although it has been held that an investigative stop is a “seizure” under the Fourth Amendment, a police officer may, under appropriate circumstances, conduct an investigative stop when a lesser degree of suspicion exists. *See Terry v. Ohio*, 392 U.S. 1, 22 (1968). The standard required for this exception is reasonable suspicion based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.* at 21. Section 968.24, STATS., the codification of *Terry* in Wisconsin, allows investigative stops based upon a standard of reasonableness.

A determination of reasonableness depends upon the totality of the circumstances and looks to whether the “facts available to the officer at the moment of the seizure ... ‘warrant a [person] of reasonable caution in the belief’ that the action taken was appropriate.” *Richardson*, 156 Wis.2d at 139, 456 N.W.2d at 834 (quoting *Terry*, 392 U.S. at 21-22). Information received from an anonymous informant may provide police officers a basis for reasonable suspicion. *See Alabama v. White*, 496 U.S. 325, 332 (1990). When evaluating reasonable suspicion, the reliability of an anonymous tip will be measured based upon consideration of the totality of the circumstances. *See id.* at 330.

In *Richardson*, the court concluded that an anonymous tip and the verification of its innocent details provided the police reasonable suspicion to

conduct an investigative stop. *See Richardson*, 156 Wis.2d at 144, 456 N.W.2d at 836. The court stated that the “corroborated actions of the suspect ... need not be inherently suspicious or criminal in and of themselves. 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.* at 142, 456 N.W.2d at 835.

The *Richardson* court identified two principles that courts are to consider in assessing the reliability of an anonymous tip. First, “the greater the amount, specificity and uniqueness of the detail contained in an anonymous tip, the more likely it is that the informant has an adequate basis of knowledge.” *Id.* Verification of the future predictions of the suspect’s behavior is important “to avoid investigative stops based on minimal facts that any passerby or resident on the street could enunciate.” *Id.* at 142, 456 N.W.2d at 836. Citing *White*, the court noted that a “special emphasis” is placed on police corroboration of the tipster’s predictions of the suspect’s or a third party’s future actions. *See Richardson*, 156 Wis.2d at 142, 456 N.W.2d at 835-36; *White*, 496 U.S. at 332.

Under the second principle, when significant portions of an anonymous tip are corroborated by the police, an inference arises that the anonymous caller is truthful and that he or she is “more probably than not correct as to the ultimate fact of criminal activity.” *Richardson*, 156 Wis.2d at 142-43, 456 N.W.2d at 836.

Recently, in *State v. Williams*, ___ Wis.2d ___, 591 N.W.2d 823, 828-33 (1999), our supreme court recognized that reasonable suspicion to detain may be based upon (1) an anonymous tip that provides no predictions of future behavior and (2) an officer’s observations of wholly innocent activity. In

Williams, police conducted an investigatory stop of the defendant's vehicle after receiving information from an anonymous tipster that drug activity was taking place at "4261 North Teutonia" involving a "blue and burgundy Ford Bronco." See *id.* at ___, 591 N.W.2d at 826-27. While the court noted that this information could not be considered a prediction of Williams' future conduct and that the police did no more than corroborate information readily observable to the tipster, it determined that a tip need not contain a prediction in order to guarantee the tipster's reliability. See *id.* at ___, 591 N.W.2d at 829-30.

In the limited circumstance where an anonymous tip provides the police with information concerning ongoing criminal activity that a tipster is observing at the time he or she makes the call, the critical factors of "veracity," "reliability," and "basis of knowledge" may be established in a manner no less certain than they are when a tip contains a prediction of an individual's future activity.

Id. at ___, 591 N.W.2d at 830.

Because the **Williams** court permits a determination of reasonable suspicion notwithstanding **White**'s "special emphasis" on the predictive value of a tip, we reject Kreutz's contention that the tipster's information was insufficient in and of itself for its failure to predict future behavior.

We now turn to the factors of "reliability," "basis of knowledge" and "veracity." See **Williams**, ___ Wis.2d at ___, 591 N.W.2d at 830. "Reliability" looks to police corroboration of the details of the tip. If the innocent details are found to be accurate, an inference of reliability arises with respect to information about the criminal activity as well. See *id.*

In the present case, Fietzer stated that dispatch informed him that a possibly intoxicated driver was leaving 15th Street and Division Avenue. Fietzer indicated that he knew this address to be in the vicinity of several taverns. A

detailed description of the vehicle was then provided as follows: a tan station wagon with wood grain carrying a white male occupant and a dog and bearing a license plate number of “CPT 310.” When Fietzer arrived at the address of the registered vehicle’s owner, he verified the details of the suspect vehicle and observed a white male driver and a dog. When Kreutz attempted to exit his vehicle, he stumbled, landing on his hands. As he stood back up, he fell against the vehicle. Fietzer then approached him.

Because Fietzer initially corroborated the innocent details of Kreutz’s vehicle and the description of the driver and the dog, an inference of reliability arose as to the dispatch report of suspected criminal activity. *See Richardson*, 156 Wis.2d at 142-43, 456 N.W.2d at 836. This inference was corroborated when Fietzer observed Kreutz fall as he exited his car.

In assessing “basis of knowledge,” we consider how the tipster knew the information he or she relayed. *See Williams*, ___ Wis.2d at ___, 591 N.W.2d at 830. In *Williams*, the tipster was informed of suspected drug dealing through his or her contemporaneous observation of criminal conduct taking place outside his or her apartment. *See id.* at ___, 591 N.W.2d at 826. Here, there is no transcript of the anonymous call. Fietzer, nevertheless, testified that “the caller had called and indicated that the car hadn’t left yet because the dog got out of the vehicle and [the driver] was chasing the dog around, and the caller advised that they felt he was too intoxicated to drive and they feared he would drive.” While the absence of a transcript or further information about the call makes it difficult to determine why the caller suspected an intoxicated driver, Fietzer’s testimony does indicate that the tipster was presently concerned with such activity. The tip therefore suggests that the caller was making a contemporaneous, or nearly contemporaneous, observation of the suspected criminal activity. *See id.*

Finally, as to “veracity,” the *Williams* court was impressed by the fact that the caller used a “911” emergency telephone system to report the suspected crime. See *id.* at ___, 591 N.W.2d at 831. In *White*, the tipster accurately predicted future events, giving reason to believe the caller was honest. See *White*, 496 U.S. at 332. In the instant case, we do not know whether the anonymous caller used a “911” telephone number; also, we cannot conclude that the tipster predicted any future behavior of the suspect driver. Despite these deficiencies, we take heed of the instruction in *State v. Boggess*, 115 Wis.2d 443, 340 N.W.2d 516 (1983), that

[i]n determining the overall reliability of an anonymous informer’s tip, the “totality of circumstances” approach permits a deficiency in indicia demonstrating an informer’s veracity to be compensated for by a strong showing concerning the informer’s basis of knowledge, or by some other indicia of a reliability.

Id. at 454, 340 N.W.2d at 523 (citing *Illinois v. Gates*, 462 U.S. 213, 233 (1983)) (footnote omitted).

We are convinced that the totality of the circumstances compensates for the deficiency of the “veracity” component. The tipster gave reliable and specific information that was verified in each detail as to the type and color of the vehicle, the license plate number, the description of the driver, the identification of the dog, the address of the vehicle’s owner, and the general location of the driver. Aside from the tip, Fietzer witnessed Kreutz fall out of his vehicle and land on his hands, then stand back up and fall against the vehicle.¹ Kreutz’s behavior

¹ We note that Fietzer’s observation of Kreutz’s suspicious behavior was substantially more than that observed in *State v. Williams*, __ Wis.2d __, 591 N.W.2d 823 (1999), and in *Alabama v. White*, 496 U.S. 325 (1990). The officers in *Williams* only noticed that the defendant’s hand was behind the passenger seat. See *Williams*, __ Wis.2d at __, 591 N.W.2d at 826. In *White*, the police stopped the defendant solely on the basis of an anonymous tip. See *White*, 496 U.S. at 327.

corroborated the tipster's belief that Kreutz was likely intoxicated. In light of these circumstances, we are satisfied that Fietzer had reasonable suspicion to detain Kreutz. Thus, we affirm the trial court.

By the Court.—Judgment affirmed.

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

