COURT OF APPEALS
DECISION
DATED AND FILED

February 16, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-2285-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GARNER ADREAL GASTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County: DENNIS J. BARRY, Judge. *Reversed and cause remanded with directions.*

¶1 BROWN, P.J.[1] The law with regard to reasonable suspicion to stop a person based on an anonymous tip is that the police may make the stop if the person under suspicion fits some of the unique details provided by the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98). All further references to the Wisconsin Statutes are to the 1997-98 version.

anonymous tipster. We see the issue in this case as being whether the police here were able to corroborate any of the unique facts given by the anonymous tipster. We hold that there was no such corroboration and we must reverse the judgment of conviction and remand with directions to suppress the evidence gleaned from the stop.

¶2 The relevant facts of this case are as follows: On November 27, 1998, at approximately 5:40 p.m., a police officer was dispatched to the 200 block of Jones Street in Racine in response to an anonymous tip that four black males were approaching vehicles on the street and attempting to sell drugs. One of the black males was wearing an orange and blue jacket, one a blue jacket, one a checkered jacket and one a black jacket.

¶3 The officer arrived at the scene a few minutes after dispatch. After turning onto Jones Street, the officer saw Garner Adreal Gaston, a black male, about three-quarters of the way down the block standing on the front lawn of a residence, wearing a black jacket with red lettering. Four or five other black males were sitting or standing on the porch of the residence behind Gaston, but none of them was wearing a jacket such as described in the anonymous tip. After Gaston observed the officer, he first began walking toward the house and then turned and walked north toward the marked paddy wagon, which was traveling south. Recognizing Gaston from a drug-related investigation that had occurred at the 200 block of Jones Street two or three weeks prior, the officer immediately stopped and searched Gaston and found a gun on his person. The officer considered the 200 block of Jones Street a high crime area.

¶4 The key inquiry in determining if a stop is constitutional as discussed in ***Terry v. Ohio***, 392 U.S. 1 (1968), and codified in WIS. STAT.

§ 968.24 is whether reasonable suspicion exists that a person is committing, is about to commit or has committed a crime. The court defines reasonable suspicion by looking at the "totality of the circumstances," ***State v. Williams***, 225 Wis. 2d 159, 169, 591 N.W.2d 823 (1999) (quoting ***United States v. Cortez***, 449 U.S. 411, 417 (1981)), and balancing "the interests of society in solving crime and the members of that society to be free from unreasonable intrusions." ***State v. Richardson***, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990).

¶5 ***Williams*** is the case which drives the result here. In that case, the supreme court announced that an anonymous tip will provide an adequate basis for reasonable suspicion if the innocent details of the tip are corroborated by the facts observed by officers at the scene. Observation of criminal activity is not a prerequisite. *See* ***Williams***, 225 Wis. 2d at 175. The supreme court reasoned that "the officers' corroboration of the readily observable information supports a finding that because the tipster was correct about the details of these innocent activities, he or she is probably correct about the ultimate fact of criminal activity." ***Id***.

¶6 In ***Williams***, the court found that the details of an anonymous tip regarding drug-selling activity were sufficiently corroborated to establish reasonable suspicion. *See* ***id***. at 181-83. An anonymous tipster reported to a 911 operator that persons were selling drugs in a dark blue and burgundy Bronco located in the alley adjacent to the tipster's apartment. *See* ***id***. at 163-64. Police corroborated the tip. *See* ***id***. at 165. They arrived in a few minutes and discovered a Blazer, which looks much like a Bronco, of the color and at the location described by the tipster, containing a number of people. *See* ***id***. In ***Williams***, suspicion was enhanced because the Blazer did not have license plates and one of the defendant's hands was hidden from the view of the police. *See* ***id***.

at 181-82. But the key to ***Williams*** is that, with the exception of the drug selling, the police encountered exactly what the tipster reported: a blue and burgundy sport utility vehicle with a number of persons in it at a particular location. The innocent, unique details were corroborated by police observation and the police could assume criminal activity based on the corroboration of those unique details.

¶7 It is our task to compare the facts in ***Williams*** with the facts here. And here, the persons and activities the officer encountered at the 200 block of Jones Street were significantly different from the persons and activities described in the tip. The tip stated that four black males, one wearing an orange and blue jacket, one a blue jacket, one a checkered jacket and one a black jacket, were approaching vehicles trying to sell drugs. However, the police encountered Gaston, who was observed standing alone in a yard. He was not near three other males wearing jackets described by the tipster. In fact, the officer never observed any person wearing a jacket matching the description given by the tipster, except possibly Gaston.

¶8 And while Gaston was wearing a black jacket, which was the color of one of the jackets described by the tipster, this jacket provides little corroboration because a black jacket, standing by itself, simply is not unique. Had a person in a black jacket been observed next to or in the area of a person in a blue and orange jacket or a checkered jacket, the two jackets, taken together, would have constituted a unique, corroborated detail. But a black jacket standing alone, no. As our supreme court has stated, "the most important consideration concerning a physical description is whether the description is sufficiently unique to permit a reasonable degree of selectivity from the group of all potential suspects." ***State v. Harris***, 206 Wis. 2d 243, 262 n.15, 557 N.W.2d 245 (1996).

¶9 Moreover, Gaston's jacket was not an exact match because it had red lettering. In light of the precision with which the tipster described the other jackets, it is likely he or she would have noticed and reported if the black jacket had red lettering.

¶10 In summary, the lack of corroboration of all facts except the black jacket and the lack of uniqueness and inexact match of the black jacket indicate that the officer did not have an adequate basis for reasonable suspicion to stop Gaston.

¶11 The State argues that despite the fact that the tip was not corroborated, the totality of the circumstances indicates reasonable suspicion existed to stop Gaston because the officer knew Gaston from a prior drug investigation and Gaston was located in a high crime area. This argument is not persuasive because these factors alone are an inadequate basis for reasonable suspicion.

¶12 Wisconsin case law indicates that an officer's prior knowledge about a defendant's past criminal activity may be a factor in finding reasonable suspicion. *See* ***State v. Williamson***, 113 Wis. 2d 389, 402, 335 N.W.2d 814 (1983) (holding that defendant's admission that he was convicted of a crime and his volunteering that his past crime was carrying a gun were factors in establishing reasonable suspicion to stop and frisk). However, knowledge of past criminal activity or a prior criminal investigation alone is not sufficient to establish reasonable suspicion where no particular facts indicate the defendant is engaged in criminal activity. In this case, no particular facts indicated Gaston was engaged in criminal activity because his appearance and activity failed to meet the description of the tip. Furthermore, Gaston's conduct was not suspicious. He was standing in

a yard at 5:40 p.m., an ordinary activity for this time of day. Also, when he saw the police, he approached them rather than fled from them.

¶13 Our supreme court also held that the perception of a high crime area can be a factor in justifying a stop. *See* ***State v. Morgan***, 197 Wis. 2d 200, 211, 539 N.W.2d 887 (1995). However, the court's caveat is that a high crime area without other suspicious circumstances does not justify a stop. *See* ***id***. at 212 (quoting 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.3(c) at 457-58 (2d ed. 1987) ("Professor LaFave warns that 'simply being about in a high-crime area should not of itself ever be viewed as a sufficient basis to make an investigative stop.'")). As described above, no particular facts other than being involved in a prior drug investigation and being in a high crime area indicated Gaston was engaged in criminal activity.

¶14 What the State appears to be arguing is that the analysis begins and ends with a "totality of circumstances" test. Therefore, even if there are no unique facts which corroborate the tip, the fact that an officer arrives at the scene a few minutes after the tip is called in and observes a person who is known to be involved in drug activity in a high crime area is reason enough to think that the tip was valid. We disagree that this is the law. Our view of the law is this: There has to be some unique fact provided by the tipster which is corroborated through police observation. With that prerequisite established, *then* the facts that police realize that the person under suspicion is known to be involved in drug activity and that the place under observation is in a high crime area serve to *add* to the "totality of circumstances" present. The two factors become just two more reasons to support the ***Terry*** stop.

¶15 For these reasons, we are constrained to reverse the decision of the trial court and remand with directions that the evidence obtained from the stop and search be suppressed.

By the Court.—Judgment reversed and cause remanded with directions.

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