

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 7, 2006

Cornelia G. Clark
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. 2005AP667-CR

Cir. Ct. No. 2004CT1918

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JOSEPH O. CORBISIER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Brown County:
MARK A. WARPINSKI, Judge. *Reversed and cause remanded.*

¶1 PETERSON, J.¹ The State of Wisconsin appeals an order suppressing evidence obtained during a *Terry*² stop. The State contends there was

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

² This is a reference to *Terry v. Ohio*, 392 U.S. 1 (1968).

no *Terry* stop and, alternatively, that the officer had reasonable suspicion to stop Corbisier. We agree that the officer had reasonable suspicion to stop Corbisier. Therefore, we reverse the order and remand this case to the circuit court.

FACTS

¶2 Just after 11 p.m. on October 13, 2004, officer David Graf of the Green Bay Police Department was at a gas station drinking a soda. A citizen approached Graf and told him there was a staggering, intoxicated man who had just entered a vehicle in the parking lot and was about to drive away. The citizen pointed out the vehicle to Graf, who then proceeded to his squad car. Because Graf's squad car was on another side of the building, he temporarily lost sight of the vehicle. He soon rediscovered it across the street at the drive-through window of a Wendy's restaurant. Graf waited for the vehicle to leave the restaurant, but instead of pulling into traffic, the vehicle stopped in a parking stall.

¶3 Graf parked his squad car behind the vehicle and directed his spotlight toward it to blind the driver's rear view. He then approached the driver, who remained in the car eating his recently purchased food. When asked for his driver's license, the driver, Corbisier, was unable to produce one because it had been revoked. Graf observed that Corbisier's breath smelled of intoxicants, his eyes were glossy and bloodshot, and his speech was slurred. After Corbisier performed poorly on field sobriety tests, he was arrested for operating a motor vehicle while intoxicated.

¶4 On January 7, 2005, Corbisier filed a motion to suppress evidence obtained from the stop, asserting that Graf did not have reasonable suspicion to stop him. Relying on *State v. Williams*, 2001 WI 21, 241 Wis. 2d 631, 623 N.W.2d 106, the circuit court granted Corbisier's motion because Graf failed to

corroborate the information provided by the informant before seizing Corbisier. The State appeals.

DISCUSSION

¶5 We first address the State's argument that Corbisier was not seized when Graf initially approached him. Not all interactions between police and citizens constitute seizures under the Fourth Amendment. *United States v. Mendenhall*, 446 U.S. 544, 552 (1980). A seizure occurs only when an officer, by use of physical force or show of authority, restrains a person's liberty. *Id.* The ultimate question is whether a reasonable person would feel free to leave under the circumstances. *Id.* at 554. A *Terry* stop is a seizure under the Fourth Amendment. *See State v. Harris*, 206 Wis. 2d 243, 253-54, 557 N.W.2d 245 (1996).

¶6 The State argues that Corbisier parked his vehicle on his own accord and, as a result, there was no show of authority by Graf. While the fact that Corbisier parked his vehicle independent of any signal from police is relevant to whether he was stopped, there was more than that here. Graf, who was a uniformed police officer in a squad car, blocked Corbisier's ability to leave and blinded his rear view. That was a show of authority.

¶7 The State also focuses on the fact that Corbisier was eating, apparently implying that he was not going anywhere anyway. The fact that Corbisier was eating, which indicates his subjective intent, is not relevant to the objective inquiry before us. Where an officer blocks a person's avenue of retreat and blinds that person's view, a reasonable person would not feel free to drive away. As such, Corbisier was seized for Fourth Amendment purposes.

¶8 The next question is whether Graf had reasonable suspicion to stop Corbisier. An anonymous tip cannot justify a *Terry* stop unless accompanied by sufficient indicia of reliability. *Florida v. J.L.*, 529 U.S. 266, 274 (2000). In *J.L.*, the United States Supreme Court held a stop unconstitutional where police had a physical description of a man alleged to be carrying a gun. The information was provided by an unknown informant from an unknown location. *Id.* at 271, 274. That informant also did not explain how he knew about the gun. *Id.* at 271.

¶9 In *Williams*, 241 Wis. 2d 631, ¶¶34-37, 47, our supreme court upheld a stop that was based on an informant's tip. The informant called 911 and stated she observed drugs being sold from a vehicle near her apartment building. *Id.*, ¶4. She gave a description of the vehicle and its location. She also identified her apartment building's street address.

¶10 The *Williams* court distinguished these facts from those in *J.L.* *Williams*, 241 Wis. 2d 631, ¶¶32-34. The informant in *Williams* stated she was an eyewitness to the criminal activity, in contrast to *J.L.*, where the informant did not state how he knew the suspect was carrying a gun. *Id.*, ¶33. The informant also was not completely anonymous because she identified where she lived. *Id.*, ¶34. The court stated that “[r]isking one’s identification intimates that, more likely than not, the informant is a genuinely concerned citizen as opposed to a fallacious prankster.” *Id.*, ¶35. The court also noted that a tip’s reliability may be bolstered where police corroborate a tip’s details. *Id.*, ¶40. The police corroborated the tip in *Williams* when they spotted a vehicle fitting the informant’s description in the approximate location described by the informant. *Id.*, ¶39.

¶11 We conclude that the tip in this case was at least as reliable as the one in *Williams*. As in *Williams*, the informant here made clear that he personally

witnessed the information he was reporting. Also, the informant was not completely anonymous. The informant approached Graf face-to-face, thereby risking identification. Moreover, a face-to-face tip is categorically different than a tip by telephone. When an officer speaks with an informant in person, the officer can gauge the informant's credibility by observing his or her demeanor, just as judges and juries do at trials. To the extent an officer finds the informant credible, such a tip is inherently more reliable than a similar tip by telephone. Further, a "fallacious prankster" would likely avoid a face-to-face encounter with police lest the veracity of the tip be questioned. Therefore, the manner in which this tip was conveyed strongly supports its reliability.

¶12 Corbisier argues that Graf failed to corroborate the informant's assertion that Corbisier was intoxicated. This same argument was addressed in *Williams*, where the court stated that corroboration does not require police to observe criminal or inherently suspicious activity. *See id.*, ¶41. Moreover, police corroboration is only one of many possible indicia of reliability. *See id.*, ¶¶34-37. Beyond the police corroboration necessary to identify the subject of an informant's tip, the amount of corroboration necessary to give an officer reasonable suspicion will depend on the other indicia of reliability present. We conclude there were sufficient indicia of reliability to support the informant's tip, independent of any police corroboration. We nevertheless note that the details corroborated by police in *Williams* were also corroborated here when Graf saw the vehicle physically identified by the informant. *See id.*, ¶39.

By the Court.—Order reversed and cause remanded.

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

