

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 27, 2010

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. 2009AP1865-CR

Cir. Ct. No. 2008CF1726

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEVELL M. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Jevell M. Williams appeals from a judgment of conviction entered upon his guilty plea to one count of possessing heroin.¹ He

¹ The transcript of Williams's guilty plea is not in the record.

challenges the circuit court's denial of his motion to suppress evidence that police found during an investigatory stop of his vehicle. We affirm.

BACKGROUND

¶2 On April 5, 2008, police stopped a vehicle operated by Williams and discovered twenty-five packets of heroin in Williams's pocket. The State charged Williams with one count of possession of heroin with intent to deliver. Williams moved to suppress the evidence found during the search, claiming that the police lacked a constitutionally sufficient basis for stopping his vehicle.

¶3 Three police officers testified at the suppression hearing, and their descriptions of the events of April 5, 2008, are not disputed on appeal. Officer Wardell Dodds testified that he received a telephone call from a confidential informant who stated that she knew someone with a "jab" of heroin. Dodds explained that a "jab" is twenty-five packages of heroin with a street value of \$250. The informant told Dodds that the drug dealer was "a black guy driving a gray Buick." Additionally, the informant described the drug dealer's hair ("short"), age ("thirty to thirty-four years old"), weight ("approximately 170 or 175 [pounds]"), and height ("5'10" to 5'11"). The informant stated that the drug dealer would be "on North 44th Street."

¶4 Officer Zebdee Wilson testified that he and his partner, Dodds, received a telephone call from a confidential informant who "knew a drug dealer that can deliver some heroin to her." Further, "the suspected drug dealer told [the informant] that he would be in the 2400 block of North 44th Street, and that he would be driving a gray four-door Buick." The informant described the drug dealer to the police and stated that the transaction would take place within a half an hour.

¶5 Fifteen minutes after receiving the informant's call, Dodd and Wilson arrived at the location described by the informant and discovered a gray four-door Buick "mid block." Soon thereafter, the officers saw a black male matching the informant's description of the drug dealer get into the Buick and drive away.

¶6 Wilson testified that the police had worked with the confidential informant "numerous times" over a period of six to eight months. During that time, the informant "introduced undercover officers to drug dealers and made phone calls to drug dealers, with subsequent arrests of numerous suspects" leading to both charges and convictions. Wilson testified that the informant received payments for her assistance to police and was neither a known drug addict nor a suspect trying to avoid a charge. According to Wilson, the informant had never provided inaccurate information.

¶7 Officer John Bryda testified that he received radio transmissions and cell phone calls from Wilson on April 5, 2008, advising that a suspect believed to be carrying heroin was driving northbound on North 44th Street in a gray four-door Buick. Bryda described following the vehicle and conducting an investigatory stop with the assistance of other officers in the area. Williams was driving the Buick. In his pocket, the police found a baggie containing twenty-five packages of heroin.

¶8 The State presented no other witnesses. Williams elected not to testify or to call any witnesses on his behalf.

¶9 The circuit court concluded that the officers had reasonable suspicion to stop Williams, and it refused to suppress the evidence that the officers found in his pocket. Williams entered into a plea agreement with the State and

pled guilty to one count of possessing heroin. The circuit court imposed a three-year term of imprisonment, and this appeal followed.

DISCUSSION

¶10 The sole issue that Williams presents on appeal is whether the police lawfully stopped his vehicle.² He argues that the stop violated his right to be free from unreasonable seizures guaranteed under the Fourth Amendment to the United States Constitution and article 1, section 11 of the Wisconsin Constitution.³

¶11 “An investigatory stop is constitutional if the police have reasonable suspicion that a crime has been committed, is being committed, or is about to be committed.” *State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729. Whether reasonable suspicion supports an investigatory stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765

² Williams does not suggest that police acted improperly during the stop nor does he contend that the police lacked probable cause to arrest him based on the information obtained during the stop.

³ The Fourth Amendment of the United States Constitution provides:

[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, section 11 of the Wisconsin Constitution provides:

[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

N.W.2d 569. We accept the circuit court’s findings of historical fact unless they are clearly erroneous, but we review independently the application of those facts to constitutional principles. *Id.* Here, the historical facts are not disputed, so we turn to whether they justify the investigatory stop of Williams’s vehicle.

¶12 Information in a tip to police may support an investigatory stop under appropriate circumstances. *State v. Rutzinski*, 2001 WI 22, ¶17, 241 Wis. 2d 729, 623 N.W.2d 516. Before the police may conclude that a tip constitutes reasonable suspicion for a stop, however, they must assess the tip’s reliability and content. *Id.*

In assessing the reliability of a tip, due weight must be given to: (1) the informant’s veracity; and (2) the informant’s basis of knowledge. These considerations should be viewed in light of the “totality of the circumstances,” and not as discrete elements of a more rigid test: “[A] deficiency in one [consideration] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.”

Id., ¶18 (citations omitted, brackets in *Rutzinski*).

¶13 Reliability of a tip is not determined by reference to a *per se* rule. *See id.* Rather, the relevant considerations identified in *Rutzinski* “outline a general spectrum of potential types of tips that ... can give rise to a reasonable suspicion.” *Id.* Thus, the potential risk to a known informant of being held accountable for providing false information may permit the police to conclude that a tip from the informant is reliable. *See State v. Williams*, 2001 WI 21, ¶29, 241 Wis. 2d 631, 623 N.W.2d 106. Further, “a confidential informant may be trustworthy whe[n] he or she has previously provided truthful information.” *State v. Kolk*, 2006 WI App 261, ¶12, 298 Wis. 2d 99, 726 N.W.2d 337. By contrast, when a police officer receives information from an anonymous source, the

veracity of the source must “be assessed by other means, particularly police corroboration.” *Id.*

¶14 Williams relies on decisions that discuss the necessary quantum of corroboration necessary when the police receive information from an anonymous informant, and he argues that the police in this case acted on the informant’s tip without sufficiently corroborating the information. Williams’s cited authorities do not aid him, however, because his case involves a known informant, not an anonymous one.

¶15 The police do not have an obligation to corroborate information obtained from a known and reliable informant. *See State v. McAttee*, 2001 WI App 262, ¶¶12,14, 248 Wis.2d 865, 637 N.W.2d 774. A “confidential informant’s reliability may be established by evidence that [the] informant ‘ha[s] provided reliable information in the past.’” *Id.*, ¶11 (citation omitted, one set of brackets added). In the instant case, the testimony at the suppression hearing established that the confidential informant had a significant history of providing information that always proved accurate. The police were entitled to rely on a tip from such an informant. *See id.* (police had “ample reason” to rely on information from a confidential informant who had supplied accurate information on several previous occasions and who had never supplied untruthful information).

¶16 Moreover, were we to conclude in this case that the confidential informant’s prior relationship with law enforcement provided insufficient assurance of the informant’s veracity, we would nonetheless hold that the police took more than adequate steps to determine the reliability of the information before effecting an investigatory stop. The informant called police and described a drug dealer in a grey four-door Buick who would be in a specific area to deliver

twenty-five packages of heroin within half an hour of the call. Approximately fifteen minutes later, the police discovered a man matching the description of the drug dealer in the area specified by the informant, and the police observed the man get into a gray four-door Buick. ““When significant aspects of the caller’s predictions [are] verified, there [is] reason to believe not only that the caller [is] honest but also that he [or she is] well informed, at least well enough to justify the stop.”” *Williams*, 241 Wis. 2d 631, ¶28 (citation omitted).

¶17 Williams complains that the police stopped him after verifying only elements of the information’s tip that, standing alone, are not incriminating. In fact, the law is well-settled that corroboration of the innocent details of a tip may support a finding of reasonable suspicion, even under circumstances where the police receive the tip from a wholly anonymous source. *See State v. Richardson*, 156 Wis. 2d 128, 142, 456 N.W.2d 830 (1990). ““An officer may corroborate the tip by observing illegal activity or by finding the person and vehicle and the location as substantially described by the informant.”” *State v. Powers*, 2004 WI App 143, ¶14, 275 Wis. 2d 456, 685 N.W.2d 869 (citation omitted).

¶18 Here, the police began their investigation based on a tip from a source that had provided invariably accurate information on numerous prior occasions, and the police independently corroborated many details supplied by the informant. The totality of the circumstances fully justified the investigatory stop.

By the Court.—Judgment and order affirmed.

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

