COURT OF APPEALS
DECISION
DATED AND FILED

September 1, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

Nos. 98-0359-CR
98-0360-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DARWIN J. PAMANET,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Shawano County: THOMAS G. GROVER, Judge. *Affirmed.*

HOOVER, J. Darwin Pamanet appeals judgments of conviction entered upon his no contest pleas to: (1) obstructing an officer; (2) operating a motor vehicle while under the influence of an intoxicant, second offense; (3) operating with a prohibited breath-alcohol concentration, second offense; and (4) operating after suspension. Pamanet contends that the trial court erred when it denied his motion to suppress evidence based on a lack of probable cause to stop

his vehicle. This court concludes that the police officer had a reasonable suspicion sufficient to stop Pamanet's vehicle. The judgments are therefore affirmed.

The facts of the case are undisputed. At approximately 7:20 a.m. on October 1, 1996, the Shawano County Sheriff's Department received a report from the Brown County Sheriff's Department describing an anonymous call. The caller reported that a white Chevy Nova, traveling westbound on Highway 29, was being driven recklessly and that there were open intoxicants in the vehicle. The caller also provided the Nova's license plate number, but did not provide a description of the driver or report any passengers in the car.

Shawano County sheriff's deputy Ty Raddant was dispatched to look for the Nova. While traveling east on Highway 29, Raddant spotted a car that matched the caller's description traveling west on 29. He turned his squad car around and followed the Nova for approximately three-tenths of a mile before it turned off Highway 29 and onto Highway 47. At that time, about 7:50 a.m., Raddant pulled over the Nova. He had not seen any reckless driving or any open intoxicants in the car.

Pamanet was the driver. The Nova also contained three passengers, one of whom was holding an open bottle of beer. During their initial encounter, Raddant noticed that Pamanet's breath smelled of alcohol. Raddant was then joined by two other officers, one of whom conducted field sobriety tests on Pamanet that indicated he was under the influence of alcohol. As a result, Raddant arrested Pamanet and transported him to the Shawano County Jail, where a breath test was performed. The test indicated that Pamanet's breath-alcohol concentration was .17%.

After Raddant had stopped the Nova, he asked Pamanet to identify himself. Pamanet told Raddant that he did not have his license with him, but that his name was Wendell J. Martin, Jr. About one week after the arrest, however, a man identifying himself as Martin reported to the sheriff's department that someone had used his name when arrested for drunken driving. After he and Raddant reviewed the complaint, Martin believed that his cousin, Pamanet, had used his name. When Raddant compared the book-in photographs of the man who had originally identified himself as Martin with previous book-in pictures of Pamanet, it was determined that Pamanet had used his cousin's name.

At the hearing on the motion to suppress evidence, the trial court held that Raddant had reasonable suspicion to stop Pamanet's vehicle. As a result, it denied Pamanet's motion.

Pamanet contends the trial court erred when it denied his motion to suppress evidence. He argues that the evidence was obtained as a result of an illegal stop, violating his constitutional and statutory rights. Specifically, Pamanet argues that the stop was based solely on an unsubstantiated anonymous tip and, therefore, Raddant lacked reasonable suspicion to stop the vehicle. The State asserts that the facts were, under the controlling case, sufficient to excite a reasonable suspicion and justify an investigatory stop.[1]

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

[1] Additionally, and without citation to authority, the State argues that cases which involve anonymous tips reporting dangerous situations, such as those involving weapons or impaired driving, should require less corroboration than others. We need not address this issue based on our conclusion that Raddant had reasonable suspicion to stop Pamanet's vehicle.

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. ***Id***. at 137-38; 456 N.W.2d at 833.

The Fourth Amendment to the United States Constitution and art. I, § 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. ***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 reasonable 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. ***Richardson***, 156 Wis.2d at 139, 456 N.W.2d at 834. A police officer may validly perform an investigative stop when a person's activity can constitute either a civil forfeiture or a crime. ***State v. Krier***, 165 Wis.2d 673, 678, 478 N.W.2d 63, 65 (Ct. App. 1991). Also, information received from an anonymous informant may provide police officers a basis for reasonable suspicion. ***Alabama v. White***, 496 U.S. 325, 332 (1990). When evaluating whether a police officer has reasonable suspicion, the reliability of an anonymous tip will be measured upon a consideration of the totality of the circumstances. ***Id***. at 330.

The State contends that ***Krier*** controls. In ***Krier***, the police received an anonymous call that Krier was about to leave his girlfriend's house in a blue station wagon. ***Id***. at 675, 478 N.W.2d at 64. The caller claimed that Krier did not have a valid driver's license. The officer sent to investigate observed the station wagon in the girlfriend's driveway and then left the area. Soon afterwards, the same person called again and, remaining anonymous, stated that Krier had left the home and was driving northbound on Colonial Parkway. The officer went again to investigate and sighted the same blue station wagon being driven a block from the driveway. After the officer pulled the car over, the driver identified himself as Krier. ***Id***. The officer then checked Krier's license and found it had been revoked. ***Id***. at 675-76, 478 N.W.2d at 64. As a result, Krier was arrested.

Krier held that, under the totality of the circumstances, a corroborated anonymous tip can provide reasonable suspicion of illegal activity. ***Id***. at 677, 478 N.W.2d at 65. The court noted that when an anonymous caller can accurately predict future behavior, and when the caller's predictions can be verified, there is reason to believe that the caller is honest and well informed about the illegal activity. ***Id***. at 676, 478 N.W.2d at 65.[2]

Pamanet argues, however, that his case is analogous to ***State v. Williams***, 214 Wis.2d 411, 570 N.W.2d 892 (Ct. App. 1997). ***Williams*** held that police officers did not have reasonable suspicion to justify an investigative seizure. ***Id***. at 417, 423, 570 N.W.2d at 894, 896. Our supreme court quoted with approval

[2] Other courts have recognized similar factors in ***Terry*** stops, including: (1) the particularity of the description of the suspect or the vehicle; (2) the size of the area in which the suspect might be found as indicated by, for example, the elapsed time since the crime occurred; and (3) the known or probable direction of the suspect's flight. *See* ***State v. Guzy***, 139 Wis.2d 663, 676-77, 407 N.W.2d 548, 554 (1987).

United States v. Roberson, 90 F.3d 75 (3rd Cir. 1996), which concluded that the police do not have reasonable suspicion when they receive an anonymous tip of drug dealing that provides only readily observable information, rather than a prediction of future behavior, and when the police themselves observe no suspicious activity. ***Williams***, 214 Wis.2d at 421-22, 570 N.W.2d at 896; *see* ***Roberson***, 90 F.3d at 81. Our supreme court further relied on ***Roberson***'s reasoning, that the reliability of an anonymous tip may be undermined when it contains only easily obtainable facts and conditions existing at the time of the call, for it could subject any citizen to significant intrusion based on a possible anonymous prankster or misinformed individual. ***Williams***, 214 Wis.2d at 421-22, 570 N.W.2d at 896; *see* ***Roberson***, 90 F.3d at 80-81.

This court concludes that ***Krier*** controls. The record supports the trial court's conclusion that Raddant had probable cause to stop Pamanet's vehicle. The anonymous caller provided information about the Nova's present location and its direction, claiming that the car was traveling westbound on Highway 29. The caller provided a detailed description of the automobile, noting the color, make and license plate number. Shortly after receiving the dispatch, Raddant personally corroborated this information. One-half hour after receiving the call, he observed a car traveling in the same direction on 29 with the same characteristics that the anonymous caller had reported. The caller accurately described the Nova and predicted its future route. This verification provided Raddant sufficient corroboration to conclude that the caller was well informed and the report of the Nova's reckless driving and the open intoxicants was worthy of belief. Thus, under the totality of the circumstances known to him at the time, Raddant had reasonable suspicion to stop Pamanet's vehicle.

Williams is distinguishable. In ***Williams***, the anonymous tip concerned a drug dealing complaint that provided readily observable information. ***Id***. at 421, 570 N.W.2d at 896; *see* ***Roberson***, 90 F.3d 75 at 80. The caller reported that someone was dealing drugs from a blue and burgundy Bronco from a nearby driveway.[3] ***Williams***, 214 Wis.2d at 413, 570 N.W.2d at 892-93. The police officers did not conduct any surveillance of the vehicle, but rather immediately ordered the car's occupants out of the vehicle. ***Id***. at 414-15, 570 N.W.2d at 893. The information upon which they relied, however, merely described the vehicle and its stationary location similar to the situation in ***White***. These facts could easily be "predicted" because they were immediately observable at the time of the call. ***Williams***, 214 Wis.2d at 421, 570 N.W.2d at 896; *see* ***Roberson***, 90 F.3d 75 at 79. Thus, there was nothing from which the officers could corroborate the anonymous call. ***Williams***, 214 Wis.2d at 421, 570 N.W.2d at 893.

This court concludes that Raddant, under the totality of the circumstances, had reasonable suspicion to stop Pamanet's vehicle. The anonymous caller provided detailed information about Pamanet's vehicle and its predicted route, which Raddant then personally verified. Thus, the stop of Pamanet's vehicle was constitutionally valid, and this court affirms the trial court's ruling denying Pamanet's motion to suppress evidence.

[3] Although the anonymous caller had reported that someone was dealing drugs from a Ford Bronco, the vehicle was actually a Chevy Blazer. However, Williams acknowledged that both a Bronco and a Blazer are sport utility vehicles of similar appearance, and it therefore was not an issue in that case.

By the Court.—Judgments affirmed.

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