

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 8, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 99-1088-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITY OF MEQUON,

PLAINTIFF-RESPONDENT,

V.

TERRY QUIGLEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Ozaukee County:
THOMAS R. WOLFGRAM, Judge. *Affirmed.*

NETTESHEIM, J. Terry Quigley appeals from a forfeiture judgment for operating a motor vehicle while intoxicated pursuant to § 346.63(1)(a), STATS. The police conducted a *Terry*¹ stop of Quigley's vehicle based upon a telephone call from a citizen eyewitness reporting that the vehicle was being operated in an erratic fashion. Quigley challenged the stop by a motion

¹ *Terry v. Ohio*, 392 U.S. 1 (1968).

to suppress. The trial court denied the motion. We uphold this ruling on appeal. Therefore, we affirm the forfeiture judgment.

The relevant facts are not disputed. On September 13, 1998, at approximately 5:00 p.m., a person placed a telephone call to the City of Mequon Police Department. The caller was on a cellular phone in an automobile and reported that she was following a vehicle being driven in an erratic manner. The caller described the vehicle as a red Trans Am with four occupants and also reported the vehicle's direction of travel and license plate number. Based upon this information, Mequon Police Officer Tarie Grant was dispatched to the area of Wauwatosa Road and Freistadt Road in the city. While en route, the dispatcher continued to receive updated information from the caller regarding the vehicle's route of travel. This further information was, in turn, passed on to Grant. The caller also provided her name and telephone number.

Grant located the suspect vehicle traveling southbound in the 10300 block of Wauwatosa Road. Grant tried to get directly behind the vehicle but was unable to do so due to heavy traffic. She was, however, able to verify that the vehicle's appearance, license plate number and number of occupants matched the information provided by the caller. During her pursuit of the vehicle, Grant did not observe any erratic driving. Grant stopped the vehicle in the 9600 block of Wauwatosa Road because the vehicle was leaving the city limits. Quigley was the driver. Based upon Grant's further observations of Quigley, she issued him a citation for OWI.

Quigley brought a motion to suppress the evidence obtained as a result of the traffic stop. The City conceded that the sole basis for the stop of the vehicle was the information provided to the dispatcher by the caller and then

related to Grant. Quigley argued that this information was not sufficient to permit a *Terry* stop. The trial court disagreed and denied the motion. Later, the parties stipulated to the facts for purposes of a bench trial. The trial court found Quigley guilty. Quigley appeals.

We conclude that the supreme court's recent decision in *State v. Williams*, 225 Wis.2d 159, 591 N.W.2d 823 (1999), governs this case. There, an unidentified person placed a 911 telephone call and reported suspected drug dealing in a van parked in a driveway located at 4261 North Teutonia, the address of the caller's residence. The caller also provided a description of the vehicle and a general description of the area. Based upon this information, the police responded. They discovered drugs and Williams was charged with possession of cocaine with intent to deliver. *See id.* at 162-66, 591 N.W.2d at 825-27.

Williams challenged the sufficiency of the information provided by the tipster. The trial court held that the information was sufficient. *See id.* at 166-67, 591 N.W.2d at 827. However, the court of appeals reversed this ruling, holding that the information in the call did not reach the requisite level of reasonable suspicion necessary for a stop. *See id.* at 167, 591 N.W.2d at 827.

The supreme court reversed the court of appeals decision. The court held that the tipster's information satisfied the "veracity," "reliability" and "basis of knowledge" factors under the totality of the circumstances test. *See id.* at 174-83, 591 N.W.2d at 830-34.

As to "basis of knowledge," the key question is "how does the tipster know the information that he or she is relaying?" *Id.* at 175, 591 N.W.2d at 830. In *Williams*, the tipster's basis of knowledge was satisfied by the fact that the information provided was contemporaneous with the tipster's observations. *See*

id. The same is true in this case. The caller's information was provided contemporaneously with her observations.

As to "reliability," the key question is whether the tipster is probably correct about the ultimate fact of criminal activity. *See id.* at 175, 591 N.W.2d at 830-31. The *Williams* court noted that the officers' observations in response to the tip corroborated much of the tipster's information. *See id.* The court made this determination despite the fact that the tipster provided incorrect information as to the description of the van. *See id.* at 178, 591 N.W.2d at 831. Here, the observations by Grant confirmed the reliability of the caller's information. The vehicle, the license number and the number of occupants matched the information provided by the caller. In addition, the location of the vehicle and its ensuing route of travel as reported by the caller brought Grant into contact with the vehicle. We also take note, as did the supreme court in *Williams*, that the test of a citizen-informant's reliability is less strict than the test applicable to a police-informant. *See id.* at 176, 591 N.W.2d at 831.

As to "veracity," the key question is whether the tipster was "able to predict future events accurately." *Id.* The *Williams* court concluded that in most cases "honesty must be inferred from the circumstances." *Id.* The court concluded that the veracity of the tipster had been satisfied because "an anonymous caller's use of an emergency telephone system to report a current and ongoing crime provides [a] sufficient ... reason to believe that the caller is honest." *Id.* The same situation exists here. Moreover, here the tipster is not truly anonymous because she provided her name and telephone number. That fact strengthens the case for the caller's veracity since she risked criminal prosecution if she provided false information. *See* § 146.70(10), STATS. (illegal to falsely

report a 911 emergency situation); § 946.41, STATS. (illegal to knowingly give false information to a police officer).

We must also consider the circumstances in which the tip was received. *See Williams*, 225 Wis.2d at 178, 591 N.W.2d at 832. This requires that we balance the privacy interest of Quigley against the need to protect society. *See id.* There can be little doubt that the scales come down on the side of the need to protect society under the facts of this case. Quigley's erratic driving, while not documented with specificity by the caller, represented a potential hazard to other users of the roadway. Erratic driving is nearly always associated with drunken driving. That argues all the more for protecting the safety interests of society. In fact, the *Williams* court spoke to this very scenario. *See id.* at 179-80, 591 N.W.2d at 832.

After considering both the quality and quantity of the caller's information and after balancing Quigley's right to privacy against the need to protect the public, we conclude that Grant had the requisite reasonable suspicion to conduct an investigatory stop of Quigley's vehicle.

By the Court.—Judgment affirmed.

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