

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 24, 2001

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.

No. 00-2877-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

v.

KENNETH BLUE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Racine County:
EMILY S. MUELLER, Judge. *Reversed and cause remanded.*

Before Nettesheim, P.J., Brown and Snyder, JJ.

¶1 NETTESHEIM, P.J. The State appeals from a trial court order suppressing evidence resulting from an investigative stop of Kenneth Blue. A police officer approached Blue's vehicle based on information obtained from an anonymous tip. During the approach, the officer observed suspicious behavior inside Blue's vehicle. The State contends that the anonymous tip, when bolstered

by the officer's own observations, provided the officer with reasonable suspicion to stop Blue. Based on our supreme court's recent decision in *State v. Williams*, 2001 WI 21, 241 Wis. 2d 631, 623 N.W.2d 106, we agree. We therefore reverse the trial court's suppression order and remand for further proceedings.

FACTS

¶2 On July 16, 1999, the State filed a criminal complaint charging Blue with one count of possession of cocaine with intent to deliver (less than five grams) in violation of WIS. STAT. §§ 961.41(1m)(cm)1, 961.16(2)(b) and 961.50 (1999-2000).¹ The complaint additionally included a penalty enhancer of distributing within 1000 feet of a school pursuant to WIS. STAT. § 961.49.

¶3 On July 5, 2000, Blue filed a motion to suppress arguing that the evidence obtained as a result of the stop and search of him was obtained in violation of the Fourth Amendment to the United States Constitution.

¶4 The trial court held a hearing on Blue's motion on July 6, 2000. The facts underlying Blue's arrest are largely undisputed. We take them from the testimony of City of Racine Police Officer Daniel J. Meyer, who was the sole witness at the suppression hearing.

¶5 Meyer testified that prior to Blue's arrest on July 15, 1999, he had approximately six years of law enforcement experience. At about 6:30 p.m. on July 15, Meyer was dispatched in a marked police wagon to the 900 block of Peck Avenue in the city of Racine based on an anonymous tip regarding drug dealing in

¹ All references to the Wisconsin Statutes are to the 1999-2000 version.

that area. The tip referenced three black males and specific descriptions of their clothing. Blue was not the subject of this initial anonymous tip.

¶6 A couple of minutes after arriving at the Peck Avenue location, Meyer received further information from the dispatcher based on a further anonymous tip reporting that two other subjects in a brown station wagon were dealing drugs. Meyer then turned around and observed only one station wagon on the 900 block of Peck Avenue. Initially, Meyer could not see anyone inside the vehicle. As Meyer approached the vehicle, another officer yelled to him that he had observed movement in the front seat. Meyer walked closer and observed an occupant, later identified as Blue, lying down on the passenger side of the front seat. Another individual was lying down in the back seat of the vehicle. Meyer suspected that the occupants of the vehicle were attempting to hide from him.

¶7 Meyer testified that upon observing Blue and the other individual, he “directed Blue out of the vehicle first, however, [Blue] hesitated with a variety of movements which were directed to the floor of the vehicle.” Meyer suspected that Blue was “possibly removing whatever contraband he had in place and hiding it in the vehicle before he exited the vehicle.” Meyer also expressed concern that Blue was concealing a weapon. Blue finally exited the vehicle and Meyer ascertained his identity.

¶8 Meyer maintained Blue and the other individual under observation until a cover squad arrived. Meyer then searched the vehicle and Blue’s person. Meyer’s search of Blue uncovered thirty-seven individually wrapped chunks of crack cocaine.

¶9 At the close of the suppression hearing, the trial court granted Blue’s motion to suppress finding, pursuant to *Florida v. J.L.*, 529 U.S. 266 (2000), that

the anonymous tip was not sufficient to justify Meyer's stop of Blue. The State appeals.

ANALYSIS

¶10 When reviewing a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. However, the application of constitutional principles to the facts is a question of law that we decide *de novo* without deference to the circuit court's decision. *State v. Fields*, 2000 WI App 218, ¶9, 239 Wis. 2d 38, 619 N.W.2d 279.

¶11 Here, neither party disputes the underlying facts surrounding Blue's arrest, either as testified to by Meyer or as found by the trial court. We therefore accept the trial court's findings of fact.

¶12 The issue in this case is whether the trial court properly suppressed the evidence. The State argues that Meyer had a reasonable suspicion, apart from the anonymous tip, to conduct a *Terry*² stop and question Blue based on his observations as he approached Blue's vehicle. The State additionally argues that our supreme court's recent ruling in *State v. Williams*, 2001 WI 21, 241 Wis. 2d 631, 623 N.W.2d 106 (*Williams II*), supports the reliability of the anonymous tip and the validity of Meyer's stop and subsequent search.³

² *Terry v. Ohio*, 392 U.S. 1 (1968).

³ We note that at the time of the trial court's decision, *State v. Williams*, 225 Wis. 2d 159, 591 N.W.2d 823 (1999) (*Williams I*), had been vacated and remanded by the United States Supreme Court for further consideration in light of its holding in *Florida v. J.L.*, 529 U.S. 266 (2000). See *Williams v. Wisconsin*, 529 U.S. 1050 (2000). Thus, the trial court did not have the benefit of the Wisconsin Supreme Court's subsequent decision in *State v. Williams*, 2001 WI 21, 241 Wis. 2d 631, 623 N.W.2d 106 (*Williams II*).

¶13 WISCONSIN STAT. § 968.24 codifies the rule announced by the United States Supreme Court in *Terry*. *Fields*, 2000 WI App 218 at ¶10. The statute provides in relevant part, “[A] law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime” Sec. 968.24. In addition, if the officer reasonably suspects that he or she is in danger of physical injury, the officer may search the person for weapons. WIS. STAT. § 968.25.⁴ In reviewing the validity of a *Terry* stop, we consider the totality of the circumstances. *Williams II*, 2001 WI 21 at ¶22. “Reasonable suspicion ... is dependant upon both the content of information possessed by the police and its degree of reliability. Both factors—quantity and quality—are considered in the ‘totality of the circumstances—the whole picture.’” *Id.* (citation omitted).

¶14 Here, Meyer’s attention was initially drawn to Blue’s vehicle by an anonymous tip which “[s]pecifically identified ... a brown station wagon and two other subjects in the station wagon dealing drugs.” While anonymous tips are generally less reliable than tips from known informants, they can form the basis for reasonable suspicion if, suitably corroborated, they exhibit “sufficient indicia of reliability.” *J.L.*, 529 U.S. at 270; *Williams II*, 2001 WI 21 at ¶31. Thus, the question is whether the anonymous tip in this case had those indicia of reliability. *J.L.*, 529 U.S. at 270. We conclude that it did.

⁴ On appeal, Blue challenges only the temporary detention under WIS. STAT. § 968.24. He does not challenge the ensuing search under WIS. STAT. § 968.25.

¶15 The reliability of an anonymous tip was recently examined by our supreme court in *Williams II* and by the United States Supreme Court in *J.L.* Because *Williams II* was decided in light of the United States Supreme Court decision in *J.L.*, we begin our discussion with *J.L.*

¶16 In *J.L.*, an anonymous caller reported to the Miami Dade Police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. *J.L.*, 529 U.S. at 268. Officers went to the bus stop and saw three black males; one of the men, later identified as J.L., was wearing a plaid shirt. *Id.* Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct. *Id.* The officers did not see a firearm or observe any threatening or otherwise unusual movements. *Id.* Therefore, the officers' suspicion that J.L. was concealing a weapon "arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller." *Id.* at 270. The Court held that the anonymous tip lacked sufficient indicia of reliability to provide a reasonable suspicion to make a *Terry* stop. *J.L.*, 529 U.S. at 271.

¶17 Subsequently, in *Williams II*, our supreme court addressed whether an anonymous tip containing a contemporaneous report of drug trafficking, combined with independent observations and corroboration of details from the tip, justified an investigatory stop. *Williams II*, 2001 WI 21 at ¶2. After consideration of the totality of the circumstances, including the indicia of reliability surrounding the anonymous tip and the officers' additional observations, the court concluded that the officers reasonably suspected that criminal activity was afoot. *Id.*

¶18 In *Williams II*, the police received an anonymous tip indicating that individuals were selling drugs from a blue and burgundy Ford Bronco automobile

in the parking lot of an apartment building. *Id.* at ¶4. The tipster additionally provided the police with her address but did not provide her name. *Id.* Using the information in the tip, the police located the vehicle—a Chevrolet Blazer—and noted that the vehicle did not have license plates. *Id.* at ¶7. The police also noted that Williams reached down and behind the passenger seat as they approached. *Id.* at ¶8. After ordering Williams out of the vehicle, the police searched the area of the vehicle within Williams' reach and discovered marijuana and rock cocaine base. *Id.* at ¶¶9, 10. Williams moved to suppress the evidence, challenging the officers' search of his vehicle. *Id.* at ¶11.

¶19 In assessing the indicia of reliability surrounding the anonymous tip, the court considered that: (1) the tipster described the basis for her knowledge of the criminal activity, *id.* at ¶33; (2) the tipster provided the dispatcher with self-identifying information, if not her name, *id.* at ¶34; (3) the tipster dialed 9-1-1, thus putting her identity at risk, *id.* at ¶¶35, 39; (4) there was an audio recording of the tip providing a record of the tip and its content, *id.* at ¶37; (5) the police were able to corroborate significant, if innocent, details of the tip, i.e., the description of the vehicle and its location relative to the layout of the surrounding area, *id.* at ¶39; and (6) the police observed two facts independent of the tip giving them reason to believe criminal activity was afoot—Williams reached behind the seat indicating that he was either reaching for a weapon or attempting to conceal a weapon and his vehicle did not have license plates, *id.* at ¶45.

¶20 In comparing the circumstances presented in *Williams II* to those presented in *J.L.*, the *Williams II* court observed, “Here, there is plainly so much more than a ‘bare-boned’ tip.... We have here the necessary ‘cumulative detail, along with reasonable inferences and deductions which a reasonable officer could

glean therefrom, [that] is sufficient to supply the reasonable suspicion that crime is afoot and to justify the stop.”” *Williams II*, 2001 WI 21 at ¶47 (citations omitted).

¶21 Blue argues that the anonymous tip and surrounding circumstances in this case are similar to those presented in *J.L.* We disagree. As our supreme court observed in *Williams II*, the tip in *J.L.* was “a ‘bare-boned’ tip about a gun. All the police had to go on ... was the bare report of an unknown, unaccountable informant.” *Williams II*, 2001 WI 21 at ¶32. A tip containing only readily observable identifying information could not, standing alone, establish a reasonable suspicion. *Id.*

¶22 Here, we agree with Blue that the tip, standing alone, did not constitute reasonable suspicion under *Terry* and Wis. STAT. § 968.24 to warrant a temporary interference with his liberty. The record reveals no information as to the manner in which the anonymous tipster acquired his or her information or as to the tipster’s identity. Thus, the tip lacked the level of reliability of the tip in *Williams II*.

¶23 However, Meyer’s temporary detention of Blue rested on far more than the information conveyed by the tip. First, Meyer’s observations corroborated significant, if innocent, aspects of the tip—he spotted a vehicle matching the description and the location provided by the tipster. And although Meyer did not initially verify that there were two occupants in the vehicle, he was able to do so prior to making contact with Blue. Second, unlike the officers in *J.L.* who did not make any observations independent of the anonymous tip, Meyer made two additional observations, unrelated to the tip, giving him reason to believe criminal activity may have been afoot. Meyer observed Blue and another individual lying down in the vehicle. Then, as Meyer approached the vehicle, he

saw Blue “directing some activity toward the floor of the vehicle.” Meyer testified as to his concern that Blue was attempting to hide from him or, in gesturing to the floor, attempting to stash contraband or possibly a weapon. Meyer had these collective facts in his command prior to making contact with Blue.⁵

¶24 We hold that this collective information entitled Meyer to perform a temporary detention. Although there may have been an innocent explanation for Blue and his friend lying down in the vehicle and for Blue’s furtive gesture, it was also reasonable for Meyer to suspect that Blue was attempting to hide a weapon or contraband from him. Meyer made all of these observations while in a public place and before he interfered with any of Blue’s liberty interests. It is reasonable for an officer to conduct an investigatory stop to resolve suspicious activity that is ambiguous. *State v. Jackson*, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989).

Indeed, the principal function of the investigative stop is to quickly resolve the ambiguity and establish whether the suspect’s activity is legal or illegal.... [I]f any reasonable suspicion of past, present or future criminal conduct can be drawn from the circumstances, notwithstanding the existence of other inferences that can be drawn, officers have the right to temporarily freeze the situation in order to investigate further.”

Id. We conclude that after having received the tip and observing Blue’s behavior, Meyer acted reasonably in investigating the situation further.

¶25 While a court must examine the indicia of reliability of the tip itself, the court may also consider the events following the call and leading up to the

⁵ The trial court also recognized that Meyer had more information than did the officers in *Florida v. J.L.*. Nonetheless, the court suppressed the evidence. However, as we have noted, the court made its ruling without the benefit of *State v. Williams*.

investigatory stop in determining the level of reliability of the tip. *See Williams II*, 2001 WI 21 at ¶¶33-45. We conclude that the content of the tip, Meyer's corroboration of the facts in the tip and his independent observations of suspicious behavior were sufficient to justify the investigative stop of Blue.

CONCLUSION

¶26 We hold that Blue was properly detained pursuant to *Terry* and WIS. STAT. § 968.24. Since Blue makes no challenge to the ensuing search of his person that produced the contraband, we uphold that search. We reverse the trial court's ruling suppressing the evidence and we remand for further proceedings.

By the Court.—Order reversed and cause remanded.

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