

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 27, 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. 2005AP3143-CR

Cir. Ct. No. 2005CF337

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRYANT T. GRIMES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Reversed and cause remanded.*

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

¶1 KESSLER, J. Defendant Bryant T. Grimes appeals from a judgment of conviction and an order denying his motion to suppress all evidence realized from a search of his person instigated by a tip to police from an

anonymous caller. Because we find that, based upon the test set forth by the United States Supreme Court in *Florida v. J.L.*, 529 U.S. 266 (2000), and the totality of the circumstances surrounding the receipt of the tip, the police did not have a reasonable suspicion to stop and search Grimes, we reverse the trial court's denial of Grimes's motion to suppress, and thereby, also reverse the underlying conviction, and remand to the trial court for further proceedings consistent with this opinion.

BACKGROUND

¶2 On January 19, 2005, Vice Control Detective Brian Otzelberger received a telephone call from an anonymous male caller at approximately 12:45 a.m. The caller refused to give his name or address and the caller's phone number did not appear on the detective's caller ID screen. Viewing the evidence most favorably to the State, the information the caller provided to Otzelberger in this call was: (1) a man by the name of "Brian" or "Bryant" Grimes was selling drugs; (2) Grimes was doing this at a tavern at 24th and Greenfield; and (3) Grimes was wearing a black, waist-length, wool coat and black winter cap. After giving this information, the caller abruptly hung up.

¶3 Otzelberger immediately contacted Dispatch and relayed the above information for investigation by a squad. Only the above-described information was relayed to Dispatch at this time. Dispatch contacted police officers Shalamar LeFlore and Benitez¹ at approximately 12:50 a.m. The printout of the Dispatch

¹ Officer Benitez's first name is inconsistently recorded in the record as either "Xavier" or "Javier." It is clear there was only one officer Benitez, so we will use only his last name to avoid confusion.

record notes the information Otzelberger provided to Dispatch, which Dispatch provided to the officers:

00:49:12 CREATE Location: S 24TH ST / W
GREENFIELD AV Type: 1810
Name: Detective Otsenberger
DAREA: D6 RptDist:5384
TypeDesc:DRUG DEALING
LocDesc:<1200/2300> Priority:2
Response:1PO Agency:MWPD
LocType:H

00:50:57 ENTRY Comment: SQ TO
24TH/GREENFIELD SOUTHEAST
CORNER INSIDE CLUB POSS
CALLED 24 //BLK MALE
WEARING BLK WAIST COAT
BLK WINTER CAP HAS DRUGS
IN POCKET/GAVE NFI

00:50:57 -PREMIS Comment: PPR

00:51:48 INFO Comment: SUBJS NAME IS
BRIAN GRIMES/NFI

The record does not establish that the investigating officers received any other information before they went to the tavern indicated.

¶4 Approximately five to ten minutes after Otzelberger notified Dispatch, the anonymous caller telephoned Otzelberger again, stating “that now he could talk.” During the second call, the caller gave Otzelberger “additional information as to subject’s name, age, height, and the clothing that he was wearing.” Otzelberger testified that this information was that Grimes was thirty-nine years old and five foot eleven, wearing a black waist-length jacket, a winter cap, and that he was seated by the bathroom. The caller also told Otzelberger that Grimes “should have six to seven dime-size pieces of crack cocaine.” Otzelberger asked how the caller knew this, the caller stated “that he had bought one dime from him ... shortly before he had called.”

¶5 Otzelberger did not specifically remember whether he had “relay[ed] that [additional] information to any other members of the Milwaukee Police Department,” but believed that he would have told the 9-1-1 operator.² Otzelberger’s report discloses neither the time the second call came in nor that he had recontacted the 9-1-1 operator. The printout of the Dispatch record notes no additional calls from Otzelberger after the first call. Neither Otzelberger nor the investigating officers report any personal contact between them after the Dispatch notice and before their contact with Grimes.

¶6 The arresting officer, LeFlore, testified that Dispatch sent him and his partner, Benitez, to a bar located at 24th and Greenfield Avenue. LeFlore testified that the “nature of the dispatch” “was to check for a subject that had drugs on him, a drug complaint.” The following exchange occurred between the State and LeFlore:

Q And do you recall specifically what information was provided to you regarding the subject that was supposed to be at the bar at that location with drugs?

² Otzelberger testified as follows:

WITNESS: I believe I would have told – called the 9-1-1 operator back and given her that additional information so that could be relayed to the responding squad.

[STATE]: Do you have any independent recollection of providing additional information to anyone else in the police department after the second call?

WITNESS: I – I believe I would have called – I have no reason to doubt that I wouldn’t have because that is pertinent information. I mean, age, height, what he’s wearing, where he’s seated in the bar, that would be beneficial to them when they were responding to the tavern to check for this individual.

A Yes, he gave a description of a black male, gave *his height, his weight,*³ and what he was wearing.

Q And did you respond to that location, then?

A Yes.

Q And did you go into the bar at that location?

A Yes.

Q And when you went into the bar, what did you yourself observe?

A First thing I observed was the gentleman that I believed fit the description sat at the end of the bar *exactly where it was described in the call as to where he would be.*⁴

....

Q And when you went in there – in the tavern, do you recall if the tavern was busy? Were there other people in there?

A There were other people, maybe one or two bartenders, and I think, in total, maybe three or four patrons.

....

Q Was there any other black males in the bar, to your recollection?

A Not that I can recall.

Q But to your recollection, was there anyone other than Mr. Grimes who fit the description of the – that you had going into the bar?

A No, he was the only one who fit the description.

(Emphasis added.)

³ Nothing in the Dispatch report describes Grimes's height or weight.

⁴ Nothing in the Dispatch report describes a specific location of Grimes in the tavern.

¶7 At the hearing on the motion to suppress, long after Grimes's arrest, LeFlore stated that he knew from Dispatch that the subject was five feet eleven and weighed 200 pounds, and acknowledged that this information was not anywhere on his report. LeFlore continued:

Q All right. Now, when you entered Club 24, you said that it was pretty dead in there, correct?

A Correct.

Q And you looked over and saw a man sitting at the southwest corner of the bar?

A Correct.

Q You testified that that man fit the description?

A Yes.

Q That the man was sitting down, correct?

A Yes.

Q And so when you say "fit the description," you are talking in terms of clothes – clothing that he was wearing?

A And his physical nature.

Q But the physical description was someone who was five foot 11, correct?

A Correct.

Q And 200 pounds?

A Yes.

Q We know that Mr. Grimes is six foot seven and 280 pounds?⁵

⁵ The Milwaukee Police Department Arrest-Detention Report also records Grimes's height as "607" [sic] and weight as "280."

A Correct.

Q When you saw Mr. Grimes sitting at the bar, what was he doing?

A I think he was having a beer.

Q He was just sitting there?

A Correct.

Q And you walked up to him?

A Yes, I did.

Q You and your partner?

A Yes.

Q It's your testimony you asked his name?

A Yes.

Q And he gave you his name?

A Yes.

Q And then you asked him to stand up?

A Yes.

Q And then you patted him down for – cause, as you said, officer safety?

A Yes.

Q Like for a weapon?

A Making sure I was safe.

Q There was nothing in that original description that stated that Mr. Grimes had a weapon, was there?

A No.

In the course of the pat-down, the police discovered several rocks of cocaine. On the basis of those drugs, Grimes was charged.

¶8 With regard to the Dispatch report, the State specifically acknowledged on the record that the arresting officers did not have the information Otzelberger received in the second phone call. In discussing the Dispatch report, the State noted:

I think that document speaks for itself as to what the officers – what the dispatch was that the officers received.

That they – the location was to South 24th and West Greenfield. Information came from Detective Otzelberger. Comment on that dispatch which occurred at approximately 12:50 a.m. was the squad was sent to 24th and Greenfield, the southeast corner inside a club possibly called 24. Black male wearing black waist coat, black winter cap, has drugs in pocket and his name is Bryant Grimes.

In discussing the subsequent information obtained by Otzelberger, the State acknowledged that additional information was received and further acknowledged that it did not reach the arresting officers before they stopped Grimes.

I think the main additional information was the height and weight and that there was more specific information that there was six to seven dime bags in his pocket.

I think the dispatch would state that and I think *I would conclude that that information was not given to the officers on the street. It was given to Detective Otzelberger. It doesn't appear that it was dispatched to the officers on the street through the dispatch.*

(Emphasis added.)

¶9 The problems of calendaring resulted in delay of the trial court's decision for some time after the hearing. When the trial court announced its decision to deny the motion to suppress, it found that:

Basically what happened is on January 19th at approximately 12:45 in the morning, the detective who was working vice squad who testified earlier that he took a call from a male caller and wanted to know – basically said that someone had some drugs, and the detective apparently had

asked the male caller who was calling, where that was at. It was somewhere in the vicinity of 24th and Garfield [sic]. The, um, detective had asked further questions, and it was determined that there was a person by the name of Grimes that was in that tavern with the – the drugs and what he was wearing ... was pretty consistent ... as to the outerwear of what the defendant was wearing. The description of the defendant was off.... [A]nd [the caller] stated when he was selling – in fact, he bought – the person who called the police in this anonymous call had bought a – a phone [sic] for ten dollars and then the caller hung up. Subsequent thereafter, the caller called again and gave some additional information thereafter, and a squad was sent and the squad went into this bar and – and subsequently did a patdown of the defendant and found – found the drugs.

¶10 Upon the trial court’s denial of his motion to suppress, Grimes pled guilty to possession of cocaine and was sentenced. Grimes then appealed the denial of his motion to suppress.

DISCUSSION

¶11 In reviewing a trial court’s decision on a suppression motion, we apply a mixed standard of review. *State v. Matejka*, 2001 WI 5, ¶16, 241 Wis. 2d 52, 621 N.W.2d 891. We will uphold the trial court’s factual findings unless they are clearly erroneous, but will “independently evaluate those facts against a constitutional standard to determine whether the search was lawful.” *Id.*

¶12 For an investigatory stop to be constitutional, a law enforcement officer must reasonably suspect “that a crime has been, is being or is about to be committed.” *State v. Young*, 2006 WI 98, ¶20, ___ Wis. 2d ___, 717 N.W.2d 729 (citing *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996) (footnote omitted)); *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). This court must consider whether all the specific and articulable facts, known to the officer at the time of the encounter, together with the rational inferences from

those facts, amount to reasonable suspicion. *State v. Dunn*, 158 Wis. 2d 138, 146, 462 N.W.2d 538 (Ct. App. 1990). “[I]f any reasonable inference of wrongful conduct can objectively be discerned ... officers have the right to temporarily detain the individual for the purpose of inquiry.” *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). If the temporary detention is based on a reasonable suspicion, then the officers may also conduct a pat down if they have reasonable fear for their safety. WIS. STAT. § 968.24 (2003-04);⁶ *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Conversely, if there is no basis for reasonable suspicion, a search conducted during the detention is invalid and the fruits thereof must be suppressed. *See Minnesota v. Dickerson*, 508 U.S. 366, 379 (1993); *see also J.L.*, 529 U.S. at 274 (if person not legitimately stopped under *Terry*, protective search not justified).

¶13 Reasonableness is measured against an objective standard taking into consideration the totality of the circumstances known to the officer at the time. *Richardson*, 156 Wis. 2d at 139-40. The question of what constitutes reasonable suspicion is an objective common sense test: under all the facts and circumstances known to the officer, “what would a reasonable police officer reasonably suspect in light of his or her training and experience.” *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989).

¶14 In determining whether the officers had reasonable suspicion to stop Grimes, “[t]he test we must apply asks whether the anonymous tip, combined with other information known to the police, supplied ‘sufficient indicia of reliability to

⁶ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

provide reasonable suspicion.” *State v. Sherry*, 2004 WI App 207, ¶5, 277 Wis. 2d 194, 690 N.W.2d 435 (citation omitted). In *Sherry*, we noted “that the most apt guidance on this topic is found in two decisions of the United States Supreme Court: [*Alabama v.*] *White*[, 496 U.S. 325 (1990)] and *Florida v. J.L.*, 529 U.S. 266 (2000).” *Sherry*, 277 Wis. 2d 194, ¶6.

¶15 An anonymous tip may have sufficient indicia of reliability because the police can independently corroborate important aspects of the tip. In *White*, the issue was “whether the [anonymous] tip, as corroborated by independent police work, exhibited sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.” *Id.* at 326-27. An anonymous tipster contacted police and told them that a woman named Vanessa White would be leaving a certain apartment building at a particular time, would enter and drive a brown station wagon with a broken right taillight to a specific motel and would have cocaine in an attaché case. *Id.* at 327. The officers went to the apartment building and observed the car in the parking lot. *Id.* While the officers were watching, a woman exited the building without an attaché case, got into the car, and drove in a direct route toward the motel named by the tipster. *Id.* The officers stopped the vehicle shortly before it reached the motel and found that the woman was, in fact, Vanessa White. *Id.* After a consensual search of the car, the officers discovered an attaché case containing marijuana and also found cocaine in White’s purse. *Id.* White’s motion to suppress the search based on lack of reasonable suspicion to justify the stop was denied. *Id.* She pled guilty to all charges. *Id.* On appeal, the order denying suppression was reversed. *Id.* at 327-28. The United States Supreme Court reinstated the trial court decision, concluding that although a number of the details (such as the woman’s name) were not corroborated by police prior to making the investigative stop, reasonable suspicion

was present because police observed that a woman left the apartment building described by the tipster at the approximate time predicted, got into the described vehicle and then proceeded to take the most direct route possible to the named motel. *Id.* at 331. The Court, in reviewing existing law regarding investigatory stops based on anonymous tips, noted that:

Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and quality—are considered in the “totality of the circumstances—the whole picture,” that must be taken into account when evaluating whether there is reasonable suspicion. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.

Id. at 330 (citation omitted). Particularly when the tip includes details involving predicted future behavior, one means of providing this “indicia of reliability” to an anonymous tip is by police corroboration of details through observation or investigation. *Id.* at 332. The tipster in *White* provided this predictive information, which the police then independently verified. *Id.* Because of the significant aspects of the tip the police were able to independently verify, the Court concluded that although it was a “close case,” the tip contained sufficient “indicia of reliability” to support reasonable suspicion. *Id.*

¶16 In contrast, in *J.L.*, the anonymous caller provided no predictive future behavioral information, but said only that a black male wearing a plaid shirt was at a bus stop on a particular street corner, and was carrying a concealed gun. *Id.*, 529 U.S. at 268. The police observed three black males at that street corner doing nothing that was otherwise suspicious. *Id.* One wore a plaid shirt. *Id.* The Court concluded that the lack of any predictive information “left the police without means to test the informant’s knowledge or credibility.” *Id.* at 271.

Consequently, the stop and subsequent frisk for weapons was not supported by reasonable suspicion. *Id.*

¶17 Additionally, the anonymous caller in *J.L.* was truly anonymous; the information came by a non-traceable telephone call rather than in person, and the caller refused to give any self-identifying information. *Id.* at 268. There was no recording of the call. *Id.* at 268. There was no possibility of independent identification or other verification of informant reliability. *Id.*

¶18 Finally, the police in *J.L.* conducted no independent observation or investigation to corroborate the alleged criminal conduct (carrying a gun) prior to executing the investigatory stop. *Id.* at 268. The police testified that they went to the named bus stop, “saw three black males ‘just hanging out [there]’ and that one of the males was wearing a plaid shirt. *Id.* The officers observed no weapons and “[a]part from the anonymous tip ... had no reason to suspect any of the three of illegal conduct ... and J.L. made no threatening or otherwise unusual movements.” *Id.* Without any further observation, one police officer told J.L. “to put his hands up on the bus stop” and the officer then commenced a patdown search and discovered the weapon. *Id.* The other officer “frisked” the other two individuals present at the bus stop and found nothing. *Id.* The officers arrested J.L. for carrying a concealed weapon without a license and possessing a firearm while a minor, both crimes in Florida. *Id.* at 269.

¶19 In evaluating whether the indicia of reliability in the anonymous tip were present, the Court in *J.L.* first analyzed its “stop and frisk” decisions since its decision in *Terry*. *J.L.*, 529 U.S. at 269. The Court made or restated the following determinations regarding the use of and reliance upon anonymous tips:

- “[A]n anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity’ ... however, there are situations in which an anonymous tip, suitably corroborated, exhibits ‘sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.’” *Id.* at 270 (citing *White*, 496 U.S. at 329, 327).
- “The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search.” *J.L.*, 529 U.S. at 271.
- “[R]easonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person,” *id.* at 272, and citing 4 W. LAFAVE, SEARCH AND SEIZURE § 9.4(h), p. 213 (3d ed. 1996) for the proposition that “reliability as to the likelihood of criminal activity ... is central in anonymous-tip cases,” *J.L.*, 529 U.S. at 272.

The Court concluded that neither the anonymous caller nor the information reported by the caller provided the necessary indicia of reliability to establish reasonable suspicion for an investigatory stop. *Id.* at 274.

¶20 Shortly after the Supreme Court’s decision in *J.L.*, the Wisconsin Supreme Court, in *State v. Williams*, 2001 WI 21, 241 Wis. 2d 631, 623 N.W.2d 106, applied the Court’s reasoning in *J.L.* to its analysis of the reasonableness of an investigatory stop based on an anonymous tip. *Williams*, 241 Wis. 2d 631, ¶2. The *Williams* court discussed the necessary quantity and quality of information which, *when known at the time of the stop* and viewed in the totality of the circumstances, could support reasonable suspicion. *Id.*, ¶47. The factors to consider include: (1) whether the anonymous tipster risked identification, *id.*, ¶¶34-35; (2) whether the tipster explained how he or she knew about the reported

criminal behavior, *id.*, ¶33; (3) whether the tipster was a citizen informant (*i.e.*, reporting observations of the criminal activity, but not an active participant in the criminal acts), *id.*, ¶36; (4) whether “the tip contained only information readily observable by passersby,” *id.*, ¶30; (5) whether the information provided contained predictive information about future behavior by the subject, *id.*, ¶42; and (6) whether the police either independently corroborated any of the predictive information supplied by the tipster or observed any criminal or suspicious behavior on the part of the subject, *id.*, ¶39.

¶21 In *State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, an anonymous tip case decided one week after *Williams*, the Wisconsin Supreme Court considered “under what circumstances a cell-phone call from an unidentified motorist provides sufficient justification for an investigative traffic stop.” *Rutzinski*, 241 Wis. 2d 729. The *Rutzinski* court upheld the stop in part because the anonymous caller left himself open to identification by remaining on the line with the police dispatcher, verified to the dispatcher the location of both the erratic driver and the police officer sent to the scene, identified himself as the car immediately ahead of the reported vehicle at a time when the officer could observe the caller’s car, and stopped at the side of the road when the police pulled over the reported vehicle. *Rutzinski*, 241 Wis. 2d 729, ¶32. The officer in *Rutzinski* could verify the particular vehicle being driven where the anonymous caller said it was being driven, and observed the car which the anonymous caller reported he was driving, and the caller stopped his car and remained at the scene when the officer stopped the reported vehicle. *Id.*, ¶33. Thus the anonymous caller provided both predictive, verifiable information and personally identifying information. Both types of information are indicia of reliability in the context of an anonymous caller. *Id.*, ¶¶20, 24.

¶22 Finally, the supreme court concluded that exigent circumstances—here reported dangerous highway driving which threatens public safety—can give rise to reasonable suspicion, even in the absence of the “indicia of reliability” generally required in an anonymous tip. *See id.*, ¶34 (“[A]n imminent threat to the public’s safety” created a need to stop an erratic driver.). The *Rutzinski* court explained that this exception is in keeping with “the Supreme Court’s caveat that ‘extraordinary dangers sometimes justify unusual precautions’” and emphasized that it did not replace the indicia of reliability identified in *White* or *J.L.*; rather, extraordinary dangers must be considered as part of the totality of the circumstances surrounding a particular investigatory stop. *Rutzinski*, 241 Wis. 2d 729, ¶36 (citing *J.L.*, 529 U.S. at 272).

¶23 In the case before us, the record contains no evidence of exigent circumstances which might justify an investigatory stop. Grimes was seen doing nothing but having a beer.⁷ He was understood by the officers to perhaps be in possession of drugs.⁸ There was no report of his display of a weapon or of conduct that threatened the safety of the patrons of the tavern.⁹ Reasonable suspicion was not established under the criteria discussed in *Rutzinski*.

¶24 Nor was reasonable suspicion supported by the facts in the anonymous tip which were actually known by the officers at the time of the investigative stop. The trial court concluded that *all* of the information from *both*

⁷ *See* LeFlore’s testimony, *supra* ¶7.

⁸ *See* LeFlore’s testimony, *supra* ¶6.

⁹ *See* discussion of information provided by anonymous caller to Otzelberger, *supra* ¶¶2 and 4; Dispatch printout, *supra* ¶3; and testimony of LeFlore, *supra* ¶7.

anonymous calls was transmitted to the arresting officers *before* they encountered Grimes in the tavern.¹⁰ The record shows no facts from which one could conclude that the information from the second call was transmitted to the officers *before* they made the investigative stop.¹¹ Otzelberger testified only that he “believed” that he “would have” relayed the information, but neither the Dispatch records nor any report or testimony of any officer indicates that actually occurred.¹² Had that actually happened, the trial court might well have found that the officers had a reasonable suspicion based on the informant’s admission to his own criminal activity, the accuracy of the clothing description, a precise location for Grimes inside the tavern, and the officers’ professional experience.

¶25 However, in this case, the record reflects that when they made the investigative stop of Grimes, the police officers at the scene had only the following information: (1) the person’s name was Bryant or Brian Grimes; (2) the person was a black male; (3) the person was wearing a black, wool, waist-length coat and a black winter hat; (4) the person was at a bar on the corner of 24th and Greenfield Avenue; and (5) the person was in possession of (perhaps dealing)¹³ drugs. All of the later acquired information from and about the anonymous caller

¹⁰ See *supra*, ¶9. The press of calendar matters apparently resulted in the trial court announcing its findings and decision on the motion to suppress several months after it heard the testimony. It is understandable how, without benefit of the transcripts at the time, the earlier testimony might have been somewhat confusing. Nonetheless, the record simply does not support the factual findings the trial court made on these matters.

¹¹ See State’s discussion of Dispatch printout, *supra* ¶8.

¹² See Dispatch printout, *supra* ¶3; testimony of Otzelberger, *supra* ¶5 and n.2.

¹³ It is unclear from the record whether the responding officers were told that Grimes may have been dealing drugs or was simply in possession of them. The Dispatch printout comments only about “possession,” but inserts a code for “dealing.” LeFlore testified only that he had been told about possession.

was unknown to the arresting officers at the time they stopped Grimes. The printout of the Dispatch record provides no height or weight information. The height and weight information later provided by the anonymous caller was extremely inaccurate as applied to Grimes. The record provides no basis from which the investigating officers could have learned height and weight information *before* they approached Grimes.

¶26 The officers conducted no independent investigation, such as observing Grimes for a period of time to attempt to corroborate his possession/dealing of drugs. The officers did not observe any actions by Grimes that would independently indicate that Grimes had committed, was about to commit or was committing any crime. *See* WIS. STAT. § 968.24; *Young*, 717 N.W.2d 729, ¶20; *Williams*, 241 Wis. 2d 631, ¶21. LeFlore testified that he and Benitez simply walked into a tavern located at the intersection of 24th and Greenfield Avenue, approached the only black man in the tavern, who happened to be seated at the bar, and asked him his name. Based on Grimes stating his name, which matched in substantial part the name given by the anonymous caller (Bryant or Brian), the police officers initiated a pat-down search of Grimes for weapons (none were found) and subsequently seized the cocaine which Grimes had in his pocket. The record reflects no “extraordinary danger” in the circumstances of the tip or the investigation that would permit an exception to the “indicia of reliability” necessary to support reasonable suspicion. *See Rutzinski*, 241 Wis. 2d 729, ¶36.

¶27 The trial court also emphasized in its findings the importance of 9-1-1 calls and the discussion of those calls in *Williams*. The trial court commented, in discussing *Williams*, that: “There is [sic] a lot of public policy issues for anonymous tips and that case is very instructive as to why 9-1-1 calls

are relied upon and the indicia of reliability of those calls, and this is within the scope of that case.” The trial court correctly discussed the policy. However, here the record establishes that there was no 9-1-1 call from the anonymous caller, and thus no identification of the informant was possible. Instead, the anonymous calls here all came directly to the detective. The caller blocked Otzelberger’s caller ID, making identification impossible by that method. The caller refused to identify himself in any way in the first call. In the second call, he admitted participating in criminal activity, saying he bought drugs from Grimes, but he still gave the police no way to verify his claim or his identity. The caller provided no identifying information, and no predictive information about Grimes’s future behavior. As our supreme court has explained, some indicia of reliability is needed to distinguish a legitimate citizen informant (such as the informant in *Williams*) from a mere prankster, or person seeking only to cause trouble for the person anonymously informed against. *Williams*, 241 Wis. 2d 631, ¶35 & n.11; *see also United States v. Wheat*, 278 F.3d 722, 735 (8th Cir. 2001); *United States v. Roberson*, 90 F.3d 75, 80-81 (3d Cir. 1996); *United States v. DeBerry*, 76 F.3d 884, 886 (7th Cir. 1996).

¶28 Because we determine that the anonymous tip did not have the indicia of reliability required under *J.L.*, *White* and *Williams*, and was not otherwise justified by exigent circumstances as described in *Rutzinski*, or based on suspicious conduct independently observed by the officers, we conclude that the officers did not have reasonable suspicion to conduct the investigatory stop of Grimes. Because the investigatory stop was unconstitutional, the resulting search and seizure of the cocaine was likewise unconstitutional. *See Dickerson*, 508 U.S. at 379. Based on the above, we reverse the trial court’s denial of Grimes’s motion to suppress, and thereby, also reverse the judgment resulting from the underlying

guilty plea upon which Grimes's conviction was based. We remand this case to the trial court with directions to enter an order granting the motion to suppress and for further proceedings consistent with this opinion.

By the Court.—Judgment and order reversed and cause remanded.

Not recommended for publication in the official reports.

