

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 18, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1900-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LEROY H. HINTZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: J. MAC DAVIS, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Leroy H. Hintz appeals from an order denying his motion to suppress evidence of operating a motor vehicle while intoxicated

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

(OAWI) obtained during an investigative traffic stop and from the judgment of conviction. Hintz contends that the stop was the result of an anonymous cell-phone tip to the Town of Oconomowoc Police Department that lacked credibility, and, therefore, no reasonable suspicion existed for the traffic stop. After the denial of the suppression motion, Hintz pled guilty to a criminal charge of OAWI, repeater, contrary to WIS. STAT. § 346.63(1)(a). We affirm the order denying the suppression motion and the judgment.²

FACTS

¶2 The relevant facts are undisputed. On April 18, 1998, at 10:20 a.m., an anonymous cell-phone caller reported a possible intoxicated driver operating a white Pontiac Grand Am with a partial license plate number of “PFK” on Highway 16. The caller then informed the police dispatcher that the suspect vehicle turned into the Westmoor Plaza. During the dispatch, Town of Oconomowoc Police Officer Mark Rajnicek observed a white vehicle turn into the Westmoor Plaza parking lot and pull into a parking stall. Rajnicek further observed that the vehicle was a white Grand Am with a “PFK” license plate. He stopped his squad car behind the white vehicle and made contact with the driver, Hintz. Rajnicek testified that he did not observe any erratic driving before making the traffic stop, and that the stop was made solely on the basis of the dispatch information. Hintz contends that the circumstances of the stop mandate the suppression of the OAWI evidence that was then obtained by the arresting officer.

² A companion charge of operating with a prohibited alcohol concentration, repeater, contrary to WIS. STAT. § 346.63(1)(b), was dismissed.

STANDARD OF REVIEW

¶3 The determination of reasonable suspicion for an investigatory stop is a question of constitutional fact. *State v. Martwick*, 2000 WI 5, ¶19, 231 Wis. 2d 801, 604 N.W.2d 552 (citing *Ornelas v. Unites States*, 517 U.S. 690, 699 (1996)). We apply a two-step standard of review to questions of constitutional fact. First, we review the trial court’s findings of historical fact and uphold them unless they are clearly erroneous. *Martwick*, 2000 WI 5 at ¶19. Second, we review the determination of reasonable suspicion de novo. *Id.*

BACKGROUND

¶4 The trial court relied on *State v. Williams*, 225 Wis. 2d 159, 591 N.W.2d 823 (1999), to deny Hintz’s suppression motion. In *Williams v. Wisconsin*, 529 U.S. 1050 (2000), the United States Supreme Court vacated and remanded *Williams* to our supreme court for consideration of its holding in *Florida v. J.L.*, 529 U.S. 266 (2000).³ We placed this appeal on hold awaiting the result of the remand. The Wisconsin Supreme Court re-released *State v. Williams*, 2001 WI 21, No. 96-1821-CR, holding that under “the totality of the circumstances, including the indicia of reliability surrounding the anonymous tip and the police officers’ additional observations, the officers reasonably suspected that criminal activity was afoot,” *id.* at ¶2, and again affirmed the trial court’s denial of the motion to suppress evidence obtained when an anonymous tipster reported drug trafficking. However, the trial court’s reliance on *Williams* is

³ Neither *State v. Williams* nor *Florida v. J.L.* was a traffic stop case. In *Williams*, the defendant pled guilty to possession of cocaine after the trial court denied a motion to dismiss evidence obtained after an anonymous tip that drug activity was occurring in an alley. *State v. Williams*, 2001 WI 21, ¶¶14-15, No. 96-1821-CR. In *J.L.*, an anonymous caller reported that “a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun.” *Florida v. J.L.*, 529 U.S. 266, 268 (2000).

inapplicable here because the appellate issue raised by Hintz has now been directly addressed by our supreme court in *State v. Rutzinski*, 2001 WI 22, No. 98-3541-CR.

DISCUSSION

¶5 In *Rutzinski*, our supreme court addressed when a cell-phone call from an unidentified motorist provides sufficient justification for an investigative traffic stop. As here, the arresting officer in *Rutzinski* received a dispatch based upon a cell-phone report from an unidentified motorist of a possible intoxicated driver; the officer did not independently observe any signs of erratic driving and stopped the suspect vehicle identified by the anonymous caller. Based upon evidence obtained after the stop, Rutzinski, like Hintz, was convicted of operating a motor vehicle in violation of WIS. STAT. § 346.63(1). The trial court denied Rutzinski's motion to suppress the OAWI evidence because the officer had relied solely upon an anonymous tip and we affirmed. *State v. Rutzinski*, No. 98-3541-CR, unpublished slip op. (Wis. Ct. App. May 11, 1999).

¶6 On review, the supreme court affirmed and stated:

Tips should exhibit reasonable indicia of reliability. *Cf. Illinois v. Gates*, 462 U.S. 213, 233, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) (applying same standard to probable cause determination). 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. *Id.* at 230. 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.* at 233. Although there is no per se rule of reliability, these considerations outline a general spectrum of potential types of tips that, under specific circumstances, can give rise to a reasonable suspicion.

Rutzinski, 2001 WI 22 at ¶18.

¶7 The anonymous tip in *Rutzinski* provided sufficient justification for an investigative stop because:

First, the tip contained sufficient indicia of the informant's reliability: the information in the tip exposed the informant to possible identification and, therefore, to possible arrest if the tip proved false; the tip reported contemporaneous and verifiable observations regarding Rutzinski's alleged erratic driving, location, and vehicle's description; and [the arresting officer] verified many of the details in the informant's tip. Second, the allegations in the tip could suggest to a reasonable police officer that Rutzinski was operating his vehicle while intoxicated. This exigency strongly weighs in favor of immediate police investigation.

Id. at ¶38.

¶8 The trial court's rationale for denying the suppression motion here is consistent with the considerations of consequence in *Rutzinski*. The trial court found that: (1) the anonymous call was apparently from a citizen because of safety concerns; (2) the caller was not a police informant or someone whose motives might otherwise be subject to suspicion; (3) the tipster predicted that a car of a certain color with a certain license plate was operating on a certain road in a certain direction at a certain time; (4) the call was a "real time call" relating events as they unfolded; (5) the caller expressed concern about a possible drunk driver operating the suspect vehicle; (6) a cell-phone call is subject to technology that would allow police identification of the caller and reduce the chance of the caller being a troublemaker or prankster; and (7) the Hintz vehicle had already stopped when the officer approached it. Based upon these findings, the trial court concluded that "under the totality of all of the circumstances ... there was a reasonable suspicion for the stop based on the cell phone call through the dispatcher to the [officer] and his observation [of the Hintz vehicle] on the road."

¶9 We conclude that the trial court's findings of historical fact are not erroneous. Because those findings support a conclusion that the stop, based upon the motorist's tip and the officer's observations, was reasonable and consistent with the criteria established in *Rutzinski*, we affirm.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE § 809.23(1)(b)4.

