

# Recent Case Report

## U.S. v. Graham

(6<sup>th</sup> Cir. 2007) 483 F.3d 431

### ISSUE

Did officers have grounds to conduct a protective search of the defendant's car?

### FACTS

At about 8:00 P.M., two patrol officers in Dayton, Ohio noticed a Pontiac Grand Am parked illegally in front of a house at 1701 West Grand Avenue. There were two people in the car. As the officers stopped behind the vehicle, one of them saw the driver "dip his shoulder" as if he was putting something under the front seat.

The driver identified himself as Tony Graham. This name "meant something" to the officer because, earlier that evening, another officer told him that a man named Tony Graham was planning to shoot someone at 1701 West Grand Avenue. At that point, the officer ordered Graham out of the car.

As Graham did so, the officer told him that he was going to pat search him. Graham resisted, but was eventually handcuffed and pat searched. No weapons were found. So, after putting him inside their car, the officers returned to the Grand Am, searched under the driver's seat, and found a handgun.

Graham was charged with being a felon in possession of a firearm. When his motion to suppress the gun was denied, he pled guilty.

### DISCUSSION

On appeal, Graham contended that the search of his car was unlawful and, therefore, the gun should have been suppressed. The court disagreed.

It is settled that officers may conduct a protective vehicle search (a "vehicle frisk"<sup>1</sup>) if both of the following circumstances existed:

- (1) **Lawful detention:** An occupant of the vehicle was lawfully detained.
- (2) **Weapon inside:** Officers had reasonable suspicion that a weapon was inside the vehicle.<sup>2</sup>

Having ruled that the officers had lawfully detained Graham to investigate the parking violation, the issue was whether they reasonably believed there was a weapon inside. For purposes of the appeal, the court assumed that the source of the tip was an anonymous informant. Consequently, this information would be relevant only if the officers had reason to believe it was accurate or otherwise reliable.

One strong indication of reliability is that the officers saw the suspect engage in conduct that was consistent with the allegations contained in the tip. As the California

---

<sup>1</sup> See *Maryland v. Buie* (1990) 494 U.S. 325, 332.

<sup>2</sup> See *Michigan v. Long* (1983) 463 U.S. 1032, 1049-51; *People v. Williams* (1988) 45 Cal.3d 1268, 1303.

Court of Appeal observed, “Even observations of seemingly innocent activity suffice alone, as corroboration, if the anonymous tip casts the activity in a suspicious light.”<sup>3</sup>

For example, in *Alabama v. White*<sup>4</sup> an anonymous caller phoned the Montgomery Police Department and said that Vanessa White would be leaving a certain apartment building at a particular time, that she would drive off in a brown Plymouth station wagon with a broken right taillight, that she would drive to Dobby's Motel, and that she would be carrying an ounce of cocaine. Officers staked out the apartment building and watched as White drove off in the described vehicle and headed in the direction of Dobby's. So they stopped her, obtained her consent to search the station wagon, and found marijuana.

On appeal, the United States Supreme Court ruled that, although the caller was anonymous, the officers had sufficient reason to believe his information was reliable because he had accurately predicted White's actions. Said the Court, “What was important was the caller's ability to predict [White's] *future behavior*, because it demonstrated inside information—a special familiarity with [White's] affairs.”

Citing *White*, the court in *Graham* ruled that the officers had sufficient reason to believe the tip was accurate because, (1) the officers saw Graham outside the home in which he was reportedly going to kill someone; and (2) his furtive gesture was consistent with that of a person who was hiding a handgun. Said the court, “Combined, the anonymous tip and Graham's dip gave the officers reasonable suspicion that Graham was armed and dangerous, thus permitting [the officer's] frisk of Graham and search under the car seat.” POV

---

<sup>3</sup> *People v. Costello* (1988) 204 Cal.App.3d 431, 446. ALSO SEE *Massachusetts v Upton* (1984) 466 U.S. 727, 734 [the informant's tip and the circumstances at the scene possessed an internal coherence that gave weight to the whole.]; *People v. Jordan* (2004) 121 Cal.App.4<sup>th</sup> 544, 558 [“Where police officers follow up an anonymous tip and observe suspicious behavior, the totality of the circumstances may generate a reasonable suspicion that justifies a [detention].”].

<sup>4</sup> (1990) 496 U.S. 325.