[J-49-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 154 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1233 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004, at No. 3416-03.
DOUGLAS MISTLER,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 155 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1235 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3417-03.
JOANNA OLIVER,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 156 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1238 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3199-03.
PATRICK LUDDY,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 157 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1239 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3284-03.
STACEY GILLESPIE,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 158 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1240 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3413-03.
KALI WARREN,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 159 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1249 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3405-03.
PAUL MUDD,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 160 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1250 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 4108-03.
HILLARY KOZAK,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 161 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1251 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3315-03.
ELISE STERBINSKY,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

DISSENTING OPINION

JUSTICE EAKIN **DECIDED: December 27, 2006**

The majority holds all evidence obtained is inadmissible because the police lacked individualized suspicion sufficient to justify a seizure, and failed to meet any exception justifying suspicionless searches. Majority Slip Op., at 14. I respectfully dissent, as I believe the investigation was not "suspicionless." As set forth Terry v. Ohio, 392 U.S. 1 (1968), if an officer possesses reasonable suspicion criminal activity is afoot, he is justified in briefly detaining the suspect in order to investigate. See Commonwealth v. E.M., 735 A.2d 654, 659 (Pa. 1999). In a Terry stop, "the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." Berkemer v. McCarty, 468 U.S. 420, 439 (1984).

Examining the totality of the circumstances here, the Liquor Control Officers had reasonable suspicion to believe appellees and others were engaged in criminal activity. The officers had professional experience and familiarity with underage drinking, but one need not be Sherlock Holmes to deduce that when admission is charged to enter a college fraternity party, there is often alcohol available without the restrictions present in commercial establishments, and such was the case here. When the officers arrived, no one was asking for identification or proof of age; they observed people "youthful in appearance,"[1] the majority of whom were holding cups or cans of beer, the only beverage being served. The officers possessed sufficient articulable facts amounting to suspicious conduct on the part of the group which included appellees—a more than

[1] Trial Court Opinion, 2/6/04, at 2.

reasonable, nay an unavoidable, belief that underage drinking was occurring. To conclude otherwise is to cast aside common sense.

The question really is whether, in response to evidence of ongoing violations by a group, the police may undertake a group Terry stop. That is, if there is reason to suspect that some members of a group are violating the law, may the officer briefly stop and investigate the whole group, or must he sit by because he cannot articulate which members of the group are involved and which are not. Recalling that Terry allows a brief investigatory stop when it appears "criminal activity is afoot," here it certainly was afoot—the question was which members of the group were in violation and which were not. I find no requirement in Terry that this unique situation requires particularized suspicion for each individual in the group. Where the investigation is manifestly brief and the age of the individuals easily determined, the principles of Terry can be respected within the context of a group stop, without the illogical result of officers having to ignore what they know and allow all to go because there are too many of them.

The officers here asked the students for identification. Those who were over 21 were allowed to leave, consistent with the dictates of Terry; once the officers determined these parties were not involved in the criminal activity, they were on their way with minimal intrusion. Those identified as being under 21 were questioned briefly and given a preliminary breath test to determine if they drank alcohol. In context, this process was expedient, as the officers established whether probable cause existed to issue an underage drinking citation.

While some of the people at the party were over 21 years old, "[t]he fact that a suspect's behavior may be consistent with innocent behavior does not, standing alone, make detention and limited investigation illegal." Commonwealth v. Johnson, 734 A.2d 864, 869 (Pa. Super. 1999). While there may not be reasonable suspicion of underage

drinking to a layperson, we must consider the totality of the circumstances "drawn from those facts in light of the officer's experience." Commonwealth v. Cook, 735 A.2d 673, 677 (Pa. 1999) (citation omitted). Here, the officers viewed the entire situation and determined there was underage drinking at the party. As there was reasonable suspicion of underage drinking occurring, allowing them to conduct a group Terry stop to separate the legal drinkers from the illegal ones seems totally reasonable. If they have the ability to ask one young drinker for ID, how does that authority evaporate simply because there are many suspected underage drinkers? This was not suspicionless activity, and accordingly, I would reverse the Superior Court's order.

Mr. Justice Castille joins this dissenting opinion.