

[J-24-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN THE INTEREST OF D.M.,	:	No. 21 E.D. Appeal Docket 1998.
	:	:
	:	Order of the Superior Court dated
	:	November 19, 1997, at No. 3538
	:	Philadelphia 1996 affirming the Order of
APPEAL OF: D.M.	:	the Court of Common Pleas of
	:	Philadelphia County dated October 2,
	:	1996, at Juvenile Petition No. 4074-96-06
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	:	ARGUED: FEBRUARY 3, 1999
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DISSENTING OPINION

MR. JUSTICE CASTILLE

DECIDED: December 27, 1999

For the reasons expressed in Madame Justice Newman's Dissenting Opinions in Commonwealth v. Hawkins, 547 Pa. 652, 692 A.2d 1068 (1997), and Commonwealth v. Kue, 547 Pa. 668, 692 A.2d 1076 (1997), I believe that the police officer in the instant matter was justified in initiating an investigative stop of appellant. Consequently, I would affirm the Superior Court's determination that the investigative stop herein satisfies the requirements of the United States and Pennsylvania Constitutions.

The majority correctly acknowledges that the standard for determining whether reasonable suspicion exists for a protective frisk is the same under both Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution. Commonwealth v. Cook, ___ Pa. ___, 735 A.2d 673 (1999); Commonwealth

v. Jackson, 548 Pa. 484, 698 A.2d 571 (1997). Nevertheless, the majority’s interpretation of the corroboration requirements for an anonymous tip of a “suspect with a gun” continues to diverge from the interpretation of federal courts. See, e.g., United States v. DeBerry, 76 F.3d 884 (7th Cir. 1996)(anonymous tip that armed man dressed in tan shorts and shirt at certain location and “ambiguous gesture” justified frisking suspect); United States v. Gibson, 64 F.3d 617 (11th Cir. 1995), cert. denied, 517 U.S. 1173 (1996)(anonymous tip of armed man wearing long black trench coat at specific location and suspect reaching behind him justified frisking suspect); United States v. Bold, 19 F.3d 99 (2d Cir. 1994)(anonymous tip of armed man in gray Cadillac at specific location justified frisking suspect); United States v. Clipper, 973 F.2d 944 (D.C. Cir. 1992), cert. denied, 506 U.S. 1070 (1993)(anonymous tip that armed man wearing green and blue jacket and black hat at a specific location justified frisking suspect); United States v. McClinnhan, 660 F.2d 500 (D.C. Cir. 1981)(anonymous tip of armed man in black hat holding briefcase at specific location justified frisking suspect).

The majority asserts that Alabama v. White, 496 U.S. 325 (1990), always requires predictive information to support a finding of reasonable suspicion based on an anonymous tip. To the contrary, Alabama v. White, did not create a “categorical rule conditioning a Terry stop . . . on the corroboration of predictive information.” Clipper, supra at 949. In United States v. Roberson, 90 F.3d 75 (3d Cir. 1996), in which there was an anonymous tip of a man selling narcotics, the United States Court of Appeals for the Third Circuit noted *in dicta* that predictive information may not be required to conduct a protective frisk based on an anonymous tip of a “suspect with gun.” The Third Circuit cited Clipper, supra, for the proposition that the police have the requisite reasonable suspicion to conduct a protective frisk when an anonymous tip involves: (1) the report of a suspect with a gun, (2) a description of the suspect, and (3) the suspect’s location. The court in Clipper reasoned that:

[The] element of imminent danger distinguishes a gun tip from one involving possession of drugs. If there is any doubt about the reliability of an anonymous tip in the latter case, the police can limit their response to surveillance or engage in ‘controlled buys.’ Where guns are involved, however, there is the risk that an attempt to ‘wait out’ the suspect might have fatal consequences.

Clipper, supra at 951.

The simple rationale for the Clipper standard is to provide police with the tools to decrease the deadly risk when confronting suspects who may be armed with firearms. A protective frisk “allow[s] the officer to pursue his investigation without fear of violence” Adams v. Williams, 407 U.S. 143, 146 (1972). A police officer is “required to act swiftly to apprehend an individual reported to be in possession of a gun . . . and [is] a potential threat to the safety of the officer and other persons in the area.” Commonwealth v. Lagana, 517 Pa. 371, 377, 537 A.2d 1351, 1354 (1988). This Court should properly balance the privacy interests of a citizen of this Commonwealth with the risk encountered by police officers entrusted with the protection of society and their own personal safety. A proper balance is found when this Court acknowledges that an anonymous tip concerning a suspect with a gun requires less corroboration given the risk of a police encounter with a potentially armed suspect.

Therefore, I believe that the facts of the instant matter under the standard set forth in Clipper support a finding that the officer had reasonable suspicion to conduct a protective frisk for weapons. The majority’s holding here greatly enhances the possible infliction of death or serious injury to those in whom society chooses to enforce the public safety, the police, and concomitantly increases the danger to all members of society by greatly decreasing the ability of the police to remove illegally carried firearms from our public streets.

Madame Justice Newman joins this dissenting opinion.