[J-132-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	4 E.D. Appeal Dkt. 1998
	:	
Appellee,	:	Appeal from the Order of the Superior
	:	Court dated July 17, 1996 at No. 02106
	:	Phila. 1995 reversing the Order of the
v.	:	Philadelphia County Court of Common
	:	Pleas dated May 12, 1996 at. No. 9411-
	:	0024.
WILLIAM ALLEN,	:	
	:	681 A.2d 778, 452 Pa. Super. 200
Appellant.	:	
	:	SUBMITTED: June 10, 1998

DISSENTING OPINION

MR. JUSTICE CASTILLE **DECIDED: February 26, 1999**

I respectfully dissent, as I believe that Officer Bey reasonably suspected that criminal activity was afoot at the time he initiated an investigative stop of appellant. Consequently, I would affirm the Superior Court's determination that the investigative stop comported with the requirements of both the United States and Pennsylvania Constitutions.

In its analysis of what Officer Bey observed upon arrival outside 2128 North Natrona Street, the majority correctly points out that Officer Bey observed "Mookie," the subject of the tip and a person with whom he was familiar, sitting in a chair on the sidewalk with his arms folded across his chest and his eyes closed in front of the same house which was identified in the tip and which was located in an area that the officer knew to be a high drug-trafficking area. However, the majority's recitation of the facts omits one rather crucial fact. Namely, Officer Bey, who had been told by the tipster that "Mookie" would be carrying a gun, observed a "big bulge" in appellant's left front pants pocket. N.T. 3/13/95, at 12-13,

23-24. It was the observation of this bulge which, in combination with the officer's corroboration of all other parts of the tip except for the actual witnessing of a narcotics sale, gave Officer Bey a reasonable suspicion that criminal activity was afoot.[1] Indeed, to hold otherwise is to contravene the persuasive precedent of our sister states as well as the federal courts which have unanimously concluded that observation of a hidden bulge pursuant to a tip predicting the presence of an identifiable armed suspect at a certain location gives rise to a reasonable suspicion of criminal activity afoot and, hence, a justifiable Terry stop.[2]

At the outset, it is important to set forth the axiom that Fourth Amendment Terry stop analysis balances the "need to search or seize against the invasion which the search or seizure entails." Michigan v. Long, 463 U.S. 1032, 1046 (1983)(quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)). When weighing the need to search or seize, we must of course be mindful that a tip which implicates a risk to public safety by alerting police that the individual described has access to a gun suggests a greater need to search or seize than a tip which

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[1] In analyzing the nature of the tip itself, the majority suggests that the tip should be deemed less reliable because the former policeman who passed the tip along to Officer Bey did not reveal the name of the senior citizen who provided the information to him. However, the important point is that the senior citizen did not come forward anonymously, but instead sought out a former police officer in person to convey the information, telling him that she knew her information to be reliable because she lived in the house out of which "Mookie" was selling drugs. This willingness of the tipster to be identified, as opposed to providing information through an anonymous phone call, placed the tip in a more reliable category under this Court's jurisprudence, notwithstanding the majority's conclusion to the contrary. See Commonwealth v. Jackson, 548 Pa. 484, 698 A.2d 571, 574 (1997)(anonymous tip is less reliable because "a known informant places himself or herself at the risk of prosecution for filing a false claim if the tip is untrue, whereas an unknown informant does not").

[2] Assuming arguendo that the initial Terry stop was justified, the subsequent arrest was, of course, supported by probable cause. This is manifest since, during the Terry stop, the suspect's large sweatshirt pocket flared open, exposing numerous clear plastic packets of cocaine.

does not alert the police to this fact. Speight v. United States, 671 A.2d 442, 448 (D.C. 1996). Thus, courts have consistently upheld the right of police to conduct a limited interrogation and/or search in situations where tipsters described an armed individual and where the officers subsequently corroborated the description of the individual and observed a bulge in the individual's clothing. See Ramirez v. State, 672 S.W.2d 480 (Texas Crim. App. 1984)(cited favorably in Gutierrez v. State, 1996 Tex. App. LEXIS 511, at *10) (pursuant to "man with a gun tip" from unnamed witness, police officer observed a man matching the description of the subject of the tip with a bulge in his pocket; court held that reasonable suspicion existed for a temporary detention and limited search for weapons); New York v. Quan, 182 A.2d 506, 507, 582 N.Y.2d 190 (1992)(even without any tip, officer's observation of bulge in shape of gun handle, in itself, constituted reasonable suspicion); Gaskins v. United States, 262 A.2d 810, 812 n.2 (D.C. 1970)(pursuant to tip from "seemingly reasonable" tipster, if officer "saw a gun bulge, he would be warranted in seizing it"); United States v. Colon, 1998 U.S. Dist. LEXIS 3259, at *9 (bulge in coat cited as central observation validating investigative detention). Additionally, the United States Supreme Court has determined that, in the course of an ordinary traffic stop, an officer's observation of a bulge in the driver's jacket is, in itself, sufficient grounds to conduct a limited search. See Pennsylvania v. Mimms, 434 U.S. 106, 112 (1977)("The bulge in the jacket permitted the officer to conclude that Mimms was armed . . . .")

Thus, at the moment that Officer Bey ordered appellant to get up and put his hands against the wall, he was justified in doing so by having corroborated appellant's presence in a high drug trafficking area, outside the home in which the tipster lived and from which the tipster claimed that appellant trafficked in drugs, with a big bulge in his pants pocket which appeared to the officer to be consistent with the gun with which the tipster predicted appellant would be armed. Indeed, to allow appellant to go forth without even questioning him in this situation, when appellant appeared to be carrying a concealed firearm, would

have amounted to a dereliction of Officer Bey's duties -- a dereliction which might have had serious implications for the safety of innocent citizens of the Commonwealth.

I believe that the Court's error today is partly a result of its failure to appreciate the principles that drive the distinction between the "reasonable suspicion" required for a Terry stop and the "probable cause" required for an arrest. In a Terry stop, the intrusiveness of the police conduct at issue is comparatively negligible. The police are not seeking to strip the subject of his liberty and bring him to trial. An individual may well be annoyed by having to respond to questions or by submitting to a brief detention -- especially if that individual is trying to obfuscate some criminal conduct -- but police officers do not intrude on any deeply ingrained notion of liberty simply by asking a question or initiating an extremely brief detention to ensure the safety of the citizenry. That is why the standard of "reasonable suspicion" required for an investigative stop is far less exacting than the standard of "probable cause" for an arrest, which is itself far less exacting than the necessary "proof beyond a reasonable doubt" required to convict. These different standards are driven by the vastly different levels of intrusion that are implicated by investigative stops, arrests, and finally by convictions.

Here, after an admirable collaboration between a concerned senior citizen, an ex-police officer, and a current police officer, and after diligent police work corroborating the significant details of the senior citizen's tip, two hundred and fifty-six packets of crack cocaine were seized from a purveyor of illegal narcotics. In suppressing this evidence, the majority fails to demonstrate why a departure from the sound reasoning of the United States Supreme Court and our sister states is warranted. I respectfully dissent.

Madame Justice Newman and Mr. Justice Saylor join this dissenting opinion.