

[J-136A/B-1999]
IN THE SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,:	No. 0174 Middle District
:	Appeal Docket 1996
Appellee	:
:	Appeal from the Order of the Superior
v.	Court entered January 4, 1996
:	at No. 0789 Harrisburg 1994
ANTHONY C. WIMBUSH	affirming the Judgment of
:	Sentence of the Huntingdon
Appellant	County Court of Common Pleas
:	entered September 6, 1994 at
:	No. 93-313.
:	:
:	ARGUED: September 17, 1997
:	RE-SUBMITTED: July 14, 1999
COMMONWEALTH OF PENNSYLVANIA,:	No. 0025 Western District
:	Appeal Docket 1997
Appellee	:
:	Appeal from the Order of the Superior
v.	Court entered May 9, 1996 at No.
:	1739PGH95 affirming the Judgment
LANCE M. WHITE, SR.	of Sentence of the Westmoreland
:	County Court of Common Pleas
Appellant	entered July 14, 1995 at No. 2176 Criminal
:	1994.
:	:
:	ARGUED: September 17, 1997
:	RE-SUBMITTED: July 14, 1999

CONCURRING OPINION

MR. CHIEF JUSTICE FLAHERTY

DECIDED: APRIL 17, 2000

I join the majority but write separately to respond to the dissenting view that the issues of Pennsylvania constitutional law were not properly raised.

In Wimbush and Commonwealth v. White there is a question as to whether appellants raise claims under the Pennsylvania Constitution. Pa.R.A.P. 910 (a)(5) states:

The statement of questions presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the statement, or fairly comprised therein will ordinarily be considered by the Court.

Wimbush asserts in the statement of questions presented section of his brief that the stop of Wimbush's vehicle was "unconstitutional" and White asserts that his "constitutional rights" were violated. Both briefs then go on to cite Pennsylvania cases in making the argument that constitutional rights were violated. White even refers to Pennsylvania's "strong right of privacy," asserting that Pennsylvania's view of privacy is applicable to his case.

It would be understatement to say that the statement of questions presented in the briefs of Wimbush and White are inartfully drafted. If an appellant wishes to raise a question under the Pennsylvania Constitution, this court should not have to guess at what is being raised. Although it is a close case as to whether Pennsylvania claims have in fact been raised, I would conclude, with some hesitancy, that they have. The applicable law, therefore, is our decisions in Jackson and Hawkins.

In both Wimbush and White the Commonwealth relies on the predictive nature of the anonymous calls. In Hawkins, a plurality of this court stated: "if the tip is anonymous, police

may reasonably rely on it if it is predictive of the suspect's behavior." 692 A.2d 1068, 1070 n.3. The anonymous caller in Wimbush indicated that a black man would be driving a white van with a specified registration number on Piney Ridge Road and would have drugs in his possession. The fact that police discovered this particular van on Piney Ridge Road being driven by a black man is predictive of nothing since the van was there from the beginning of police surveillance.

However, the Commonwealth asserts that the stop was permissible under Pennsylvania law because the arresting police called police in the area where Wimbush lived and were told that he was a suspect in drug activity. This, according to the Commonwealth, is independent corroboration of the anonymous tip. I cannot agree that such information validates the stop for two reasons. First, the anonymous tip provided no information except that the van and driver were located at a particular location. Since the van was already on Piney Ridge Road when police arrived, separate information as to suspected drug activity gives the police nothing except that the driver is a suspected drug dealer. Secondly, the call from one police department to the other was made after the stop had been ordered. Information validating the stop which arrives after the stop had been already decided upon cannot serve to justify the stop.

In White the anonymous caller stated that a black male wearing a white shirt and shorts would leave a public housing complex and get on a girl's bike. This person would allegedly have drugs. However, the fact that a black male clad in white left the housing project on a bike is so general in nature that it cannot be said to be predictive. Without more, police had no reasonable suspicion that this person was engaged in illegal conduct.

Accordingly, I join the majority in reversing both convictions.

