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

COMMONWEALTH OF PENNSYLVANIA ,	:	No. 0174 M.D. Appeal Docket 1996
	:	
Appellee,	:	Appeal from the Order of the Superior
	:	Court entered January 4, 1996 at No.
	:	0789 Harrisburg 1994 affirming the
v.	:	Judgment of Sentence of the Huntington
	:	County Court of Common Pleas entered
	:	September 6, 1994 at No. 93-313.
ANTHONY C. WIMBUSH,	:	
	:	
Appellant.	:	ARGUED: September 17, 1997
	:	RE-SUBMITTED: July 14, 1999
	:	

COMMONWEALTH OF PENNSYLVANIA ,	:	No. 0025 W.D. Appeal Docket 1997
	:	
Appellee,	:	Appeal from the Order of the Superior
	:	Court entered May 9, 1996 at No.
	:	1739PGH95 affirming the Judgment of
v.	:	Sentence of the Westmoreland County
	:	Court of Common Pleas entered July 14,
	:	1995 at No. 2176 Criminal 1994.
LANCE WHITE, SR.,	:	
	:	ARGUED: September 17, 1997
Appellant.	:	RE-SUBMITTED: July 14, 1999
	:	

DISSENTING OPINION

MR. JUSTICE CASTILLE **DECIDED: APRIL 17, 2000**

As the majority acknowledges, stop-and-frisk cases in this Commonwealth are evaluated under the federal standard set forth in Terry v. Ohio, 392 U.S. 1 (1968).[1] Thus, I must respectfully dissent.[2] The corroboration of the anonymous tips in both of these cases was clearly sufficient under Alabama v. White, 496 U.S. 325 (1990). In Alabama v. White, a police officer received a telephone call from an anonymous person, stating that White would be leaving a specified apartment at a particular time in a brown Plymouth station wagon with a broken taillight, that she would be going to a specified motel, and that she would be in possession of about an ounce of cocaine inside a brown attaché case. After arriving outside the apartment building, the officer and his partner observed White leave the building, with nothing in her hands, and enter a station wagon similar to the one described. The officers followed the vehicle as it proceeded along the most direct route towards the specified motel, and stopped it before it reached the motel. After receiving permission to conduct a search, the officers found a brown attaché case. Upon request, White provided the combination to the lock. The officers found marijuana inside and placed White under arrest. A subsequent search revealed cocaine in her purse.

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[1] Even if the Pennsylvania Constitution afforded broader protection in stop-and-frisk cases than the United States Constitution, appellants in the case *sub judice* would not be entitled to that protection because they have not raised claims under the Pennsylvania Constitution. Although it is true, as Mr. Chief Justice Flaherty asserts in his Concurring Opinion, that both appellants cite Pennsylvania case law in their briefs, all of the cases relied upon by appellants for the issue presently before this Court are based on federal jurisprudence. Moreover, appellant White's passing reference to Pennsylvania's "strong right of privacy" arises in his discussion of discarded contraband, an issue that is not relevant to the dispositive question of the propriety of the initial investigatory stop in this matter.

[2] For further elaboration on the subject matter of this opinion, see the Dissenting Opinion in Commonwealth v. Goodwin, 72 W.D. Appeal Docket 1997 (Pa., decided _____, 1999), a companion matter originally accepted under this Court's allocatur jurisprudence.
(continued…)

After White was tried and convicted of several possession charges, the Alabama Court of Criminal Appeals determined that the officers lacked the reasonable suspicion necessary under Terry v. Ohio, 392 U.S. 1 (1968), to justify the initial investigatory stop of respondent's vehicle; therefore, the marijuana and cocaine were deemed fruits of an unlawful detention. The Court of Criminal Appeals concluded that White's motion to suppress the evidence should have been granted and, therefore, reversed her conviction. The Supreme Court of Alabama denied the State's petition for a writ of *certiorari*.

The United States Supreme Court granted *certiorari* in order to resolve a conflict in the state and federal courts "over whether an anonymous tip may furnish reasonable suspicion for a stop." Alabama v. White, supra at 328. The United States Supreme Court noted that, similar to determinations of probable cause, reasonable suspicion determinations are considered under the "totality of the circumstances – the whole picture." Id. at 330, citing United States v. Cortez, 449 U.S. 411, 417 (1981). However, unlike probable cause, reasonable suspicion is a less demanding standard, not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. Id.

Applying this lesser standard to the facts of the case, the Court concluded that, when the officers stopped White, the anonymous tip had been sufficiently corroborated

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so as to furnish reasonable suspicion that White was engaged in criminal activity; therefore, the investigative stop did not violate the Fourth Amendment to the United States Constitution. The Court acknowledged that important details of the anonymous tip – specifically the fact that White would be carrying an attaché case that allegedly contained drugs – had gone uncorroborated. However, the tipster had been correct about White's time of departure, place of departure, vehicle in which she departed and, apparently, White's destination.[3] Thus, the Court reasoned that "the independent corroboration by the police of significant aspects of the informer's predictions imparted some degree of reliability to the other allegations made by the caller." Id. at 332.[4] The corroboration of predictive information pertaining to White's future behavior was significant "because it demonstrated inside information – a special familiarity with respondent's affairs." Id. Since only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is also likely to have access to reliable information about the individual's illegal activities. Id.

I have little doubt as to how the two matters at issue should be resolved in light of Alabama v. White. Indeed, in Commonwealth v. Hawkins, 547 Pa. 652, 692 A.2d 1068

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[3] The Court acknowledged that the officers could not have been positive that White was driving to the specified motel since they stopped her before she reached it.

[4] The United States Supreme Court's recent decision in Florida v. J.L., 2000 WL 309131 (U.S.Fla. March, 28, 2000), in no way impacts on the application of White to the cases *sub judice*. In J.L., unlike in White or the cases *sub judice*, the anonymous tip did not contain any predictive information, but merely stated that a young black male wearing a plaid shirt and standing at a particular bus stop – facts that could be reported by anyone looking out a window – was carrying a gun. Accurately predicting someone's movements, however, is an entirely different matter. Thus, J.L. is more analogous to Hawkins, supra.

(1997), this Court noted that, under Alabama v. White, "if the tip is anonymous, police may reasonably rely on it if it is predictive of the suspect's behavior." Id. at 565 n.3, 692 A.2d at 1070 n.3.[5] The principles expressed by this Court in Hawkins and by the United States Supreme Court in Alabama v. White are inexplicably abandoned by the majority in this matter.

In Commonwealth v. Wimbush, the facts adduced at trial demonstrate that on February 13, 1993, State Trooper Richard Gergel received an anonymous call during which the caller provided the registration number of a white van that the caller said was owned by an African-American male named Tony. The caller predicted that this vehicle later that evening would be proceeding along Piney Ridge Road, a limited access road in Huntington County, and would be carrying marijuana and drugs in the vehicle.[6] The police obtained the registration number of the vehicle in question and found that the vehicle was registered to Anthony Wimbush. The officers also contacted the state police barracks in the area where the vehicle was registered and determined from officers there that Anthony Wimbush was a known suspect in drug activity.

Having corroborated the non-predictive aspects of the tip, and having performed independent police work to uncover further details concerning the criminal activities of the subject of the tip, the officers proceeded to Piney Ridge Road. There, they

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[5] In Hawkins, the anonymous tip did not predict any future behavior. Therefore, a majority of this Court found that the tip in question was not sufficient to justify a Terry stop. Hawkins, supra (Newman and Castille, JJ., dissenting, Nigro, J., concurring in the result).

[6] Because this tip provided information as to Wimbush's actions later in the evening and Wimbush did not begin to travel down Piney Ridge Road until after the police arrived at that location, the police were not merely "verifying facts in existence at the time of the tip," as the majority contends. See Slip. Op. at 11 n.6.

observed a van that matched the relevant description and registration numbers travelling north along Piney Ridge Road. The officers followed the van and observed it exceeding the speed limit and driving on the wrong side of the highway.[7] Finally, having corroborated the predictive aspects of the tip, having observed the erratic and unlawful operation of the van, and having performed independent police work with respect to the suspected drug activities of the van operator, the officers pulled the van over for an investigative stop.

In sum, not only did the officers here take the minimum corroborative measures necessary to justify an investigative stop based exclusively on a predictive anonymous tip under Alabama v. White, they also developed reasonable suspicion through independent measures, culminating in the observations of unlawful operation of the

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[7] The majority discounts the observations concerning traffic violations by claiming that the suppression court deemed them pretextual. This is quite simply not supported by the record. Although all parties agreed that the van was not stopped because it was exceeding the speed limit, the parties also agreed that the van was in fact exceeding the speed limit, and that this could be evaluated as an independent basis for the stop, as evidenced by the following exchange:

> PROSECUTOR: I am saying there are two bases for the stop . . . Independently the stop can be justified due to the fact that there were traffic violations. We can't ignore that . . . The question is whether Trooper Granlund would have been justified in stopping the vehicle for those traffic violations to issue a citation.
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> THE COURT: Certainly.
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> DEFENSE COUNSEL: Yes, he would.

(R. at 49-50).

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vehicle. Since Alabama v. White is the barometer by which an officer's conduct must be measured in this context, the only possible conclusion is that the conduct of these officers was unassailable for Fourth Amendment purposes.

In Commonwealth v. White, Officer Traci Matthews received an anonymous telephone call about possible drug activity at a certain named public housing complex. The caller stated that an African-American male, wearing a white shirt and white shorts, would shortly exit the complex with illegal drugs in his possession and leave on a girl's black bicycle. Officer Matthews responded immediately and arrived at the specified complex minutes later. After circling the area in her patrol vehicle, she observed appellant, an African-American male, emerge wearing white shorts and a white shirt. Appellant mounted a girl's black bicycle and began to depart. Officer Matthews caught up to appellant, stopped him and informed him of the 911 call, and inquired as to whether she might ask him a few questions. Although appellant agreed, Officer Matthews noted that appellant was extremely nervous and she asked whether she could briefly check him for weapons. As she attempted to initiate a limited pat-down, appellant turned and fled, leaving the bicycle behind. Officer Matthews conveyed this information over police radio.

Sergeant Floyd Newingham responded immediately when he heard the radio call indicating that appellant had fled. Arriving at the area of the housing complex, Sergeant Newingham observed a man matching appellant's description running across the street

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Clearly, this testimony supported the suppression court's finding of fact that the van was navigating curves on the wrong side of the highway and that the speed of the vehicle was excessive.

in front of him and ordered him to stop. After complying with this order, appellant surreptitiously discarded a small plastic bag that was later determined to contain three grams of crack cocaine. Officer Matthews arrived immediately thereafter and identified appellant.

The only question for purposes of this appeal is the propriety of the initial investigative stop by Officer Matthews. If this stop was supported by a reasonable suspicion of criminal activity, then the evidence in the small plastic bag was not the result of a "coerced abandonment" and it was properly deemed admissible.[8] Again, as in Alabama v. White, the officer here corroborated the predictive aspect of the tip as well as the descriptive aspects of the tip. As this Court properly noted in Hawkins, "if the tip is anonymous, police may reasonably rely on it if it is predictive of the suspect's behavior." Hawkins, supra at 656 n.3, 692 A.2d at 1070 n.3. Quite simply, this tip predicted that appellant would shortly exit the complex and depart on a girl's black bicycle. Officer Matthews watched as appellant fulfilled this prediction exactly. "[T]he independent corroboration by the police of significant aspects of the informer's predictions imparted some degree of reliability to the other allegations made by the caller." Alabama v. White, supra at 332.[9]

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[8] Appellant challenges only the initial stop, not the subsequent request by Officer Matthews to perform a Terry frisk for her own protection.

[9] The majority opinion attempts to distinguish the prediction in Alabama v. White from this prediction by asserting that "anyone in the King's Residence complex could have been aware of [appellant]'s . . . mode of transportation on the day in question." This naked speculation is devoid of legal significance. Having read Alabama v. White carefully, I could nowhere find any indication that a prediction loses its ability to be a meaningful indicator of reliability if there is some possibility that other people in the world might be able to make the same prediction. In any event, I find it highly unlikely
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In determining that the Terry stops in these two matters were not supported by reasonable suspicion, the majority relies on the fact that the independent observation by police did not provide any corroboration of the criminal aspects of the anonymous tips. Alabama v. White, however, only requires that the police have independent corroboration of the predictive aspect of the tips. Id. By holding that the police must corroborate the criminal aspects of the tip, the majority has raised the standard for an investigative stop set forth in Alabama v. White from reasonable suspicion to probable cause.

The societal interest in allowing police officers to ask questions on the basis of a common-sense suspicion is compelling. One wonders how else police officers can advance cases such as these without asking questions of the suspects. The only possible alternative here was to allow the suspects to pass on unimpeded and follow them in an attempt to discover direct evidence of criminal conduct. But following suspects further would most likely yield no rewards unless the suspects were so simple-minded as to carry on their criminal activity in public. To say that the officers could have procured the cooperation of other witnesses is to ignore the reality that gives rise to anonymous reports of criminality to begin with – namely, citizens are frequently in mortal fear of drug dealers, and often with good reason. One can only conclude that there will frequently be nothing that officers can do in the wake of this opinion to justify an investigative stop. Instead, they must allow criminal activity to go forth unabated,

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that at the time of this tip, a significant number of people in the housing complex at issue were cognizant of the fact that appellant would depart the complex within minutes on a girl's bicycle.

even when concerned but fearful citizens try to alert them to such criminal activity, when they first corroborate the predictive information supplied by these citizens, and when all they seek to do is ask questions.

This decision protects our citizens against what the majority must conclude to be the ominous specter of having to answer a few questions posed by hard-pressed police; all it surrenders in exchange is the ability of law enforcement officers to do their jobs. Moreover, the decision today clearly contradicts the pronouncement of the nation's high Court in Alabama v. White.[10] Therefore, I dissent.

Madame Justice Newman joins this dissenting opinion.

[10] Of course, the United States Supreme Court can once again correct the mistake the majority makes today regarding the scope of the Fourth Amendment. See, Pennsylvania v. Labron, 518 U.S. 938 (1996)(reversal by U.S. Supreme Court on Fourth Amendment issue); Pennsylvania v. Kilgore, 518 U.S. 938 (1996)(same); Pennsylvania v. Bruder, 488 U.S. 9 (1988)(same); Pennsylvania v. Mimms, 434 U.S. 106 (1977)(same).