[J-144B-1997]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA ,	:	No. 0037 Western District Appeal Docket 1997
Appellee,	:	
	:	Appeal from the Order of the Superior Court entered July 10, 1996, at No. 1600PGH95 vacating in part and remanding the Judgment of Sentence of the Westmoreland County Court of Common Pleas entered August 15, 1995, at No. 26 C 1994.
v.	:	
CONSTANCE L. GOODWIN,	:	
Appellant.	:	
	:	ARGUED: September 17, 1997

DISSENTING OPINION

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

In finding that the Fourth Amendment to the United States Constitution requires suppression of the evidence in this case, the majority circumvents binding federal precedent. Because I believe that this case is controlled by Alabama v. White, 496 U.S. 325 (1990), I respectfully dissent.[1]

---

[1] Mr. Justice Zappala concurs with the majority, properly recognizing that the decision of the Majority incorrectly applies the Fourth Amendment to dispose of the search and seizure issue; however, he proceeds to determine that Article I, Section 8 of the Pennsylvania Constitution provides an independent basis on which to suppress the evidence at issue. In footnote ten, Mr. Justice Zappala indicates his belief that this Court has not provided any authority which would render the Fourth Amendment coextensive with Article I, Section 8 when determining what quantum of reasonable suspicion suffices to initiate an investigative stop. However, this Court has provided such authority. In Commonwealth v. Jackson, 548 Pa. 484, 489-90, 698 A.2d 571, 574 (1997), this Court initially noted, as does Mr. Justice Zappala, the simple axiom that this
(continued…)

In 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.

After White was tried and convicted of several possession charges, the Alabama Court of Criminal Appeals determined that the officers lacked the reasonable suspicion

---

(…continued)
Court may provide more extensive protections under the Pennsylvania Constitution if it so chooses. However, the Court proceeded to observe that ". . . Pennsylvania has always followed Terry in stop and frisk cases . . . ." Id., citing Commonwealth v. Hicks, 434 Pa. 153, 253 A.2d 276 (1969). See also, Commonwealth v. Morris, 537 Pa. 417, 422, 644 A.2d 721, 724 (1994)(rejecting the appellant's suggestion to depart from Terry in interpreting Article I, Section 8 and determining that the requirements of Terry and Article I, Section 8 are coextensive: "we have long recognized that the limited [Terry frisk] is likewise permissible under the Pennsylvania Constitution."). Indeed, in Commonwealth v. Tarbert, 517 Pa. 277, 535 A.2d 1035 (1987)(Zappala, J., concurring), Mr. Justice Zappala recognized the applicability of Terry under Article I, Section 8 in the limited context of investigative stops, while indicating his belief that Terry should not be applied to eviscerate the traditional probable cause requirement for seizures outside the scope of Terry. Id. at 300, 535 A.2d at 1046 ("even under [Hicks], in which we adopted the Terry exception to probable cause for a search and/or seizure, we required a reasonable suspicion that a crime was in process" (emphasis added)). Thus, in the context of a Terry stop, the more expansive interpretation of Article I, Section 8 that Mr. Justice Zappala proffers today differs from the settled and sound jurisprudence of this Court.

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 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." Id. 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, reasonable suspicion is a less demanding standard than probable cause, 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 before it, the United States Supreme Court concluded that, when the officers stopped White, the anonymous tip had been sufficiently corroborated 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.[2] 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.[3] 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 likely to also have access to reliable information about the individual's illegal activities. Id. I have little doubt how this case should be resolved in light of White.

Further, in Commonwealth v. Hawkins, 547 Pa. 652, 692 A.2d 1068 (1997), this Court relied on White in attempting to impart guidance to police investigations in the area of search and seizure. Although the anonymous tip in Hawkins did not predict any future behavior, this Court noted that, "if the tip is anonymous, police may reasonably rely on it if it is predictive of the suspect's behavior." Id. at 656 n.3, 692 A.2d at 1070 n.3. In its decision today, the majority abandons the principles of Hawkins and White.

The relevant facts of the case at issue, as summarized by the trial court, indicate that on November 8, 1993, Trooper Anthony DeLuca of the Pennsylvania State Police received an anonymous telephone call at about 11:15 a.m. The caller advised the trooper that a woman who worked in a nearby law office was selling drugs to schoolchildren out of

---

[2] 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 the motel.

[3] 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.

the office and at her residence. The caller further stated that the woman was the girlfriend of a man named David Klink, and that the woman had sold drugs to Klink's son, Ian. Additionally, the caller provided a physical description of the woman and stated that she would be leaving her office for lunch between 12:10 and 12:15 p.m., that she would proceed by a specified route to her blue Ford Mustang with Pennsylvania registration number AKA 2168, parked on the inside corner of a parking garage on Maple Avenue, and that she would be carrying illegal drugs in a small pink carrying bag. The phone call with the tipster lasted three or four minutes, during which the tipster stated that he had seen the drugs in appellant's pink bag that morning. Furthermore, Trooper DeLuca testified that, at the time of this phone call, he already had independent reason to believe that Ian Klink had purchased drugs from a female seller. In an undercover capacity, Trooper DeLuca had purchased drugs from the younger Klink outside of the building where DeLuca knew that Klink lived with his father and appellant. Klink had mentioned at the time that his supplier was a female.

Next, Trooper DeLuca and several other officers set up surveillance at a point where they could observe both the parking garage and the law office in which appellant worked. At approximately 12:08 p.m., a female exactly matching the caller's detailed description exited the law office carrying a pink bag. She followed the route that the caller had predicted she would follow and entered the Ford Mustang described by the caller. The troopers followed her vehicle for several blocks and then pulled her over for an investigative stop.

The only question for purposes of this appeal is whether the officers had a reasonable suspicion that criminal activity was afoot when they pulled appellant over. If they did, then the subsequent permission that they received to search her residence was not tainted by the illegality of the stop, and the contraband found therein is not excludible.

The predictive detail that was corroborated in White – namely the defendant's itinerary – was corroborated in great detail here. A person with access to an individual's itinerary is likely to also have access to reliable information about the individual's illegal activities. White, supra at 332. Moreover, the police here corroborated the fact that appellant was carrying the same pink bag in which the tipster claimed to have seen drugs that very morning, unlike in White, where the officers were unable to corroborate the caller's prediction that White would be transporting the drugs in a certain type of attaché case and were also unable to establish the basis of the tipster's knowledge. Lastly, Trooper DeLuca had independently formed reasonable suspicion regarding appellant's drug trafficking activities based on the statements by her boyfriend's son. The combination of these statements with the subsequent detailed, predictive, and fully corroborated tip furnished Trooper DeLuca with a degree of suspicion that criminal activity was afoot far greater than the suspicion engendered by the facts of White. [4] Consequently, Trooper DeLuca's initiation of an investigative stop was fully justified.

In determining that the Terry stop in this case violated the Fourth Amendment, the majority opinion relies on the fact that the police lacked independent corroboration of the criminal aspects of the anonymous tip. However, nothing in White requires such

[4] The majority discounts the predictive aspect of this tip by claiming that it did not show "a familiarity with Goodwin's personal affairs," contrasting this tip with the "intimate knowledge found in White." See Maj. Opin. at 8. At the risk of being laborious, I reiterate that the tip in White furnished the suspect's identity, time of departure, place of departure, vehicle type, method of transporting the drugs, and destination. Of these, the officers were only able to fully corroborate the identity, place of departure, and vehicle type. Here, the officers corroborated all of the above details, in addition to the predicted route taken by the suspect from the office to the car and the predicted method of transporting the drugs (the prediction in White was simply wrong on this point). Furthermore, the officers here established the basis of the tipster's knowledge and were also in possession of probative, independently acquired information concerning appellant's involvement with controlled substances.

corroboration. All White requires is that the police corroborate the predictive aspects of the tip. By requiring corroboration of the criminal aspects of the tip, the majority raises the bar for a permissible stop under 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 this without asking questions of the suspects. The only possible alternative here was to allow the suspect to pass on unimpeded and follow her in an attempt to discover direct evidence of criminal conduct. But following her further would most likely yield no rewards unless the suspect was so simple-minded as to carry on her 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, 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 disregards the pronouncements of the nation's high Court.[5] Therefore, I dissent.

---

[5] 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);
(continued…)

Madame Justice Newman joins this dissenting opinion.

(…continued)
Pennsylvania v. Bruder, 488 U.S. 9 (1988)(same); Pennsylvania v. Mimms, 434 U.S. 106 (1977)(same).