

[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.
v.	:	1600PGH95 vacating in part and
	:	remanding the Judgment of Sentence of
	:	the Westmoreland County Court of
CONSTANCE L. GOODWIN,	:	Common Pleas entered August 15, 1995
	:	at No. 26 C 1994.
Appellant	:	
	:	
	:	
	:	ARGUED: September 17, 1997
	:	

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MR. JUSTICE NIGRO

DECIDED: APRIL 17, 2000

In this appeal, Appellant Constance Goodwin argues that she was subjected to an investigatory stop without the requisite reasonable suspicion that she was engaged in criminal activity. We agree and therefore reverse the Superior Court's decision affirming the suppression court's denial of Goodwin's motion to suppress.¹

On November 8, 1993, Pennsylvania State Police Trooper Anthony DeLuca received an anonymous telephone call at 11:15 a.m. The anonymous caller alleged that David

¹ When reviewing the ruling of a suppression court, we are bound by the suppression court's factual findings that are supported by the record. Commonwealth v. DeWitt, 530 Pa. 299, 302, 608 A.2d 1030, 1031 (1992).

Klink's girlfriend sold drugs to Klink's minor son, Ian, who Trooper DeLuca had recently arrested on drug charges. According to the anonymous caller, this woman sells drugs both from her home and from the office where she works. The caller further stated that the woman always carries a quarter pound of marijuana in a pink bag and that children buy drugs from her. Also, the woman takes a one-hour lunch break at about 12:15 and drives a blue Mustang, registration AKA 2168, which was parked that day on the inside corner of a parking garage. The caller described the woman as 25 years old, with red hair, and stated that she was wearing a red coat and red stockings on that particular day. The anonymous caller then provided the name and address of the woman's employer, the street she lived on, the location of the parking garage, and the route the woman took to walk to the garage.

A few months earlier, in August of 1993, Trooper DeLuca bought drugs from Ian Klink while undercover. Ian got the drugs from an apartment building. Trooper DeLuca did not know from which apartment the drugs came from, but Ian referred to a female as the supplier. The building where Trooper DeLuca bought drugs had a different address than the female's home address provided by the anonymous caller. Trooper DeLuca also knew that Appellant Goodwin was David Klink's girlfriend and that they lived together.

After receiving the anonymous call, with the help of other officers, Trooper DeLuca watched the parking garage outside the office the caller identified. At about 12:10 p.m., Goodwin, who matched the caller's description, exited the office carrying a pink bag. She took the described route to the garage, entered the identified car, and traveled for several blocks. The troopers then stopped her car and told her that they had information that she was transporting marijuana.

Trooper DeLuca asked if he could search the car. He told Goodwin that she could consent or he would get a search warrant. After some discussion about how long the search would take, Goodwin ultimately agreed to the search and signed a consent form. When Goodwin removed the pink bag from the car, a trooper told her that they would search the bag since it had been inside the car. Goodwin then stated that drugs were in the bag. The trooper opened the bag and found marijuana. There were no drugs in the car.

Trooper DeLuca then asked Goodwin where she lived. She responded that she lived with David Klink and another male on the street identified by the caller. The troopers asked to search her apartment and she agreed. At the apartment, she verbally consented to a search of her bedroom, where the troopers found marijuana and drug paraphernalia. As a result, the troopers advised Goodwin of her Miranda rights and took a statement from her. Goodwin admitted that she sold drugs to Ian Klink and another male in August of 1993.

Goodwin was charged with offenses related to the sale of drugs to Trooper DeLuca in August of 1993 and the discovery of drugs in her bag in November of 1993.² The trial court denied a motion to suppress the drug evidence and Goodwin's statement to the police. After a bench trial, Goodwin was found guilty on all counts and sentenced to a total of one and a half to five years incarceration.

² Specifically, Goodwin was charged with delivery of a controlled substance, possession with intent to deliver, corrupting the morals of a minor, and criminal conspiracy in August and possession with intent to deliver, possession of a controlled substance, and possession of drug paraphernalia in November. The trial court severed the counts related to the two incidents for two non-jury trials but ultimately sentenced Goodwin on all charges.

On appeal, the Superior Court reversed and awarded Goodwin a new trial, finding that the trial court should have suppressed the drug evidence from the pink bag because the search of the bag was outside the scope of Goodwin's consent to search her car. The Commonwealth petitioned for clarification as to the sentence for the charges related to the August drug sale. The Superior Court issued another opinion awarding a new trial on the charges related to the drugs found in Goodwin's bag in November but affirming the sentence on the charges related to the drug sale in August. Thus, only those charges related to the August drug sale are the subject of this appeal.

Goodwin argues that the investigatory detention she was subjected to was invalid since the anonymous tip and other purported corroborating evidence did not create a reasonable suspicion that she was engaged in criminal activity.³ We agree.

An investigatory stop, which subjects a suspect to a stop and a period of detention but does not involve such coercive conditions as to constitute an arrest, requires a reasonable suspicion that criminal activity is afoot. Terry v. Ohio, 392 U.S. 1, 21 (1968); Commonwealth v. Melendez, 544 Pa. 323, 676 A.2d 226, 228-30 (1996). Reasonable suspicion depends upon both the content of the information possessed by the police and its degree of reliability. Commonwealth v. Wilson, 424 Pa. Super. 110, 115, 622 A.2d 293, 295-96 (1993) (quoting Alabama v. White, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990)). Thus, quantity and quality of information are considered when assessing the

³ Although Goodwin raises her claim under both Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution, we note that Pennsylvania has consistently followed Fourth Amendment jurisprudence in stop and frisk cases. See, e.g., Commonwealth v. Jackson, 548 Pa. 484, 489, 698 A.2d 571, 574 (1997); see also Commonwealth v. Melendez, 544 Pa. 323, 327-28, 676 A.2d 226, 230 (1996) (Terry v. Ohio sets (continued...))

totality of the circumstances. Id. If information has a low degree of reliability, then more information is required to establish reasonable suspicion. Id.

This Court has recently addressed the role of anonymous tips in providing a basis for an investigatory stop. In Commonwealth v. Jackson, 548 Pa. 484, 698 A.2d 571 (1997), a police officer responded to a radio report stating that a man in a green jacket was carrying a gun at a particular location. No additional details were provided. When the officer arrived at the identified location, he saw a number of people including the defendant who was wearing a green jacket. Based solely upon the anonymous call, the officer stopped and searched the defendant.

Relying upon Commonwealth v. Hawkins, 547 Pa. 652, 692 A.2d 1068 (1997), a factually similar case⁴, the Court held in Jackson that the anonymous tip did not justify a stop and frisk of the defendant. Jackson at 494, 698 A.2d at 576. In Hawkins, a plurality of the Court explained that when police receive an anonymous call alleging that a person of a particular description is carrying a gun at a particular location, and the police broadcast that information to patrol cars, neither the dispatcher nor the officers in their cars know whether the information is reliable. Hawkins, 547 Pa. at 656, 692 A.2d at 1070. The Court observed that an anonymous tip may be nothing more than a mere prank call. Id. At the same time, it may be based on no more than the caller's unparticularized hunch. Jackson,

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forth standard for the reasonableness of a search under Article I, Section 8 of the Pennsylvania Constitution).

⁴ In Hawkins, a police officer also responded to a radio call stating that there was a man with a gun at a particular location. The radio call included a description of the suspect. When the officer arrived at the location, he saw the defendant who fit the description in the call. Based upon the anonymous call, the officer stopped and frisked the defendant.

548 Pa. at 490, 698 A.2d at 574; see also White, 496 U.S. at 329; 110 S. Ct. at 2415 (anonymous tips provide “virtually nothing from which one might conclude that the caller is either honest, or his information reliable”). Because of its unreliability, an anonymous radio call alone is insufficient to establish a reasonable suspicion of criminal activity. Jackson, supra; Hawkins, supra.

The Court in Jackson further explained that the fact that the police proceeded to the designated location and saw a person matching the description in the call did not corroborate any alleged criminal activity. Jackson, 548 Pa. at 492, 698 A.2d at 574-75 (quoting Hawkins, 547 Pa. at 656-57, 692 A.2d at 1070). Since anyone can describe a person who is standing in a particular location, “[s]omething more is needed to corroborate the caller’s allegations of criminal conduct.” Id. In the typical anonymous caller situation, the police will need an independent basis to establish reasonable suspicion. Id.

As explained in Hawkins, where the police are acting on information supplied anonymously, the public will receive its full measure of protection by police who act within constitutional restraints. Hawkins, 547 Pa. at 657-58, 692 A.2d at 1071. When the police receive unverified information that a person is engaged in illegal activity, the police may observe the suspect and conduct an investigation. If police surveillance produces a reasonable suspicion of criminal conduct, the suspect may be stopped and questioned. Id.

Since the police in Jackson and Hawkins acted on anonymous tips and had no independent reason to believe that the suspects may have been involved in criminal activity, the Court reversed the judgments of sentence. See also Commonwealth v. Kue, 547 Pa. 668, 692 A.2d 1076 (1997) (opinion announcing the judgment of the Court) (where,

other than anonymous tip, there was no reason to believe that criminal conduct was afoot, an officer's stop was unsupported by reasonable suspicion).

Applying the rationale in Jackson and Hawkins to the instant case, the Superior Court's decision cannot stand. Here, police proceeded to Goodwin's office building in response to an anonymous tip alleging that Goodwin was selling drugs. As Jackson and Hawkins make clear, an anonymous tip alone, given its unreliability, is insufficient to give rise to a reasonable suspicion that criminal activity is afoot. Thus, the police needed "something more" than just the anonymous tip to justify conducting an investigatory stop of Goodwin.

The police, however, saw no unusual activity while they watched Goodwin and had no reason independent of the anonymous tip to suspect that criminal activity was afoot. Thus, the allegations of criminal conduct furnished by the anonymous tipster remained uncorroborated. Under Jackson, such an uncorroborated anonymous tip is insufficient to provide the basis for an investigatory stop.

The Superior Court found, and the Commonwealth argues, that the anonymous caller's tip was similar to the tip in Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412 (1990), where the United States Supreme Court held that police corroboration of an anonymous tip that predicted a person's future actions justified an investigatory stop.⁵ The tipster in Alabama v. White told the police that the defendant would leave her apartment at a

⁵ The United States Supreme Court recently reaffirmed the requirement that anonymous tips must contain predictive information in order to give the police reasonable suspicion in Florida v. J.L., 2000 WL 309131 (U.S. March 28, 2000). The Court explained that in order for an anonymous tip to have sufficient indicia of reliability the tip must exhibit predictive information that can be corroborated by police officers. Id. at *3. In the absence of such predictive information, the (continued...)

particular time, travel to an identified motel, and that she would have drugs in a brown attaché case. The police stopped the defendant's car just short of the identified motel. In upholding the stop, the United States Supreme Court found that the information provided by the caller demonstrated “insider information - a specific familiarity with respondent’s affairs.” White, 496 U.S. at 332, 110 S. Ct. at 2417. The Court then held that if an anonymous tip provides such insider information, including facts relating to “future actions of third persons ordinarily not easily predicted,” then police corroboration of this insider information can support a finding of reasonable suspicion. Id. Unlike the tip in Alabama v. White, however, the tip in the instant matter did not predict behavior that showed a familiarity with Goodwin's personal affairs. Anyone in Goodwin’s office building could have known what she was wearing that day, which kind of car she drove and where she parked it, and that she went to lunch around noon. The intimate knowledge found in Alabama v. White is simply not present here.

After the illegal stop, Goodwin consented to a search of her apartment where she admitted that she sold drugs to Ian Klink in August. Goodwin argues that her statement is the fruit of the illegal stop and must be suppressed. We agree.⁶ The voluntariness of a statement is a threshold requirement for its admissibility. Commonwealth v. Yocham, 473

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anonymous tip leaves the police without any means to test the informant’s knowledge and thus, cannot provide the officers with reasonable suspicion. Id.

⁶ In addition to granting Goodwin's allocatur petition as to the validity of the stop, the Court granted allowance of appeal as to whether her statement was the fruit of an illegal stop. While the Superior Court noted that Goodwin did not pursue the voluntariness of her statement on appeal, Goodwin has raised all along that her statement was the fruit of an illegal stop.

Pa. 445, 455-56, 375 A.2d 325, 330-31 (1977). In addition, the causal chain between the initial illegality and the statement made thereafter must be broken so that the statement is an act of free will that is purged of the primary taint. Id.

While Goodwin received Miranda warnings, we cannot conclude that the statement was an act of free will purged of the primary taint. During the illegal stop of her car, Goodwin was caught with drugs. Immediately thereafter, the police asked to search her apartment. Once there, more drugs were found and Goodwin then confessed to her involvement in the August drug sale. In these circumstances, while the confession was voluntary, it was not free of coerciveness as it resulted shortly after the unlawful stop without intervening circumstances. See Yocham, 473 Pa. at 455, 375 A.2d at 330 (considering temporal proximity of illegal act and confession and intervening circumstances to determine admissibility of confession).

The Commonwealth concedes that there were no intervening circumstances and that the confession was within two hours of the stop. It argues, however, that in light of Trooper DeLuca's involvement in the drug purchase from Ian Klink, the evidence obtained at the apartment was the result of an independent source. Before receiving the anonymous tip, Trooper DeLuca suspected that the supplier of his purchase was a female. He also knew that Goodwin was David Klink's girlfriend. This information, however, is inadequate to establish an independent source for the fact that Goodwin was the supplier of drugs in the August sale. Thus, Goodwin's statement should have been suppressed as it was the fruit of the illegal stop.

In sum, since the uncorroborated anonymous tip did not create the reasonable suspicion necessary to stop Goodwin for investigation, the statement regarding Goodwin's

involvement in the August drug transaction, which was a fruit of the illegal stop, must be suppressed. Thus, we reverse the decision of the Superior Court affirming the trial court's denial of Goodwin's motion to suppress the statement and remand for further proceedings consistent with this opinion.

Mr. Justice Zappala filed a concurring opinion in which Mr. Chief Justice Flaherty joins.

Mr. Justice Castille filed a dissenting opinion in which Madame Justice Newman joins.