

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

COMMONWEALTH OF PENNSYLVANIA ,	:	No. 37 W.D. Appeal Docket 1997
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered July 10, 1996 at No.
	:	1600PGH95 vacating in part and
v.	:	remanding the Judgment of Sentence of
	:	the Westmoreland County Court of
	:	Common Pleas dated August 15, 1995 at
CONSTANCE L. GOODWIN,	:	No. 26 C 1994.
	:	
Appellant	:	ARGUED: September 17, 1997

CONCURRING OPINION

MR. JUSTICE ZAPPALA

DECIDED: APRIL 17, 2000

Although I disagree with the majority's Fourth Amendment analysis pursuant to the United States Supreme Court's decision in Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412 (1990), I find that its conclusion is supported by Article I, Section 8 of the Pennsylvania Constitution. Accordingly, I concur in the result reached by the majority.¹

In White, the anonymous caller informed the police that Vanessa White would be leaving 235-C Lynwood Terrace Apartments at a certain time in a brown Plymouth station wagon with the right taillight lens broken, that she would be going to Dobby's Motel and that

¹ The record establishes that Appellant asserted in her suppression motion that the stop of her vehicle was illegal and in violation of the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. She further preserved this claim in her post-trial motions as well as in the appellate courts.

Although Appellant has not engaged in a complete analysis of a state constitutional claim pursuant to Commonwealth v. Edmunds, 526 Pa. 374, 586 A.2d 887 (1991), we have held that the failure to do so does not result in waiver of the state constitutional claim. Commonwealth v. Arroyo, 555 Pa. 125, 133 n. 6, 723 a.2d 162, 166 n. 6 (1999); Commonwealth v. White, 543 Pa. 45, 669 A.2d 896 (1995); Commonwealth v. Swinehart, 541 Pa. 500, 509 n.6, 664 A.2d 957, 961 n.6 (1995).

she would be in possession of about an ounce of cocaine inside a brown attaché case. Police officers proceeded to the apartment complex and saw a brown Plymouth station wagon with a broken right taillight parked in front of the 235 building. They observed White exit the building, carrying nothing in her hands and enter the station wagon. The police officers followed the vehicle as it drove the most direct route to Dobey's Motel. The officers stopped the vehicle just short of the motel. Marijuana was discovered in an attaché case and cocaine was found in White's purse.

Acknowledging that it was a close case, the Court held that the anonymous tip coupled with the police corroboration established reasonable suspicion to support the investigatory stop.² The Court held 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. It emphasized that the caller predicted White's future behavior and possessed a special familiarity with her affairs.

Applying White to the instant case, I conclude that no violation of the Fourth Amendment occurred.³ Similar to the anonymous caller in White, the informer here relayed information regarding where Appellant was located, i.e., her employer's place of business, when she would leave for lunch, the travel route she would take to the garage, where she

² The Court noted that every detail of the tip had not been verified at the time of the stop, such as the name of the woman leaving the building, the precise apartment from which she left, and the suggestion that White would be carrying a brown attaché case.

³ In reaching this conclusion, I have afforded the suppression court's finding of fact the deference described in Ornelas v. United States, 116 S. Ct. 1657 (1996). In Ornelas, the United States Supreme Court held that the trial court's ultimate determination as to whether police officers had reasonable suspicion to stop an individual is subject to *de novo* review on appeal, rather than a deferential or abuse of discretion standard. The Court made clear, however, that reviewing courts "should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." Id. at 1663.

parked her car, the description of her car including the license plate number and that she would be carrying a pink bag.⁴ Upon a close scrutiny of both cases, I find that the information given by the anonymous caller in the present case and the subsequent police corroboration demonstrate a similar degree of reliability as that found to constitute reasonable suspicion to support an investigatory stop under the Fourth Amendment in Alabama v. White.⁵

Analyzing the same claim under Article 1, Section 8 of the Pennsylvania Constitution, however, I reach a contrary result. In determining whether an investigatory stop is based on reasonable suspicion of criminal activity, the interest of the public must be balanced against the suspect's right to personal security. It is this weighing of interests which leads me to a conclusion distinct from that reached under an analysis of the Fourth Amendment.

In Alabama v. White, the Supreme Court did not effectively distinguish between information contained in an anonymous tip which is readily observable by a casual acquaintance of the accused and information which is not.⁶ I find that the absence of such a qualification renders the police corroboration of an anonymous tip virtually meaningless

⁴ Unlike the anonymous tip in White, the caller here also informed the police of the specific apparel Appellant was wearing.

⁵ As noted in my dissenting opinion in the consolidated cases of Commonwealth v. Wimbush, 174 M.D. Appeal Dkt. 1996, and Commonwealth v. White, 25 W.D. Appeal Dkt. 1996, although I may question the Court's reasoning in White, our Court is bound by it as there is no discernable difference between the factual scenarios presented.

⁶ The Court asserted that the anonymous tip included details regarding "future actions of third parties ordinarily not easily predicted." White, 110 S. Ct. at 2417. To the contrary, however, Justice Stevens's cogent dissent recognized that "an anonymous neighbor's prediction about somebody's time of departure and probable destination is anything but a reliable basis for assuming that the commuter is in possession of an illegal substance." 110 S. Ct. at 333.

and fails to increase the reliability of the information regarding the accused's alleged criminal activity.

The instant facts demonstrate this point. The information which was found by the lower courts to be corroborated by independent police investigation includes Appellant's place of employment, her physical characteristics and apparel on the day of the investigatory stop, including the fact that she would be carrying a pink bag, her type of car and registration number, the location of the parking garage and the route Appellant took to arrive at her car during her 12:15 lunch hour. I fail to see how such corroboration imparts reliability upon an otherwise unreliable anonymous tip.⁷

The call was placed at 11:15 a.m. and police stopped Appellant approximately an hour later. Thus any individual who saw Appellant arrive at work that morning would possess the same detailed information regarding her apparel, physical characteristics, type of vehicle and the location where she parked her car. Moreover, the time that she takes her lunch and the direction she walks to reach her parked vehicle is information available to anyone she worked with or who had seen her leave for lunch on a previous workday. The corroboration of such commonplace and unsuspecting activities can not give rise to a reasonable suspicion of criminal activity under Article I, Section 8 of the Pennsylvania Constitution. Otherwise, as noted by Justice Stevens in his dissenting opinion in White, "every citizen is subject to being seized and questioned by any officer who is prepared to testify that the warrantless stop was based on an anonymous tip predicting whatever

⁷ The officer who stopped Appellant had previously arrested David Klink on drug charges. The officer had reason to believe that Klink's drug supplier was a female and that Appellant was Klink's girlfriend. These facts, however, do not constitute independent evidence that would give rise to a reasonable suspicion that Appellant was Klink's drug supplier.

conduct the officer just observed.” 496 U.S. at 333.⁸ To satisfy this Commonwealth’s Constitution, the information contained in the anonymous tip and corroborated by independent police investigation must reveal an awareness of the suspect’s activities which would not be readily observable by the general public. This is the only method to ensure that the anonymous caller’s information regarding the accused’s illegal activities is reliable.

As noted by the majority, this conclusion is supported by our recent decisions in Commonwealth v. Hawkins, 547 Pa. 652, 692 A.2d 1068 (1997), and Commonwealth v. Jackson, 548 Pa. 484, 698 A.2d 571 (1997). In Commonwealth v. Hawkins, an officer responded to a police radio broadcast that a man of a particular description was carrying a gun. The source of the report was unknown. We held that the anonymous call and subsequent police corroboration was insufficient to establish reasonable suspicion to support an investigatory stop. We observed that if police “respond to an anonymous call that a particular person at a specified location is engaged in criminal activity, and upon arriving at the location see a person matching the description and nothing more, they have no certain knowledge except that the caller accurately described someone at a particular location.” Id. at 656-657, 692 A.2d at 1070. The same can be said of an anonymous tip that “predicts” an accused’s location, physical appearance, and an unsuspecting routine activity.

In Commonwealth v. Jackson, a case factually indistinguishable from Hawkins, we reiterated that anonymous tips should be treated with particular suspicion as they may be a joke or may be based upon no more than a caller’s unparticularized hunch. We

⁸ Justice Stevens recognized that the vast majority of those in the law enforcement community would not adopt such a practice, but stated that the Fourth Amendment was intended to protect citizens from the overzealous officer as well as the conscientious one.

concluded that the police must be able to corroborate more than a mere description and location of the accused.⁹

Accordingly, I would hold that reasonable suspicion pursuant to Article I, Section 8 of the Pennsylvania Constitution did not exist to support the investigatory stop of Appellant. As found by the majority, I would further hold that Appellant's statements regarding her prior drug sales to Klink and her consent to search her vehicle should be suppressed as the fruit of an illegal stop.¹⁰

Mr. Chief Justice Flaherty joins in this Concurring Opinion.

⁹ We cited Alabama v. White in both Hawkins and Jackson for the proposition that an anonymous tip may provide reasonable suspicion for an investigatory stop if the tip accurately predicts future behavior of an individual. We were not faced, however, with the issue of whether particular information given by an anonymous source constituted a prediction of a third party's future conduct.

¹⁰ In his dissenting opinion, Mr. Justice Castille concludes that in analyzing whether an investigative detention supported by reasonable suspicion occurred, the Pennsylvania Constitution is satisfied by the prevailing federal constitutional test. This is not completely accurate. While minimum federal constitutional guarantees are equally applicable to the analogous state constitutional provision, the state has the power to provide broader standards than those mandated by the federal constitution. Commonwealth v. Sell, 540 Pa. 46, 470 A.2d 457 (1983).

In Commonwealth v. Hawkins, 547 Pa. 652, 656 n.2, 692 A.2d 1068, 1069 n.2 (1997), we stated in dictum that the case of Commonwealth v. Melendez, 544 Pa. 323, 676 A.2d 226, 230 (1996), "makes it clear that the requirements of Terry are also the requirements of Art. I, Section 8 of the Pennsylvania Constitution. . . ." In Melendez, however, we merely concluded that because the investigative stop violated the Fourth Amendment, the items seized must be suppressed under Article I, Section 8 of the Pennsylvania Constitution. It does not follow from this conclusion that a Fourth Amendment violation arising from an investigatory stop must be found in order to find a violation under Article I, Section 8. I find that Article I, Section 8 of the Pennsylvania Constitution requires a broader standard than that applied by the United States Supreme Court in Alabama v. White in interpreting whether an anonymous tip is sufficient to establish reasonable suspicion to support an investigatory stop.