

[J-221-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA ,	:	No. 30 E.D. Appeal Docket 1999
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court dated July 9, 1996 at No. 3906 PHL
	:	1994, affirming the Order of the
v.	:	Philadelphia County Common Pleas Court
	:	dated October 17, 1994, at No. 3820 March
	:	Term, 1992
ABDUL M. ZAHIR,	:	
	:	
Appellant	:	
	:	SUBMITTED: October 18, 1999

DISSENTING OPINION

MR. JUSTICE ZAPPALA

DECIDED: May 19, 2000

Because there was no reasonable suspicion justifying the stop of Appellant, the seized contraband should have been suppressed and the issue involving the application of the plain feel doctrine need not be reached. The majority's holding to the contrary is troubling as it may be interpreted as creating a separate legal standard applicable to citizens present in areas known for criminal activity. As I believe our Constitution protects all citizens equally, I cannot join the majority opinion which deems otherwise commonplace behavior "suspicious and furtive" simply because of the nature of the *unconfirmed* allegation (drug dealing) and the location of the accused.

The majority concedes that the officer's stop of Appellant was based on information his captain received from an anonymous source, that the information did not include a range of details, did not indicate future behavior, was not acted upon immediately and

confirmed only the location and description of the suspect. Slip op. at 5.¹ It finds that reasonable suspicion existed, however, because Appellant's "suspicious conduct in an area associated with criminal activity provided independent corroboration of the essential allegation of the information and, thus, suggested that criminality may have been afoot." Id.

Although there may have been corroboration of the description and location of the accused, corroboration of criminal activity is sorely lacking. The suspicious behavior cited by the majority is Appellant's observation of the police and subsequent dropping and retrieving of an object in a Chinese restaurant located in a high crime area. Such conduct could only appear "suspicious" if one accepts as true the unverified allegation that the actor is a drug dealer. The officers observed no activity that corroborated the anonymous information that Appellant was selling drugs or that he may have been armed with an illegal weapon. The mere presence of police in a high crime area can create the type of behavior deemed suspicious here. Had the officers' surveillance continued, they may have observed evidence of drug trafficking. As they did not, however, the stop of Appellant was illegal and the evidence should have been suppressed.

Unlike information obtained from a known informant whose reputation can be assessed and who can be held responsible if his allegations prove to be fabricated, information from an anonymous source can only be considered reliable if it provides

¹ The record establishes that the arresting officers received unverified information from their captain that a male, wearing a green jacket and blue jeans, was selling narcotics on a particular street in Philadelphia. The officers did not respond until two and one-half hours later and then observed Appellant in the designated area, standing in front of a Chinese restaurant, wearing clothing matching the description. The officers observed Appellant enter the restaurant, drop an object upon seeing police and return outside. Appellant went back into the restaurant and apparently retrieved the object when the police approached.

specific facts, which are sufficiently corroborated by the officer. Commonwealth v. Jackson, 698 A.2d 571, 574 (Pa. 1997).

The United States Supreme Court found corroborating evidence of an anonymous tip lacking in its recent decision in Florida v. J.L., 2000 U.S. LEXIS 2345 (decided March 28, 2000). There, the Court examined whether an anonymous tip that a person at a particular location is carrying a gun was sufficient to justify a police officer's stop and frisk of that person.²

In finding the anonymous tip insufficient to establish reasonable suspicion to effectuate a stop, the Court relied upon the fact that the tip did not provide predictive information and therefore left the police without the means to test the informant's knowledge or credibility. Id. at 9. It noted that the tip was a "bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information." Id. at 9. The Court went on to hold that a tip must "be reliable in its *assertion of illegality*, not just in its tendency to identify a determinate person." Id. at 10 (emphasis added). It stated that the mere fact that a tip, if true, would describe illegal activity does not mean that the police may make a *Terry* stop without meeting the reliability requirement. Id. at 13.

As in J.L., the anonymous allegation in the instant case did not include predictive information and did not indicate any source of knowledge upon which the information was based. Moreover, although the description of the Appellant may have been corroborated, there was no similar corroboration of any "assertion of illegality." The fact that the tip, if true, described the illegal activity of drug dealing in a high crime area, does not transform

² The stop in J.L. was premised solely on the information contained in the anonymous tip, while the officers in the instant case relied on the anonymous information as well as Appellant's conduct in dropping and retrieving an object upon seeing police. This distinction is not controlling, however, as the additional information is meaningless unless the unconfirmed report of drug dealing is taken as true.

the innocent act of dropping and retrieving an object into evidence demonstrating that criminal activity is afoot. Had the officers not received the anonymous information from their captain, Appellant's evasive conduct would not have alerted them to drug activity. The overriding factor here is that Appellant was in a high crime area and drugs were ultimately recovered. These are impermissible factors upon which to find reasonable suspicion to warrant government intrusion.

Accordingly, I dissent.

Mr. Chief Justice Flaherty joins this Dissenting Opinion.