

[J-24-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN THE INTEREST OF D.M.,

APPEAL OF: D.M.,

: No. 21 E.D. Appeal Docket 1998
:
: Order of the Superior Court dated
: November 19, 1997, at No. 3538
: Philadelphia 1996 affirming the Order of
: the Court of Common Pleas of
: Philadelphia County dated October 2,
: 1996, at Juvenile Petition No. 4074-96-06
:
:
:
: ARGUED: February 3, 1999

OPINION

MR. JUSTICE CAPPY

DECIDED: December 27, 1999

The sole issue presented in the instant appeal is whether the police officer demonstrated the requisite cause to stop appellant pursuant to the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. For the reasons stated herein, we determine that the officer did not possess the requisite cause to stop appellant, and accordingly, reverse the court below.

As the issue before us arises from the ruling of the suppression court, our standard of review is limited. When reviewing rulings of a suppression court, we must determine whether the record supports that court's findings of fact. Commonwealth v. Cortez, 507 Pa. 529, 491 A.2d 111 (1985). Where the defendant has appealed, we consider the evidence presented by the prosecution and only that evidence from the defense that is uncontradicted. Id. Where the record supports the findings of the suppression court, we are bound by those

facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts. Id.

The facts, presented at the suppression hearing, established the following. On June 24, 1996, at approximately 6:00 p.m., Officer Chris Frazier received a radio call regarding a man with a gun at 28th and Cecil B. Moore Avenues in Philadelphia. The officer was only one block from the location at the time of the call. The radio call included a description of the “man with a gun” as a black male, wearing a white t-shirt, blue jeans and white sneakers.

Upon arriving at the scene, the officer saw appellant, D.M., who matched the description given by the radio call.¹ Officer Frazier exited his vehicle and told appellant to come over. Appellant ran away from the officer. Police back up approached the scene and appellant was stopped between the two cars. Officer Frazier asked appellant to put his hands on the hood of the car in front of him and proceeded to pat appellant down for the officer’s own protection. Officer Frazier felt a hard object resembling a handgun in appellant’s crotch area. A .32 caliber handgun fell out of appellant’s right pants leg. At that point, Officer Frazier secured the gun and arrested appellant.

Appellant filed a motion to suppress alleging violations of both the United States and Pennsylvania Constitutions. Following a hearing, the trial court denied appellant’s motion to suppress. That same day, the court adjudicated appellant delinquent and placed him on Intensive Probation. The Superior Court affirmed in a memorandum opinion. This court granted the petition for allowance of appeal in order to address the issue of whether the

¹ Although there appears to be some dispute as to whether appellant was the only person present at the time Officer Frazier arrived on the scene, our scope of review is limited to considering only the evidence that is uncontradicted.

officer possessed reasonable suspicion to stop appellant based on an anonymous tip, where appellant fled at the time he was approached by the officer.²

Appellant argues that the officer did not establish reasonable suspicion based upon Article 1, Section 8 of the Pennsylvania Constitution. Specifically, appellant asserts that anonymous tips that lack specificity carry no indicia of reliability, and therefore cannot be used in establishing reasonable suspicion. The Commonwealth responds that the anonymous tip was sufficiently specific in the description and location of appellant. Thus, when examined in their totality, the facts in the instant case, including the tip and appellant's subsequent flight, demonstrate reasonable suspicion.

Both the Fourth Amendment of the United States Constitution and Article 1, § 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. Commonwealth v. Jackson, 698 A.2d 571, 573 (Pa. 1997). In the seminal case on reasonable suspicion, the United States Supreme Court determined that in order to stop a defendant the officer must demonstrate that he had a reasonable suspicion that criminal activity was afoot. Terry v. Ohio, 392 U.S. 1 (1968). "[T]he police officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts in light of the officer's experience." Commonwealth v. Cook, 735 A.2d 673, 677 (Pa. 1999); Jackson, 698 A.2d at 573; Terry, 392 U.S. at 27. In determining whether reasonable suspicion exists for a Terry stop, the inquiry is the same under either Article 1, Section 8 of the Pennsylvania Constitution or the Fourth Amendment of the United States Constitution. Cook, 735 A.2d at 675; Jackson, 698 A.2d at 573.

In Jackson, this court recently considered almost identical facts to those involved in the instant case, and concluded that the officers did not possess reasonable suspicion to

² Appellant did not contend that the frisk was improper in the courts below. Similarly, appellant does not contend that the frisk was improper to this court, thus the only issue we address is whether the stop was supported by reasonable suspicion.

justify a stop of appellant. Jackson, 698 A.2d at 573. However, the Commonwealth insists that the anonymous tip in the instant case was more specific than the tip in Jackson.

In Jackson, the police officer received a radio report of a man in a green jacket with a gun. The officer was also provided with a location. The officer responded to the report and upon arriving at the specified location, saw a group of people in which appellant was the only person wearing a green jacket. The officer exited his vehicle and immediately searched appellant.

In rejecting the Commonwealth's contention that the officer possessed a reasonable suspicion that criminal activity was afoot, this court explained that anonymous tips should be treated with particular suspicion. Jackson, 698 A.2d at 573. In order to be considered reliable the anonymous tip must supply specific facts, which are sufficiently corroborated by the officer. Jackson, 698 A.2d at 574. Facts that may be utilized in determining reasonable suspicion should indicate a particularized knowledge, and should not be those facts available to the general public. Jackson; see also Alabama v. White, 496 U.S. 325 (1990)(facts which predict a defendant's future behavior make anonymous tip more reliable). "The fact that a suspect resembles the anonymous caller's description does not corroborate allegations of criminal conduct, for anyone can describe a person who is standing in a particular location at the time of the anonymous call. Something more is needed to corroborate the caller's allegation of criminal conduct." Jackson, 698 A.2d at 574-5; quoting Hawkins, 692 A.2d at 1070. Based upon the above, the court concluded that the mere physical description and location of appellant were insufficient to satisfy the reasonable suspicion requirement. Jackson, 698 A.2d at 575.

We are not persuaded by any attempts to distinguish the radio report in the instant case from the one in Jackson. We do not see how the "additional" facts of the race of the appellant and a full clothing description of the appellant imparted more reliability to the instant tip. Akin to the tip in Jackson, there was nothing in this tip to indicate that the

person providing the tip had any particularized knowledge about appellant. As we stressed in Jackson, anyone can describe a person who is standing in a particular location at the time of the anonymous call. In that instance, the tip must provide something more. Here, the tip provided nothing more than a physical description and location of the appellant, the equivalent to the tip in Jackson. Officer Frazier did not testify that appellant was acting suspiciously at the time he arrived on the scene. He also did not make any observations that would insinuate that criminal activity was afoot. In fact, the evidence merely suggests that appellant was “hanging out” when Officer Frazier reached the scene. Accordingly, there was nothing in the instant anonymous tip or the circumstances surrounding the tip that provided the officers with a reasonable suspicion that criminal activity was afoot.³

However, our inquiry does not end here, because the Commonwealth asserts that appellant’s subsequent flight furnished the police officers with a reasonable suspicion to stop appellant. In Commonwealth v. Cook, supra, this court recently explained the relevancy of an appellant’s subsequent flight in determining reasonable suspicion. Although ultimately, in Cook, this court did not suppress the contraband, the analysis regarding flight is instructive for purposes of the instant case.

³ The dissent asserts that the corroboration requirements should be lessened where the suspect is alleged to be carrying a gun, given the risk that a suspected gun carrier poses to the police and in turn, society. Dissenting opinion at 3. Contrary to the insinuations of the dissenting opinion, we are mindful of the risks that police officers in this Commonwealth face on a daily, even hourly, basis. We are also cognizant of the widespread public violence that has erupted in our schools and streets, due in part to the accessibility to firearms. However, this court has steadfastly refused the temptation to step onto the slippery slope by recognizing a “gun exception” to the limitations placed upon search and seizures by both the Fourth Amendment and Article 1, § 8; and we continue to decline any invitations to recognize such an exception today. Jackson, 698 A.2d at 575 (quoting Hawkins, 692 A.2d at 1070 (“... there is no gun exception to the Terry requirement for reasonably suspicion of criminal activity....”)).

In Cook, this court made clear that flight alone does not establish reasonable suspicion. 735 A.2d at 677. However, flight along with other facts, may demonstrate a reasonable suspicion that criminal activity is afoot. Id. In making the determination that reasonable suspicion existed, we relied upon the fact that the officer made firsthand observations of suspicious conduct, which based upon his experience, indicated that criminal activity was afoot, before he even approached appellant. Id. Moreover, we explained that flight could be considered in establishing reasonable suspicion, since the officer's suspicions were already aroused at the time appellant fled. Id. at 677-78. Accordingly, Cook makes clear that the appellant's subsequent flight becomes a relevant factor, in determining reasonable suspicion, only when the officer's suspicions are already aroused.

In the instant case, the officer's suspicions were not aroused at the time he initially approached appellant. As indicated previously, the tip and existing circumstances when Officer Frazier arrived at the scene failed to provide any facts that would lead an officer to reasonably suspect that criminal activity was afoot. In the absence of any factors indicating that the officer suspected criminal activity was afoot, the "additional" factor of flight is not relevant to the determination of reasonable suspicion.

Accordingly, for the reasons stated herein, we reverse the Superior Court and grant appellant's motion to suppress the contraband.

Mr. Justice Castille files a dissenting opinion joined by Madame Justice Newman.

Mr. Justice Saylor files a dissenting opinion.