

[J-257-1996]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA	:	No. 50 E.D. Appeal Docket 1996
	:	
Appellee	:	Appeal from the December 15, 1995
	:	order of the Superior Court at No.
v.	:	2955 Philadelphia 1994, affirming
	:	the order of the Court of Common
	:	Pleas of Philadelphia County, M.R.
	:	No. 94-8421, which denied a writ of
	:	certiorari to the Philadelphia
MICHAEL HAWKINS,	:	Municipal Court, following
	:	imposition of defendant's judgment
	:	of sentence, M.C. #9311-2345
Appellant	:	November term, 1993
	:	
	:	349 Pa.Super. 615,
	:	503 A.2d 48 (1985)
	:	
	:	ARGUED: December 12, 1996
	:	
	:	

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MR. CHIEF JUSTICE FLAHERTY

DECIDED: April 22, 1997

This case concerns whether a police radio broadcast that a man of a particular description is carrying a gun may serve as the justification for a search of that person and the seizure of the gun he is carrying when the arresting officer is unable to authenticate the telephone message on which the radio broadcast was based or provide an independent basis for the stop and frisk.

On November 19, 1993, a Philadelphia police officer responded to a radio call that there was a man with a gun at Sydenham and York Streets. The suspect was described as a black male wearing a blue cap, black jeans and a gold or brownish coat. When the officer arrived, he observed Hawkins, who fitted the radio description. He then stopped and frisked Hawkins, finding a .22 caliber revolver in his waistband. At the suppression hearing, the officer stated that he did not know the source of the information contained in the radio call. No other testimony established the source of the call or the basis for the

information.

On May 25, 1994, Hawkins was convicted of a violation of the Uniform Firearms Act¹ and sentenced to twenty-one months probation. A writ of certiorari in the court of common pleas was denied and Hawkins appealed to Superior Court. On July 20, 1994, Superior Court, in a memorandum opinion, affirmed the conviction. This court granted allocatur.

The existing law with respect to searches such as the one conducted in this case is based on Terry v. Ohio, supra, which held that police are authorized under the Fourth Amendment to stop and temporarily detain citizens short of an arrest when they can point to "specific and articulable facts" causing them to have a reasonable suspicion that "criminal activity may be afoot." 392 U.S. at 21, 30, 88 S.Ct. at ___, ___, 20 L.Ed.2d at 905-06, 911; Commonwealth v. Melendez, ___ Pa. ___, 676 A.2d 226, 228 (1996); Commonwealth v. Hicks, 434 Pa. 153, 160, ___ A.2d ___, ___ (1969). If police reasonably believe that they may be in danger, they may conduct a limited pat-down search of the suspect's outer garments for weapons. Ybarra v. Illinois, 444 U.S. 85, 92-93, 100 S.Ct. 338, 62 L.Ed.2d 238, 246 (1979); accord, Commonwealth v. Melendez, supra. Thus, before police may briefly detain a person, there must be reasonable suspicion of criminal conduct, and before police may pat down for weapons, there must be a reasonable belief that the suspect is presently armed and dangerous.² The initial question with which any analysis of this case must begin, therefore, is whether the police officer had grounds for reasonable suspicion that criminal activity was afoot.

1 18 Pa.C.S. §§ 6106, 6108.

2 Commonwealth v. Melendez, ___ Pa. ___, 676 A.2d. 226, 230 (1996) makes it clear that the requirements of Terry are also the requirements of Art. I, § 8 of the Pennsylvania Constitution, and we decide the present case on the basis of Art. I, § 8 of the Pennsylvania Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

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 this information to radio patrol cars, neither the police dispatcher nor the officers in the cars know whether the information is reliable. It may be a prank call. For this reason, in Commonwealth v. Queen, 536 Pa. 315, 320, 639 A.2d 443 (1994), we held that "a stop and frisk may be supported by a police radio bulletin only if evidence is offered at the suppression hearing establishing the articulable facts which support the reasonable suspicion."³ To hold otherwise would be to sanction police interference with citizens upon less than the reasonable suspicion of criminal activity required by Terry.

The Superior Court reasoned that because the officer arrived within three minutes of receiving the call, because Hawkins fitted the description of the man on the radio broadcast, and because Hawkins allegedly had a gun, there was "sufficient corroboration" of the phone call to give the officer reasonable suspicion that Hawkins was "armed and dangerous." Superior Court erroneously believed that these factors were sufficient to justify the search of appellant and the seizure of his gun.

If the 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 but nothing more, they have no certain knowledge except that the caller accurately described someone at a particular location. As the United States Supreme Court observed in Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983), the fact that a suspect resembles the anonymous caller's description does not corroborate

3. Although it is not part of this case, the police might also justify an investigative stop based on a tip if they knew the identity of the person giving the tip and the basis of his knowledge. See Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983) (an informant's veracity, reliability, and basis of knowledge are "highly relevant" in determining whether the informant has provided reasonable suspicion of criminal activity); Commonwealth v. Queen, supra.

Additionally, if the tip is anonymous, police may reasonably rely on it if it is predictive of the suspect's behavior. See Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

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 allegations of criminal conduct. The fact that the subject of the call was alleged to be carrying a gun, of course, is merely another allegation, and it supplies no reliability where there was none before. And since there is no gun exception to the Terry requirement for reasonable suspicion of criminal activity, in the typical anonymous caller situation, the police will need an independent basis to establish the requisite reasonable suspicion.

The Commonwealth takes the radical position that police have a duty to stop and frisk when they receive information from any source that a suspect has a gun. Since it is not illegal to carry a licensed gun in Pennsylvania,⁴ it is difficult to see where this shocking idea originates, notwithstanding the Commonwealth's fanciful and histrionic references to maniacs who may spray schoolyards with gunfire and assassins of public figures who may otherwise go undetected. Even if the Constitution of Pennsylvania would permit such invasive police activity as the Commonwealth proposes -- which it does not -- such activity seems more likely to endanger than to protect the public. Unnecessary police intervention, by definition, produces the possibility of conflict where none need exist.

Contrary to the Commonwealth's view, the public will receive its full measure of protection by police who act within the restraints imposed on them by Art. I, § 8 of the Constitution of Pennsylvania and this court's relevant caselaw. Upon receiving unverified information that a certain person is engaged in illegal activity, the police may always observe the suspect and conduct their own investigation. If police surveillance produces a reasonable suspicion of criminal conduct, the suspect may, of course, be briefly stopped

⁴ In all parts of Pennsylvania, persons who are licensed may carry concealed firearms. 18 Pa.C.S. § 6108. Except in Philadelphia, firearms may be carried openly without a license. See Ortiz v. Commonwealth, ___ Pa. ___, ___, 681 A.2d 152, 155 (1996) (only in Philadelphia must a person obtain a license for carrying a firearm whether it is unconcealed or concealed; in other parts of the Commonwealth, unconcealed firearms do not require a license).

and questioned (the Terry investigative stop), and, if the officer has reasonable fear for his safety, police may pat down the suspect's outer garments for weapons.⁵

In this case, the police acted on an anonymous tip and had no basis for believing that the tip was reliable. They also had no independent reason to believe that the suspect may have been involved in criminal activity. But Queen requires that "a stop and frisk may be supported by a police radio bulletin only if evidence is offered at the suppression hearing establishing the articulable facts which support the reasonable suspicion." 536 Pa. at 320, ___ A.2d at ___. Here, no facts were offered which supported the suspicion created by the anonymous call. The judgment of sentence must, therefore, be reversed.

⁵ We do not address the scenario in which the officer has an independent reason to believe that a crime (carrying an unlicensed gun) may be in progress, inquires as to whether the gun is licensed and the person does not answer.

Mr. Justice Nigro concurs in the result.

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