

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

vs.

Case No. 95,782

GREGORY MAYNARD,
Respondent.

_____ /

DISCRETIONARY REVIEW OF A DECISION
OF THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT

Amicus Curiae, Florida Association
of Criminal Defense Lawyers (FACDL),
Brief on the Merits on Behalf of Respondent

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On behalf of Florida Association of
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PRELIMINARY STATEMENT

A. Record References

FACDL will adopt, to avoid confusion, the record references used by Petitioner.

B. Statement Regarding Type

The undersigned certifies that the font style and size used in this brief is Courier 12.

C. Interest of Amicus Curiae - FACDL

The Florida Association of Criminal Defense Lawyers is a statewide organization of over 1,000 members. FACDL has local chapters throughout the state, from Pensacola to Key West. Members include public defenders and private attorneys. Two of the founding purposes of FACDL are to promote 1) the protection of the constitutional rights of all Florida citizens, and 2) the fair and uniform administration of justice throughout the state. This cause involves a constitutional search and seizure issue. FACDL's interest in this cause is to promote the two purposes described above.

CERTIFICATE OF FONT SIZE AND STYLE

The undersigned hereby certifies the font used in this brief
is Courier 12.

STATEMENT OF THE CASE AND FACTS

FACDL adopts the statement of the case and facts by Petitioner. To avoid confusion, FACDL will adopt the statement of the issue as formed by Petitioner. FACDL will not re-state the issues as is customary for an opposing party to the party seeking review.

SUMMARY OF ARGUMENT

This Court should approve of the decision on review. The tip in this case was essentially an anonymous tip because the police did nothing to verify or confirm the identity of the tipster or the source or accuracy of the tipster's information. Petitioner argues for a presumption of reliability for citizen phone-callers who identify themselves as relatives of the Defendant. The possibility of deliberately misleading or inaccurate tips is significant - if the police do nothing to confirm the identity of the tipster or to corroborate the information in the tip, then any police action is subject to the accuracy or good intentions of a citizen informant. Citizens are not trained observers of criminal activity. Citizens may have good intentions but they may very well send the police on wild goose chases. If this Court approves of a tip where the police do not confirm the identity of the tipster nor corroborate any of the information in the tip, then the freedom of movement and liberty rights of all Florida's citizens are at risk; the approval of such tips could also lead to wasteful or ineffective police work.

This Court should resolutely reject Petitioner's argument that the tip was sufficient in this case due to the potentially dangerous situation of the possession of a firearm. This Court, less than a year ago, rejected this argument in J.L. v. State, 727 So. 2d 204 (Fla. 1998). Petitioner has not demonstrated any

compelling reason to overrule such a recent precedent. The doctrine of stare decisis should compel this court to reject Petitioner's argument. See Zakrzewski v. State, 717 So. 2d 488 (Fla. 1998).

I.

WHETHER A CALL, RECEIVED BY THE POLICE IN WHICH THE CALLER IDENTIFIES HERSELF AS A SUSPECT'S MOTHER, GIVES DETAILED AND SPECIFIC INFORMATION UNIQUE TO THE SUSPECT AND THE CRIMINAL ACTIVITY, CONSTITUTES A CITIZEN INFORMANT TIP WHICH IS TREATED AS BEING AT THE HIGH END OF THE SCALE OF RELIABILITY NEEDING NO INDEPENDENT CORROBORATION OF CRIMINAL ACTIVITY BY POLICE BEFORE STOPPING AND FRISKING A SUSPECT?

A. The issue in this cause

FACDL respectfully submits that the issue in this cause requires this court, pursuant to the decision of the Second District Court of Appeal in Maynard v. State, 24 Fla. L. Weekly D 1322 (Fla. 2d DCA 1999) and this Court in J.L. v. State, 727 So. 2d 204 (Fla. 1998), to answer the following questions:

- 1) Did the police need to corroborate the tip given in this case under the totality of the circumstances test - should this court adopt a special rule governing reasonable suspicion when the police receive a tip from a person claiming to be the Defendant's mother (but the police do not confirm the identity and reliability of the tipster prior to the seizure and search of the Defendant?
- 2) Should the citizen informant - reasonable suspicion to stop and frisk calculus change if the tip involves possession of a firearm?

B. The case law on citizen informants

FACDL will address both of the questions above to help this Court decide whether the decision below was correct. This Court has already decided, in a general sense, the answer to question number one. In J.L. v. State, 727 So. 2d 204 (Fla. 1998), this Court decided that there must be corroboration of an anonymous tip by a citizen. In J.L., supra, the police received a phone call tip stating that several young males were waiting at a specified bus stop. The tip also stated that the male wearing a plaid shirt was carrying a gun. The police arrived at the bus stop and saw three black males, one was wearing a plaid shirt. The police had no information as to the identity of the tipster. This Court held that the innocent detail tips (the general description and location of the males), without more were not sufficient to establish reasonable suspicion. 727 So. 2d at 207. In J.L., this Court additionally decided that "innocent detail tips" could still prove to be reliable if the tip predicts particular actions which will occur in the future. See Alabama v. White, 496 U.S. 325 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990); Illinois v. Gates, 462 U.S. 213 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

In this case, Petitioner essentially argues that the tipster was not anonymous but was an identifiable citizen informant. The tipster in this case did identify herself as the mother of the defendant. However, the police did not verify, in any way, whether

the tipster was in fact defendant's mother. Under these circumstances, the tipster was still anonymous. The Second District Court of Appeal decided the tipster was anonymous because the police did not verify her identity. The Second District decided an informant is not any more credible merely because she identifies herself as the suspect's mother.

FACL urges this Court not to extend the citizen informant doctrine beyond the situation where the police have some direct contact with the tipster and can evaluate the credibility of the tipster and ask questions about the nature and source of the information given in the tip. See State v. Evans, 692 So. 2d 216 (Fla. 4th DCA 1997). The possibilities of incorrect or deliberately false or misleading information from a phone call tipster are potentially significant, even if the tipster identifies himself or herself as a relative of the suspect. Criminals themselves could phone in false or misleading "tips". Even if the phone call was traceable, it would be different for the police to determine who gave the erroneous tip; it would also be difficult for the police to take corrective measures against such false or misleading tips.

Even if the tip was not deliberately misleading, citizen informant tips (without independent corroboration) could lead the police on "wild goose chases", if the police may stop and frisk someone based upon uncorroborated citizen tips. For example, a citizen sits in his house looking out the window. He lives in a high-crime neighborhood. He sees four males standing on the

corner. The males are passing something between themselves. The citizen thinks the men are dealing in drugs. The citizen calls in the tip. The police confirm that the tipster lives next to the corner. Under Petitioner's argument, this tip would be valid citizen tip just because the tipster was known and identifiable and claimed to witness criminal activity. Even under the general circumstances of this case, erroneous citizen tips, without corroboration, are possible. A friend or relative of the defendant sees the defendant put a firearm in a backpack (Defendant has a permit to carry the firearm but the tipster is unaware of this fact). The friend or relative calls the police. The police later stop and frisk the Defendant. Under these circumstances, the police mistakenly deprived the Defendant of his liberty of movement based upon a well-intended but mistaken tip.

FACDL recognizes that the quantum of proof for a stop and frisk is only reasonable suspicion. However, this Court should not forget the logical and empirical foundation for tips from informants and reasonable suspicion: in the case of reliable informants who have supplied information in the past, there may be reasonable suspicion based upon the fact that the informant has been reliable in the past - we assume new information supplied by the informant may also be reliable. See J.L. v. State, 727 So. 2d 204, 206 (Fla. 1990); State v. Hadden, 629 So. 2d 1043 (Fla. 2d DCA 1993). However, even information from a reliable confidential informant is not automatically reasonable suspicion. A reviewing

court will review even a confidential informant's tips, under the totality of the circumstances test, to determine if the information constitutes reasonable suspicion. See Callahan v. State, 671 So. 2d 227 (Fla. 1st DCA 1996); Bristol v. State, 584 So. 2d 1086 (Fla. 2d DCA 1991).

Some Florida courts have presumed citizen informants to be reliable. See Williams v. State, 721 So. 2d 1192 (Fla. 1st DCA 1998); State v. Rewis, 722 So. 2d 863 (Fla. 5th DCA 1998); State v. Foy, 692 So. 2d 216 (Fla. 4th DCA 1997). In most of the cases where the courts held citizen informants were presumably reliable, there was contact with the citizen such that the police could verify the identity of the tipster. See Aguilar v. State, 700 So. 2d 58 (Fla. 4th DCA 1997); State v. Evans, supra.

This Court has not directly addressed the question of whether a citizen informant is presumably reliable. FACDL respectfully submits that this Court should not adopt such a test. The totality of the circumstances test enunciated in Alabama v. White, supra, should govern whether a tip given by a citizen is reliable enough to constitute reasonable suspicion. A test which states a citizen informant is presumptively reliable could lead to erroneous decisions on whether the tip constituted reasonable suspicion.

As the Second District noted below, any informant should be judged by the specificity of the tip, prediction of future activities, accessibility to the information constituting the tip, identity of the tipster, motive, past veracity and reliability.

FACDL submits that any evaluation of whether a citizen tip is reliable should be subject to the above-described factors. The mere fact that the citizen tipster is identifiable should not, by itself, lead to any special presumption of reliability. Under Article I Section 12 of the Florida Constitution, this Court must adhere to controlling decisions of the United States Supreme Court. The United States Supreme Court has established no special presumption of validity for citizen informants: the test for reasonable suspicion is a totality of the circumstances based upon the sufficiency of the tip, the reliability of the tipster and the corroboration of the tip. See Illinois v. Gates, supra.

C. This Court should not adopt a special rule of reliability for tipsters who identify themselves as relatives of the defendant.

For the reasons stated above, this Court should not apply a special rule of citizen informant reliability to this case. Even though the tipster identified herself as Defendant's mother, such information may be easily fabricated. The police did nothing to verify whether such information was true. Under the totality of the circumstances test, this Court should adhere to the general rules that such anonymous tips (in the sense that the police have not confirmed the identity or reliability of the informant) must be corroborated by independent police observations or investigation.

There were no specific predictions of future behavior which established the reliability of the tip. See Alabama v. White, supra. If this Court disapproves of the decision below and adopts a presumption of validity of a citizen informant who claims to be a relative and who gives relatively specific information, describing the individual and stating the individual is carrying a gun or contraband or has just committed a crime, then this Court will 1) dilute the protection against unreasonable searches and seizures by abandonment of the totality of the circumstances test, 2) open "a can of worms" concerning the reliability of citizen informants. Logically, this Court could extend the presumption of reliability doctrine to friends, acquaintances or lovers of the defendant who claim to have seen the defendant commit illegal acts. If the police do nothing to verify the identity of the tipster, including some indication that the person was in the position to observe the information contained in the tip and corroborate the information given, then the possibility of inaccurate or deliberately misleading tips is significant.

FACDL does not argue citizen tips may not be sufficient; FACDL argues such tips must be rigorously judged, as all other tips and information constituting probable cause or reasonable suspicion, under the totality of the circumstances test - the source and reliability of the information, including any independent corroboration of the tip. Under this test, this Court should approve the decision below. The tip in this case was the

equivalent of an anonymous tip because the police did not verify the source of the information. The specificity of the tip does not ipso facto, make it a reliable tip. Petitioner suggests that the tip is inherently reliable because of its details. This argument begs the question because the description of the individual in J.L. v. State, supra, was also specific. This Court rejected that tip precisely because there was no validation of the source of the information or corroboration of the information in the tip.

D. This Court should not find the tip was sufficient based upon the possible exigent circumstance of possession of a firearm.

Petitioner argues that there was no need to corroborate the tip in this case due to the danger from the possession of a Mac-10 Uzi. (Quoting Justice Wells' dissent in J.L. v. State) Petitioner's brief at pages 17-18. Less than a year ago, this Court in J.L. specifically rejected a firearm/weapons exception to the Fourth Amendment calculus for reasonable suspicion. Petitioner has presented no compelling reason to overrule a precedent not even one year old. See Bernie v. State, 524 So. 2d 988 (Fla. 1988); Zakrzewski v. State, 717 So. 2d 488 (Fla. 1998). This Court should resolutely adhere its prior precedent in J.L. v. State.

CONCLUSION

This Court should approve the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail this _____ day of August, 1999, to Diane K. Bock, Assistant Attorney General, and Robert J. Krauss, Assistant Attorney General, 2022 North Lois Avenue, Suite 700, Tampa, Florida 33607-2366, Counsel for Petitioner; and Charles H. Holloway, 611 Druid Road, Suite 512, Clearwater, Florida 33756, Counsel for Respondent.

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