

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

GREGORY MAYNARD,
Respondent.

FSC. NO. 95,782

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

PETITIONER'S SUPPLEMENTAL BRIEF

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PRELIMINARY STATEMENT

All references to the record on appeal shall be designated by the letter "R," followed by the page number. References to the transcripts of the hearing held on June 22, 1998, will be designated by the letters "RT," followed by the page number. References to the supplemental transcript shall be designated by the letters "ST," followed by the page number. Petitioner shall be referred to as the State or Petitioner and Respondent shall be referred to as Respondent or defendant.

STATEMENT REGARDING TYPE

The size and style of type used in this brief is 12-point Courier New, a font that is not proportionately spaced.

STATEMENT OF THE CASE AND FACTS

Petitioner adopts those matters set forth in its Initial Brief as the statement of the case and facts with the following additions:

On December 14, 1999, this Court granted Petitioner's Motion For Continuance of Scheduled Oral Argument and Stay of Proceedings pending the disposition by the United States Supreme Court in Florida v. J.L., Case No. 98-1993. On March 28, 2000, the United States rendered its decision in that case. Florida v. J.L., 2000 WL 309131 (U.S., March 28, 2000).

In April, 2000, Petitioner filed a Motion To File A Supplemental Brief and Reschedule Oral Argument. On May 24, 2000, this Court granted Petitioner's Motion and rescheduled oral argument in this case for November 9, 2000. This Supplemental Brief timely follows.

SUMMARY OF THE ARGUMENT

Petitioner maintains its position that the trial court correctly determined that the Respondent's mother's call to the police, identifying herself, giving her address, a complete physical description of the Respondent, informing the police that Respondent was carrying a Mac-10 Uzi in his green backpack, and apprizing the police of his route of travel, as well as informing the police that she had personally observed Respondent placing the gun in his backpack before leaving the home, constituted a citizen informant tip which was properly relied upon by the police to stop, detain, and pat down the Respondent, revealing a Mac-10 Uzi in his green backpack.

Additionally, in light of the recent decision of the United States Supreme Court in Florida v. J.L., 2000 WL 309131 (U.S., March 28, 2000), Petitioner argues that the Second District Court of Appeal erroneously re-categorized the mother's call as an anonymous tip, and compounded that error by then improperly determining that there was not sufficient independent corroboration to uphold the anonymous tipster's information as a basis for the stop and frisk of Respondent.

ARGUMENT

ISSUE

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?

Petitioner adopts its arguments made in its Initial Brief in this case, and would further argue:

Based upon the recent ruling of Florida v. J.L., 2000 WL 309131 (U.S., March 28, 2000) and Alabama v. White, 110 S.Ct. 2412, 496 U.S. 325 (U.S. Ala. 1990), Petitioner argues that the Second District Court of Appeal erred in determining that the tip was given by an anonymous caller in light of the fact that the caller identified herself and was readily identifiable by the police, and, further erred by determining that, as an anonymous tip, the information given by Respondent's mother was insufficient to warrant a reasonable suspicion permitting the officer to stop the Respondent.

The facts of this case closely parallel those reviewed by the United States Supreme Court in White. In White the police received an anonymous call informing them that the defendant would be leaving a specific location, driving a particular vehicle, going to a specific location and would be in possession of about

an ounce of cocaine. The police arrived at the location from which the defendant was to leave, observed the defendant leave that location, get in the described vehicle and proceed in the direction that the anonymous tipster had indicated she would go. Based on this corroboration, before the defendant reached her destination, the police stopped the vehicle, requested and were granted permission to search the vehicle, and ultimately found the cocaine. The issue reviewed by the Court was "whether the tip, as corroborated by independent police work, exhibited sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." White, 110 S.Ct. at 2414, 496 U.S. at 327. The Court found that it did, finding:

What was important was the caller's ability to predict respondent's **future behavior**, because it demonstrated inside information -- a special familiarity with respondent's affairs. ***The general public would have no way of knowing that respondent would shortly leave the building, get in the described car, and drive the most direct route to Dobey's Motel. Because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities.*** Citing Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).¹ (emphasis added)

¹It is important to note that Gates dealt with an issue of an informant's tip establishing **probable cause**, a higher standard than addressed herein, that of **reasonable suspicion**. In White the Court notes this distinction and specifically determines that:

The inside information, Respondent's future behavior, is exactly what Respondent's mother demonstrated with the information she provided to the police when she called 911 to report that her son had just left the house, was on his way to the school, gave the location of the school, described in detail what he was wearing, where the gun would be found and his route of travel. In fact, it was based upon this route of travel that the responding officer was able to locate Respondent on his way to the destination relayed to the police by Respondent's mother. In White the Court found that the same approach, that of a totality-of-the-circumstances, which was applied in Gates in the context of probable cause was properly applicable in cases dealing with reasonable suspicion with one important difference: the level of suspicion that must be established is lower in a context of reasonable suspicion.

Petitioner argues that here, as in White, when the officer stopped Respondent the anonymous tip had been sufficiently corroborated to furnish reasonable suspicion that Respondent was engaged in the criminal activity described by the caller and that

[r]easonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

White, 110 S.Ct. at 2416, 496 U.S. at 330.

the investigatory stop did not violate Respondent's Fourth Amendment rights. White, 110 S.Ct. at 2417, 496 U.S. 331.

In J.L., the Court has now revisited some of its decision in White and again upheld the ruling while finding that case was a "close case." J.L., 2000 WL 309131, *3. The Court found that there was sufficient indicia of reliability for the police to make the stop even though it was a close case:

Knowledge about a person's future movements indicates some familiarity with that person's affairs, but having such knowledge does not necessarily imply that the informant knows, in particular, whether that person is carrying hidden contraband. We accordingly classified White as a 'close case.'

J.L., 2000 WL 309131, *1. In J.L. the Court reversed the detention and suppressed the results of the search finding the anonymous caller provided no additional information that would indicate any familiarity with the defendant. In the case now before this Court the Respondent's mother gave specific information to the police which demonstrated her intimate knowledge concerning the criminal behavior of the Respondent. When she called the police she informed them that she was the Respondent's mother, she had personally witnessed her son's possession of and concealment of a Mac-10 Uzi in his backpack. She was also able to provide specific information concerning her son's *future movements* by advising the police that he had just left the home, was heading for a specific location and his route of travel. This insider information was sufficient to establish

the requisite indicia of reliability necessary for the police to stop Respondent and conduct a pat-down type search. This information was even more persuasive than the informant in White due to the fact that this informant, Respondent's mother, identified herself and her relationship to the Respondent to the police at the time she informed them of the criminal activity she had witnessed. This information of how she obtained her knowledge of Respondent's criminal activities is paramount in reviewing whether the police had a sufficiently established reasonable suspicion to stop and search Respondent. The instant situation was no bare-bones anonymous call, and as the Court noted in J.L.:

The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the 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 about J.L.

J.L., 2000 WL 309131, *2. Respondent's mother was sufficiently known or readily identifiable, she was accountable, she explained specifically how she knew about the gun and she supplied the police with direct information regarding how she obtained her inside information that her son was carrying a Mac-10 Uzi. The Respondent's mother's tip falls squarely within White, as affirmed by J.L.. The Court went on to find that "[t]he reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a

determinate person." J.L., 2000 WL 309131, *4. The specific information provided to the police by Respondent's mother adequately provided the police with a firm basis upon which to find reasonable suspicion that Respondent was engaged in the criminal activity described by his mother in her telephone call to the police.

Petitioner argues that the Second District Court of Appeal's error was two-fold: first, it was error to determine that the Respondent's mother was not a citizen informant, and second, compounding that error was the determination that, if anonymous, the information was insufficient to warrant the detention of Respondent. Consequently, the police acted properly, Respondent's Fourth Amendment rights were not violated, the weapon was properly introduced at trial below and the Second District Court of Appeals erred by overruling the trial.

Based on the totality of the circumstances, Respondent was not subjected to any unreasonable search or seizure - the constitutional right under review.² Accordingly, the evidence, the Uzi, was properly admitted by the trial court. The decision of the Second District Court should be reversed and conviction and sentence of Respondent should be reinstated.

²Respondent has no constitutional right to suppress evidence.

CONCLUSION

Based on the foregoing facts, argument, and citations of authority, as well as those set forth in Petitioner's Initial Brief, Petitioner respectfully requests that the ruling of the district court be reversed, and the trial court's ruling determining that the tip was from a citizen informant and denying Respondent's motion to suppress be reinstated, upholding the conviction and sentence of Respondent. Alternatively, should this Court find that the mother's tip was properly categorized as anonymous, then, Petitioner requests that upon evaluation of the independent corroborating factors presented herein that Respondent's conviction and sentence at trial be reinstated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Charles H. Holloway, Esq., Attorney for Respondent, 611 Druid Road, Suite 512, Clearwater, Florida 33756, and James T. Miller, Esq., representing Amicus Curiae; Florida Association Of Criminal Defense Lawyers, 233 E. Bay Street, Suite 920, Jacksonville, Florida 32202, this ____ day of June, 2000.

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