

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA
Petitioner,

vs.

FSC. No. 95,782

GREGORY MAYNARD,
Respondent.

_____ /

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

RESPONDENT'S SUPPLEMENTAL ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT REGARDING TYPE	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
ISSUE	
WHETHER A CALL, RECEIVED BY THE POLICE, IN WHICH THE CALLER IDENTIFIES HERSELF AS A SUSPECT’S MOTHER AND 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?	
CONCLUSION	8
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

CASES

PAGE NO.

Alabama v. White,

110 S.Ct. 2412, 496 U.S. 325 (U.S., Ala. 1990) 4, 5, 6

Florida v. J.L.,

2000 WL 309131 (U.S., March 28, 2000) 3,4, 5, 6, 7

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 14-point Times New Roman, a font that is proportionately spaced.

STATEMENT OF CASE AND FACTS

The Respondent adopts the statement of the case and facts as stated by
Petitioner.

SUMMARY OF ARGUMENT

The Respondent maintains his position that the trial court incorrectly determined that the informant's call to the police and the identifying information which she provided constituted a citizen informant tip which was improperly relied upon by police to stop, detain, and search the Respondent. The Second District Court of Appeal correctly determined that the informant's call constituted an anonymous tip which required additional independent corroboration of the caller's identity in order to provide law enforcement with sufficient cause to stop and search the Respondent.

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), Respondent would argue that the Second District Court of Appeal did not erroneously re-categorize the mother's call as an anonymous tip, nor did it improperly determine that there was insufficient independent corroboration to uphold the tip information as a basis for the seizure and search of the Respondent.

ARGUMENT

WHETHER A CALL RECEIVED BY THE POLICE, IN WHICH THE CALLER IDENTIFIES HERSELF AS A SUSPECT'S MOTHER AND 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?

The Respondent adopts his argument made in his Amended Answer Brief on the Merits, and in addition would argue as follows:

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), Respondent argues that the Second District Court of Appeal did not err in determining that the tip was given by an anonymous caller, in light of the fact that the caller could have been readily identified by the police, but was not. In addition, the District Court did not err by determining that, as an anonymous tip, the information given by Respondent's mother was insufficient to provide reasonable suspicion, thereby permitting the officer to stop the Respondent.

Respondent would agree that the facts of this case resemble those reviewed by the U.S. Supreme Court in *White*. However, this case can be distinguished from *White* upon the following points: In *White*, the anonymous caller specifically described the

suspect, specifically described the suspect's vehicle, stated that the suspect would leave in the vehicle from a specific location at a specific time, follow a specific direction, and arrive at a specific destination. All of this information was subsequently proved correct, as police followed the suspect and confirmed each step of the prediction. *Alabama v. White*, 110 S.Ct. 2412, 496 U.S. 325 (U.S., Ala. 1990)

In Respondent's case, the tip did not predict his future behavior with the same points of correspondence and specificity as that provided in *White*. The tip described the Respondent, indicated he had just left a specific location, described his general direction of travel and described his ultimate destination. Respondent did not employ any separate means of transportation and, was not observed to arrive at the ultimate destination predicted. In short, Respondent did not engage in additional, precise actions on his part, which might otherwise have demonstrated a greater accuracy in predicting his future behavior. This case more closely resembles the factual scenario presented in *Florida v. J.L.*, 2000 WL 309131 (U.S., March 28, 2000) than it does that found in *White*. As the court noted in *J.L.*:

An accurate description of a subject's readily observable location and appearance is, of course, reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The 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. Respondent, therefore, argues that when the officer stopped him, the anonymous tip had not been sufficiently corroborated to create reasonable suspicion that he was engaged in the criminal activity described.

Respondent would agree with Petitioner in noting that the factual situation in *White* made that decision a “close case” *Florida v. J.L.*, 2000 WL 309131, *3. It is also agreed that in the factual context of *J.L.*, the Court found that the anonymous tip provided no additional information that would indicate any familiarity with the suspect.

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. Petitioner states that Respondent’s mother was sufficiently known or readily identifiable so as to make her accountable and, therefore, falls squarely within *White*. In this case, law enforcement had no previous knowledge of the caller’s true identity. Therefore, she could not be sufficiently known so as to make her accountable and her report credible. Neither did law enforcement attempt to verify and confirm her true identity, when they easily could have done so. The lack of

prior knowledge of the caller's identity or failure to identify the caller when easily and readily available, was fatal to the requirement that law enforcement have reasonable suspicion, as required by *J.L.*

Respondent argues that the Second District Court of Appeal did not err in determining that the caller should not be recognized as a citizen informant, nor in determining that the information available to law enforcement was insufficient to warrant the detention and seizure of the Respondent. Therefore, the decision of the Second District Court of Appeal should be affirmed, and the conviction and sentence of the Respondent reversed and remanded.

CONCLUSION

Based on the stated facts, argument, and citations of authority, as set forth herein and in the Respondent's Amended Answer Brief, the Respondent respectfully requests that the decision of the Second District Court of Appeal be affirmed, as the tip was neither that of a citizen informant, nor properly corroborated by independent factors.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail to Attorney General, Westwood Center, 2002 N. Lois Avenue, Suite 700, 4th Floor, Tampa, Florida 33607, and Gregory Maynard, 1560 Greenlea Drive, Clearwater, FL 33755, this _____ day of _____, 2000.

Respectfully submitted,
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