

SUPREME COURT OF LOUISIANA

No. 97-KK-2960

STATE OF LOUISIANA

V.

WILLIAM ROBERTSON

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH CIRCUIT,
PARISH OF ORLEANS

Marcus, Justice*

William Robertson was charged by bill of information with possession with intent to distribute cocaine in violation of La. R.S. 40:967. Defendant filed a motion to suppress the evidence. After hearing the testimony of several witnesses, the trial judge denied the motion.¹ Defendant's application to the court of appeal for supervisory writs was denied, with one judge voting to grant. On defendant's application to this court, we granted certiorari to review the correctness of the trial judge's denial of the motion to suppress.

Evidence adduced at the hearing reveals that on June 10, 1996, Officer Raymond Veit of the New Orleans Police Department received an anonymous telephone call from a concerned citizen via the Alcohol, Tobacco, and Firearms ("ATF") Hotline. The caller informed Officer Veit that an individual known as "Will," who drove a dark green Pontiac Grand Am with very dark tinted windows, was involved in the illegal sale of narcotics within the Magnolia Housing Development. The caller described Will as a black male, very dark complected, short and having the appearance of a juvenile. The caller further stated that the described vehicle would be parked in the 2800 block of Magnolia Street when Will "wasn't dropping off narcotics."

* Calogero, C.J., not on panel. Rule IV, Part 2, § 3.

¹ The trial judge held two separate hearings on defendant's motion to suppress. Officer Raymond Veit testified at the first hearing. Subsequently, the trial judge allowed a second hearing to give defendant an opportunity to present witnesses on his behalf. Crystal Morgan and Shaun Joseph testified. At the end of the second hearing, the trial judge again denied the motion to suppress.

Officer Veit and ATF Agent Mike Hutton relocated to the 2800 block of Magnolia Street and identified a dark green Pontiac Grand Am with dark tinted windows parked in a driveway. While the officers were getting in position to set up surveillance, they observed the vehicle pull out of the driveway and begin to drive away. The officers followed the vehicle until it parked in the 2500 block of Sixth Street. When the driver exited the vehicle, the officers observed that he matched the description given by the caller. The officers then approached defendant and asked his name. After defendant identified himself as William Robertson, Officer Veit informed him that he was under investigation for narcotics. A canine detention unit was called to the scene and arrived approximately 10-15 minutes later. When the dog indicated that an odor of narcotics was coming from inside the vehicle, Officer Veit entered the vehicle and discovered a large plastic bag filled with crack cocaine underneath the ashtray. Thereafter, Officer Veit placed defendant under arrest.

The sole issue presented for our consideration is whether the information provided by the anonymous informant was sufficient to generate reasonable suspicion for the investigatory detention of defendant.

The Fourth Amendment to the United States Constitution and Article 1, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. Measured by this standard, La. Code Crim. P. art. 215.1, as well as federal and state jurisprudence, recognizes the right of a law enforcement officer to temporarily detain and interrogate a person whom he reasonably suspects is committing, has committed, or is about to commit a crime. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 110 L. Ed. 2d 889 (1968); State v. Belton, 441 So. 2d 1195, 1198 (La. 1983), cert. denied, 466 U.S. 953, 104 S. Ct. 2158, 80 L. Ed. 2d 543 (1984); State v. Fauria, 393 So. 2d 688, 690 (La. 1981). Reasonable suspicion for an investigatory detention is something

less than probable cause and must be determined under the specific facts of each case by whether the officer had sufficient knowledge of facts and circumstances to justify an infringement on the individual's right to be free from governmental interference. Belton, 441 So. 2d at 1198. In the instant case, justification for the investigatory detention of defendant depends upon whether the anonymous tip, as corroborated by police, was sufficient to furnish reasonable suspicion of criminal activity.

In Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), the United States Supreme Court set forth a "totality of the circumstances" test to determine whether information from an anonymous informant established probable cause. In Gates, law enforcement officers received an anonymous letter informing them that Lance and Susan Gates were drug dealers. The informant detailed the Gates' plan to fly to Florida and drive back to Illinois with drugs hidden in the trunk of their car. Acting on the tip, police confirmed that Mr. Gates had arrived in Florida by plane and had departed from Florida heading north in a car with Illinois license plates. The Court held that there was probable cause to issue a search warrant based on police corroboration of the anonymous letter. In assessing the informant's tip, the Court abandoned the two-pronged test of Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964) and Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969), in favor of a totality of the circumstances test. The Court emphasized, however, that an informant's veracity, reliability, and basis of knowledge remain highly relevant factors in evaluating an informant's tip. Because significant aspects of the tip had correctly predicted the defendant's future actions, the Court concluded that police had reason to believe that the informant's other assertions about illegal activity were likely to be true.

Seven years after Gates, the U.S. Supreme Court applied the totality of the circumstances test to determine whether an

anonymous tip established reasonable suspicion for an investigatory stop. Alabama v. White, 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990). Although reasonable suspicion is a less demanding standard than probable cause, "the content of information possessed by police and its degree of reliability" remain significant factors in the analysis. Id. at 330. In White, an anonymous caller informed police that Vanessa White would leave apartment 235-C Lynwood Terrace Apartments at a particular time, get into a brown Plymouth station wagon with a broken taillight, and drive to Dobey's Motel. The tip further provided that she would be in possession of cocaine in a brown attache case. Police officers immediately proceeded to the apartment building and set up surveillance. They observed a woman, carrying nothing in her hands, get into a brown Plymouth station wagon parked in front of the 235 building. The officers followed the vehicle as she drove the most direct route to Dobey's Motel. When the vehicle reached a point just short of the motel, police stopped her. White consented to a search of the vehicle, and marijuana was discovered in a brown attache case located in the car. During processing at the police station, officers found cocaine in White's purse. The Court held that the anonymous tip, as corroborated, exhibited sufficient indicia of reliability to justify the investigatory stop of White's car. Although not every detail mentioned in the tip was verified by police prior to the stop,² the Court concluded that the informant's ability to predict White's future behavior, and police corroboration of significant aspects of the tip, were sufficient to furnish reasonable suspicion for the investigatory stop. Id. at 331-32. Of particular significance to the Court was the informant's prediction of White's "future behavior." While anyone could have "predicted" that a car precisely matching the caller's description would be parked in front of the 235 building, the

² Police did not verify the name of the woman leaving the building, the precise apartment from which she left, or her involvement in criminal activity.

general public would have had no way of knowing that White would shortly leave the building, get into the described car, and drive the most direct route to Dobey's motel. Emphasizing the insider quality of predictive information, the Court concluded that verification of the "innocent" aspects of the anonymous tip gave police reason to believe that the allegations of criminal activity were probably true as well.

Against this legal landscape, we must determine whether the anonymous tip, together with subsequent corroboration by police officers, provided reasonable suspicion for the investigatory detention of defendant. As noted above, in assessing reasonable suspicion for a stop pursuant to an anonymous tip, the White Court stressed corroboration and predictiveness. In the instant case, it is true that the officers were able to corroborate certain aspects of the anonymous tip, including defendant's name, his physical description and the location of the described vehicle. The tip, however, contained no predictive information from which the officers could reasonably determine that the informant had "inside information" or a "special familiarity" with defendant's affairs. In particular, the tip failed to predict the specific time period in which defendant would be engaged in illegal activity. It simply stated that drugs would be in the vehicle when not parked at a certain location. Because it is likely that defendant's use of the vehicle included non-illegal activity, the allegation that defendant would be engaged in illegal activity whenever the vehicle was moving was far too general. Since the tip did not provide sufficiently particular information concerning defendant's future actions, an important basis for forming reasonable suspicion was absent. The officers, therefore, lacked reasonable grounds to believe that the informant possessed reliable information about defendant's alleged illegal activities.

We note that the police were not powerless to act on the non-predictive, anonymous tip they received. The officers could

have set up more extensive surveillance of defendant until they observed suspicious or unusual behavior. Furthermore, if, after corroborating the readily observable facts, the officers had noticed unusual or suspicious conduct on defendant's part, they would have had reasonable suspicion to detain him. These circumstances, however, were not present here. In the absence of any suspicious conduct or corroboration of information from which police could conclude that the anonymous informant's allegation of criminal activity was reliable, we must conclude that there was no reasonable suspicion to detain defendant. The trial judge erred in holding otherwise.

Decree

For the reasons assigned, the judgment of the trial judge denying defendant's motion to suppress is reversed. The motion to suppress is granted. Case remanded to the district court for further proceedings.