

SUPREME COURT OF LOUISIANA

No. 97-KK-2551

STATE OF LOUISIANA

Versus

TIMMIE HILL

JOHNSON, J., Dissenting

We must strike a balance in this case between the competing interests of a government with the responsibility to maintain safe streets, and the right of persons in America to walk the streets without fear of police action. With this decision, the court has pushed the Terry stop to new levels. Reasonable suspicion that a person may have committed a crime or is about to commit a crime is no longer a requirement for an investigatory stop in Louisiana. See, Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968) (holding a police officer may make an investigatory stop when there is reasonable, articulable suspicion to believe that the person has been, is, or is about to be engaged in criminal activity).

The majority has concluded that persons in “high crime areas”, which generally means those sections of the community with complaints of narcotics trafficking, can be stopped at will, engaged in conversation, frisked, and have their identity verified. This is an egregious violation of the Fourth Amendment to the United States Constitution which guarantees that no person shall be subject to an unreasonable search or seizure of their person or property.

The majority relies on the multi-factor test set out in Brown v. Illinois, 422 U.S. 590, 603 (1975) to determine whether illegally seized evidence should be suppressed. The majority concedes that the initial Terry stop and frisk, which unearthed no evidence, was illegal. However, they assert that the two outstanding

arrest warrants, discovered during the defendant's unlawful detention, provide an intervening circumstance. According to the majority, this intervening circumstance allows the contraband seized during the illegal stop to be admissible. In support of this proposition, the majority relies on United States v. Green, 111 F.3d 515 (7th Cir. 1997).

The majority's reliance on United States v. Green is misplaced because the defendant in Green was not illegally stopped. Although the United States Seventh Circuit Court of Appeals classified the stop as illegal, the trial court and defendant Green conceded that the stop was legitimate and justified. See, United States v. Green, 111 F.3d 515, 518 (7th Cir. 1997). In Green, the police officers recognized defendant Green's car as having been parked at the home of a felon who was wanted for arrest. That is vastly different from the instant case where the police officers had absolutely no reason for approaching the defendant.

Brown requires us to consider the purpose and flagrancy of the official misconduct. Brown, 422 U.S. at 603. The majority states that, "even if the Terry stop exceeded the officers' authority, the police conduct was not particularly egregious and did not amount to a flagrant abuse of police power." It is shocking to think that the officers' conduct in this case could be characterized as anything but a flagrant abuse of power. The officers detained and frisked the defendant solely because they were on a "pro active patrol" in an area in which the police department had a general tip of narcotics activity.

The state has exploited a completely illegal stop in order to aid in the prosecution of this case. Police officers must not be allowed to randomly stop and search individuals without reasonable suspicion. We must return to the standard set out in Terry v. Ohio. By allowing this contraband to be admitted into evidence, this

court condones the egregious conduct of these police officers.

For the reasons expressed above, I would affirm the holdings of the trial court and the court of appeal. I would hold that the crack pipe found on the defendant's person is inadmissible pursuant to the "fruit of the poisonous tree" doctrine because the police officers did not have reasonable suspicion for the stop, and the evidence was discovered during an illegal search.