IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1995 SESSION



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| STATE OF TENNESSEE, | ) | |
| | ) | No. 02-C-01-9410-CC-00227 |
| APPELLANT, | ) | |
| | ) | Madison County |
| v. | ) | |
| | ) | Whit Lafon, Judge |
| DENNIS KEITH and | ) | |
| TIMOTHY COLLINS, | ) | (Interlocutory Appeal) |
| | ) | |
| APPELLEES. | ) | |

FOR THE APPELLANT:

Charles W. Burson
Attorney General & Reporter
450 James Robertson Parkway
Nashville, TN 37243-0493

Rebecca L. Gundt
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

James G. Woodall
District Attorney General
P. O. Box 2825
Jackson, TN 38302-2825

Lawrence E. Nicola
Asst. District Attorney General
P. O. Box 2825
Jackson, TN 38302-2825

FOR THE APPELLEES:

J. Blake Anderson
200 Main Street, East
Jackson, TN 38301
(Counsel for Dennis Keith)

Joe H. Byrd, Jr.
P. O. Box 2764
Jackson, TN 38302-2764
(Counsel for Timothy Collins)

OPINION FILED: _____

REVERSED AND REMANDED

Joe B. Jones, Judge

## O P I N I O N

This Court granted the State of Tennessee's application for interlocutory appeal to review the judgment of the trial court granting the appellees' motions to suppress illicit narcotics seized from a motor vehicle and a residence. The pivotal question is whether law enforcement officers had a legal basis for stopping a motor vehicle occupied by the appellees, and, thereafter, seizing illicit drugs from the interior of the vehicle.

This Court has made a thorough review of the record, the briefs of the parties, and the cases of the United States Supreme Court and the appellate courts of this State which address the issue presented for review. It is the opinion of this Court that the judgment of the trial court suppressing the evidence seized from the motor vehicle and the residence of the appellees should be reversed and this case remanded to the trial court for further proceedings consistent with this decision.

The Drug Task Force for the Twenty-Sixth Judicial District received information on several occasions that individuals living in a house municipally known as 225 Hollywood, Jackson, Tennessee, were engaged in the possession and sale of illicit narcotics. The Task Force placed the residence under surveillance on three separate occasions.

The information possessed by the Task Force was supplied by a confidential informant who had been inside the residence. The confidential informant had provided the Task Force with information that led to five separate arrests for narcotic-related offenses and the seizure of contraband. This informant had supplied information to the Task Force as late as September 9, 1993. The information had been obtained by the informant on or before September 2, 1993.[1] He also gave the Task Force a description of the two

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[1]Officer Mullikin was not clear about the date the confidential informant was at the appellees' residence. The reason was two-fold. First, the questions propounded to the officer were not clear, and the questions did not specify whether the interval sought was the date he last talked to the informant or the specific date the informant was inside the defendants' residence. Second, it appears that he was trying to protect the integrity of the confidential informant.

He testified that he received information from the confidential informant "seven days" before the date in question, September 12, 1993. He then testified that it had been "seven to nine days prior to this [date]." Later, he stated that the confidential informant "had contacted us seven to nine days and wasn't exactly certain of the day from the time he had been there. . . ." An attorney mentioned the officer had testified at the preliminary hearing that the confidential informant had observed drugs at the residence within "four days."

(continued...)

individuals who resided at the Hollywood address.

On the evening of September 12, 1993, the Task Force received a telephone call from an anonymous informant regarding the residence, the occupants, and a red Honda motor vehicle. The residence was the Hollywood address. The description of the individuals living at that address matched the descriptions given by the confidential informant. Also, the officers had seen the red Honda at that location on at least one prior occasion. The anonymous informant advised the Task Force that the two individuals worked during the day, and they engaged in drug transactions at night; and there would be marijuana contained in the red Honda that night. This informant supplied the officers with Collins's name.

Officers Mullikin and Robinson went to the area surrounding the Hollywood address shortly after receiving the information from the anonymous informant. The red Honda was parked precisely where the anonymous informant said it would be parked; and it matched the description given by the informant. Approximately five minutes later, Collins and Keith

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[1](...continued)
The following colloquy occurred during cross-examination:

> Q. In that search warrant, isn't it true that you state that you heard from your confidential informant ten days --
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> A. Within ten days.
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> Q. Well how many days was it?
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> A. How many days was it that he was there?
>
> Q. That you had heard from the confidential informant. Was it ten days or was it seven days, was it three days or was it nine days?
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> A. The idea of not giving the exact date when the informant was there is to protect the informant. That's why I placed within ten days. He was -- The information I received from the informant, the last contact with him had been three days prior to that. The time that he had been there had been somewhat longer than that which is why we did not attempt to get a search warrant based on his information alone.
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> **********
>
> Q. Was it three days or seven days?
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> A. Three days when I talked to him. Three days from the time that I had spoken to the confidential informant concerning that residence, if I recall correctly.

exited the residence and got into the red Honda. They matched the physical descriptions given by both informants. When the vehicle left the driveway and went north on Hollywood, the officers followed. They stopped the Honda approximately one-fourth of a mile from the residence. Collins was driving and Keith was on the passenger side of the vehicle.

The officers asked Collins if they could search his vehicle. He gave the officers consent to search the vehicle. The officers found a small amount of marijuana and two Lorazepam tablets, a Schedule IV narcotic, inside the vehicle. Collins stated that the pills were his. He did not have a prescription for them. He told the officers that a female friend had given the tablets to him. The officers arrested Collins and Keith.

Once the defendants were in jail, the officers sought and obtained a search warrant that authorized the search of the defendant's residence. The affidavit given in support of issuance of the warrant was based in part upon the illicit narcotics found in the motor vehicle. The search of the premises resulted in the seizure of several pounds of marijuana, marijuana seeds, Xanax, LSD, several varieties of pills, and drug paraphernalia.

The trial court suppressed the evidence on the ground the officers stopped the appellees' motor vehicle based on information received from an anonymous source.

**I.**

When an accused challenges the validity of a Terry stop, the state must establish by a preponderance of the evidence[2] that the law enforcement officer making the stop had a reasonable suspicion, based upon specific and articulable facts, that a criminal offense had been, was being, or was about to be committed before the fruits seized incident to the stop may be introduced into evidence.[3] The state may establish the validity of the stop through the testimony of the officers making the stop, a representative of a law enforcement agency initiating a broadcast, bulletin or flyer, the testimony of the informant or a citizen who perceived the facts that were communicated to the officer, or a

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[2]United States v. Matlock, 415 U.S. 164, 178 n.14, 94 S.Ct. 988, 996 n.14, 39 L.Ed.2d 242 (1974).

[3]State v. Moore, 775 S.W.2d 372, 377-78 (Tenn. Crim. App.), per. app. denied (Tenn. 1989).

combination of these witnesses.[4]

Issues raised by an interlocutory appeal, after permission to appeal has been granted, are determined in the same manner as issues raised in an appeal as of right. Since the thrust of the state's appeal challenges the ruling of the trial court granting the appellees' motions to suppress evidence, the time tested rules applicable to the findings of the trial court apply.[5]

In this jurisdiction, the findings of fact made by a trial court in resolving the merits of a motion to suppress evidence seized incident to a Terry stop are binding upon this Court if the evidence adduced at the suppression hearing does not preponderate against these findings.[6] Thus, this Court must examine the record to determine if the state has met its burden of showing that the evidence adduced at the suppression hearing preponderates against the findings made by the trial court.

**II.**

In the landmark case of Terry v. Ohio,[7] the United States Supreme Court held that a law enforcement officer may temporarily seize a citizen if the officer has a reasonable suspicion, based upon specific and articulable facts, that a criminal offense has been, is being, or is about to be committed.[8] Such seizures are commonly called Terry stops or

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[4]Moore, 775 S.W.2d at 378.

[5]Moore, 775 S.W.2d at 374.

[6]Moore, 775 S.W.2d at 374.

[7]392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

[8]State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992); State v. Scarlett, 880 S.W.2d 707, 709 (Tenn. Crim. App. 1993); State v. Little, 854 S.W.2d 643, 648 (Tenn. Crim. App.), per. app. denied (Tenn. 1992); State v. Brothers, 828 S.W.2d 414, 415 (Tenn. Crim. App.1991), per. app. denied (Tenn. 1992); State v. Oody, 823 S.W.2d 554, 561 (Tenn. Crim. App.), per. app. denied (Tenn 1991); State v. Coleman, 791 S.W.2d 504, 505 (Tenn. Crim. App. 1989), per. app. denied (Tenn. 1990); State v. Blankenship, 757 S.W.2d 354, 356 (Tenn. Crim. App.), per. app. denied (Tenn. 1988); State v. Denson, 710 S.W.2d 524, 525 (Tenn. Crim. App. 1985); State v. Hellum, 664 S.W.2d 314, 317 (Tenn. Crim. App.), per. app. denied (Tenn. 1984); Johnson v. State, 601 S.W.2d 326, 328 (Tenn. Crim. App.), per. app. denied (Tenn. 1980).

investigatory stops. The Terry doctrine applies to citizens riding in a motor vehicle.[9]

The purpose of a Terry stop is to permit a law enforcement officer to obtain a citizen's identity, question the citizen, and, when appropriate, maintain the status quo momentarily while the officer obtains additional information. However, the scope of the investigation "must be carefully tailored to its underlying justification" -- the officer's reasonable suspicion that a crime has been, is being, or is about to be committed.[10] Moreover, the detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop; and the investigative methods used by the officers should be the least intrusive means available to either verify or refute that an offense has been, is being, or is about to be committed.[11]

**III.**

The touchstone of a Terry stop is the specificity of the information possessed by the law enforcement officer when he stops a citizen.[12] Information received from an unknown informant will not, standing alone, support a Terry stop.[13] However, if the anonymous informant sufficiently details the information, and the officer is able to corroborate the information, the officer is justified in making a Terry stop.[14] Also, an officer is justified in making a Terry stop based upon information obtained from a known informant if (a) the information given is sufficiently detailed and (b) the informant has furnished accurate

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[9]Watkins, 827 S.W.2d at 294; Scarlett, 880 S.W.2d at 709; Little, 854 S.W.2d at 648; Brothers, 828 S.W.2d at 414; Oody, 823 S.W.2d at 561; State v. Jones, 802 S.W.2d 221, 222 (Tenn. Crim. App. 1990), per. app. denied (Tenn. 1991); Coleman, 791 S.W.2d at 504-05; Blankenship, 757 S.W.2d at 356; Denson, 710 S.W.2d at 525; Hellum, 664 S.W.2d at 317; State v. Yarbro, 618 S.W.2d at 521, 523 (Tenn. Crim. App.), per. app. denied (Tenn. 1984); Johnson, 601 S.W.2d at 327-28.

[10]Florida v. Royer, 460 U.S. 491, 499-500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229, 238 (1983).

[11]See Florida v. Royer, 460 U.S. at 500, 103 S.Ct. at 1325-26, 75 L.Ed.2d at 238; United States v. Place, 462 U.S. 696, 708-10, 103 S.Ct. 2637, 2645-46, 77 L.Ed.2d 110, 122 (1983); United States v. Seelye, 815 F.2d 48, 50 (8th Cir. 1987).

[12]Moore, 775 S.W.2d at 377.

[13]Coleman, 791 S.W.2d at 507.

[14] Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990); State v. Pulley, 863 S.W.2d 29, 31-34 (Tenn. 1993); see Brothers, 828 S.W.2d at 416.

information in the past.[15]

A Terry stop is never justified when it is based upon the mere hunch or inarticulate suspicion of the law enforcement officer.[16] "If subjective [beliefs] alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police."[17]

In determining whether a law enforcement officer's suspicion was supported by specific and articulable facts, the court must consider the totality of the circumstances -- the entire picture -- that were perceived by the officer prior to making a Terry stop.[18] The court must consider, among other things, the objective observations of the officer, the information the officer obtained from an informant, the reliability of the informant and the specificity of the informant's information, information received from other law enforcement officers and agencies, and the reasonable inferences which may be drawn from the officer's observations and the information available to the officer.[19] Other factors which may be considered are the character of the area where the stop occurred, the number of people with the suspect at the time of the stop, any furtive movement made by the suspect, and a suspect's attempt to avoid being stopped by the officer.[20]

**IV.**

In this case, the trial court based its decision solely on the fact that an anonymous

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[15]See Jones, 802 S.W.2d at 222.

[16]State v. Bryant, 678 S.W.2d 480, 482 (Tenn. Crim. App. 1984), cert. denied, 469 U.S. 1192, 105 S.Ct. 967, 83 L.Ed.2d 971 (1985); Johnson, 601 S.W.2d at 328.

[17]Beck v. Ohio, 379 U.S. 89, 97, 85 S.Ct. 223, 229, 13 L.Ed.2d 142, 148 (1964). See Brown v. Texas, 443 U.S. 47, 51, 99 S.Ct. 2637, 2640, 61 L.Ed.2d 357 (1979); Delaware v. Prouse, 440 U.S. 648, 654-55, 99 S.Ct. 1391, 1396-97, 59 L.Ed.2d 660 (1979).

[18]Alabama v. White, 496 U.S. at 328-29, 110 S.Ct. at 2415, 110 L. Ed. 2d at 309; Watkins, 827 S.W.2d at 295; Binion, 880 S.W.2d at 709; Little, 854 S.W.2d at 648; Hellums, 664 S.W.2d at 317.

[19]Watkins 827 S.W.2d at 294; Scarlett, 880 S.W.2d at 709; Little, 854 S.W.2d at 648.

[20]See Hawkins v. State, 543 S.W.2d 606, 609-10 (Tenn. Crim. App. 1976).

informant had furnished information to the officers, and the officers stopped the appellees' vehicle based on this information. The trial court ignored the information that had been furnished by the reliable, confidential informant, what the officers had personally seen through their senses, and the reasonable inferences that could be drawn from the officers' observations and the information that they had received. In short, the trial court failed to consider the totality of the circumstances that existed when the officers stopped the appellees' motor vehicle.

The officers had information that the appellees were engaged in drug trafficking and that the appellees had a quantity of marijuana inside their residence. The physical descriptions of the appellees had been related to the officers. This information had been furnished by a reliable informant. Based on this information, the officers had conducted surveillance in the vicinity of the residence on three separate occasions. The information furnished by the anonymous informant was corroborated by the information furnished by the reliable informant and the personal observations of the officers. The officers were familiar with the residence. The physical descriptions given by the anonymous informant were identical to the descriptions given by the reliable informant. The vehicle described by the anonymous informant had been seen by the officers at the appellees' residence on a prior occasion. The anonymous informant knew that the appellees worked during the day and engaged in drug transactions at night. The anonymous informant advised the officers that the name of one of the appellees was Collins. Finally, the anonymous informant advised the officers that marijuana would be contained inside the motor vehicle, which was located in front of the residence that evening.

When the officers went to the vicinity of the residence, they observed the red motor vehicle described by the anonymous informant. The vehicle was located where the informant said it would be parked. The appellees exited the residence shortly after the officers arrived. The appellees matched the description given by both informants. Furthermore, it was nighttime -- after working hours -- when the appellees left their residence and drove away.

Based upon personal observations of the officers, the information received from the informants, and the corroboration of this information, the officers had a reasonable

suspicion, supported by reasonable and articulable facts, that the appellees were committing a criminal offense, the possession of marijuana. Further, the officers had a reasonable suspicion that the appellees were about to commit a criminal offense, the sale of marijuana.

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JOE B. JONES, JUDGE

CONCUR:

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JERRY SCOTT, PRESIDING JUDGE

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JOHN H. PEAY, JUDGE