



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

August 25, 2003

The Honorable J. Seth Whipper  
Member, House of Representatives  
4592 Durant Avenue  
North Charleston, South Carolina 29405

Dear Representative Whipper:

In a letter to this office you questioned the constitutionality of anonymous crime tips serving as the basis for stops and/or searches.

In Alabama v. White, 496 U.S. 325 (1990), the United States Supreme Court dealt with a situation where a police officer received an anonymous tip by telephone that the defendant, White, would leave a particular apartment at a specified time with cocaine in her possession. The telephone caller also informed the police officer in detail what vehicle White would drive and her final destination. The police traveled to the apartment and observed a woman enter a vehicle that matched the description of the one specified in the telephone call. The police followed the vehicle for several miles and then stopped the vehicle just before the driver arrived at the motel the caller had identified as White's final destination. A consensual search revealed marijuana. After White was arrested, cocaine was found in her purse.

The United States Supreme Court determined that the anonymous tip "exhibited sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." 496 U.S. at 327. The Court concluded that when the officers stopped the defendant, the anonymous tip had been "sufficiently corroborated to furnish reasonable suspicion" of criminal activity. 496 U.S. at 331. The Court noted that what was important was the caller's ability to predict the defendant's future behavior, a point that demonstrated inside information and familiarity with the defendant's affairs. That finding was based on the fact that the telephone caller's message was sufficiently corroborated by the police and the caller was able to predict future behavior so as to demonstrate familiarity with White's affairs.

In contrast, the United States Supreme Court in its decision in Florida v. J.L., 529 U.S. 266 (2000) determined that there was a lack of sufficient indication of reliability to make an investigatory stop in circumstances where suspicion is based solely upon an anonymous telephone call made from an unknown location. In that case the police officer received an anonymous tip that a young black male would be standing at a designated bus stop, wearing a plaid shirt, and carrying a gun. The

officer in response went to the location and observed three black males, only one of which was wearing a plaid shirt. Based solely upon the anonymous tip, the officer frisked all three individuals. The officer found a gun in J.L.'s pocket.

The Supreme Court determined that in that case there was lack of indicia of reliability that had been present in White. The Court determined that the anonymous tip failed to provide sufficient predictive information and, therefore, the police had no means to test the knowledge or credibility of the anonymous caller. The Court noted that "the reasonableness of official suspicion must be measured by what the officers knew before they concluded their search." 529 U.S. at 271. The Court stated:

An accurate description of a subject's readily observable location and appearance is...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...(R)easonable suspicion...requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

529 U.S. at 272. The Court concluded, therefore, that an anonymous tip that a person is carrying a gun is, without more, not sufficient to justify a police officer's stop and frisk of that person.

In its decision in State v. Green, 341 S.C. 214, 532 S.E.2d 896 (Ct.App. 2000), the State Court of Appeals held that the uncorroborated, anonymous tip in the situation before the court did not provide an officer with reasonable suspicion authorizing the stop of a defendant's automobile. The facts of that case were that a police officer received a cellular telephone call from a police dispatcher that indicated that a black male by the name of Alonzo Green was leaving the area of Bayside Manor. An anonymous caller had indicated that Green was driving a gray four-door Maxima and had just left a residence in Bayside Manor with a large sum of money and narcotics. While still talking on the telephone, the officer observed Green, whom the officer knew by sight, driving a gray Maxima away from Bayside Manor. Based solely on the anonymous tip, the officer pulled Green.

While approaching the vehicle, the officer observed Green fumbling under his front seat. The officer testified that he thought the fumbling indicated that Green might be in possession of a weapon. After asking Green to exit his vehicle, Green was frisked for weapons. Subsequent to the frisk, Green was found to be in possession of narcotics and a large sum of money. A pistol was also found under the front seat of the Maxima.

At trial, Green's attorney moved to suppress the evidence alleging a violation of the Fourth Amendment. The trial judge denied the request. Following his conviction, Green appealed. In its decision reversing the conviction, the State Court of Appeals cited the decisions in Alabama v. White and Florida v. J.L. In Green's case the Court determined that while the anonymous caller had

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provided Green's name, a description of the car he was driving and the location from which he would depart, all these matters were readily observable and did not supply sufficient indicia of reliability so as to establish reasonable suspicion to justify an investigatory stop. The officer himself had no personal observations and had no justification other than the anonymous tip to suspect any illegal conduct by Green. Also, the caller failed to provide any means to test his knowledge or credibility. The Court reasoned that the caller's simple statement that Green would leave the particular apartment on a particular road was not sufficient "predictive information". While the allegations about the money and drugs proved ultimately to be correct, the Court concluded that there was insufficient basis to suggest that Green was engaged in unlawful conduct. The court stated:

The only information available to the officer was the statement of an unknown, unaccountable informant who neither explained how he knew about the money and narcotics, nor supplied any basis for the officer to believe he had inside information about Green...Since the telephone call was anonymous, the caller did not place his credibility at risk and could lie with impunity. Therefore, we cannot judge the credibility of the caller, and the risk of fabrication becomes unacceptable.

341 S.C. at 218. Therefore, the Court concluded that all the evidence from the investigatory stop should have been suppressed.

Admittedly, the situations outlined above are close in facts. However, the distinction that appears is that for a search to be upheld there must be sufficient corroboration of criminal activity and sufficient indication of reliability to support a stop of an individual. Any tip by an individual must be reliable in its assertion and meet the test of substantiating the knowledge or credibility of the informant.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General