

IN THE SUPREME COURT OF GUAM
TERRITORY OF GUAM

PEOPLE OF THE TERRITORY OF GUAM
Plaintiff/Appellant,
vs.
MARK STEVEN JOHNSON
Defendant/Appellee.

Criminal Case No. CRA 96-003
Filed: June 22, 1997
Cite as: 1997 Guam 9

Appeal from the Superior Court of Guam

Argued and Submitted 29 January 1997
Agana, Guam

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OPINION

BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and MONESSA G. LUJAN,¹ Associate Justices.

PER CURIAM:

This is a timely appeal filed by Appellant Territory of Guam (APeople®) and arises from a trial court decision which granted Defendant-Appellee Mark Steven Johnson's (AJohnson®) motion to suppress evidence obtained during a traffic stop. Based upon the record and the applicable law, this Court denies the relief sought and hereby affirms the order suppressing the evidence obtained from the traffic stop.

I.

[1] At about 2:10 a.m. on the morning of June 11, 1995, Officer Nys (ANys®) of the Guam Police Department (AGPD®) was patrolling the area around Club Texas and Pamela >76 in Anigua, Guam. Nys was approached by an individual who reported that an African-American male driving a blue

Nissan Pathfinder, license plate number Mangilao 2807, had asked the individual if he would like to purchase some crystal methamphetamine. Upon questioning by the police officer, the individual refused to provide his name, indicating that he preferred to remain anonymous. Nys described the individual as a caucasian military-type male who did not appear to be joking. Nys also testified that the individual appeared intoxicated, but not drunk.

[2] Nys left the Club Texas area and headed south on Route One towards the G.C.I.C. building. Nys observed a northbound blue Pathfinder execute a right turn near Kentucky Fried Chicken in Anigua and head towards West O'Brien Drive. Nys followed the vehicle and confirmed that the license plate

¹Justice Lujan heard oral argument and participated in the resolution of this matter, but due to her untimely death was not available to sign the opinion.

matched the number provided by the anonymous informant. Nys proceeded to conduct a traffic stop because of the fact that the informant had advised me that this discovered a package wrapped with a Narcotics Anonymous schedule. Nys opened the package and found what appeared to be, five plates of ice. Johnson was arrested and subsequently charged with possession of a controlled substance with intent to deliver.

II.

[3] This Court is presented with the issue of whether Officer Nys was justified in stopping Appellee Johnson's vehicle. This Court undertakes a de novo review of the trial court's legal conclusion that there was not a reasonable suspicion sufficient to justify an investigatory stop, however, the findings of fact relied on by the trial judge in drawing the legal conclusion are reviewed for clear error. *U.S. v. Lee*, 68 F.3d 1267, 1270 (11th Cir. 1995); *U.S. v. Santamaria-Hernandez*, 968 F.2d 980, 983 n.3 (9th Cir. 1992). Such findings include what information the officers had, what acts were performed, and what statements were made. *U.S. v. Bold*, 19 F.3d

car may possibly be dealing narcotic substances. Nys' search of the vehicle revealed a black pouch underneath the driver's seat. Inside the black pouch, Nys 99, 102 (2nd Cir. 1994). The facts are also construed in a light most favorable to the party prevailing at the trial level. *U.S. v. Lee*, 68 F.3d 1267, 1270 (11th Cir. 1995). This court holds, for the reasons set forth below, that the trial court's factual findings, construed in a light most favorable to Appellee Johnson were not clearly erroneous and that the trial court's legal conclusion survives de novo review.

III.

[4] The Fourth amendment prohibition against unreasonable searches and seizures is made applicable to Guam via ' 1421b (c) of the Organic Act of Guam. The Fourth Amendment permits brief detentions when a police officer has a reasonable suspicion that an individual was engaged in or is about to be engaged in illegal conduct. *Terry v. Ohio*, 392 U.S. 1 (1968). The *Terry* stop doctrine has been extended to justify the investigatory stop of a motor

vehicle. *United States v. Sharpe*, 470 U.S. 675, 682 (1985).

[5] The reasonable suspicion necessary to justify an investigatory stop is dependent upon both the content of information possessed by police and its degree of reliability.® *Alabama v. White*, 496 U.S. 325, 330 (1990). When an investigatory stop is justified with reasonable suspicion based upon an any-

[6] In order to determine whether an officer had reasonable suspicion sufficient to warrant a traffic stop, the court must look at the totality of the circumstances, taking into account the facts known to the officers from personal observation, and giving the anonymous tip the weight it deserved in light of its indicia of reliability as established through independent police work.® *Id.* at 330. Furthermore, the reasonable suspicion must exist at the time the stop was initiated. *U.S. v. Santamaria-Hernandez*, 968 F.2d 980, 982 (9th Cir. 1992). In the specific context of an investigatory stop prompted by an informant's tip, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip

was an anonymous tip, *Alabama v. White* requires that such tip be sufficiently corroborated by independent police work. Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized.® *Id.* at 329 (quoting *Adams v. Williams*, 407 U.S. 143 (1972)).

were more reliable.® *Alabama v. White* 496 U.S. at 330. Substantial corroboration of the tip by independent police work can impart some degree of reliability in other uncorroborated portions of the tip. *Id.* at 332. However, such corroboration must ordinarily involve predictive facts of the suspect's behavior. *Id.* As stated in *White*:

[w]e think it also important that, as in *Gates*, the anonymous [tip] contained a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted.® (cite

omitted) The fact that the officers found a car precisely matching the caller's description in front of the 235 building is an example of the former. Anyone could have predicted² that fact because it was a condition presumably existing at the time of the call. What was important was the caller's ability to predict respondent's *future behavior*, because it demonstrated inside information--a special familiarity with respondent's affairs. . . . When significant aspects of the caller's predictions were verified, **there was reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop.**

Id. at 332 (italics and underlining added). The corroboration of predictive facts regarding the defendant's future behavior confirms the reliability of an anonymous informant's tip. It is

such a demonstration which justifies the traffic stop.²

²Some jurisdictions require less corroboration of predictive facts where the tip involves an allegation that the suspect is armed. *See U.S. v. Bold*, 19 F.3d 99 (2nd Cir. 1994); *United States v. Clipper*, 973 F.2d 944 (D.C. Cir. 1992). These cases are inapplicable because there are no facts which support the exigent circumstance exception.

IV.

[7] In the present case the trial judge determined that the tip had a low degree of reliability, if any, and that additional information would be needed to make the tip more reliable. The trial court's determination was influenced by the finding that the face to face anonymous informant specifically refused to identify himself or otherwise expose himself to any risk of prosecution. Furthermore, the trial judge also made the factual determination that the anonymous informant was tip was possibly intoxicated. Based on such factual findings, the trial court concluded that the anonymous informant's unreliable tip did not give rise to a reasonable suspicion.

[8] The police officer was not presented with the type of facts that could be corroborated by additional and independent findings. *See, e.g., U.S. v. Lee*, 68 F.3d 1267, 1271 (11th Cir. 1995). The anonymous tip consisted of preexisting facts and did not contain predictive information

which demonstrated the informant's intimate awareness of the defendant's criminal activity. *Alabama v. White*, 496 U.S. at 332.

[9] Ultimately, the trial judge determined that the anonymous informant's tip alone, which contained no predictive facts to be corroborated, was insufficient to justify a traffic stop. This Court agrees and concludes that the trial court was correct in suppressing the evidence obtained from the unlawful traffic stop.

CONCLUSION

[10] For the foregoing reasons, the decision of the Superior Court is affirmed.

JANET HEALY WEEKS
Associate Justice

MONESSA G. LUJAN
Associate Justice

PETER C. SIGUENZA
Chief Justice