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SEARCH AND SEIZURE

United States Constitution Amendment IV:

[N]o warrants shall be issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

New York Constitution Article I Section 12:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. . . .

COURT OF APPEALS OF NEW YORK

People v. William "II"; People v. Rodriguez[1]
(decided June 6, 2002)

This is a consolidated action involving two cases in which William "II" and Rodriguez were named as defendants. William II pleaded guilty to possession of marijuana in the third degree and Rodriguez was convicted of criminal possession of a weapon in the third degree.[2] The trial court denied William II's motion to suppress, and the appellate division affirmed.[3] The trial court denied Rodriguez's motion to suppress, and the appellate division then reversed, from which the state appealed.[4] In both cases, the state agreed that the stop and attempted frisk of William II, and the

[1] 98 N.Y.2d 93, 772 N.E.2d 1150, 745 N.Y.S.2d 792 (2002).
[2] *Id.* at 96, 772 N.E.2d at 1151, 745 N.Y.S.2d at 793.
[3] *Id.*
[4] *Id.* at 97, 772 N.E.2d at 1152, 745 N.Y.S.2d at 794.

traffic stop of Rodriguez both required reasonable suspicion.[5] Both cases share a common issue: "whether the facts and information the police possessed, when coupled with an anonymous tip that a described individual was carrying a gun, established reasonable suspicion for the intrusions."[6] In both cases, New York Constitutional issues were not raised. Rather, the Court of Appeals reached its decision by following the rationale of the United States Supreme Court decision of *Florida v. J.L.*[7] The New York Court of Appeals ultimately granted William II's motion to suppress, dismissed his indictment, and affirmed as to the order given to Rodriguez.[8]

In *William II*, the City of Ithaca Police Department received an anonymous call signifying that a man named "Will" was a part of a recent drive-by shooting.[9] The anonymous caller gave a physical description of Will, said he was carrying a weapon, and was accompanied by two Caucasian males.[10] The caller also described Will's location.[11] Upon dispatch, one officer spotted an individual he knew as "Will Cruz," who matched the physical description given by the anonymous caller, with two Caucasian males.[12] The officer spotted the group and frisked Cruz, even though Cruz's attire would not permit a weapon to be concealed.[13] Another officer approached the other two males and ordered them to face his police car.[14] The trial court initially found that William II ran from the police to avoid questioning and a possible frisk.[15] Additionally, the court determined that the officer who ordered William II to face the car "had no reason to believe that [William II] had been handed the weapon by [Cruz] but felt that there had been enough time for that to happen."[16] The police eventually

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[5] *Id.* at 96, 772 N.E.2d at 1151, 745 N.Y.S. at 793.
[6] *William II*, 98 N.Y.2d at 97, 772 N.E.2d at 1151, 745 N.Y.S.2d at 793.
[7] 529 U.S. 266 (2000).
[8] *William II*, 98 N.Y.2d at 100, 772 N.E.2d at 1153, 745 N.Y.S.2d at 795.
[9] *Id.* at 97, 772 N.E.2d at 1151, 745 N.Y.S.2d at 793.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *William II*, 98 N.Y.2d at 100, 772 N.E.2d at 1153, 745 N.Y.S.2d at 795.
[14] *Id.*
[15] *Id.*
[16] *Id.* at 98, 772 N.E.2d at 1150, 745 N.Y.S.2d at 792.

apprehended William II, searched his backpack and discovered marijuana and drug paraphernalia.[17]

In *Rodriguez*, police officers on patrol received a report that a "light-skinned male Hispanic, in his twenties, with black hair, wearing a black-and-white checkered shirt and jeans, was carrying a gun."[18] The officers observed a man that matched the description standing in front of a grocery store approximately two hours after receiving the initial report.[19] The officers watched Rodriguez get into the back seat of a car, and the officers then followed as the vehicle drove away.[20] The officers eventually pulled the car over, and as they approached the vehicle, they observed Rodriguez "dropping a gun from the car window."[21] The officers subsequently searched Rodriguez, and placed him under arrest.[22]

The Court of Appeals noted that for a search and seizure to be reasonable, it must inquire as to: "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place."[23] Furthermore, the court discussed that a stop by police, which is not justified from the beginning, could not be

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[17] *Id.*

[18] *William II*, 98 N.Y.2d at 98, 772 N.E.2d at 1152, 745 N.Y.S. at 794.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *William II*, 98 N.Y.2d at 98, 772 N.E.2d at 1152, 745 N.Y.S. at 794 (citing Terry v. Ohio, 392 U.S. 1 (1968)). *Terry*, holds that:

> where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

392 U.S. at 20. This decision created a "stop and frisk" exception to the probable cause requirement. Courts today will find that such a search is reasonable under the Fourth Amendment, and any weapons seized may be properly introduced in evidence against the person from whom they were taken. *Id.* at 31.

"validated by a subsequently acquired suspicion."[24] As mentioned earlier, the state in both cases agreed that "the police intrusions were justifiable at their inception only if the police officers' knowledge at the time carried a reasonable suspicion that criminal activity was afoot."[25]

The Court of Appeals began its analysis by discussing the United States Supreme Court case of *Florida v. J.L.*,[26] which the court found to be "particularly instructive" because of its resemblance to the facts of *William II* and *Rodriguez.*[27] Ultimately, the Court of Appeals adopted the identical rationale of United States Supreme Court in *J.L.*, and reached the same conclusion: an anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a *Terry* stop and frisk[28] of that person.[29]

In *Florida v. J.L.*, police received notification from an anonymous caller that a young black male, wearing a plaid shirt standing by a bus stop with three other black males, was carrying a gun.[30] The police went to the bus stop and saw a young black male, wearing a plaid shirt, standing amongst three other black males.[31] Aside from the anonymous tip, the officers did not witness any unusual activity that would indicate the possibility of criminal activity.[32] One of the officers approached J.L., frisked him and discovered a gun.[33] J.L., who was under the age of eighteen, was subsequently charged with carrying a weapon

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[24] *Id.* at 98, 772 N.E.2d at 1152, 745 N.Y.S. at 794 (citing People v. McIntosh, 96 N.Y.2d 521, 527, 755 N.E.2d 329, 333, 730 N.Y.S.2d 265, 269 (2001)).

[25] *William II,* 98 N.Y. 2d at 98, 772 N.E.2d at 1152, 745 N.Y.S. at 794. In the context of search and seizure, reasonable suspicion is, "that 'quantum of knowledge sufficient to induce an ordinarily prudent and cautious [person] under the circumstances to believe criminal activity is at hand'" *Id.* (citing People v. Martinez, 80 N.Y.2d 444, 606 N.E.2d 951, 591 N.Y.S. 823 (1992) (quoting People v. Cantor, 36 N.Y.2d 106, 324 N.E.2d 872, 365 N.Y.S.2d 509 (1972)).

[26] 529 U.S. 266 (2000).

[27] *William II,* 98 N.Y.2d at 98, 772 N.E.2d at 1152, 745 N.Y.S. at 794.

[28] *See supra* note 23.

[29] *William II,* 98 N.Y.2d at 99, 772 N.E.2d at 1153, 745 N.Y.S.2d at 795.

[30] *J.L.*, 529 U.S. at 268.

[31] *Id.*

[32] *Id.*

[33] *Id.*

without a license.[34] J.L argued that the gun should be suppressed because it was the "fruit of an unlawful search," and as a result, the trial court granted J.L.'s motion.[35] However, the appellate court reversed, and the Supreme Court of Florida agreed with J.L. that the search was "invalid under the Fourth Amendment."[36]

The United States Supreme Court determined that an anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officers' stop and frisk of that person.[37] The Court stated that the officers in *J.L.* based their suspicions purely on an anonymous tip rather than their personal observations.[38] The Court then compared the facts of *J.L* with a decision it made ten years earlier in *Alabama v. White*.[39]

In *White,* the Court held that an anonymous tip, as corroborated by independent police work, *did* provide sufficient indicia of reliability to provide reasonable suspicion to make a *Terry* stop.[40] An anonymous caller told police that a woman driving a station wagon with a broken taillight, was carrying an ounce of cocaine, and was going to leave an apartment building at a specific time destined for a specific motel, which the caller identified.[41] Upon police investigation, the anonymous informant accurately predicted every one of the woman's movements and the police did in fact discover cocaine on her person.[42] Even though every detail mentioned by the anonymous tipster was not verified, the Court found that "it was not unreasonable to conclude [that] the independent corroboration by the police of significant aspects of the informer's predictions imparted some degree of reliability to the other allegations made by the caller."[43] The Court classified its decision as a "close case," noting "the anonymous [tip] contained a range of details relating not just to easily obtained facts and

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[34] *Id.* at 269.
[35] *J.L.*, 529 U.S. at 269.
[36] *Id.*
[37] *Id.* at 274.
[38] *Id.* at 270.
[39] 496 U.S. 325 (1990).
[40] *Id.* at 332.
[41] *Id.* at 327.
[42] *Id.*
[43] *Id.* at 331-32.

conditions at the time of the tip, but to future actions of third parties not easily predicted."[44]

After reviewing the facts of *White*, the United States Supreme Court concluded that the facts in *J.L.* were clearly distinguishable. The majority noted that unlike the anonymous call in *White*, the call in *J.L.* did not provide police with any "predictive information" that would allow the police to test the informant's "knowledge or credibility."[45] The Court further explained that but for the anonymous call, the police would not have had any reason to conduct a search of J.L.[46] The Court also noted that merely because the allegation about the gun turned out to be true, this alone does not justify the requisite reasonable suspicion as required by *Terry,* for the "reasonableness of the officer's suspicion must be measured by what the officers knew before they conducted their search."[47] As a result, the Court concluded that, "if *White* was a close case on the reliability of anonymous tips, this one surely falls on the other side of the line."[48] Therefore, the weapon seized from J.L. was deemed the fruit of an unlawful search and could not be used as admissible evidence at trial.[49]

As mentioned earlier, the New York Court of Appeals adopted the requirements of *Florida v. J.L.* and applied them to *William II* and *Rodriguez*.[50] In so doing, the court found that the "police did not have reasonable suspicion to subject William II to a *Terry* stop and frisk."[51] Much like the police officers in *J.L.*, the police approached William II's companion, Cruz, based solely on an anonymous tip.[52] This anonymous tip not only lacked

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[44] *White*, 496 U.S. at 332 (citing Illinois v. Gates, 462 U.S. 213, 245 (1983)). In *Gates*, a "totality of the circumstances" approach is used to determine whether an informant's tip established probable cause, whereby "the informant's veracity, reliability, and basis of knowledge are highly relevant." *Gates,* 462 U.S. at 245.

[45] *J.L.*, 529 U.S. at 271.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *William II*, 98 N.Y.2d at 99, 772 N.E.2d at 1153, 745 N.Y.S.2d at 795.

[51] *Id.*

[52] *Id.*

"predictive information" that would test the caller's knowledge but also "rendered suspect when directly contradicted by the police officer's observation that Cruz was not dressed in a manner that would permit him to conceal a weapon on his person."[53] Moreover, the anonymous tip in *William II* failed to point out the defendant and did not present any pertinent information to propose, "he possessed a weapon or that he engaged in any criminal activity."[54] As a result, the New York Court of Appeals found that the police officers did not have reasonable suspicion to believe that Cruz, "the subject of the tip, had handed William II the weapon."[55] Therefore, the police officers' attempted frisk of the defendant was improper.[56]

Likewise, in *Rodriguez*, the Court of Appeals found that the police officers' suspicion for stopping the vehicle in which Rodriguez was a passenger was unreasonable.[57] The Court opined that the officers stopped the car based solely on the fact that the defendant matched the physical description that the anonymous tipster provided.[58] As a result, the anonymous tip, on its own, lacked the sufficient indicia of reliability to conduct a *Terry* stop.[59] Furthermore, the Court of Appeals supported the appellate division's determination that the gun, which was dropped out of the car window by the defendant was not abandoned[60] because the

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[53] *Id.*

[54] *Id.*

[55] *William II*, 98 N.Y.2d at 99, 772 N.E.2d at 1153, 745 N.Y.S.2d at 795.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.* Additionally, the People's assertion that the officers stopped the vehicle out of concern for the livery cab driver's safety was contradicted by the testimony of the People's only witness at the suppression hearing. During questioning, the witness, who was one of the arresting officers, stated:

> Q: When you first started following the car, did you have any reason to believe this was a gypsy cab?
>
> A: At that time, no.
>
> Q: And when you first stopped the vehicle, you did not know at that time it was a gypsy cab, did you?
>
> A: No.

Id. at 100.

[60] It is important to note: "Property is deemed abandoned when the expectation of privacy in the object or place searched has been given up by voluntarily and knowingly discarding the property. The result is a waiver of constitutional

stop was not based on a reasonable suspicion that criminal activity was afoot.[61]

In conclusion, after the decisions of *People v. William II* and *People v. Rodriguez*, federal and New York courts use identical requirements in determining whether an anonymous tip provides sufficient indicia of reliability to conduct a *Terry* stop. It is clear that when information is passed through a purely anonymous source, and wholly vague in its description of criminal conduct as alleged by the caller, police officers may use the tip as a means of identifying a possible suspect but must be careful to conduct a thorough observation of the individual's conduct to assess whether or not criminal activity is present. Due to the fact that the Court of Appeals adopted the requirements demanded in the Supreme Court case of *Florida v. J.L.*, police officers in New York cannot claim reasonable suspicion as a basis for a *Terry* stop if they act solely on tips from an anonymous source.

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protection." People v. Ramirez-Portoreal, 88 N.Y.2d 99, 110, 666 N.E.2d 207, 213, 643 N.Y.S.2d 502, 508 (1996).

[61] *William II*, 98 N.Y.2d at 100, 772 N.E.2d at 1153, 745 N.Y.S.2d at 795.