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Recent Decisions - State and Federal: Terry Examined

James F. Kuhn

ownership, maintenance or use of an uninsured auto." Under this provision of McKoy's policy, Aetna limits its dollar liability to a single injured person (McKoy) at $20,000.

Third, Part III(d), the set-off clause upon which Aetna relied, also modifies the primary liability of Part I by indicating that "*any amount payable* to the insured under the terms of [the policy] shall be reduced" by the amount of sums paid to the insured "on behalf of the tortfeasor." *See Id.*, at 30, 374 A.2d at 1172.

There was no dispute that Part III(d) meant that the $10,000 from the D.C. driver's insurance already paid to Mrs. McKoy should act as a set-off. The issue became one of determining the proper referent of the phrase "any amount payable." If this meant the total amount corresponding to the total damages, $29,000, suffered by Mrs. McKoy, then the $10,000 set-off would leave Aetna with a $19,000 obligation. On the other hand, if those words in III(d) referred to the amount payable from Aetna to McKoy, $20,000, then the application of the set-off would leave Aetna with a mere $10,000 obligation.

In holding for Mrs. McKoy, the court stated that both III(a) and III(d) were independent modifiers of the total amounts payable clause in Part I. Thus, the set-off did not reduce the Aetna limit of liability, but the total sums to which that liability was to be applied, i.e., the outstanding amount payable to plaintiff McKoy after the application of the $10,000 paid on behalf of the tortfeasor.

In order to remove any doubt about the correctness of the result, the court stated:

> Even assuming that the interpretation of the policy urged upon us by Aetna is an equally reasonable one, this would, at best, create an ambiguity. In such situations, ambiguities are resolved against the author of the instrument. . . *Penn., Etc., Ins. Co. v. Shirer*, 224 Md. 530, 537, 168 A.2d 525, 528 (1961). . .

281 Md. at 31, 374 A.2d at 1173.

The decision of the court rested entirely upon the construction of the Uninsured Motorists Endorsement issued by Aetna. To avoid this result in future cases involving the Uninsured Motorists coverage, Aetna could restructure the language of its endorsement specifically to limit the coverage. While it is evident that the court intended that an insured benefit from as much of her insurance as possible, it could have reached a more enduring result based upon substantive law rather than contract construction had it dealt with the alternative argument that the set-off clause was void under Md. Ann. Code art. 48A §541. This section requires that insurers issuing policies for Maryland drivers provide a minimum of $20,000 U/M coverage for each policy, and a court could construe the Code to require application of the $20,000 obligation to the balance of "any amount payable" to an insured after application of a set-off. The court chose not to reach this question, and thus left this case vulnerable to isolation on its facts. *See id.*, at 28 n.1, 374 A.2d 1171 n.1.

McKoy articulates well the problem of uninsured motorists insurance protection—a problem acute in Maryland, which entertains more than its share of foreign drivers who are without sufficient coverage of their own. It also appears that the result in this case works a two-edged economic sword, with one blade cutting costs to an insurance consumer like McKoy by holding an insurance company to its full obligation in the manner provided by this court. The other edge, however, narrows company profit margin resulting in higher insurance rates.

Terry Examined

by James F. Kuhn

The Court of Special Appeals has rendered invalid an investigatory stop based solely on information received in a police radio broadcast absent other indications of present danger and criminal activity. *Price v. State*, 37 Md. App., 248, 376 A.2d 1158 (1977).

On April 5, 1975, a Prince George's County police officer on routine patrol received a radio broadcast that an armed robbery suspect, James Price, was believed to be driving a silver 1966 Cadillac and that he was in possession of a shotgun, stolen goods, and narcotics. The officer, having sighted an automobile matching the description given in the broadcast down to the tag number, approached the driver when he stepped from the car in a gas station and conducted a patdown of the driver who at that time identified himself as James Price. This limited search, conducted on the basis of the radio alert alone, produced a knife from the person of the appellant. He was arrested on a weapons charge and subsequently convicted on separate charges, relating to a robbery which had occured three weeks earlier on the basis of evidence seized by a second officer while searching the car in the gas station. Price's contention on appeal was that the state had failed to establish the necessary "reasonable suspicion" to justify his being stopped and frisked for weapons, thus violating rights guaranteed by the Fourth Amendment.

Nine years ago, the Supreme Court made clear in *Terry v. Ohio*, 392 U.S. 1, (1968), that police officers may "in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behaviour even though there is no probable cause for making an arrest" and that where the 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" he may conduct a limited frisk for weapons by patting down the outer clothing of the suspect. 392 U.S. at 22. *Terry* requires only that the officer be able to point to specific and articulable facts that would justify a reasonable suspicion that the individual is armed and presents a threat to the officer or bystanders.

In *Price*, the state argued that the patdown was justified under the *Terry* doctrine in that a police broadcast that a suspect is armed and dangerous in and of itself justifies a patdown for weapons even if it does not constitute probable cause for arrest. The danger of too broad a reading

of the *Terry* doctrine lies in its abuse in cases where the state may seek to dignify an otherwise invalid investigatory procedure. The narrow holding in *Terry* was originally intended as justification for good faith searches, limited in scope to a patdown for weapons in a situation reasonably perceived by the officer as presenting immediate danger. The gist of *Terry* is good-faith preemption of hostile citizen reaction to a lawful police stop; *Terry* was not envisioned as applying an excuse for bad faith or sloppy police work and the "stop and frisk" perceived by the Supreme Court was clearly not meant to be a habitual law enforcement procedure.

In *Price*, the court noted that the officer had concededly acted solely on the basis of the police broadcast and that he observed nothing in the course of his approaching the defendant which indicated that he might be armed. The court distinguished *Williams v. State*, 19 Md.App. 204, 310 A.2d 593 (1973), where it upheld a "stop and frisk"based on a similar radio alert *together with other circumstances* which were found sufficient to give rise to the required reasonable suspicion. Specifically, in *Williams*, the fact that the automobile was parked in the same general vicinity only ninety minutes after a shooting incident was a specific and articulable fact which reasonably warranted the self-protective frisk, whereas in *Price* the court was faced with the question whether the police broadcast alone would give rise to this suspicion where the offense which was the subject of the broadcast had occured three weeks earlier and in another part of the county. The unaccompanied police broadcast was held insufficient.

The rationale underlying *Terry* goes to the legitimate interest of the state in protecting its law enforcement officers from the inherent dangers involved in the conducting of investigations of those suspected of possible criminal activities. The cases following *Terry* have been forced to apply a balancing test between the rights of individuals to be free from unreasonable searches and seizures and society's interest in protecting its police from potential threatened violence when such is the case. The difficult question to which the court addressed itself in this case is whether the frisk can be upheld at a suppression hearing where the arresting officer has no reason other than the broadcast for conducting the frisk and where the prosecution is unable to identify the source of the information bringing about the alert. Through a delicate balancing of the interests outlined in *Terry*, the court has chosen not to expand its prior holding in *Williams* to encompass a situation such as that in *Price*.

While it might legitimately be suggested that *Price* almost completely deprives police officers of the right to conduct protective frisks solely on the basis of police radio broadcasts alerting officers of armed and dangerous suspects (who are identified with certainty), officers in fear of their safety may conduct such frisks if they can point to any specific and articulable facts supporting the broadcast (such as in *Williams*) which reasonably leads them to conclude that criminal activity is afoot and that the subject of their investigation is armed. Furthermore, such a frisk based on the broadcast alone will be upheld if the facts underlying the radio alert are established by the state at the suppression hearing. *Price*, while declining to extend the former rule, reaffirms the self-protective frisk *under appropriate circumstances* and at the same time preserves the right of the people to be free from unreasonable searches and seizures. The narrow holding of *Price* requires only that evidence seized as the result of an arrest made following a productive frisk for weapons based solely on the radio broadcast must be suppressed both where the accuracy underlying the broadcast cannot be documented and in the absence of other indicia of present danger.

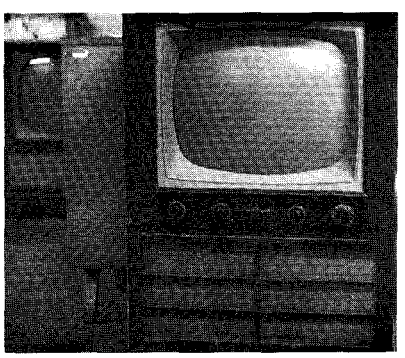

photo by John Clark Mayden

T.V. Or Not T.V.— Proof Of Value For Grand Larceny

by John Jeffrey Ross

To obtain a conviction of a defendant accused of grand larceny in the District of Columbia, the Government must present evidence that the property stolen was worth at least $100.00. (*See* 22 D.C. Code Sec. 2201). Such evidence should include proof of the fair market value of the item. This axiom appears to be too simple to require judicial explanation, but the District of Columbia Court of Appeals recently reversed a felony grand larceny conviction because of the Government's failure to establish the threshold value. *Williams v. United States*, 376 A.2d 442 (D.C. App. 1977).

John Williams was convicted of grand larceny after the Government convinced the jury that he had taken a television set (and other effects of negligible value). The evidence showed that Mr. Williams sold the television for $50.00 and then bought it back for $100.00 in the hope of returning it to avoid prosecution. There was further testimony by the complaining witness of the property's original purchase value and state of repair.

Williams subsequently appealed this conviction, claiming that the Government's evidence was insufficient to demonstrate a felony theft. In remanding the case for a misdemeanor disposition the Court of Appeals stated that the failure of the Government's case was the reliance on the evidence of only "a) physical presence of the items stolen and b) the owner's statement of original cost." 376 A.2d at 443. The Court indicated that the "fair market value" is defined as that "price at which a willing seller and a will-