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Millwood v. State: ANONYMOUS TIP PROVIDES REASONABLE SUSPICION NEEDED TO JUSTIFY AN INVESTIGATORY STOP

The Court of Special Appeals of Maryland in *Millwood v. State*, 72 Md. App. 82, 527 A.2d 803 (1987) held that an anonymous tip provided a reasonable suspicion to justify an investigatory stop of Defendant's automobile. In so holding, the court of special appeals affirmed the circuit court ruling.

On January 31, 1986 at 4:45 p.m., an anonymous caller informed a Maryland State Police dispatcher that a purple "1965 Ford Thunderbird with Pennsylvania license plates was traveling south on Interstate 81 on a drug run from Pennsylvania into Maryland." *Millwood*, 72 Md. App. at 84, 527 A.2d at 804. The informant alleged that the automobile was carrying methamphetamines either in the trunk or taped inside the grill. Additionally, he stated when the car would cross into Maryland and described its occupants. *Id.* at 85, 527 A.2d at 804.

Soon after alerting its counterpart in Pennsylvania, the Maryland State Police were informed that such a vehicle was, in fact, traveling south. Maryland State troopers were sent out to set up surveillance posts along Interstate 81 near the state border.

The vehicle was spotted by one of the troopers at approximately 5:50 p.m. as it crossed into Maryland. Two state troopers followed the suspect vehicle hoping to observe the driver commit a traffic violation. Unfortunately for the officers, this did not happen. The officers were given no valid reason to stop the suspect vehicle, yet, they did.

The troopers motioned for the driver to pull his car over to the side of the road after confirming that the car met the informant's description. Charles Millwood, the driver, pulled over, got out of the car, and then was ordered to "spread eagle" so that he could be frisked by the officer. The trooper informed Millwood that an anonymous tip had been received with information matching the description of Millwood's car including its occupants and that a quantity of methamphetamines would be in the car. *Id.* at 86, 527 A.2d at 805.

The parties have differing stories as to what happened next, but as a result of the search a large quantity of methamphetamines and two handguns were discovered. Millwood and his female passenger were then placed under arrest.

At trial, the Defendant's motion to suppress the evidence obtained during the

search was denied. The court reasoned that there was probable cause to search the car or alternatively that the Defendant consented to the search. With this evidence, Millwood was convicted for possession of methamphetamines along with several other charges.

On appeal, Millwood contended that the trial court erred in denying the motion to suppress the evidence. He asserted that the information given by the anonymous tipster was insufficient to constitute probable cause to search. Furthermore, Millwood insisted that his consent to the search was not voluntary. Moreover, even if Millwood had consented to the search, that consent and the resulting search were "fruits of the poisoned tree" as products of an illegal stop. *Id.* at 87, 527 A.2d at 805 (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)).

The Court of Special Appeals of Maryland, however did not agree with Millwood's contentions. The court found that the investigatory stop was valid as well as Millwood's consent to search.

In its reasoning, the court of special appeals used several Supreme Court decisions. Under *Terry v. Ohio*, a police officer may approach, accost, and temporarily detain a person for the purpose of investigating possible criminal activity without the probable cause needed for an actual arrest. *Terry v. Ohio*, 392 U.S. 1, 22 (1968). An officer need only be reasonable in his conclusion that criminal activity is afoot. *Terry* describes this as a "reasonably articulable suspicion" that a crime is being or is about to be committed. *Id.* at 21-2. This suspicion can be a result of an informant's tip. See, e.g., *Adams v. Williams*, 407 U.S. 143 (1972).

Courts are divided on the issue of whether an anonymous tip constitutes a reasonable suspicion. The Supreme Court in *Illinois v. Gates*, 462 U.S. 213 (1983) adopted a "totality of the circumstances" test and held that an anonymous tip, which police were able to verify as to various details, furnished probable cause to issue an arrest warrant. Even though the informant's credibility was unknown, the police were able to verify details of the tip, thus giving credibility to the information and hence to the informant himself.

Using this approach, the Court of Special Appeals of Maryland examined the anonymous tip in *Millwood*. The description of the car, its occupants and its route may not have been enough to justify an investigatory stop. However, a reasonable suspicion was gained by the information regarding the approximate time the car would travel into Maryland. A casual observer or mischief maker predicting

such information was highly unlikely.

Regarding Millwood's contention that the search was invalid, the court of special appeals looked again to the Supreme Court for guidance as well as to Maryland holdings.

The totality of the circumstances test was examined to determine whether Millwood's consent was valid. *Schneckloth v. Bustamonte*, 312 U.S. 218, 229 (1973) states that "account must be taken of subtly coercive police questions as well as the possibly vulnerable subjective state of the person who consents."

The two versions of the events surrounding the search of the car were examined by the trial court. The appeals court accepted the trooper's story over Millwood's. The trooper stated that he told Millwood that he believed he had the right to search the car, but would like to have Millwood's permission. Millwood answered, "Go ahead, we have nothing to hide." With this consent, the trooper began the search and discovered the contraband. *Millwood*, 72 Md. App. at 95, 527 A.2d at 809.

The Court of Special Appeals of Maryland accepted the trial court judgment that voluntary consent was demonstrated by a preponderance of the evidence. *Id.* at 96, 527 A.2d at 810. No police coercion was found. Millwood had relied on *Whitman v. State*, 25 Md. App. 428, 336 A.2d 515 (1975), where consent was given as a result of coercion. The court in that case identified eight occurrences to be of "enormous psychological effect and compelling circumstance." None were present in the instant case.

Maryland appears to be following the trend of allowing an anonymous tip to provide the reasonable suspicion needed to justify an investigatory stop.

—Margaret Ann Willis

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