Recent Decisions - State and Federal: Terry Examined

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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. Shiver, 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.l, 374 A.2d 1171 n.l.

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 occurred 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 behavior 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 pro-
cedure. 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 rea-
sonably perceived by the officer as pre-
senting 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 ob-
served nothing in the course of his ap-
proaching the defendant which indicated
that he might be armed. The court dis-
204, 310 A.2d 593 (1973), where it
upheld a "stop and frisk" based on a simi-
lar radio alert together with other circum-
stances which were found sufficient to
give rise to the required reasonable suspi-
cion. 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 war-
ranted the self-protective frisk, whereas in
Price the court was faced with the ques-
tion whether the police broadcast alone
would give rise to this suspicion where the
offense which was the subject of the
broadcast had occurred 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 pro-
tecting its law enforcement officers from
the inherent dangers involved in the con-
ducting 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 iden-
tify the source of the information bringing
about the alert. Through a delicate bal-
cancing 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 sug-
gested that Price almost completely deprives police officers of the right to con-
duct 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 ar-
ticulable facts supporting the broadcast
(such as in Williams) which reasonably
leads them to conclude that criminal ac-
tivity 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 declin-
ing 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 ar-
rest made following a productive frisk for
weapons based solely on the radio broad-
cast must be suppressed both where the
accuracy underlying the broadcast cannot
be documented and in the absence of
other indicia of present danger.

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

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 return-
ing it to avoid prosecution. There was
further testimony by the complaining wit-
ess of the property's original purchase
value and state of repair.

Williams subsequently appealed this
conviction, claiming that the Govern-
ment's evidence was insufficient to dem-
onstrate 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 pre-
ence 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-