



Roll Call Reporter

LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

July 2018

Terry Stops Based on Anonymous Tips

Question: Can an anonymous tip provide reasonable articulable suspicion for a *Terry* stop?

Answer: Generally, no, because anonymous tips seldom demonstrate the informant's basis of knowledge or veracity. However, under appropriate circumstances, an anonymous tip can demonstrate sufficient indicia or reliability to support a *Terry* stop and potentially a *Terry* frisk.

Case: *Maurice Mack v. State of Maryland*
Court of Special Appeals of Maryland
Decided June 5, 2018

The Anonymous 911 Tip, the Dispatch and Response, and the Positioning of the Police Cars at the Scene

Officers Charles Faulkner and Sergeant Horace McGriff of the Baltimore City Police Department responded to a report from the police dispatch unit that two African-American men, one wearing a blue jacket or coat and the other a gray jacket, were selling drugs from a silver Honda Accord in the 5500 block of Ready Avenue in Baltimore City. Officer Faulkner was aware that (1) that block of Ready Avenue, a narrow one-way street, was a high crime and high drug activity area to which he had responded to calls many times, and (2) the dispatch

report emanated from a 911 call that the dispatch unit said was anonymous—that the caller did not give his/her name or identifying information.

Officer Faulkner and a third officer, Officer White, arrived at the scene at the same time in separate cars. They saw a silver Honda, with two African-American men sitting in it. The Honda's motor was running. The officers knew from their experience that, in these types of calls, many suspects will drive off upon the arrival of the police, and that most suspects involved in drug trafficking carry weapons. Officer Faulkner parked his vehicle directly in front of the Honda and Officer White parked his vehicle directly behind it, intending to block it in.

The Frisks of the Occupants, the Recovery of Drugs, and the Discovery of the Handgun

Officer Faulkner, who initially was near the driver's side of the Honda, walked in front of the car to the passenger side. As he did, he observed through the front windshield that the driver, Maurice Mack, was wearing a gray jacket, and that both occupants were dipping their shoulders down towards the lower part of the front passenger seat. Based upon his ten years of training and police experience, Officer Faulkner knew that armed suspects will dip their hands down to the lower part of the seat, underneath the seat, to either grab a weapon or conceal one.

From the occupants' movements, Officer Faulkner concluded that the suspects were armed. Officer Faulkner spoke with the occupants and received Mack's driver's license. He then ordered the passenger out of the car and frisked him for weapons. Officer White ordered Mack out and frisked him.

At that point, Sergeant McGriff, the most senior officer with over twenty years' experience, arrived on the scene. He first observed that Mack was wearing a "puff coat," despite the fact that it was a relatively warm day, so warm in fact, that Sergeant McGriff was wearing a short sleeve uniform shirt. Sergeant McGriff knew that "puff coats" were worn by many suspects in warm weather to prevent the discovery of weapons. As Officer White was frisking Mack, Sergeant McGriff noticed a small piece of plastic hanging outside Mack's underwear which, from Sergeant McGriff's experience, he believed was part of a sandwich bag (a type of "break bag") which most likely contained narcotics. He alerted Office White, who recovered a ziplock bag of suspected drugs. Another officer arrived and searched the Honda. A handgun was found in the car.

The Charges, the Denial of the Motion to Suppress, the Conviction, and Appeal

Mack was charged with unlawful possession of a regulated firearm. He moved to suppress arguing that the blocking of his car by the officers was an unlawful seizure that violated the Fourth Amendment. The motion was denied and Mack was convicted and sentenced to five years without the possibility of parole. Mack appealed the denial of his motion to suppress.

The Outcome on Appeal

On appeal, Mack argued that the mere blocking of his car violated the Fourth Amendment. He contended that the unlawfulness arose from the fact that the only basis for the stop was the anonymous tip that was relayed through police dispatch, and that, based on decisions from the Supreme Court

and Court of Appeals of Maryland, an anonymous tip, without more, is insufficient to justify a *Terry* stop, much less a *Terry* frisk. The Court of Special Appeals of Maryland agreed that the blocking of the car, thereby rendering it immobile, constituted an unlawful seizure mandating the suppression of the gun.

In reaching its decision, the court rejected the State's contention that the blocking of the Honda was the initiation of a "field investigation based on the anonymous tip." In the court's view, the State paid too little attention to the consequence of immobilizing the vehicle, which was the first action taken by the officers at the scene. Because of blocking the vehicle, the occupants were no longer free to leave and terminate any encounter with police. So, what occurred was a *Terry* stop that had to be supported by reasonable articulable suspicion (RAS) of possible criminal activity and here it was not.

At the time the car was blocked, the officers essentially were acting on the anonymous tip, and such tips alone rarely demonstrate the informant's basis of knowledge or veracity. In other words, anonymous tips generally do not provide "a sufficient indicia or reliability" to establish RAS to make a *Terry* stop. Simply finding the person or persons at the readily observable location described by the tipster is not enough; RAS requires that the tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. In this case, the tip simply didn't establish that the tipster had seen or otherwise knew that the persons were selling drugs. As a result, the officers lacked RAS to make the *Terry* stop when they blocked the car in.

Another point concerns the suppression hearing itself. At the suppression hearing, the State failed to produce the 911 recording. This deprived the court of the opportunity to listen to the recording and to make a more informed judgment regarding its reliability. There may have been other information



on the recording that the officers had simply forgotten.

Note: The more detailed the information provided by the tipster, the greater the reliability of the tip. For example, if the tipster claims to be an eyewitness to the criminal activity, that boosts reliability. Also, the more “predictive” information an anonymous tip provides, the greater the likelihood the tip can establish RAS. In this regard, the tipster essentially predicts the future conduct of the alleged criminal; conduct that once corroborated by police observation, can serve as the basis for a *Terry* stop and potentially a *Terry* frisk. Finally, the more the anonymous informant places his/her anonymity at risk, the more reliable the tip becomes. 911 calls, instant caller identification, and voice recording are all helpful in revealing the tipster’s location and identity. When relying on an anonymous tip, it is the State’s burden to provide persuasive evidence that the tip was reliable. That did not happen in this case.

*John F. Breads, Jr., Director of Legal Services,
Local Government Insurance Trust*

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

