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White on White: Anonymous Tips, Reasonable Suspicion and the Constitution

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White on White: Anonymous Tips, Reasonable Suspicion, and the Constitution

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INTRODUCTION

In Alabama v White, the Supreme Court, in an opinion written by Justice Byron White, held that an anonymous tip to the police stating that a particular individual was engaged in criminal activity, when corroborated to some extent by independent police investigation, provided "reasonable suspicion" to justify an investigatory stop of that individual. This Article argues that the Supreme Court's decision in Alabama v White significantly reduces the protection afforded by the fourth amendment.

I. INVESTIGATORY STOPS

The Supreme Court held in Terry v. Ohio that a police officer, acting without a warrant, can forcibly stop and briefly detain an individual for investigatory purposes, although the officer lacks probable cause for an arrest. The Court concluded that although an investigatory "stop," however brief, constitutes a "seizure"

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2 Chief Justice Rehnquist and Justices Blackmun, O'Connor, Scalia, and Kennedy joined Justice White's opinion. Justice Stevens wrote a dissenting opinion that was joined by Justices Brennan and Marshall.

3 392 U.S. 1 (1968).


The Terry Court also held that if an officer reasonably believes that the individual with whom he is dealing "may be armed and presently dangerous," he can pat down the outer clothing of the individual in an attempt to find weapons that could be used against him. Terry, 392 U.S. at 29-30.
within the meaning of the fourth amendment, such a stop necessarily requires swift action predicated upon on-the-scene observations by an officer and cannot as a practical matter be subjected to the warrant procedure. The Court tested the police conduct by the fourth amendment’s general proscription against unreasonable searches and seizures, balancing the governmental interest against the degree of intrusion upon individual rights. It concluded that the government’s interest in crime prevention and detection outweighs the limited intrusion on an individual’s personal security caused by a brief investigatory stop. The Terry Court held that a police officer may make an investigatory stop when he “observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot.” As the Court explained in Adams v Williams:

The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

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5 U.S. Const. amend. IV provides:

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.

This amendment, designed to secure privacy against arbitrary intrusion by the government, is “basic to a free society,” and is applicable to the states through the Due Process Clause of the fourteenth amendment. Wolf v. Colorado, 338 U.S. 25, 27-28 (1949). By its very terms, the fourth amendment applies only to “searches” and “seizures.” An investigative technique that does not fall into either category does not need to meet the requirements of the fourth amendment. Maryland v. Macon, 472 U.S. 463, 468-69 (1985); United States v. Jacobsen, 466 U.S. 109, 136-37 (1984) (Brennan, J., dissenting).

6 Terry, 392 U.S. at 20.

7 Id. at 20-21.

8 Id. at 27.

9 Id. at 30.


II. THE "REASONABLE SUSPICION" STANDARD

A police officer cannot forcibly stop an individual for investigatory purposes merely upon the basis of an "inchoate and unpolarized suspicion or 'hunch.'"11 Rather, under the "totality of the circumstances—the whole picture—,"12 he must have a "reasonable suspicion, based on objective facts"13 that the particular individual in question "is, or is about to be, engaged in criminal activity,"14 or that he "was involved in or is wanted in connection with a completed felony."15

The Supreme Court attempted to explain this standard in *United States v. Cortez:*16

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14 Cortez, 449 U.S. at 417; see also Royer, 460 U.S. at 498 (crime occurring or imminent threat of crime).

Several courts have held that the criminal activity under investigation need not be a felony. See State v. G.B., 769 P.2d 452, 454-56 (Alaska Ct. App. 1989) (where there is "a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred"); State v. Stevens, 394 N.W.2d 388, 391 n.2 (Iowa 1986) (at least for the offense of public intoxication), cert. denied, 479 U.S. 1057 (1987); State v. Blankenship, 757 S.W.2d 354, 356-57 (Tenn. Crim. App. 1988) (reasoning that "the difference between felonies and misdemeanors is a legislative, not a constitutional distinction").

15 Hensley, 469 U.S. at 229; see also Royer, 460 U.S. at 498 (stating that Terry allowed seizure if person had committed or was about to commit a crime); Cortez, 449 U.S. at 417 n.2 (recognizing police right to stop if a person was wanted for a past crime).

The Hensley Court expressly left open the question "whether Terry stops to investigate all past crimes, however serious, are permitted." Hensley, 469 U.S. at 229. Several lower courts have held that, at least under certain circumstances, a police officer can forcibly stop an individual to investigate a completed misdemeanor. See G.B., 769 P.2d at 456-57 (stop based on solid information may be permitted when the crime is not a felony); State v. Stich, 399 N.W.2d 198, 199 (Minn. Ct. App. 1987) (where the misdemeanor was committed in the "very recent past"); Blankenship, 757 S.W.2d at 357 (reasoning that "the difference between felonies and misdemeanors is a legislative, not a constitutional distinction"). But see Blasdell v. Commissioner, 375 N.W.2d 880, 882 n.2, 884 (Minn. Ct. App. 1985) (holding that vehicle stops to investigate "completed" misdemeanors violate the fourth amendment; stating, however, that courts should be hesitant to hold criminal conduct that occurred in the recent past, such as the same day, to be "completed"), aff'd on other grounds, 381 N.W.2d 849 (Minn. 1986).
The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all of the circumstances. The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions—-inferences and deductions that might well elude an untrained person.

The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing.17

The level of suspicion required for an investigatory stop is less demanding than the probable cause required for a search and is "considerably less than proof of wrongdoing by a preponderance of the evidence."18 Moreover, a reasonable suspicion of criminal activity can arise from wholly lawful conduct.19 In determining whether reasonable suspicion exists in a given case, "the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts."20

17 Id. at 418.
18 Sokolow, 490 U.S. at 7.
19 Id. at 8-10; Reid, 448 U.S. at 441 (per curiam); see, e.g., Terry, 392 U.S. at 5-6, 22-23 (a plainclothes police officer with thirty-nine years' experience concluded that three men he observed walking back and forth past a particular store were "casing" the store for a robbery).

In Sokolow, for example, the Court concluded that federal drug agents had reasonable suspicion to stop the defendant following his arrival at Honolulu International Airport, based upon the following facts: the defendant purchased two round-trip airline tickets between Honolulu and Miami, paying $2,100 in cash from a large roll of $20 bills; the name under which the defendant traveled did not match the name under which his telephone
III. REASONABLE SUSPICION BASED UPON AN INFORMANT'S TIP

Although *Terry v. Ohio*\(^1\) involved a forcible stop based upon the personal observations of a police officer, the Supreme Court subsequently held in *Adams v. Williams*\(^2\) that a forcible stop also can be based upon an informant's tip. In *Adams*, a confidential informant told a police officer that an individual seated in a nearby automobile was carrying narcotics and had a gun at his waist. Acting upon this information, the officer approached the automobile, tapped on the car window, and asked the occupant, Robert Williams, to open the door. When Williams instead rolled down the window, the officer reached into the vehicle and removed a fully loaded revolver from Williams's waistband.\(^3\) The officer arrested Williams for unlawful possession of the pistol. During a search incident to the arrest, other police officers found substantial quantities of heroin, on Williams's person and in his car, as well as a machete and a second revolver.\(^4\)

In upholding the validity of the investigatory stop of Williams and the subsequent seizure of his pistol,\(^5\) the Supreme Court

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\(^1\) 392 U.S. 1 (1968).

\(^2\) 407 U.S. 143 (1972).

\(^3\) The Court indicated that a forcible stop occurred when Williams rolled down the window of his car, because, in doing so, he did not act voluntarily. *Adams v. Williams*, 407 U.S. 143, 146 n.1 (1972).

\(^4\) Williams was convicted of illegal possession of a handgun and possession of heroin. *Id.* at 144.

\(^5\) The Court also upheld the validity of the seizure of the heroin found during the search incident to his arrest. *Id.* at 149.
expressly rejected the argument that a stop and frisk can be based only upon a police officer’s firsthand observations. Instead, the Court held that reasonable suspicion can be based upon information supplied by another person,26 provided that the information carries sufficient “indications of reliability.”27 The Court stated:

Informants’ tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation. Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. But in some situations—for example, when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime—the subtleties of the hearsay rule should not thwart an appropriate police response.28

The Court in Adams concluded that the informant’s report contained sufficient “indications of reliability” to justify an investigatory stop of the vehicle’s occupant.29 The police officer knew the informant, who previously had provided the police with reliable information.30 Furthermore, the information was immediately verifiable at the scene. Finally, under state law,31 the informant might have been subject to immediate arrest for making a false complaint had the officer’s investigation proven the tip incorrect.

IV ANONYMOUS TIPSTERS AND PROBABLE CAUSE

Since Adams v. Williams32 involved an informant who was personally known by the police officer who received the tip, the Supreme Court found it unnecessary to discuss whether an anonymous tip could supply “reasonable suspicion” for an investigatory stop. The Court merely stated that “[i]t[is] a stronger case than

26 Id. at 146-47.
27 Id. at 147.
28 Id.
29 Id.
30 But, as Justice Marshall pointed out in his dissenting opinion in Adams, the information previously supplied by the informant had involved homosexual activity in the local railroad station and had not even led to an arrest. Id. at 156 (Marshall, J., dissenting).
31 Id. at 147 n.2; Conn. Gen. Stat. §§ 53-168, repealed by 1969, P.A. 828 § 214 (a “person who knowingly makes to any police officer a false report or a false complaint alleging that a crime or crimes have been committed” was guilty of a misdemeanor).
obtains in the case of an anonymous telephone tip.”33 Several years later, in *Illinois v Gates,*34 the Court dealt with the issue of anonymous tips in the context of probable cause for the issuance of a search warrant. The tip in *Gates* came in the form of an anonymous letter to the police in Bloomingdale, Illinois, a suburb of Chicago. The letter, which the police received by mail on May 3, 1978, stated that two residents of Bloomingdale, Sue and Lance Gates, made their living selling drugs. It also said that Sue would drive to Florida on May 3 to obtain over $100,000 worth of drugs, that Lance would fly down a few days later to drive their car back, while Sue flew home, and that they currently had over $100,000 worth of drugs in the basement of their house.35 The police pursued

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After the Supreme Court's decision in *Adams,* lower courts regularly upheld investigatory stops based upon anonymous tips. This was true even in cases in which the tipster did not state how he had obtained his information. These courts typically concluded that the police corroboration of facts contained in the tip—albeit innocent ones, rather than facts raising a suspicion of criminal activity—provided sufficient "indicia of reliability" for police action. See, e.g., United States v. Seelye, 815 F.2d 48, 51 (8th Cir. 1987) (an anonymous informant reported that a described man in the hallway of an apartment building was pointing a gun at people as they left a party); United States v. McBride, 801 F.2d 1045, 1046-48 (8th Cir. 1986) (an anonymous telephone caller reported that a man had just left the caller's house with four ounces of heroin in a silver foreign Japanese-like car with Illinois license plates and was heading toward a certain intersection), cert. denied, 479 U.S. 1100 (1987); Hetland v. State, 387 So. 2d 963 (Fla. 1980) (per curiam) (an anonymous telephone caller reported that a named individual, whom she described, was on his way to a particular bar to shoot someone), adopting State v. Hetland, 366 So. 2d 831 (Fla. Dist. Ct. App. 1979); State v. Jernigan, 377 So. 2d 1222, 1224-25 (La. 1979) (an unidentified telephone caller told the police that a described individual sitting in a specified bar was armed with a gun), cert. denied, 446 U.S. 958 (1980); State v. Thomas, 542 A.2d 912, 913, 917-18 (N.J. 1988) (an anonymous informant reported that a man named Ike, who was dressed in described clothing and was inside a particular bar, possessed illegal drugs); State v. Czowowski, 393 N.W.2d 72, 73-74 (S.D. 1986) (an anonymous telephone caller reported that he had been following a particular vehicle and that it was weaving all over the road); cf. Strong v. State, 495 So. 2d 191, 192-93 (Fla. Dist. Ct. App. 1986) (holding that an anonymous telephone caller's tip that there was a black man wearing dark clothing with a handgun at a particular convenience store was too vague to justify an investigatory stop), cert. denied, 481 U.S. 1049 (1987); People v. Crea, 510 N.Y.S.2d 876, 879-80 (A.D. 2 Dept. 1987) (holding that an anonymous telephone call reporting that some children in the neighborhood said that a woman was bound and gagged and screaming for help inside a white van parked at a specified location did not justify an investigatory stop); State v. Sieler, 621 P.2d 1272, 1275-76 (Wash. 1980) (en banc) (an unknown telephone caller reported that a drug transaction had just taken place in a car in a school parking lot).


35 The anonymous handwritten letter read:

This letter is to inform you that you have a couple in your town who strictly make their living on selling drugs. They are Sue and Lance Gates, they live on Greenway, off Bloomingdale Rd. in the condominiums. Most of their
this tip and learned that Lance Gates had flown to West Palm Beach, Florida, on May 5, and had gone to a motel room registered to one Susan Gates. He left the motel the next morning with an unidentified woman in an automobile bearing Illinois license plates, which had been issued to him, and drove northbound on an interstate highway frequently used by travelers to the Chicago area. On the basis of this information, the Bloomingdale police obtained a warrant to search the Gateses' residence and their automobile. When the Gateses returned to their home at 5:15 a.m. on May 7, the police executed the warrant, finding about 350 pounds of marijuana in the trunk of the car and marijuana, weapons, and other contraband in the residence.36

In determining the validity of the warrant in Gates,37 the Supreme Court concluded that the anonymous letter, standing alone, did not provide probable cause to believe contraband would be found in the Gateses' automobile and home. The Court reasoned that the letter provided "virtually nothing" from which the issuing judge could conclude that its writer was either honest or his information reliable and that it gave "absolutely no indication" of the basis of the author's predictions concerning the criminal activities of the Gateses.38 Nevertheless, the Court held that the tip, when taken in conjunction with the facts obtained by the law enforcement officers through their independent investigation, supplied probable cause for issuance of the search warrant.39 The Court

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buys are done in Florida. Sue her wife drives their car to Florida, where she leaves it to be loaded up with drugs, then Lance flies down and drives it back. Sue flies back after she drops the car off in Florida. May 3 she is driving down there again and Lance will be flying down in a few days to drive it back. At the time Lance drives the car back he has the trunk loaded with over $100,000.00 in drugs. Presently they have over $100,000.00 worth of drugs in their basement.

They brag about the fact they never have to work, and make their entire living on pushers.

I guarantee if you watch them carefully you will make a big catch. They are friends with some big drugs dealers, who visit their house often.

Lance & Susan Gates
Greenway in Condominiums

36 Id. at 225-27.

37 The trial court suppressed the items discovered during the searches, concluding that the affidavit in support of the warrant failed to show probable cause. Id. at 227. Both the Illinois Appellate Court, 403 N.E.2d 77 (Ill. App. Ct. 1980), and the Supreme Court of Illinois, 423 N.E.2d 887 (Ill. 1981), affirmed this decision.

38 Gates, 462 U.S. at 227.

39 Id. at 243-46.
first found that Lance Gates's flight to Florida—a place well-known as a source of illegal drugs—, his brief, overnight stay in a motel, and his apparently immediate return north to Chicago in the family car was suggestive of a prearranged drug run. The Court then concluded that the judge that issued the warrant had properly relied upon the anonymous letter. The corroboration of the letter's predictions that the Gateses' car would be in Florida, that Lance Gates would fly to Florida in the next day or so, and that he would drive the car north toward Bloomingdale, Illinois, indicated that the informant's other assertions—including the claims regarding the illegal activity—also were true. The Court noted that "the anonymous letter contained a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted."40 The Court reasoned:

The letterwriter's accurate information as to the travel plans of each of the Gateses was of a character likely obtained only from the Gateses themselves, or from someone familiar with their not entirely ordinary travel plans. If the informant had access to accurate information of this type a magistrate could properly conclude that it was not unlikely that he also had access to reliable information of the Gateses' alleged illegal activities.41

Prior to Gates, a magistrate or judge determining the existence of probable cause for the issuance of a warrant or for a warrantless search or arrest could consider hearsay information from an informant only if it met the "two-pronged test" first articulated in Aguilar v Texas42 and later refined in Spinelli v United States.43 That test required that the magistrate or judge be informed of some of the underlying circumstances from which the informant

40 Id. at 245.
41 Id.

Although both Aguilar and Spinelli involved probable cause determinations made by magistrates upon applications for search warrants, "the guidelines for the valuation of hearsay information in a probable cause setting are the same whether a magistrate is contemplating the issuance of a warrant or whether a trial judge is weighing the propriety of a policeman's actions without a warrant." Stanley v. State, 313 A.2d 847, 850 (Md. Ct. Spec. App. 1974); accord United States v. McEachin, 670 F.2d 1139, 1142 (D.C. Cir. 1981); United States v. Anderson, 500 F.2d 1311, 1315 n.8 (5th Cir. 1974), reh'g denied, 504 F.2d 760 (5th Cir. 1974); State v. Chatmon, 515 P.2d 530, 533 n.2 (Wash. Ct. App. 1973).
reached his conclusions—that is, the basis of the informant’s knowledge—and, in addition, some of the underlying circumstances from which the person seeking the warrant concluded that the informant was “credible” or his information “reliable.” Both prongs of this test had to be met before a magistrate could rely upon the informant’s tip; “an ‘overkill’ on one prong [would] not carry over to make up for a deficit on the other prong.”

In Gates, however, the Court abandoned the “two-pronged test” and substituted a “totality-of-the-circumstances” approach. Under this approach an “informant’s ‘veracity’ or ‘reliability’ and his ‘basis of knowledge’” are “relevant considerations”

46 Aguilar, 378 U.S. at 114; accord Spinelli, 393 U.S. at 413.

Unlike the affidavit in Aguilar, the affidavit in Spinelli contained not only a report from a confidential informant, but also a report of an independent FBI investigation allegedly corroborating the informant’s tip. In setting forth the analytical framework for determining the proper weight to be given an informant’s tip where that tip is a necessary element in a finding of probable cause, the Court stated:

The informant’s report must first be measured against Aguilar’s standards so that its probative value can be assessed. If the tip is found inadequate under Aguilar, the other allegations which corroborate the information contained in the hearsay report should then be considered. At this stage as well, however, the standards enunciated in Aguilar must inform the magistrate’s decision. He must ask: Can it fairly be said that the tip, even when certain parts of it have been corroborated by independent sources, is as trustworthy as a tip which would pass Aguilar’s tests without independent corroboration? Aguilar is relevant at this stage of the inquiry as well because the tests it establishes were designed to implement the long-standing principle that probable cause must be determined by a “neutral and detached magistrate,” and not by “the officer engaged in the often competitive enterprise of ferreting out crime.” A magistrate cannot be said to have properly discharged his constitutional duty if he relies on an informer’s tip which—even when partially corroborated—is not as reliable as one which passes Aguilar’s requirements when standing alone.

Spinelli, 393 U.S. at 415-16 (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)).
48 Stanley, 313 A.2d at 861.

The Supreme Court in Gates noted that “the ‘two-pronged test’ ha[d] encouraged excessively technical dissection of informants’ tips, with undue attention being focused on isolated issues that cannot sensibly be divorced from the other facts presented to the magistrate.” Gates, 462 U.S. at 234-35.
50 Gates, 462 U.S. at 238.
in determining the existence of probable cause,\textsuperscript{51} but "a deficiency in one may be compensated for . . . by a strong showing as to the other, or by some other indicia of reliability."\textsuperscript{52} According to the Court,

The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.\textsuperscript{53}

Even under this test, though, "[s]ufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others."\textsuperscript{54}

V. ANONYMOUS TIPSTERS AND REASONABLE SUSPICION

A. \textit{Alabama v White}

The Supreme Court recently dealt with an anonymous tip in the context of an investigatory stop. In \textit{Alabama v White},\textsuperscript{55} a police officer received a telephone call at about 3:00 p.m. from an anonymous person informing him that a Vanessa White would be leaving 235-C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with a broken right taillight lens. She would be going to Dobey's Motel, which was located on the Mobile Highway, and she would have in her possession about an ounce of cocaine inside a brown attache case. Acting upon this tip, the officer and his partner proceeded to the Lynwood Terrace Apartments, where they observed a brown Plymouth station wagon with a broken right taillight in the parking lot in front of the 235 building. Shortly thereafter, the officers observed a woman, who

\textsuperscript{51} \textit{Id.} at 233.

The Court referred to the \textit{informant's} reliability, but it is clear from \textit{Aguilar}, \textit{Spinelli}, and subsequent cases that it is the reliability of the informant's \textit{information}, rather than the reliability of the informant himself, that serves as an alternative to the informant's veracity or credibility.

\textsuperscript{52} \textit{Id.}

\textsuperscript{53} \textit{Id.} at 238.

\textsuperscript{54} \textit{Id.} at 239.

\textsuperscript{55} \textit{----- U.S. -----}, 110 S. Ct. 2412 (1990).
turned out to be Vanessa White, leave the 235 building with nothing in her hands and enter the station wagon. The officers followed the station wagon as it took the most direct route to Dobey’s Motel. The police stopped the vehicle at approximately 4:18 p.m. on the Mobile Highway, just short of the motel. After being informed that she had been stopped because she was suspected of carrying cocaine in the car, White consented to a search of the vehicle. The ensuing search revealed a locked brown attaché case. Upon request, White provided the combination to the lock. The officers discovered marijuana in the attaché case and arrested White. While processing White at the stationhouse, they found three milligrams of cocaine in her purse.56

Prior to her trial for possession of marijuana and cocaine, White moved on fourth amendment grounds to suppress the evidence found in her attaché case and purse. The trial court denied the motion, and the defendant pleaded guilty, reserving her right to appeal the denial of her suppression motion. On appeal, the Court of Criminal Appeals of Alabama reversed the conviction, holding that the police lacked reasonable suspicion to justify an investigatory stop of the defendant’s car and that the marijuana and cocaine were fruits of that unlawful stop and detention.57

On certiorari, the Supreme Court reversed the decision of the state appellate court, holding that although the anonymous tip, standing alone, would not have justified the forcible stop,58 as corroborated by the independent police work, the tip exhibited sufficient indicia of reliability to provide reasonable suspicion for the police to make the investigatory stop.59 The Court acknowledged that not every detail mentioned by the tipster was corroborated by the police,60 but the officers did corroborate that a woman left the 235 building, entered the particular vehicle described by the caller, and departed within the time frame predicted by the caller. The Court also found that the caller’s prediction of the woman’s destination was significantly corroborated by the police. It therefore concluded that because “significant aspects” of the caller’s predictions were verified by the police, particularly pred-

59 Id. at 2417.
60 The Court pointed out that the police did not verify the name of the woman they saw leaving the building or the precise apartment from which she left. Id. at 2416.
dictions as to future actions of a third party not easily predicted, there was reason to believe not only that the caller was honest but also that the caller was well enough informed to justify the investigatory stop.\textsuperscript{61}

**B. An Analysis of Alabama v. White**

An evaluation of the Supreme Court's decision in *Alabama v. White*\textsuperscript{62} must begin with the principle that the Constitution requires that the determination of whether sufficient grounds for a search or seizure exist must be made """"by a neutral and detached magistrate [or judge] instead of being judged by [an] officer engaged in the often competitive enterprise of ferreting out crime""""\textsuperscript{63} or """"by an unidentified informant.""""\textsuperscript{64} Accordingly, a police officer seeking a warrant or attempting to justify a warrantless search or seizure, including an investigatory stop, cannot merely swear or affirm to the existence of probable cause or reasonable suspicion. Rather, the officer must relate to the magistrate or judge the facts and circumstances upon which he bases his conclusion, so that the judicial officer can determine whether they are sufficient to constitute probable cause\textsuperscript{65} or reasonable suspicion.\textsuperscript{66}

\textsuperscript{61} *Id.* at 2416-17.


\textsuperscript{64} *Id.* at 115.

The initial determination of probable cause for the issuance of a warrant is made by the issuing magistrate or judge. See, e.g., *Illinois v. Gates*, 462 U.S. 213, 226 (1983); *Aguilar*, 378 U.S. at 112-15. When a police officer makes a warrantless search or seizure (including an investigatory stop), it is the officer that makes the initial determination of the existence of probable cause, see, e.g., *United States v. Ross*, 456 U.S. 798 (1982); Draper v. United States, 358 U.S. 307 (1959), or, in the case of an investigatory stop, reasonable suspicion. See, e.g., *United States v. Sokolow*, 490 U.S. 1 (1989); *Terry v. Ohio*, 392 U.S. 1 (1968). A criminal defendant that was the victim of the search or seizure can seek to have the initial determination of probable cause or reasonable suspicion reviewed by a court by moving to suppress evidence obtained as a result of the questioned police conduct. See, e.g., *Sokolow*, 490 U.S. 1 (review of drug agents' determination of reasonable suspicion); McCray v. Illinois, 386 U.S. 300 (1967) (review of police officers' determination of probable cause to arrest). However, under the so-called "good faith" exception to the exclusionary rule, a court deciding a motion to suppress evidence might not reach the merits of the fourth amendment claim if the court finds the evidence was obtained pursuant to a facially valid warrant that was issued by a detached and neutral judge or magistrate but later determined to be invalid. See *United States v. Leon*, 468 U.S. 897 (1984).


\textsuperscript{66} *Terry*, 392 U.S. at 21-22.
Logically, the same rule must apply when a police officer seeks to show probable cause or reasonable suspicion based upon information received from an informant. The Supreme Court recognized this in the probable cause context in *Aguilar v. Texas*.

As indicated above, the Court in *Aguilar* held that a police officer seeking a warrant on the basis of information supplied by a confidential informant must inform the magistrate or judge of some of the underlying circumstances from which the informant reached his conclusions (the informant's "basis of knowledge") and some of the underlying circumstances from which the officer concluded that the informant was "credible" or his information "reliable" (the informant's "veracity"). The *Aguilar* Court correctly reasoned that otherwise the police officer or the informant—not the magistrate or judge—would determine the existence of probable cause.

In the context of reasonable suspicion, however, the Supreme Court has not taken the same approach. Without specifically analyzing the informant's "basis of knowledge" or his "veracity," and while acknowledging that the tip may not have been sufficient to justify an arrest or the issuance of a search warrant, in *Adams v. Williams* the Court concluded that the informant's tip carried sufficient "indicia of reliability" to justify a forcible stop for investigatory purposes. In essence, *Adams* applied a "totality-of-the-circumstances" test for determining whether information from an informant constitutes reasonable suspicion. In doing so, the Court presaged its decision in *Illinois v. Gates*, where it abandoned the "two-pronged" test of *Aguilar* and *Spinelli* and adopted a "totality-of-the-circumstances" approach to the determination of probable cause.

In addition to applying a "totality-of-the-circumstances" test, the Supreme Court in *Adams* apparently held that a different, and lesser, standard applies when determining whether hearsay information from an informant can be considered on the issue of reasonable suspicion. The Court made this explicit in *White*:

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68 See supra notes 42-48 and accompanying text.
73 Id. at 231-32, 238.
74 *Adams*, 407 U.S. at 147 ("[W]hile the Court's decisions indicate that this infor-
Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and quality—are considered in the "totality of the circumstances—the whole picture," (citation omitted) that must be taken into account when evaluating whether there is reasonable suspicion. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.\textsuperscript{76}

Although the Supreme Court can be criticized for abandoning the \textit{Aguilar-Spinelli} test in \textit{Gates}, this Article will not do so. Instead, it will focus upon two issues raised by the Court's decision in \textit{White}: first, the notion that less reliable evidence can be used when determining the existence of reasonable suspicion than when determining the existence of probable cause, and, second, the type of independent police corroboration of an anonymous informant's tip that will justify an investigatory stop.

\subsection{Less Reliable Evidence}

The Supreme Court's holding in \textit{White}—that less reliable evidence can be used when determining reasonable suspicion than when determining probable cause—does not follow from its holding in the seminal case of \textit{Terry v. Ohio}.\textsuperscript{77} In \textit{Terry}, the Court held that a police officer can stop and frisk an individual on less than probable cause to arrest. The Court reasoned that because a stop-and-frisk constitutes less of an intrusion upon individual liberty than an arrest, such a procedure can be undertaken where the quantum of evidence is such that there is less of a probability of criminal activity than is necessary to effect an arrest.\textsuperscript{78} However,

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\textsuperscript{76} \textit{White}, 110 S. Ct. at 2416.

\textsuperscript{77} 392 U.S. 1 (1968).

\textsuperscript{78} \textit{Terry}, 392 U.S. at 25-27.
the Court in no way indicated that "reasonable suspicion" could be based upon less reliable evidence than probable cause. Indeed, 

_Terry_ involved the firsthand observations of a police officer, not information from an informant. The reliability of the information therefore was not really at issue, because the officer was under oath when he related his observations to the court at the pretrial hearing on the defendant's motion to suppress evidence seized during the stop-and-frisk. A close reading of _Terry_ clearly indicates that the Court merely reduced the _quantum_ of evidence necessary for an investigatory stop; the Court did nothing to alter the _quality_ of evidence necessary to justify such a seizure.

Logic dictates that a judge should not be allowed to rely upon hearsay information that does not meet some minimum standard of "reliability." To illustrate, suppose a police officer receives a tip that _X_ is standing on a particular street corner selling cocaine. No one would doubt that even under the _Gates_ test that tip, by itself, does not provide probable cause to arrest _X_. Without some indication that the tip is reliable, no reason exists to give it any weight whatsoever. The same must be true if the issue is whether the officer has reasonable suspicion to forcibly stop _X_ for investigatory purposes. Even though only the lesser standard of reasonable suspicion, rather than probable cause, must be met to justify the brief seizure of _X_’s person, the tip is no more reliable in the latter context than in the former, and hence no more deserving of any weight.

Assume that the tip also stated that _X_ is approximately twenty-five years old, stands about six feet tall, has black hair and a neatly trimmed beard, is wearing a red shirt and blue jeans, and keeps his supply of cocaine in the trunk of his 1989 Mercedes Benz automobile, which is parked nearby. Even if the police went to the particular street corner and observed _X_ wearing the described clothing and standing next to the described automobile, the fact that the tip contained more detail than the first one and that the police corroborated some of the tip’s innocent details does not show that the tip is sufficiently reliable to allow a judge or magistrate to rely upon the tip in concluding that probable cause exists to believe that _X_ is selling cocaine from the trunk of his automobile.79 Noth-

79 _But cf._ United States v. Ross, 456 U.S. 798, 800 (1982) (an informant who had previously proved to be reliable told the police that he had just observed an individual named "Bandit" sell narcotics from the trunk of his car and that "Bandit" had told him that additional narcotics were in the trunk).
ing indicates how the informant obtained his information that \( X \) was selling cocaine, and the details corroborated by the police were merely "easily obtained facts and conditions existing at the time of the tip."  

If this tip is not reliable enough to be considered for the purpose of determining the existence of probable cause to arrest \( X \) or search his automobile, why should it be deemed reliable enough to be considered when determining the existence of reasonable suspicion for an investigatory stop of \( X \)? An unreliable tip is no more worthy of belief in the latter context than in the former, and this is true despite the lower quantity of evidence required to justify an investigatory stop. It is difficult to understand what the Court meant in White when it stated that where "a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable."  

2. **Sufficient Corroboration by the Police**

The second problem with the Supreme Court's decision in White is its conclusion that the anonymous tip, as corroborated by the independent police investigation, exhibited sufficient indicia of reliability to justify the investigatory stop of the defendant's automobile. As indicated above, the police officers corroborated that a woman left the 235 building, entered the vehicle described by the caller, and departed within the time frame predicted by the caller. The Court also found that the caller's prediction of the woman's destination was significantly corroborated by the police. The Court reasoned that "because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity" The Court found it particularly important that the caller predicted the woman's *future behavior* According to the Court, this "demonstrated inside information—a special familiarity with [the woman's] affairs." The Court continued:

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80 Gates, 462 U.S. at 245.
81 White, 110 S. Ct. at 2416.
82 The Court acknowledged that the police officers stopped the woman "just short of Dobey's Motel and did not know whether she would have pulled in or continued on past it." However, the Court pointed out that "the four-mile route driven by the respondent," despite involving several turns, "was the most direct route possible to Dobey's Motel." Id. at 2417.
83 Id., relying upon Gates, 462 U.S. at 244.
84 White, 110 S. Ct. at 2417.
The general public would have had no way of knowing that [the defendant] would shortly leave the building, get in the described car, and drive the most direct route to Dobey’s Motel. Because only a small number of people are generally privy to an individual’s itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual’s illegal activities.\(^{85}\)

Under certain circumstances, one cannot quibble with the Supreme Court’s reasoning in *White*. For example, suppose an anonymous informant telephones the police one afternoon and tells them that at 10:30 that evening a woman named Hester Prynne, whom he describes in detail, will leave her house at 1000 West Elm Street carrying an attaché case filled with money and take a number 36 bus to a tavern named Bottoms Up, a known hangout for drug dealers, where she will give her attaché case to a man named Slim, whom the informant describes in detail. Suppose further that the informant says that Slim will then give Prynne the key to a red 1990 Mercedes Benz, which will be parked in the alley behind the bar and which will contain a large amount of cocaine in a brown duffle bag in the trunk. If the police follow up this tip and observe the described woman leave her house at the predicted time carrying an attaché case, take a number 36 bus to Bottoms Up, give the attaché case to the described man in exchange for a car key, and then go to the alley behind the tavern and remove a brown duffle bag from the trunk of a red 1990 Mercedes Benz automobile, it would be difficult to conclude that the police lacked reasonable suspicion to stop the woman for investigatory purposes.\(^{86}\) The fact that the informant accurately predicted the individual’s somewhat unusual future behavior reasonably allows one to conclude that “because [he] is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity”\(^{87}\)

On the other hand, such a conclusion cannot reasonably be reached when the future behavior predicted by the informant is not at least somewhat unusual. The following example shows the fallacy of the Court’s reasoning in *White*. Each fall semester for the past seven years I have taught a class that begins at 8:30 a.m. Each morning at roughly the same time I leave my house carrying

\(^{85}\) *Id.*

\(^{86}\) Indeed, the police might even have probable cause to arrest the woman.

\(^{87}\) *White*, 110 S. Ct. at 2417, relying upon Gates, 462 U.S. at 244.
my worn out leather briefcase, drive my car to the train station, and take the same commuter train to downtown Chicago, arriving at the law school building at approximately 7:45 a.m. I am one of millions of people that leave their residences at about the same time every day, carrying briefcases and heading for destinations known to their neighbors.\textsuperscript{88} However, as Justice Stevens pointed out in his dissenting opinion in \textit{White}, it is unlikely that my neighbors, or the neighbors of these millions of other people, know what the briefcase contains.\textsuperscript{89} Thus, it follows that "[a]n anonymous neighbor’s prediction about somebody’s time of departure and probable destination is anything but a reliable basis for assuming that the commuter is in possession of an illegal substance."\textsuperscript{90} Yet, this is what the Supreme Court held in \textit{White}.

\textbf{CONCLUSION}

Under the Supreme Court’s holding in \textit{Alabama v White},\textsuperscript{91} any person with a bit of knowledge about another individual can make that individual the target of a prank, or, if he harbors a grudge against the individual, can maliciously attempt to inconvenience and embarrass him, by formulating a tip about that individual similar to the one in \textit{White} and then anonymously passing it on to the police.\textsuperscript{92} Moreover, "every citizen is subject to being seized and questioned by any officer who is prepared to testify that the warrantless stop was based on an anonymous tip predicting whatever conduct the officer just observed."\textsuperscript{93} As Justice Stevens concluded in his dissenting opinion in \textit{White}, that decision makes a "mockery" of the protection afforded by the fourth amendment.\textsuperscript{94}

\textsuperscript{88} \textit{White}, 110 S. Ct. at 2417 (Stevens, J., dissenting).
\textsuperscript{89} \textit{Id.}
\textsuperscript{90} \textit{Id.} at 2417-18.
\textsuperscript{91} \textit{Id.} at 2417-18,
\textsuperscript{92} \textit{U.S. \ldots}, 110 S. Ct. 2412 (1990).
\textsuperscript{93} \textit{Id.} at 2418 (Stevens, J., dissenting).
\textsuperscript{94} \textit{Id.}

Justice Stevens properly recognized that "[f]ortunately, the vast majority of those in our law enforcement community would not adopt such a practice." \textit{Id.}