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Stop And Frisk Based Upon Anonymous Telephone Tips

STOP AND FRISK BASED UPON ANONYMOUS TELEPHONE TIPS

Police face a difficult dilemma when they receive an anonymous telephone tip alleging that a certain individual is involved in ongoing criminal activity. The police can either ignore the information or investigate the tip. The constitutional question is how far can police legally proceed with an investigation based on an anonymous telephone call. The fourth amendment to the United States Constitution guarantees an individual's right to be secure against unreasonable seizures.[1] Before making an arrest, the fourth amendment requires law enforcement officers to have "probable cause" to believe that the suspect has committed or is committing a crime.[2] In *Terry v.*

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[1] U.S. CONST. amend IV. The fourth amendment provides in part: "The right of the people to be secure in their persons, . . . against unreasonable . . . seizures, shall not be violated, and no Warrants shall issue, but upon probable cause. . . ." *Id.* All seizures of the person, executed pursuant to governmental authority, must comply with the command of the fourth amendment. *See* Note, *"Profile" Stops and the Fourth Amendment: Reasonable Suspicion or Inarticulate Hunches?*, 10 GOLDEN GATE U. L. REV. 112, 133 (1980). The fourth amendment does not apply to searches and seizures conducted by private citizens. *See* Burdeau v. McDowell, 256 U.S. 465, 475 (1921). In *Burdeau*, private detectives working for McDowell's employer opened McDowell's safe and forced open McDowell's desk. *Id.* at 472-74. The detectives then turned over the pages contained in the safe and the desk to the Department of Justice. *Id.* at 474. The Supreme Court held that the government could use the papers in a criminal prosecution of McDowell. *Id.* at 476. The Court found that the government had noting to do with the wrongful seizure of McDowell's papers and, therefore, the fourth amendment did not apply. *Id.* at 475. A search or seizure conducted by a private citizen involving government participation, however, is within the protection of the fourth amendment. *See* Lustig v. United States, 338 U.S. 74, 78-79 (1949) (fourth amendment is implicated when federal agents had hand in search); United States v. Mekjian, 505 F.2d 1320, 1327 (5th Cir. 1975) (when federal officials participate in search conducted by private party or stand by as search continues, search must comply with fourth amendment); Note, *Private Searches and Seizures: An Application of the Public Function Theory*, 48 GEO. WASH. L. REV. 433, 435 (1980).

[2] *See* United States v. Watson, 423 U.S. 411, 417 (1976) (necessary inquiry is whether probable cause for arrest exists); Gerstein v. Pugh, 420 U.S. 103, 111 (1975) (standard for arrest is probable cause); Henry v. United States, 361 U.S. 98, 100 (1959) (fourth amendment commands that no arrest warrant shall issue except upon probable cause); Draper v. United States, 358 U.S. 307, 310-11 (1959) (probable cause is predicate to lawful arrest); Giordenello v. United States, 357 U.S. 480, 485-86 (1958) (fourth amendment requires probable cause to support arrest warrant).

Probable cause is an elusive concept. *See generally* Cook, *Probable Cause to Arrest*, 24 VAND. L. REV. 317, 317 (1970); 2 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT, § 3.2 (1978 & Supp. 1981). The Supreme Court attempted to define probable cause in Beck v. Ohio, 479 U.S. 89 (1964). The *Beck* Court stated that probable cause exists when a prudent man would be warranted in believing that a suspect had committed or was committing a crime in light of all the facts and circumstances within the prudent man's knowledge. *Id.* at 91. In Brinegar v. United States, 338 U.S. 160 (1949), the

Ohio,[3] however, the Supreme Court recognized an exception to the probable cause requirement for brief "investigative stops".[4] In *Terry*, the Supreme Court held that a brief stop and frisk based on a "reasonable

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Supreme Court stated that probable cause means more than a mere suspicion but less than proof beyond a reasonable doubt. *See* 338 U.S. at 175.

The probable cause standard applies to both warrantless arrests and arrests pursuant to a warrant. *See* United States v. Watson, 423 U.S. at 17 (probable cause required for warrantless arrest); Henry v. United States, 361 U.S. at 100 (same); Draper v. United States, 358 U.S. at 310-11 (warrantless arrest lawful when based upon probable cause); Giordenello v. United States, 357 U.S. at 485-86 (probable cause required for arrest as well as search warrants). The probable cause standard also applies to any detention that rises to the functional equivalent of an arrest. *See* Dunaway v. New York, 442 U.S. 200, 212-13 (1979). In *Dunaway*, the police placed Dunaway into custody and drove him to police headquarters. *Id.* at 203. The police then put Dunaway into an interrogation room where officers questioned him. *Id.* The Supreme Court held that even though the police neither told Dunaway that he was under arrest nor booked him, and Dunaway would not have had an arrest record if the interrogation had proved fruitless, the detention of Dunaway was the functional equivalent of an arrest and, therefore, required probable cause. *See id.* at 212-13.

What constitutes an arrest or the functional equivalent of an arrest depends upon the scope of the intrusion involved. *See id.* at 210-16; United States v. White, 648 F.2d 29, 54 (D.C. Cir. 1981) (Edwards, J., dissenting) (any detention greater than requests for identification or explanation of suspicious circumstances requires probable cause), *cert. denied*, _____ U.S. _____, 102 S. Ct. 424 (1981); Gless, *Arrest and Citation: Definition and Analysis*, 59 NEB. L. REV. 279, 281-82 (1980). A significant government intrusion, like the police actions involved in *Dunaway*, is equivalent to a traditional arrest and, therefore, requires probable cause. *See* Dunaway v. New York, 442 U.S. at 210-16. The police conduct in *Davis v. Mississippi* is another example of a significant government intrusion that because of the scope of the intrusion required probable cause. 394 U.S. 721 (1969). In *Davis*, the police, acting upon a rape victim's description of her assailant, took at least twenty-four black youths to police headquarters. *Id.* at 722. The police then interrogated and fingerprinted the detainees. *Id.* The dragnet operation succeeded in implicating Davis in the crime. *Id.* at 723. The Supreme Court held that the seizure of Davis was unlawful because not supported by probable cause. *See id.* at 726-28. The *Davis* Court viewed the extensive intrusion involved in that case as the functional equivalent to an arrest and, therefore, subject to the probable cause requirements. *See id.* at 726-27.

[3] 393 U.S. 1 (1968).

[4] *See id.* at 20-22, 30-31. In *Terry* a Cleveland, Ohio police officer with thirty-nine years experience became suspicious of Terry and another man. *Id.* at 5-6. The officer observed while Terry and his companion repeatedly walked up and down the sidewalk, stopping each time to peer into the same store window. *Id.* at 6. The officer, anticipating a hold-up attempt, confronted the men, identified himself as a police officer and asked the men to identify themselves. *Id.* at 6-7. When Terry mumbled something in response, the officer spun Terry around and frisked him. *Id.* at 7. The policeman discovered a pistol in Terry's breast pocket. *Id.* The State of Ohio convicted Terry of carrying a concealed weapon. *See id.* On appeal, the Supreme Court reasoned that a brief seizure and frisk upon less than probable cause is not per se unreasonable because a stop and frisk involves a significantly lesser intrusion than does an arrest. *Id.* at 26. The Court struck a balance between the circumscribed invasion of individual privacy involved in the stop and frisk and the governmental interests of crime prevention and detection and in the police officer's safety. *Id.* at 22-27. The result of the *Terry* Court's balance was a narrow police authority for a reasonable weapons search without probable cause for the protection of the officer when the officer reasonably believes that he is confronting an armed and dangerous individual. *Id.* at 27. *See generally* Note,

suspicion" less than probable cause that criminal activity may be afoot did not violate the fourth amendment.[5] The Supreme Court has not determined

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Reexamining Fourth Amendment Seizures: A New Starting Point, 9 HOFSTRA L. REV. 211, 215-17 [hereinafter cited as *Starting Point*].

Before *Terry* the Supreme Court had held that the fourth amendment required probable cause before an officer could restrain the liberty of a citizen in any degree. *See* Dunaway v. New York, 442 U.S. 200, 207-08. *Terry* represents the first case in which the Supreme Court recognized a police-citizen encounter less intrusive than an arrest. *See id.* at 308-10; *Starting Point, supra*, at 211-12. In *Terry*, the Court recognized a police intrusion so significantly less intrusive than an arrest that the encounter need not be subject to the probable cause standard. *See* 392 U.S. at 20-22.

[5] *See* 392 U.S. at 30-31. The *Terry* Court stated that reasonable suspicion exists when an officer can point to specific, articulable facts that together with rational inferences from those facts would lead the officer reasonably to conclude in light of his experience that criminal activity may be afoot. *Id.* at 20-22, 30-31. Interestingly, the *Terry* Court avoided addressing the constitutionality of the stop and focused exclusively on the frisk. *See* 392 U.S. at 19 n.16; Note, *The Supreme Court, 1971 Term: Search and Seizure, Police Power to Stop and Frisk*, 86 HARV. L. REV. 171, 173-74 (1972) [hereinafter cited as *Police Power*]. The Court apparently believed that the frisk itself constituted the stop. *See* Oberly, *The Policeman's Duty and the Law Pertaining to Citizen Encounters*, 8 PEPPERDINE L. REV. 653, 657-58 (1981) [hereinafter cited as *Encounters*]. Justice Harlan, concurring in *Terry*, argued that the reasonable suspicion that justifies a limited protective search also justifies a brief detention in order to carry out the search. 392 U.S. at 31-33 (Harlan, J., concurring). The right to frisk then follows automatically upon the right to stop. *Id.* at 33-34 (Harlan, J., concurring); *see Police Power, supra*, at 174-75 (Justice Harlan's approach is sensible). The Supreme Court implicitly adopted the Harlan approch to *Terry* in Adams v. Williams, 407 U.S. 143 (1972). *See Police Power, supra*, at 174-75 (*Williams* implicitly adopts view of Justice Harlan); Comment, *Stop and Frisk: Warrantless Car Searches*—Adams v. Williams, 407 U.S. 143 (1972), 50 DEN. L.J. 243, 249 (1973) [hereinafter cited as *Stop and Frisk*] (*Williams* adopts Harlan configuration of *Terry* rule).

The *Terry* Court did not determine whether the officer seized Terry when the officer first approached the suspect. *See* 392 U.S. at 19 n.16; *Encounters, supra*, at 657-58. The Court could not determine upon the record whether the officer seized Terry before the frisk occurred. 392 U.S. at 19 n.16. The *Terry* court assumed, therefore, that no seizure occurred before the officer frisked Terry. *Id.* Chief Justice Warren, writing for the majority in *Terry*, suggested that not every officer approach of a citizen constitutes a seizure of the person. *Id.* (not all intercourse between the police and citizens involves seizure of person). The threshold question in any stop and frisk case is whether a seizure has occurred. *See Starting Point, supra* note 4, at 219-20 (full articulation in *Terry* of when seizure occurs would have provided starting point for *Terry* analysis). In *United States v. Mendenhall*, Justice Stewart articulated a standard for determining when police have seized a person. *See* 446 U.S. 544, 551-57 (1980). In *Mendenhall*, the defendant arrived at the Detroit Airport on an airline flight from Los Angeles. *Id.* at 547. Agents from the Drug Enforcement Administration (DEA) noticed that Mendenhall's conduct fit squarely into the "drug courier profile", an abstract of characteristics used by law enforcement officials, as an aid in detecting drug smugglers. *Id.* at 547-48, 547 n.1. The agents approached Mendenhall and identified themselves as federal agents. *Id.* at 547-48. When the agents specifically identified themselves as narcotics agents Mendenhall appeared quite agitated. *Id.* at 548. Mendenhall then proceeded voluntarily, pursuant to the agent's request, to the DEA office for questioning. *Id.* A voluntary search of Mendenhall's person uncovered narcotics. *Id.* at 548-49.

On appeal to the Supreme Court, Justices Stewart and Rehnquist reasoned that the

whether an anonymous telephone tip may furnish the reasonable suspicion required for a brief investigative stop.[6]

The Supreme Court has held that information supplied by a confidential informant, whose identity is known to the police, can provide the probable cause necessary for an arrest.[7] In *Aguilar v. Texas*,[8] the Court announced a two-pronged test an informant's tip must pass before the tip can yield the probable cause necessary for an arrest or search.[9] First, the tip must reveal facts from which a magistrate could conclude that the informant had a sufficient basis for his allegations.[10] Second, a law enforcement official must present facts from which the magistrate

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DEA agents had not seized Mendenhall. *See id.* at 551-57. Justice Stewart argued that the fourth amendment is only meant to prevent government overreaching and not to eliminate all contact between the police and the citizen. *See id.* at 553-54. Justice Stewart concluded that a seizure occurs only if, in view of all the surrounding circumstances, a reasonable person would believe that he is not free to leave. *Id.* at 553-54. The subjective intent of the officer, stated Justice Stewart, is irrelevant except insofar as the officer conveys his subjective intent to the suspect. *Id.* at 554 n.6. The fact that the DEA agents never told Mendenhall that she was free to leave is also irrelevant. *See id.* at 555-56. Justice Stewart's view, however, did not command a majority of the Court, as Chief Justice Burger and Justices Powell and Blackmun, the other members of the Court who created the majority for the purpose of upholding the search, did not reach the seizure question. *See id.* at 560-66 (Powell, J., concurring in part and concurring in the judgment). The concurring Justices assumed that the DEA agents seized Mendenhall and upheld the seizure as a valid *Terry* stop. *See id.* at 560, 561-66 (Powell, J., concurring in part and concurring in the judgment). *See Starting Point*, *supra* note 4, at 225 n.87 (commending Justice Stewart for his approach but suggesting that Supreme Court should have remanded to district court for evidentiary hearing).

[6] *See* White v. United States, _____ U.S. _____, 102 S. Ct. 424, 425-27 (1981) (White, J., dissenting from denial of certiorari); Jernigan v. Louisiana, 446 U.S. 958, 958-60 (1980) (White, J., dissenting from denial of certioari). *Cf.* Adams v. Williams, 407 U.s. 143, 146 (anonymous telephone tip less reliable than tip given in person) (dictum).

[7] *See* Spinelli v. United States, 393 U.S. 410, 412-13, 414 (1969); Aguilar v. Texas, 378 U.S. 108, 114 (1964).

[8] 378 U.S. 108 (1964).

[9] *See* 378 U.S. at 113-15. The *Aguilar* analysis is often referred to as the *Aguilar* two-pronged test. *See* LaFave, *Probable Cause From Informants: The Effects of Murphy's Law on Fourth Amendment Adjudication*, 1977 U. ILL. L.F. 1, 4 [hereinafter cited as *Informants*]. The test contains a "basis of knowledge" prong and a "veracity" prong. *See* text accompanying notes 10-11. While *Aguilar* involved an application for a search warrant, *see* 378 U.S. at 109, the Court has held that the *Aguilar* two-pronged test is applicable to situations in which an informant's tip purportedly establishes probable cause for a warrantless arrest or search. *See* Spinelli v. United States, 393 U.S. 410, 417 n.5 (1969); McCray v. Illinois, 386 U.S. 300, 304 (1967); Moylan, *Hearsay and Probable Cause: An* Aquilar *and* Spinelli *Primer*, 25 MERCER L. REV. 741, 752-54 (1974) [hereinafter cited as Moylan].

[10] *See* 378 U.S. at 114-15. Courts refer to the requirement of *Aguilar* that the informant's tip contain facts from which a magistrate could conclude that the informer has an adequate basis for his allegation as the "basis of knowledge" prong. *See* Moylan, *supra* note 9, at 754. The basis of knowledge prong seeks to uncover how the informant knows what he alleges. *See* Note, *The Informer's Tip as Probable Cause For Search or Arrest*, 54 CORNELL L. REV. 958, 960 (1969) [hereinafter cited as *Informer's Tip*]. The basis of knowledge prong of *Aguilar* guards against the possibility that a magistrate will issue a warrant based merely upon a casual rumor circulating within the underworld. *See Informer's Tip*, *supra*, at 960.

could determine either that the informant himself is credible or that his information inherently is reliable.[11]

The Supreme Court in *Adams v. Williams*[12] addressed whether a known informant's tip can supply the reasonable suspicion necessary for a stop and frisk.[13] In *Williams*, a known informant approached an officer on patrol and told the officer that a person in a nearby car was carrying narcotics and had a gun at his waist.[14] The officer then approached the vehicle to investigate the informant's information.[15] The officer tapped on the car window and asked the occupant to open the door.[16] When Williams opened the window instead, the officer reached into the car and pulled a loaded pistol from Williams' waistband.[17] The Supreme Court held that that officer's actions complied with the stop and frisk standards enunciated in *Terry v. Ohio*.[18]

The *Williams* Court noted that because the informant came forward personally, Williams was a stronger case supporting the use of an informant's tip to justify a *Terry* stop than the case of an anonymous telephone tip.[19] The *Williams* Court did not subject the informant's tip to the stand-

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[11] *See* 378 U.S. at 114-15. The requirement contained in *Aguilar* that the police officer present facts from which the magistrate could determine that the informant is credible or his information reliable is known as the "veracity prong" of *Aguilar*. *See* Moylan, *supra* note 9, at 754. The veracity prong has two spurs. *Id.* at 755. The credibility spur focuses on the truthfulness of the informant himself. *See id.* The reliability spur focuses on the informant's information. *See id.* The two veracity prong spurs are disjunctive, permitting the government to satisfy the veracity prong by passing either the credibility test or the reliability test. *See* 378 U.S. at 114-15; Moylan, *supra* note 9, at 156-57. The veracity prong of *Aguilar* attempts to insure that police cannot use tips from untruthful or unreliable informants to form the basis of a probable cause determination. *See Informer's Tip*, *supra* note 10, at 960; Rebell, *The Undisclosed Informant and The Fourth Amendment: A Search for Meaningful Standards*, 81 YALE L.J. 703, 712-14 (1972) (many informants come from criminal mileau and operate from inherently suspect motives, and reliability of such persons is therefore suspect).

[12] 407 U.S. 143 (1972).

[13] *See id.* at 144-49; text accompanying notes 14-25 *infra*.

[14] 407 U.S. at 144-45. The informant in *Williams* had given the same officer a tip on one prior occasion regarding homosexual activity at a local railroad station. *See id.* at 156 (Marshall, J., dissenting).

[15] *Id.* at 145.

[16] *Id.*

[17] *Id.* After the police officer in *Williams* discovered the pistol, he arrested Williams for unlawful possession of a firearm. *Id.* A search incident to the arrest yielded more contraband. *Id.* Connecticut tried and convicted Williams for unlawful possession of a firearm as well as possession of heroin. *Id.* at 144.

[18] *See id.* at 144; text accompanying notes 3-5 *supra* .

[19] *See* 407 U.S. at 146-47. The *Williams* Court did not discuss why an anonymous telephone tip is inherently less trustworthy than an in person tip. *See id.* The New York Court of Appeals in *People v. DeBour*, however, advanced several reasons why anonymous telephone tips inherently are weaker than in person anonymous tips. 40 N.Y.2d 210, 352 N.E. 2d 562, 386 N.Y.S.2d 375 (1976). An anonymous telephone tip inherently is weak because the authorities cannot hold the tipster accountable if his information turns out to have been untruthful. *Id.* at 224, 352 N.E.2d at 573, 386 N.Y.S.2d at 386. Furthermore, when

ard probable cause analysis contained in *Aguilar*.[20] Instead, the Court stated that the tip carried sufficient "indicia of reliability" to justify the officer's brief intrusion.[21] The *Williams* Court identified three indicia of reliability surrounding the tip that supplied the reasonable suspicion necessary to justify a forcible stop and frisk.[22] First, the officer knew the informant personally and the informant had provided the officer with information in the past.[23] Second, the informant was subject to criminal prosecution had his tip proved untrue.[24] Finally, the informant came forward personally and gave information that the police officer immediately could verify.[25]

The Supreme Court has twice declined to decide whether an anonymous telephone tip can form the basis of a valid *Terry* stop.[26] Recently, the Court refused to review *United States v. White*[27] in which the Circuit Court of Appeals for the District of Columbia held that an anonymous telephone tip can furnish reasonable suspicion for a *Terry* stop.[28] In *White*, police received an anonymous telephone tip regarding an ongoing narcotics transaction.[29] The caller told police that a young black man known as "Nicky" was about to purchase drugs.[30] The informant gave police Nicky's age and a description of Nicky's clothing.[31] The caller also described how the transaction was taking place.[32] Nicky had parked a Ford in front of a certain house in Washington, D.C., then

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a tipster communicates his information by telephone the officer cannot measure intangible indicia of reliability like the informant's facial expression and emotional state. *Id.* at 224, 352 N.E.2d at 573, 386 N.Y.S.2d at 386.

[20] *See* 407 U.S. at 146-47; *Police Power*, *supra* note 5, at 177-78 (*Williams* Court implicitly conceded it was relaxing *Aguilar* tests for stop and frisk encounters); *Stop and Frisk*, *supra* note 5, at 247 (*Williams* makes clear that strict requirements of *Aguilar* are inapplicable to stop and frisk encounters). The *Williams* Court apparently reasoned that because police may stop and frisk upon an articulable suspicion less than probable cause the judicial officer need not judge the informant's tip that supplies the predicate for a stop and frisk upon the standard devised to determine whether probable cause exists. *See Stop and Frisk*, *supra* note 5, at 247-48; *Police Power*, *supra* note 5, at 177-78.

[21] 407 U.S. at 146-47.

[22] *See id.*; text accompanying notes 23-25 *infra*.

[23] *See* 407 U.S. at 146-47; note 14 *supra*.

[24] *See* 407 U.S. at 146-57. *Cf.* United States v. Harris, 403 U.S. 573, 383-84 (1971) (admission against penal interest may be sufficient to establish credibility under *Aguilar*).

[25] *See* 407 U.S. at 146-47.

[26] *See* White v. United States, _____ U.S. _____, 102 S. Ct. 424, 425-27 (1981) (White, J., dissenting from denial of certiorari); Jernigan v. Louisiana, 446 U.S. 958, 958-60 (1980) (White, J., dissenting from denial of certioari).

[27] 648 F.2d 29 (D.C. Cir.), *cert. denied*, _____ U.S. _____, 102 S. Ct. 424, 425-27 (1981) (White, J., dissenting from denial of certiorari).

[28] 648 F.2d at 43, 45.

[29] *See id.* at 30-31.

[30] *See id.* at 31.

[31] *See id.* at 30. The informant in *White* described Nicky as about 19 or 20 years old and wearing a blue jumpsuit with white stripes. *Id.*

[32] *See id.* at 30-31.

entered an Oldsmobile and drove off.[33] The informant gave police the license plate numbers on both cars and described the color of the Ford.[34] According to the caller, Nicky would be returning with narcotics.[35]

Two detectives immediately responded to the tip by driving in an unmarked patrol car to the street corner nearest to the house and establishing surveillance.[36] The detectives spotted the Ford parked in front of the house.[37] Shortly thereafter, the Oldsmobile pulled behind the Ford and stopped.[38] The detectives pulled their crusier alongside the Oldsmobile, exited from the cruiser, and ordered White out of his car.[39] As White was getting out of his car a piece of tinfoil fell to the ground.[40] The detectives then arrested White.[41] The District of Columbia Circuit sustained the actions of the detectives leading up to White's exit from the car as a valid *Terry* stop based upon reasonable suspicion.[42]

In upholding the investigative stop in *White* the D.C. Circuit noted that the tip contained a detailed description of the criminal plan and the defendant.[43] Furthermore, the *White* court noted that police surveillance corroborated all details of the tip except for the actual possession of narcotics.[44] The D.C. Circuit reasoned that a detailed tip regarding criminal activity that proves to be accurate in all innocent details can furnish the reasonable suspicion required for a brief investigatory stop.[45] The *White*

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[33] *See id.* The informant in *White* said that Nicky had parked a 1971 Ford LTD in front of No. 1, 15th Street, N.E., Washington, D.C., and that Nicky had driven away from the house in a 1974 four-door Oldsmobile. *Id.*

[34] *See id.* at 31.

[35] *Id.*

[36] *See id.* The two detectives in *White* drove to 15th and East Capitol Streets, N.E., Washington, D.C. *Id.*

[37] *See id.*

[38] *See id.*

[39] *See id.*

[40] *See id.* at 32.

[41] *See id.* After the detectives in *White* placed White under arrest, they searched the Oldsmobile. *See id.* The search uncovered more tinfoils containing narcotics. *See id.* The police officers also discovered assorted narcotics paraphernalia. *See id.*

[42] *See id.* at 32, 43, 45-46. The Government conceded in *White* that the detectives did not have probable cause to arrest when they approached the car. *Id.* at 32. White conceded, on appeal, that probable cause for arrest did exist once the detective spotted the tinfoil. *Id.* The issue in *White*, therefore, centered upon the propriety of the police actions leading up to White's exit from the car. *Id.*

[43] *See id.* at 40-41; text accompanying notes 29-35 *supra.*

[44] *See* 648 F.2d at 41, 45.

[45] *See id.* at 43. The *White* court stated that the detailed description of the criminal episode suggested that the informant himself saw Nicky leave in the Oldsmobile and that the informant knew enough about Nicky's actions to predict when the Oldsmobile would return and what Nicky would be doing in the meantime. *See id.* at 44. The detail contained in the tip, therefore, suggested that the anonymous informant possessed a sufficient basis of knowledge and imparted to the tip an index of reliability. *See id.* at 44. The corroboration of innocent details through police surveillance gave the tip another index of reliability. *See id.* 41-42. The court implied that even if corroboration of innocent facts is insufficient to thrust a detailed anonymous tip over the probable cause threshold, corroboration of innocent facts

court emphasized the nature of the crime reasoning that the police have great need for informants' tips in narcotics related investigations.[46] The court concluded that under the particular facts of *White* the tip was a sufficient predicate for a *Terry* stop.[47]

Other federal circuit courts have split over whether an anonymous tip may furnish reasonable suspicion for a *Terry* stop.[48] The Fifth and Ninth Circuits have found anonymous tips insufficient to support a *Terry* stop, stressing the lack of proof regarding the factual foundation of the tip.[49] The Fifth Circuit, in *United States v. McLeroy*,[50] held that an anonymous tip regarding the possession of a sawed-off shotgun, even when police had verified innocent details of the informant's report, was insufficient to support a *Terry* stop because nothing in the record showed that the information was reliable or that the informant had a sufficient factual basis for his allegation.[51] Similarly, the Ninth Circuit, in *United*

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is enough to carry a detailed tip over the lower reasonable suspicion level. *See id.* The detail of the tip together with the verification of innocent portions of the informant's report supplied the anonymous tip with enough indicia of reliability to justify the forcible stop. *See id.* at 40-45.

[46] *See id.* at 43-44. The *White* court believed that the need for informant's tips in drug related investigations is particularly acute because there are not reporting "victims" in drug cases. *See id.* at 43-44. Narcotics investigators, therefore, depend upon undercover work and informants' tips for needed information. *See id.* The *White* court also took notice of the fact that citizen informants fear retaliation from drug dealers and users and, therefore, the informants prefer anonymity. *See id.* at 43.

[47] *See id.* at 43.

[48] *See* text accompanying notes 49-63 *infra*; United States v. McClinnhan, 660 F.2d 500, 502-03 (D.C. Cir. 1981) (detailed and corroborated anonymous tip contains sufficient indicia of reliability to justify *Terry* stop especially when reported contraband is deadly weapon); United States v. Gorin, 564 F.2d 159, 161 (4th Cir. 1977) (per curiam) (*Aguilar* standards do not apply when only reasonable suspicion needed), *cert. denied*, 434 U.S. 1080 (1978); United States v. DeVita, 526 F.2d 81, 83 (9th Cir. 1975) (per curiam) (no reasonable suspicion provided by unreliable informant's vague tip even after corroboration of innocent facts); Ojeda-Vinales v. Immigration & Naturalization Serv., 523 F.2d 286, 287-88 (2d Cir. 1975) (per curiam) (anonymous telephone tip containing detailed information, that if true, established violation of immigration law coupled with corroboration of report supplied reasonable suspicion); United States v. Cage, 494 F.2d 740, 742 (10th Cir. 1974) (per curiam) (police entitled to make *Terry* stop on basis of tip of unknown origin that occupants of particular automobile had just committed assault and were carrying sawed-off shotgun); United States v. Hernandez, 486 F.2d 614, 616-17 & n.2 (7th Cir. 1973) (per curiam) (detailed and corroborated anonymous tip carries sufficient indicia of reliability to outweigh risk of acting on basis of anonymous tip), *cert. denied*, 415 U.S. 959 (1974); United States v. Legato, 480 F.2d 408, 411-12 (5th Cir.) (detailed anonymous tip regarding airlines passengers with bomb linked with corroboration of innocent facts and suspicious behavior justify investigatory stop), *cert. denied*, 414 U.S. 979 (1973).

[49] *See* text accompanying notes 50-53 *infra*.

[50] 584 F.2d 746 (5th Cir. 1978).

[51] *See id.* at 748; text accompanying note 44 *supra*. In *McLeroy* an unidentified informant told police that a black and white 1977 Chevrolet bearing Alabama license BMB-023 was parked at 1720 27th Street in Ensley, Alabama. *See* 584 F.2d at 747. The informant stated that the car had a damaged right side and might have been involved in a hit and run accident. *See id.* McLeroy was in possession of the car, according to the report, but the car did not belong to McLeroy and was possibly a stolen vehicle. *See id.* Furthermore, the informant said that a sawed-off shotgun was in-

States v. Robinson,[52] held that an anonymous tip regarding the transportation of a stolen vehicle could not provide reasonable suspicion because the record lacked any proof regarding the factual foundation for the tip.[53]

The First and Sixth Circuits have allowed anonymous tips to support a *Terry* stop stressing the detail and corroboration of the tips through independent police observation.[54] In *United States v. Rodriguez Perez*[55] the First Circuit held that an anonymous tip implicating Rodriguez Perez in an ongoing counterfeit currency transaction was sufficient to support a valid *Terry* stop.[56] The *Rodriguez Perez* court

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side the car. *Id.* Acting upon the tip, the police determined that McLeroy's address matched the address the informant had given. *Id.* Police proceeded to the address and saw a car matching the informant's description parked nearby. *Id.* When McLeroy drove off, the police pulled the car over. *See id.* Police then checked the vehicle identification number of McLeroy's car and found that the car had been stolen. *See id.* Police arrested McLeroy for buying, receiving, and concealing stolen property. *See id.* During an inventory search of the Chevrolet police uncovered a sawed-off shotgun. *Id.* A federal district court convicted McLeroy of unregistered possession of a sawed-off shotgun. *See id.*; 26 U.S.C. § 5861(d) (1976). The Fifth Circuit held that the initial stop of McLeroy's car was unjustified as not supported by reasonable suspicion. *See* 584 F.2d at 747-48. The *McLeroy* court reversed the conviction because the shotgun was the fruit of an unlawful stop and, therefore, was inadmissible into evidence at trial. *See id.* at 747.

[52] 536 F.2d 1298 (9th Cir. 1976).

[53] *See id.* at 1299. In *Robinson*, a police officer stopped an automobile on the basis of a radio message from a police dispatcher. *See id.* The dispatcher told the officer to be on the lookout for a possibly stolen 1976 Oldsmobile Cutlass, Nevada license CKC-434. *See id.* The exact source of the information was unknown. *See id.* The officer spotted the described vehicle and stopped it. *Id.* Robinson, the driver, did not have his driver's license so the officer arrested him for driving without a license. *See id.* While Robinson was in custody he admitted that he had stolen the car. *See id.* A federal district court convicted Robinson of interstate transportation of a stolen motor vehicle. *See id.*; 18 U.S.C. § 2312 (1976). On appeal, the Ninth Circuit reversed the conviction reasoning that the confession had been the fruit of an unlawful stop. *See* 536 F.2d at 1299. The Ninth Circuit reasoned that the stop was unlawful because the officer based the stop on information from an unknown source and the government had tendered no proof of the factual foundation for the information. *See id.*

[54] *See* text accompanying notes 53-64 *infra*.

[55] 625 F.2d 1021 (1st Cir. 1980).

[56] *See id.* at 1026. In *Rodriguez Perez*, an anonymous informant telephoned the Federal Bureau of Investigation (FBI) to report that Perez was attempting to sell or pass counterfeit United States currency. *See id.* at 1022. The informant told the FBI that Rodriguez Perez was staying at the Hotel Bolivar in Santruce, Puerto Rico. *See id.* When agents arrived at the hotel, they spotted Rodriguez Perez entering the lobby from a corridor. *See id.* The agents approached Rodriguez Perez and identified themselves as Secret Service agents. *See id.* The agents asked Perez if he would agree to talk to the agents in his room. *See id.* During a subsequent consent search the agents uncovered counterfeit money. *See id.* at 1023. A federal district court convicted Perez of possession of counterfeit currency. *See id.* at 1022; 18 U.S.C. § 472 (1976). On appeal to the First Circuit Rodriguez Perez argued that the counterfeit currency was the fruit of an unlawful *Terry* stop and, therefore, the trial court should have suppressed the currency evidence. *See* 625 F.2d at 1025. Rodriguez Perez argued that the initial encounter with the agents in the lobby of the Hotel Bolivar was an unlawful *Terry* type seizure because the agents lacked reasonable suspicion that Perez was committing, or about to commit, a crime. *See id.* The First Circuit stated, however, that even assuming the encounter rose to the level of a *Terry* stop, the stop was legal. *See id.* at 1026.

reasoned that while an anonymous telephone tip was insufficient to establish probable cause for arrest, the tip justified further investigation.[57] The First Circuit suggested that a *Terry* stop was the appropriate method to further investigate the anonymous tip.[58] The Sixth Circuit, in *United States v. Andrews*,[59] upheld an investigatory stop on the basis of a detailed anonymous telephone tip alleging that Andrews possessed narcotics.[60] The *Andrews* court stressed the fact that independent police observation corroborated innocent details of the informant's report.[61] Furthermore, the informant had told police that Andrews was going to deliver the drugs to a person known to police to be a narcotics dealer.[62] The *Andrews* court specifically stated that the detail and independent corroboration of an anonymous telephone tip can provide sufficient indicia of reliability to justify a brief investigatory stop.[63]

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[57] *See* 625 F.2d at 1026.

[58] *See id.*

[59] 600 F.2d 563 (6th Cir.), *cert. denied sub nom.*, Brooks v. United States, 444 U.S. 878 (1979).

[60] *See* 600 F.2d at 564, 566, 568. In *Andrews*, Drug Enforcement Administration agents received an anonymous telephone tip alleging that Andrews would be arriving at Detroit Airport from Los Angeles at about 4:00 p.m. that day with narcotics in his possession. *See id.* at 564. The caller gave a detailed personal description of Andrews and stated that another person may be accompanying Andrews. *See id.* The informant further stated that Andrews was going to deliver the narcotics to Sylvester Rhine. *See id.* The agents knew from past investigations that Rhine was a local drug dealer. *See id.* at 564, 566-67.

Further investigation revealed that the only flight arriving from Los Angeles at approximately 4:00 p.m. that day was American Airlines flight 68. *See id.* at 564. The agents proceeded to the airport to meet flight 68. *See id.* Andrews, who met the informant's description, deplaned with two companions and proceeded to the baggage claim area. *See id.* at 564-65. As Andrews and his companions approached a cab outside the baggage claim area the agents stopped them and asked for identification. *See id.* at 565. A subsequent search uncovered the drugs. *See id.* at 565.

The Sixth Circuit upheld the initial detention of Andrews as a valid *Terry* stop. *See id.* at 566. The *Andrews* court first noted that the anonymous tip failed both prongs of the *Aguilar* test for probable cause. *See id.* Nevertheless, the court argued that the tip did supply reasonable suspicion for an investigatory stop. *See id.* at 566, 567, 568. The Sixth Circuit reasoned that because the tip contained detail and because both the agent's knowledge and personal observations corroborated the tip, the tip possessed sufficient indicia of reliability to justify a *Terry* stop. *See id.* at 566-70.

[61] *See id.* at 564, 567; note 60 *supra.*

[62] *See* 600 F.2d at 564, 567; note 60 *supra.* In *Ballou v. Massachusetts*, an anonymous telephone tip together with corroboration of the informant's report by other facts known by the police formed the basis for a valid *Terry* stop. 403 F.2d 982, 985-86 (1st Cir. 1968), *cert. denied*, 394 U.S. 909 (1969). In *Ballou*, Boston police received an anonymous tip that McLean and Ballou were in a bar and were carrying guns. *See id.* at 983. The police knew Ballou previously had served time in prison for illegal possession of a firearm. *Id.* The police also knew that Ballou and McLean were friends and that Ballou was the leader of a faction currently involved in a gang war which had already resulted in several murders. *Id.* The First Circuit held that the anonymous tip when coupled with the other facts known to police created reasonable suspicion to support a valid investigatory stop. *See id.* at 986. *Cf.* United States v. Harris, 403 U.S. 573, 583 (1971) (plurality opinion) (magistrate may rely on policeman's knowledge of suspect's reputation in assessing reliability of informant's tip).

[63] *See* 600 F.2d at 568.

The decisions from state courts regarding the status of an anonymous telephone tip also reflect a division of opinion.[64] The New Jersey Supreme Court has approved stop and frisks based on anonymous telephone tips regarding deadly weapons.[65] In *In re H.B.*,[66] the New Jersey court upheld a stop and frisk of H.B. based on an anonymous tip alleging that H.B. was carrying a gun.[67] The *H.B.* court emphasized the need for a realistic approach to stop and frisk in light of the proliferation of handguns throughout the country.[68]

The New Jersey Supreme Court, however, limited its holding in *H.B.* to tips regarding lethal materials such as firearms and explosives.[69] The *H.B.* court stated that the abundance of handguns presents a significant danger to law abiding citizens and especially to police officers.[70] The court reasoned that the violent nature of modern society is a factor the court could not ignore in considering the constitutionality of a particular investigative detention.[71] The New Jersey Supreme Court further noted that the accuracy of the informant's description provided the tip with an

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[64] *See* text accompanying notes 65-79 *infra*; Conor v. State, 260 Ark. 172, _____, 538 S.W.2d 304, 305 (1976) (anonymous tip standing alone cannot justify stop of moving vehicle); State v. Kea, 61 Hawaii 566, _____, 606 P.2d 1329, 1331 (1980) (per curiam) (reasonable suspicion found when anonymous informant told police that basis of tip was personal observations); State v. Hobson, 95 Idaho 920, _____, 523 P.2d 523, 528 (1974) (specific and detailed anonymous tip can create reasonable suspicion); State v. Jernigan, 377 So. 2d 1222, 1225 (La. 1979) (detailed tip verified by police observations supplied reasonable suspicion), *cert. denied*, 446 U.S. 958 (1980); State v. Hasenbank, _____ Me. _____, _____, 425 A.2d 1330, 1333 (1981) (specificity and corroboration of anonymous tip provide sufficient indicia of reliability to justify *Terry* stop), *aff'd on rehearing*, 436 A.2d 1130 (1981); Commonwealth v. Anderson, 481 Pa. 292, _____, 392 A.2d 1298, 1301 (1978) (anonymous telephone tip describing escapee from drug rehabilitation program in vague terms does not create reasonable suspicion); Commonwealth v. Cruse, 236 Pa. Super. Ct. 85, 89-91, 344 A.2d 532, 535 (1975) (corroboration of innocent details not enough to create reasonable suspicion from anonymous tip).

[65] *See* text accompanying notes 66-73 *infra*.

[66] 75 N.J. 243, 381 A.2d 759 (1977).

[67] *See id.* at 248, 252, 381 A.2d at 762, 764.

[68] *See id.* at 245, 381 A.2d at 759-60; Terry v. Ohio, 392 U.S. 1, 23-24 (1968). In *H.B.*, two Newark policemen responded to a radio dispatch reporting that a black man wearing a black hat, black leather coat and checkered pants was in a certain diner with a gun in his possession. *See* 75 N.J. at 248, 381 A.2d at 761. The source of the information apparently was an anonymous tip. *See id.* at 248, 381 A.2d at 761. When the officers entered the diner, they saw approximately fifteen people inside. *See id.* at 248, 381 A.2d at 761. One of the officers approached the suspect and ordered the youth to stand against the wall. *See id.* at 248, 381 A.2d at 762. The officer frisked the suspect and found a revolver in the suspect's coat pocket. *See id.* at 248, 381 A.2d at 762. The State tried H.B. for possession of a firearm. *See id.* at 244, 381 A.2d at 759. The state trial court adjudicated H.B. a juvenile delinquent. *See id.* at 244, 381 A.2d at 759. On appeal to the New Jersey Supreme Court, H.B. challenged the legality of the frisk that uncovered the weapon. *See id.* at 245, 381 A.2d at 759.

[69] *See* 75 N.J. at 251-52, 381 A.2d at 763. The New Jersey Supreme Court specifically excluded from the thrust of the *H.B.* opinion tips concerning glassine bags containing heroin. *See id.* at 251-52, 381 A.2d at 763.

[70] *See id.* at 246, 381 A.2d at 760.

[71] *See id.* at 246, 381 A.2d at 760.

index of reliability.[72] The accurate description of the suspect coupled with the vulnerability of the officer combined in *H.B.* to render the investigatory detention reasonable under the fourth amendment.[73]

In contrast to *In re H.B.*, the New York Court of Appeals has held that an anonymous telephone tip alleging that a black man in a red shirt was carrying a gun in a certain bar was too vague to provide reasonable suspicion for a *Terry* stop.[74] In *People v. DeBour*,[75] the New York Court of Appeals noted that anonymous telephone tips are the weakest type of tip.[76] The Court of Appeals also stated that the tip under consideration was vague because the tip lacked specificity and individual descriptive details.[77] A vague tip, reasoned the court, raises the real possibility that the suspect was not the man the informant meant to describe.[78] The *DeBour* court concluded by observing that the courts would severely erode the constitutional rights of citizens if they allowed police to stop and frisk on no more than an anonymous telephone tip.[79]

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[72] *See id.* at 249, 381 A.2d at 762; note 68 *supra.*

[73] *See* 75 N.J. at 249, 251, 252, 381 A.2d at 762, 763, 764. The *H.B.* court reasoned that the officer was vulnerable because he was in full uniform in a crowded place in which an informant had reported that there was a man at large with a gun. *See id.* at 249, 381 A.2d at 762. The *H.B.* court equated vulnerability with exigency. *See id.* at 251, 381 A.2d at 763. As the court noted, exigency is a significant factor in determining whether an officer's conduct is reasonable under the fourth amendment. *See id.* at 251, 381 A.2d at 763, *citing* Warden v. Hayden, 387 U.S. 294, 298-99 (1967) (fourth amendment does not require police to delay investigation if delay would endanger their lives or lives of others).

[74] *See* text accompanying notes 75-79 *infra.*

[75] 40 N.Y.2d 210, 352 N.E.2d 562, 386 N.Y.S.2d 375 (1976).

[76] *See id.* at 224, 352 N.E.2d at 573, 386 N.Y.S.2d at 386; note 19 *supra.* In *DeBour*, police received an anonymous telephone tip alleging that there was a man with a gun at a certain bar. *See* 40 N.Y.2d at 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384. The informant described the suspect as a black man wearing a red shirt. *See id.* at 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384. Police responded to the tip by dispatching several officers to the bar. *See id.* at 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384. After entering the bar the officers spotted a black man wearing a red shirt. *See id.* at 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384. The officers immediately converged upon the suspect and ordered him to freeze. *See id.* at 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384.

An officer then frisked the suspect and discovered a fully-loaded automatic pistol. *See id.* at 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384. The issue before the New York Court of Appeals was whether the anonymous phone tip justified the forcible frisk of the suspect. *See id.* at 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384. The record showed that the policemen did nothing to verify the tip once they entered the bar, such as question the bartender. *See id.* at 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384. Furthermore, the officers made no attempt to determine whether other red-shirted black men were in the bar. *See id.* 222, 352 N.E.2d at 571, 386 N.Y.S.2d at 384.

[77] *See id.* at 225, 352 N.E.2d at 573, 386 N.Y.S.2d at 386.

[78] *See id.* at 225, 352 N.E.2d at 573, 386 N.Y.S.2d at 386. The *DeBour* court noted that the possibility of misidentification by police was high in *DeBour* since the officers admitted that they did not check to see whether other black men wearing red shirts were present at the bar before the officers accosted the suspect. *See id.* at 222, 225, 352 N.E.2d at 571, 573, 86 N.Y.S.2d at 384, 386; note 76 *supra.*

[79] *See* 40 N.Y.2d at 226, 352 N.E.2d at 574, 386 N.Y.S.2d at 387. *But see* People v. Benjamin, 51 N.Y.2d 267, 270-71, 414 N.E.2d 645, 647-48, 434 N.Y.S.2d 144, 146 (1980) (detailed

The Supreme Court, in *Adams v. Williams*, stated that the fourth amendment requires an informant's tip to carry sufficient "indicia of reliability" before the tip can provide the reasonable suspicion required for a brief investigative stop.[80] A detailed anonymous tip alleging that a person is committing a serious crime that police corroborate with independent information is sufficiently reliable to provide the reasonable suspicion necessary for a brief investigative stop. Detail in the anonymous tip provides the tip with an index of reliability. The Supreme Court has suggested that a tip containing sufficient detail inherently can show that the informant has an adequate basis of knowledge upon which to base his allegation.[81] The function of detail in the fourth amendment analysis is to reduce the risk that the informant is reporting a mere rumor.[82] The wealth of detail in a tip suggests that the informant himself has seen the suspect and that the informant is reporting his first hand observations.[83] Even if the informant is not reporting his personal observations, the detail in the tip provides assurance that the tipster is relying on information more substantial than a casual rumor.[84]

A tip containing sufficient, detailed descriptive characteristics of the suspect, so that a trained police officer can reasonably distinguish the suspect from others in the area, should be enough detail to provide the tip with an index of reliability. Arguably, innocent descriptive detail

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anonymous tip can create reasonable suspicion when police corroborate tip by on-the-scene observations).

[80] *See* Adams v. Williams, 407 U.S. 143, 147 (1972); text accompanying notes 12-25 *supra*.

[81] *See* Spinelli v. United States, 393 U.S. 410, 416-17 (1969). In *Spinelli*, the Supreme Court explained how a warrant application based on an informant's tip that fails to pass the *Aguilar* tests can be cured so as to provide probable cause. *See id.* at 415-18. *Spinelli* suggests that a defect in the "basis of knowledge" prong of *Aguilar* may be cured if the tip is sufficiently detailed so that one reasonably could conclude that the tipster was not relying upon mere rumor. *See id.* at 416, 417. Justice Harlan, writing for the majority in *Spinelli*, treated self-verifying detail as a cure to an *Aguilar* "basis of knowledge" prong defect, not as an alternative method of passing the "basis of knowledge" prong. *See id.* at 416-18; *Informer's Tip*, *supra* note 10, at 962 n.26.

The *Spinelli* Court cited Draper v. United States, 358 U.S. 307 (1959), as an example of a tip containing self-verifying detail. *See* 393 U.S. at 416. In *Draper*, an informant of known credibility told a narcotics officer that Draper would be coming to Denver by train and would be carrying narcotics. 358 U.S. at 309. The informant gave the officer a detailed description of Draper and the clothes he would be wearing. *See id.* The informant described the bag Draper would be carrying and told the officer that Draper habitually walked fast. *See id.* The Court held that the tip combined with the officer's personal observations corroborating the tip supplied the necessary probable cause to arrest Draper. *See id.* at 312-13.

[82] *See* Spinelli v. United States, 393 U.S. at 415-18; *Informants*, *supra* note 9, at 47-48.

[83] *See* Spinelli v. United States, 393 U.S. at 425 (extensive detail in tip may imply that informant is basing his allegations on personal observation) (White, J., concurring); United States v. White, 648 F.2d at 44 (detailed description of criminal episode suggests informant witnessed transaction).

[84] *See* Spinelli v. United States, 393 U.S. at 416. The detail in a tip provides assurance that the tipster is not reporting a mere rumor because as a rumor circulates the details of the story are lost and the report becomes a generalized allegation.

may suggest that the informant has seen the suspect, but innocent detail provides no guarantee that the tipster did not base his allegation of criminal conduct on a mere unsubstantiated rumor.[85] The case for accepting innocent detail to show an adequate basis of knowledge in the reasonable suspicion setting is strong, however, because the Supreme Court has suggested that innocent detail is sufficient in probable cause analysis to show that the informant had an adequate basis of knowledge for his allegations.[86] Furthermore, both innocent and incriminating detail serve to reduce the risk that the informant is reporting a mere rumor.[87] Innocent detail, therefore, should provide an anonymous tip with an index of reliability.

Corroboration of an informant's tip from independent sources provides the tip with another index of reliability. The Supreme Court has advanced the view that corroboration of an informant's tale can establish the informant's credibility.[88] Corroboration of the informant's

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[85] *See Informer's Tip, supra* note 10, at 946-66 (innocent detail may suggest that informer has had personal contact with suspect but provides no assurance that informer did not base his allegation of criminal activity on mere rumor).

[86] *See* Spinelli v. United States, 393 U.S. at 416. The *Spinelli* Court cited Draper v. United States, 358 U.S. 307 (1959), as an example of a tip containing self-verifying detail. *See* 393 U.S. at 416; note 81 *supra*. Since the tip in *Draper* involved only innocent details, *Spinelli* suggests that a self-verifying tip need contain no incriminating details. The proposition that wholly innocent detail can supply the basis of a self-verifying tip has come under criticism. *See Informer's Tip, supra* note 10, at 964-66 (innocent detail may suggest that informer has had personal contact with suspect but provides no assurance that informer did not base his allegation of criminal activity on mere rumor).

[87] *See* text accompanying note 82 *supra*.

[88] *See* Spinelli v. United States, 393 U.S. at 415. *Spinelli* suggests a defect in the *Aguilar* "veracity" test may be cured by corroboration of the tip from independent sources. *See id.* at 415; *Informer's Tip, supra* note 10, at 963 n.30. *Aguilar* itself, however, may suggest that corroboration of the informant's information may be sufficient to permit the tip to pass the "veracity" prong. *See* 378 U.S. 108, 114-15 n.5. The *Aguilar* Court cited *Jones v. United States* as an example of a tip passing the "veracity" prong. *See id.*; 362 U.S. 257 (1960). The affidavit in *Jones* stated that the informant had given correct information on previous occasions and that other informants had corroborated the informant's report. *See* 362 U.S. at 267 n.2. Corroboration, therefore, may be an alternative method of passing the *Aguilar* "veracity" prong. *See Informer's Tip, supra* note 10, at 963, n.30.

Spinelli left the precise role of corroboration of the informant's story unclear. *See* 393 U.S. at 415. Justice Harlan suggested in *Spinelli* that corroboration could be a way to pass the "basis of knowledge" prong as well as the "credibility" spur. *See* 393 U.S. at 417; *Informants, supra* note 9, at 9. Justice Harlan stated that the corroboration of the informant's story in *Spinelli* was too insubstantial to support both the inference that the informer was credible and that the informant had a sufficient basis of knowledge from which to accuse Spinelli of wrongdoing. *See* 393 U.S. at 417. Justice Harlan's statement implies that corroboration can bootstrap an otherwise insufficient tip over both *Aguilar* tests. *See Informants, supra* note 9, at 9. Justice White, concurring in *Spinelli*, rejected the suggestion that corroboration can help satisfy the "basis of knowledge" prong of *Aguilar*. *See* 393 U.S. at 426-29 (White, J., concurring); *Informer's Tip, supra* note 10, at 963 n.30 (corroboration may imply that tip is not completely fabricated but does not suggest that informant obtained his information through personal observation or other dependable manner); Moylan, *supra* note 9, at 780 (partial corroboration does not pinpoint source of informer's tale). One commen-

tip shows present truthful performance.[89] As police verify parts of the tip an inference arises that the remaining parts are also true.[90] Furthermore, present good performance is analogous to past good performance.[91] Past good performance is a traditional method of showing that an informant is credible.[92]

Corroboration of innocent facts of the informant's tip from any independent source including preexisting police knowledge or on-the-scene police observation should be sufficient to supply an index of reliability to an anonymous telephone tip.[93] Arguably, corroboration of innocent facts provides no guarantee that the informant is not lying about the incriminating fact.[94] The function of corroboration in the analysis, however, is not to eliminate, but to reduce, the possibility that the informant is lying.[95] Furthermore, the Supreme Court has suggested that corroboration of innocent facts is sufficient to show that the informant is credible for probable cause analysis.[96] Corroboration of innocent facts, therefore, should be sufficient to show informant credibility for reasonable suspicion analysis.

The courts should not restrict the class of anonymous tips that supply reasonable suspicion to only those tips involving lethal weapons. Courts that have limited the use of anonymous tips to lethal weapons situations

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tator argues that the *Spinelli* remedies are not transferable. *Id.* at 779-81. Corroboration can cure a defect only in the "veracity" prong of *Aguilar* and self-verifying detail can cure a defect only in the "basis of knowledge" prong. *Id.*

[89] *See* Stanley v. State, 19 Md. App. 507, 529, 313 A.2d 847 (1974).

[90] *See id.* at 529, 313 A.2d at 860-61.

[91] *See id.* at 529, 313 A.2d at 860-61.

[92] *See* McCray v. Illinois, 386 U.S. 300, 304 (1967) (credibility of informant established when officer testified that informant had supplied 20 or 25 times before information resulting in arrests and convictions); *Informants*, *supra* note 9, at 4-5.

[93] *See* Ballou v. Massachusetts, 403 F.2d at 986 (corroboration of tip allowed from facts known to police); *cf.* United States v. Harris, 403 U.S. at 583 (plurality opinion) (magistrate may rely on policeman's knowledge of suspect's reputation in assessing the reliability of informant's tip).

[94] *See Informer's Tip*, *supra* note 10, at 967-68.

[95] *See* Comment, *Informer's Word as the Basis for Probable Cause in the Federal Courts*, 53 CAL. L. REV. 840, 842 [hereinafter cited as *Informer's Word*]; *Informants*, *supra* note 9, at 55.

[96] *See* Spinelli v. United States, 393 U.S. at 417. The *Spinelli* Court cited Draper v. United States, 358 U.S. 307 (1959), as an example of a tip that police had corroborated sufficiently through personal observation. *See* 393 U.S. at 417. *Spinelli* suggests, therefore, that corroboration of wholly innocent details may be enough to carry a tip of the *Aguilar* "credibility" spur. *See id.* One commentator has argued that only corroboration of incriminating facts should be relevant in determining whether corroboration of an informant's report propels the tip past the *Aguilar* credibility spur. *See Informer's Tip*, *supra* note 10, at 967 (skillful liar would always allege some true innocent facts). The view that only incriminating facts should be relevant in determining whether corroboration of the tip supplies the necessary credibility of the informant, however, is too restrictive. As another commentator has noted, the magistrate need not find that the risk that the informer is lying is eliminated totally, but merely sufficiently reduced by corroboration. *See Informants*, *supra* note 9, at 55; *Informer's Word*, *supra* note 95, at 842. The better view is that corroboration of incriminating facts should be more relevant than corroboration of innocent facts. *See Informants*, *supra* note 9, at 55 (corroboration of incriminating facts should count for much more than corroboration of innocent facts).

have given talismanic significance to the word "gun". The suggestion that the extent of a citizen's fourth amendment rights depends solely upon whether the informant uses the word "gun" in his report is unacceptable. The crime alleged, however, should be a factor in the determination of whether the *Terry* seizure was reasonable under the fourth amendment. The government's interest in preventing and detecting crime becomes stronger as the crime alleged becomes more serious. Conversely, a citizen's interest in individual privacy and freedom from government intrusion becomes stronger as the crime alleged declines in seriousness. The balancing of individual privacy interests against governmental interest in preventing and detecting crime is consistent with the reasoning of *Terry*.[97] In upholding the police action in *Terry*, the Court balanced the circumscribed invasion of privacy of the stop and frisk against the governmental interests of crime prevention and detection and in the safety of the police officer.[98]

The Supreme Court in *Adams v. Williams* left undecided the question whether an anonymous telephone tip could properly form the basis of a valid *Terry* stop.[99] Since *Williams*, the Court has denied certiorari on two cases addressing whether an anonymous telephone tip can provide the reasonable suspicion necessary for a *Terry* stop.[100] Both federal and state courts have adopted conflicting views on the issue.[101] The best approach is to permit a brief *Terry* stop if the informant alleges a serious crime, provides sufficient detail, and police corroborate the tip with independent information.[102] This approach is consistent with Supreme Court's treatment of informant information in other contexts.[103] The requirement of detail and corroboration protects the individual from the arbitrary exercise of police power while a brief investigate stop satisfies the strong governmental interest in detecting and preventing crime.[104] Furthermore, permitting brief and circumscribed police intrusions based upon sufficiently trustworthy telephone tips alleging serious criminal activity is consistent with the balancing test enunciated in the landmark *Terry* decision.[105]

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[97] *See* Terry v. Ohio, 392 U.S. at 22-27; text accompanying notes 3-5 *supra*.
[98] *See* 392 U.S. at 22-27; text accompanying notes 3-5.
[99] *See* text accompanying note 19 *supra*.
[100] *See* text accompanying note 26 *supra*.
[101] *See* text accompanying notes 27-79 *supra*.
[102] *See* text accompanying notes 80-98 *supra*.
[103] *See* text accompanying notes 7-25 & 80-96 *supra*.
[104] *See* text accompanying notes 97-98 *supra*.
[105] *See* text accompanying notes 3-5 & 97-98 *supra*.