

Winter 1991

## Fourth Amendment--Protection Against Unreasonable Search and Seizure: The Inadequacies of Using an Anonymous Tip to Provide Reasonable Suspicion for an Investigatory Stop

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### Recommended Citation

Orrin S. Shifrin, Fourth Amendment--Protection Against Unreasonable Search and Seizure: The Inadequacies of Using an Anonymous Tip to Provide Reasonable Suspicion for an Investigatory Stop, 81 J. Crim. L. & Criminology 760 (1990-1991)

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# **FOURTH AMENDMENT—PROTECTION AGAINST UNREASONABLE SEARCH AND SEIZURE: THE INADEQUACIES OF USING AN ANONYMOUS TIP TO PROVIDE REASONABLE SUSPICION FOR AN INVESTIGATORY STOP**

**Alabama v. White, 110 S. Ct. 2412 (1990)**

## **I. INTRODUCTION**

In *Alabama v. White*,<sup>1</sup> the United States Supreme Court held that under the totality of the circumstances approach, an anonymous tip, as corroborated by independent police work, exhibited sufficient "indicia of reliability" to provide the reasonable suspicion necessary to justify an investigatory stop.<sup>2</sup> This Note explores the *White* opinions and concludes that the Court's decision seriously threatens the constitutional right of the people of the United States to be free from unreasonable search and seizure. This Note argues that the Court's application of the totality of the circumstances approach, as opposed to the two-pronged test, inadequately protects privacy rights. Furthermore, prior case law does not warrant the extension of the investigatory stop doctrine to include nonviolent crimes, such as possession of marijuana and cocaine. Finally, this Note argues that even under the parameters set forth by the Court, its conclusion that the details supplied by the informant were sufficiently corroborated to provide an indicia of reliability was abominable.

## **II. FACTS AND PROCEDURAL HISTORY**

At approximately 3:00 p.m. on April 22, 1987, Corporal B.H. Davis of the Montgomery, Alabama Police Department received a telephone call from an anonymous caller.<sup>3</sup> The caller asserted that Vanessa White would leave 235-C Lynwood Terrace Apartments at

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<sup>1</sup> 110 S. Ct. 2412 (1990).

<sup>2</sup> *Id.* at 2417.

<sup>3</sup> *Id.* at 2414.

a particular time in a brown Plymouth station wagon with a broken right taillight lens, that she would go to Dobey's Motel, and that she would possess approximately one ounce of cocaine inside a brown attache case.<sup>4</sup> The informant did not reveal his or her identity to Corporal Davis and was not known to have ever supplied information to the police department in the past.<sup>5</sup> Furthermore, the informant gave no physical description of Vanessa White.<sup>6</sup>

After receiving the telephone call, Corporal Davis and his partner, Corporal P.A. Reynolds, proceeded to the Lynwood Terrace Apartments to set up surveillance on the 235 building.<sup>7</sup> In the building's parking lot, the officers located a brown Plymouth station wagon with a broken right taillight lens.<sup>8</sup> The officers observed a woman leave the 235 building, carrying nothing in her hands, and enter the brown station wagon.<sup>9</sup>

The police officers followed the vehicle to Norman Bridge Road where White took the most direct route to Dobey's Motel.<sup>10</sup> When the vehicle reached the Mobile Highway, on which Dobey's Motel was located, Corporal Reynolds contacted patrol unit officers and instructed them to stop the vehicle.<sup>11</sup> The patrolmen stopped the station wagon at approximately 4:18 p.m. in front of the Jet Theater, approximately 300 yards short of Dobey's Motel.<sup>12</sup>

As Corporals Davis and Reynolds approached the vehicle, they observed that the car was full of clothes and that the driver appeared to be in the process of moving.<sup>13</sup> Corporal Davis asked the driver to step to the rear of the automobile, identified himself as a police officer, and informed the driver that she had been stopped because she was suspected of carrying cocaine in the vehicle.<sup>14</sup>

White assented to a vehicle search at Corporal Davis' request.<sup>15</sup> During the search, Corporal Reynolds found a locked, brown at-

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<sup>4</sup> *Id.*

<sup>5</sup> Brief for Respondent at 2, *Alabama v. White*, 110 S. Ct. 2412 (1990) (No. 89-789) [hereinafter Brief for Respondent].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *White*, 110 S. Ct. at 2414.

<sup>9</sup> *Id.*

<sup>10</sup> Brief for Respondent, *supra* note 5, at 2-3.

<sup>11</sup> *White*, 110 S. Ct. at 2414.

<sup>12</sup> Brief for Respondent, *supra* note 5, at 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* The officers did not ask the driver to identify herself when they initially stopped the car. The driver was not identified as Vanessa White during the investigatory stop. Brief for Respondent, *supra* note 5, at 34.

<sup>15</sup> *White*, 110 S. Ct. at 2415.

tache case on the back seat.<sup>16</sup> Upon demand, White provided the officers the combination to the lock.<sup>17</sup> Inside the attache case, the officers found marijuana, empty plastic bags, and small manilla envelopes; they then arrested White.<sup>18</sup> During processing at the station, the police officers found three milligrams of cocaine in White's purse.<sup>19</sup>

White was charged in Montgomery County court with possession of marijuana and possession of cocaine.<sup>20</sup> Upon the trial court's denial of White's motion to suppress the marijuana and cocaine, she pleaded guilty to the charges, but reserved the right to appeal the denial of her suppression motion.<sup>21</sup>

On appeal, the Court of Criminal Appeals of Alabama reversed the conviction, holding that White's motion to suppress should have been granted.<sup>22</sup> The Supreme Court of Alabama denied the State's petition for certiorari.<sup>23</sup> The United States Supreme Court granted certiorari to consider whether an anonymous tip, as corroborated by independent police work, may furnish the reasonable suspicion necessary to justify an investigatory stop.<sup>24</sup>

### III. BACKGROUND

The fourth amendment of the Constitution<sup>25</sup> protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."<sup>26</sup> After its

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<sup>16</sup> Brief for Respondent, *supra* note 5, at 4. At trial, Patrolman V.D. McMillon, the officer who originally stopped White's vehicle, testified that when he stopped the station wagon, he saw the attache case on the front seat next to the driver. *Id.* at 3.

<sup>17</sup> *White*, 110 S. Ct. at 2415.

<sup>18</sup> Brief for Respondent, *supra* note 5, at 3-4.

<sup>19</sup> *White*, 110 S. Ct. at 2415. Although Corporal Davis testified that he saw White's purse on the front seat of the vehicle, Patrolman McMillon testified that he did not see a purse when he stopped the station wagon. Brief for Respondent, *supra* note 5, at 3.

<sup>20</sup> *White*, 110 S. Ct. at 2415.

<sup>21</sup> *Id.*

<sup>22</sup> *White v. Alabama*, 550 So. 2d 1074 (Ala. Crim. App. 1989). The Court of Criminal Appeals of Alabama held that the officers did not have the reasonable suspicion necessary under *Terry v. Ohio*, 392 U.S. 1 (1968), to justify an investigatory stop of White's vehicle. The court concluded that the marijuana and cocaine were, therefore, fruits of White's unconstitutional detention and that White's motion to suppress and subsequent motion to dismiss should have been granted. *White*, 550 So. 2d at 1080.

<sup>23</sup> *Id.* at 1081 (two justices dissented).

<sup>24</sup> *White*, 110 S. Ct. at 2415.

<sup>25</sup> "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." U.S. CONST. amend. IV.

<sup>26</sup> This procedural safeguard has its historical origins in the American Revolutionary

adoption in the Bill of Rights, the fourth amendment remained largely unexplored by the United States Supreme Court for almost a century.<sup>27</sup>

In 1886, the Court, in *Boyd v. United States*,<sup>28</sup> began to develop the exclusionary rule, which has since become the primary focus of fourth amendment decisions.<sup>29</sup> In *Boyd*, the Court linked together the fourth and fifth amendments<sup>30</sup> to create a fourth amendment exclusionary rule, reasoning that "the seizure of a man's private books and papers to be used in evidence against him is [not] substantially different from compelling him to be a witness against himself."<sup>31</sup>

In the early twentieth century, the continued vitality of *Boyd* and the fourth amendment exclusionary rule were cast into doubt by the Court's decision in *Adams v. New York*.<sup>32</sup> In *Adams*, the Court declared that "the weight of authority as well as reason" supported the common law principle that courts should not inquire as to the means by which evidence, which was otherwise admissible, was obtained.<sup>33</sup> However, the exclusionary rule was preserved to some extent by the Court's decision to distinguish *Boyd*, as opposed to

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experience. "[I]t is the one procedural safeguard in the Constitution that grew directly out of the events which immediately preceded the revolutionary struggle with England." 1 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 1.1(a), at 3 (2d ed. 1987) (quoting J. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT 19 (1966)) [hereinafter W. LAFAVE].

<sup>27</sup> W. LAFAVE, *supra* note 26, § 1.1(a), at 5.

<sup>28</sup> 116 U.S. 616 (1886). *Boyd* has been characterized as "the leading case on the subject of search and seizure." See, e.g., *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 696 (1965) (quoting *Carroll v. United States*, 267 U.S. 132, 147 (1925)). In *Boyd*, the United States brought criminal charges against an importer of goods alleging the use of fraudulent invoices to avoid payment of duties. The *Boyd* Court held that the forced disclosure of a certain invoice violated the fourth amendment and, as such, the items were inadmissible as evidence in the proceedings against *Boyd*. 116 U.S. at 638.

<sup>29</sup> The exclusionary rule prohibits the fruits of an unreasonable search or seizure from being admitted into evidence in a criminal case. W. LAFAVE, *supra* note 26, § 1.1(a), at 5.

<sup>30</sup> The fifth amendment provides in part, "nor shall [any person] be compelled in a criminal case to be a witness against himself . . ." U.S. CONST. amend. V.

<sup>31</sup> *Boyd*, 116 U.S. at 633. Many commentators have criticized this creative transfer of the fifth amendment's expressly stated exclusionary rule to the fourth amendment. W. LAFAVE, *supra* note 26, § 1.1(b), at 7.

<sup>32</sup> 192 U.S. 585 (1904). The Court concluded that papers which were improperly seized by state officers while they were executing a warrant for policy slips and gambling devices were admissible at trial. *Id.* at 597.

<sup>33</sup> *Id.* at 594. The Court seemingly could have based its *Adams* holding on the fact that the Constitution did not prohibit unreasonable searches under state authority, as it did a few years later in *National Safe Deposit v. Stead*, 232 U.S. 58 (1914), as opposed to creating the apparent conflict with *Boyd*. W. LAFAVE, *supra* note 26, § 1.1(c), at 7.

overrule it.<sup>34</sup>

The exclusionary rule was revived ten years after *Adams* in *Weeks v. United States*.<sup>35</sup> The Court held that to admit evidence which was illegally seized by federal officers would, in effect, put a stamp of approval on unconstitutional conduct.<sup>36</sup> The Court stated that "[t]o sanction [the unlawful invasion of one's home by officers of the law] would be to affirm by judicial decision a manifest neglect if not an open defiance of the prohibitions of the Constitution, intended for the protection of the people against such unauthorized action."<sup>37</sup> The Court concluded, therefore, that evidence illegally seized by federal officers could not be used in a federal criminal proceeding.<sup>38</sup>

Since the Bill of Rights was intended only as a limitation on the federal government, it was settled early in American history that the fourth amendment "[had] no application to state process."<sup>39</sup> However, with the adoption of the fourteenth amendment<sup>40</sup> in 1868, a difficult issue arose regarding the relation of the limitation of the fourteenth amendment upon the states to the limitations upon federal action in the first eight amendments.<sup>41</sup>

Over the years, many of the first eight amendment guarantees

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<sup>34</sup> *Adams*, 192 U.S. at 597. The *Adams* Court distinguished *Boyd* by reasoning that the papers in *Adams* were obtained through an incidental seizure made in the execution of a legal warrant, and not through a forced disclosure of personal papers. *Id.* at 598.

<sup>35</sup> 232 U.S. 383 (1914). In *Weeks*, police officers went to the house of the defendant after he had been arrested without a warrant, searched the defendant's room, and took possession of various papers found there, which were later turned over to a United States Marshall. *Id.* at 386. Later in the same day, the Marshall went back to the room and obtained additional papers. Neither the police officers nor the Marshall had a search warrant. *Id.*

<sup>36</sup> *Id.* at 394.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 398. The *Weeks* Court, however, did not require the same exclusion of the fruits of the first search conducted by state officers, "as the Fourth Amendment is not directed to individual misconduct of such officials." *Id.* In two subsequent cases, the Court extended *Weeks* to preclude from admission in a federal criminal proceeding any evidence which was illegally obtained either with federal participation, *Bryars v. United States*, 273 U.S. 28 (1927) (evidence of a crime discovered through state and federal officer participation in an unlawful search was inadmissible against the victim), or for a federal purpose, *Gambino v. United States*, 275 U.S. 310 (1927) (liquor seized by state officers making a warrantless search was inadmissible evidence in a federal proceeding because the liquor was turned over to federal authorities immediately after its discovery).

<sup>39</sup> *W. LAFAVE*, *supra* note 26, § 1.1(d) at 9 (citing *Barron v. Baltimore*, 32 U.S. (7 Pet.) 243 (1833), and quoting *Smith v. Maryland*, 59 U.S. (18 How.) 71 (1855)).

<sup>40</sup> "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . ." U.S. CONST. amend. XIV, § 1.

<sup>41</sup> *W. LAFAVE*, *supra* note 26, § 1.1(d), at 9. In other words, the issue became whether the fourteenth amendment's extension of the due process requirement to the states also extended the protection of the first eight amendments to state as well as federal actions.

were incorporated into the fourteenth amendment and applied to the states.<sup>42</sup> Yet, the Supreme Court did not address the possible extension of the fourth amendment protection against unreasonable search and seizure to the states through the fourteenth amendment until 1949, in *Wolf v. Colorado*.<sup>43</sup> The *Wolf* Court did not hesitate to declare that "the security of one's privacy against arbitrary intrusion . . . is at the core of the Fourth Amendment . . . and as such enforceable against the States through the Due Process Clause."<sup>44</sup> Nevertheless, the Court refused to enforce the exclusionary rule against the states.<sup>45</sup> For the next several years, evidence which was obtained in violation of the Constitution was used at state criminal proceedings as long as it was not obtained by "conduct that [shocked] the conscience."<sup>46</sup>

Approximately one decade later, in *Mapp v. Ohio*, the Court overruled *Wolf* and extended the exclusionary rule to state actions to enforce fourth amendment violations.<sup>47</sup> The *Mapp* Court proclaimed that "[s]ince the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government."<sup>48</sup> The *Mapp* Court concluded that the exclusionary doctrine

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<sup>42</sup> *Id.* at 9-10.

<sup>43</sup> 338 U.S. 25 (1949). Writing for the majority, Justice Frankfurter framed the question as follows:

Does a conviction by a State court for a State offense deny the 'due process of law' required by the Fourteenth Amendment, solely because evidence that was admitted at the trial was obtained under circumstances which would have rendered it inadmissible in a prosecution for violation of a federal law in a court of the United States because there [was] deemed to be an infraction of the Fourth Amendment as applied in *Weeks v. United States* . . . ?

*Id.* at 25-26.

<sup>44</sup> *Id.* at 27-28 (evidence which was admitted at trial was obtained in violation of the fourth amendment and would have been rendered inadmissible in a prosecution for a violation of a federal law in a United States court).

<sup>45</sup> *Id.* at 33. The Court reasoned that since the exclusionary rule was "not derived from the explicit requirements of the Fourth Amendment," had been expressly rejected in 30 states, and was not followed in "most of the English speaking world," it was proper to leave the victims of illegal state searches with private remedies. *W. LAFAVE, supra* note 26, § 1.1(d), at 10-11 (quoting *Wolf*, 338 U.S. at 28-31).

<sup>46</sup> See *Rochin v. California*, 342 U.S. 165 (1952). In *Rochin*, police officers had engaged in a series of unlawful acts, which concluded with the defendant forcibly being given an emetic to retrieve drugs he had previously swallowed. The *Rochin* Court held that the Fourteenth Amendment required the exclusion of this evidence because it was obtained by "conduct that shocks the conscience." *Id.* at 172.

<sup>47</sup> 367 U.S. 643 (1961). The defendant had been convicted of knowingly possessing and controlling certain lewd and lascivious books, pictures, and photographs which had been seized during an unlawful search of defendant's home by local authorities. *Id.* at 643.

<sup>48</sup> *Id.* at 655. The *Mapp* Court went on to further reason that if the exclusionary rule

as expressed in *Boyd* now extended to the states.<sup>49</sup>

With the extension of this doctrine to the states, it became clear that the courts would have to determine the constitutionality of a common police practice frequently referred to as a "stop and frisk."<sup>50</sup> The Court first addressed the stop and frisk issue in *Terry v. Ohio*.<sup>51</sup> In *Terry*, the Court held that a police officer who reasonably detained someone because "criminal activity may [have been] afoot" and who had reason to believe that "the person with whom he was dealing may [have been] armed and . . . dangerous" could conduct a limited search for weapons to protect himself, even though the officer may not have had probable cause to make an arrest.<sup>52</sup> The *Terry* Court determined that the police officer's decision to stop and search the suspect was reasonable based upon the police officer's personal observations.<sup>53</sup>

The Court expanded on the limited holding of *Terry* in *Adams v. Williams*,<sup>54</sup> delineating between the stop and the frisk portions of the

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as established in *Weeks* did not apply to the states, "the assurance against unreasonable, federal searches and seizures would be 'a form of words,' valueless and undeserving of mention in a perpetual charter of inestimable human liberties." *Id.*

<sup>49</sup> *Id.* at 666 (Black, J., concurring).

<sup>50</sup> 3 W. LAFAYE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 9.1, at 333 (2d ed. 1987) [hereinafter TREATISE]. A stop and frisk involves a police officer stopping and searching a suspect, without his consent, in the absence of grounds for arrest but with reasonable suspicion that criminal activity may be taking place. *Id.* This practice was by no means a recent development of the 1960s. *Id.* at 334 (citing NATIONAL COMMUNITY RELATIONS, FIELD SURVEYS V: A REPORT OF A RESEARCH STUDY SUBMITTED TO THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE 327-36 (1967)). The stop and frisk had long been routine practice by almost every major police force in the country. However, police actions in this regard generally had low visibility and were largely disregarded before that time. TREATISE, this note, § 9.1(a), at 333.

<sup>51</sup> 392 U.S. 1 (1968). In *Terry*, a police officer seized a revolver from the defendant after the officer observed the unusual conduct of the defendant and two other men. The officer, having concluded that these men were contemplating a daylight robbery, stopped and frisked them. *Id.* at 4-7. The *Terry* Court held that the police officer could stop and briefly detain the defendant for investigative purposes, because the police officer had reasonable suspicion supported by articulable facts that criminal activity "may [have been] afoot," even though he lacked probable cause under the fourth amendment. *Id.* at 30-31. *Terry* was decided with two companion cases: *Sibron v. New York* and *Peters v. New York*, 392 U.S. 40 (1968). *Sibron* and *Peters* presented related questions under the fourth and fourteenth amendments, but arose in the context of the New York stop and frisk statute. *Id.*

<sup>52</sup> *Terry*, 392 U.S. at 30-31.

<sup>53</sup> *Id.* The *Terry* Court subjected a frisk subsequent to a stop to constitutional scrutiny and determined that forcible street encounters could be undertaken if "reasonable" within the meaning of the fourth amendment. *Id.* A balancing of the governmental and citizen interests involved in the case determined the reasonableness of the search. *Id.* at 22. The *Terry* Court did not analyze the stop issue. *Id.* at 19.

<sup>54</sup> 407 U.S. 143 (1972). In *Williams*, a person known to a police officer informed him that an individual in a nearby automobile possessed narcotics and had a gun at his waist.



encounter.<sup>55</sup> This decision further broadened the *Terry* standards by allowing reasonable suspicion to be established not only by personal police observation, but also by information received from a known informant.<sup>56</sup> The *Williams* Court asserted that when an informant is the source of the police officer's "reasonable cause for a stop,"<sup>57</sup> the informant's tip must have an "indicia of reliability."<sup>58</sup>

The consequence of the Court's decision to allow a known informant's tip to provide the grounds necessary for an investigatory stop was the increasing use, by police officers, of anonymous informants for the same purpose. The Court has determined that information from an anonymous informant may establish probable cause for an arrest.<sup>59</sup> However, the Court has not considered whether an anonymous tip may furnish the reasonable suspicion<sup>60</sup> necessary for an investigatory stop. In the context of probable cause, the Court has recently overruled the use of the two-pronged test<sup>61</sup> in favor of a totality of the circumstances approach<sup>62</sup> to determine the reliability

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The officer approached the vehicle, tapped on the window, and after the person rolled down the window, removed from the person's waistband a loaded revolver which was not visible from outside the car. *Id.* at 144-45. The *Williams* Court held that the informant's tip carried enough indicia of reliability to characterize both the police officer's investigatory stop and his subsequent actions as reasonable because they constituted a limited intrusion designed to insure his safety. *Id.* at 149.

<sup>55</sup> *Id.* *Williams* represented the first time that the Court recognized that any on the street investigatory stop by the police was a forcible stop subject to fourth amendment limitations. Note, *The Supreme Court, 1971 Term*, 86 HARV. L. REV. 50, 173 (1972) [hereinafter Note, 1971 Term].

<sup>56</sup> *Williams*, 407 U.S. at 147.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 146-47. The *Williams* Court stated that the tip had an indicia of reliability because the informant was known to the police officer, had provided him with information in the past, the information was verifiable at the scene, and the informant herself would have been subject to arrest for making a false complaint had the information proven incorrect. *Id.*

<sup>59</sup> Probable cause is the standard required to make an arrest. *Terry*, 392 U.S. at 22. It is also the standard by which a magistrate determines whether to issue a warrant. *Illinois v. Gates*, 462 U.S. 213 (1983) (affidavit of police officer seeking a search warrant had an anonymous letter from an informant attached which indicated a certain fact pattern would occur, culminating in a drug-buy by the defendants). See also *infra* text accompanying notes 79-80.

<sup>60</sup> Reasonable suspicion is the standard required to make an investigatory stop. *Terry*, 392 U.S. at 22. See also *infra* text accompanying notes 79-80.

<sup>61</sup> The Court developed the two-pronged test in *Aguilar v. Texas*, 378 U.S. 108 (1964) and *Spinelli v. United States*, 393 U.S. 410 (1969), to determine whether an informant's tip established probable cause for an arrest. The two-pronged test requires a determination of the following: first, whether the informant is generally trustworthy (*i.e.*, his or her veracity or reliability); and second, whether he or she obtained his or her information in a reliable manner (*i.e.*, the basis of his or her knowledge). *Williams*, 407 U.S. at 157. See *infra* notes 68-69 for further discussion of *Aguilar* and *Spinelli*.

<sup>62</sup> The Court developed the totality of the circumstances approach in *Gates*, 462 U.S. at 238. This approach involves using veracity, reliability and basis of knowledge not as

of such anonymous tips.<sup>63</sup>

#### IV. THE SUPREME COURT OPINIONS

##### A. THE MAJORITY OPINION

Writing for the majority,<sup>64</sup> Justice White held that under the totality of the circumstances approach, the anonymous tip, as corroborated by independent police work, exhibited sufficient "indicia of reliability" to provide the reasonable suspicion necessary to justify the investigatory stop.<sup>65</sup>

The majority followed *Illinois v. Gates*,<sup>66</sup> which abandoned the "two-pronged test"<sup>67</sup> of *Aguilar v. Texas*<sup>68</sup> and *Spinelli v. U.S.*<sup>69</sup> in favor of a "totality of the circumstances" approach<sup>70</sup> for determining whether a known informant's tip established probable cause.<sup>71</sup> The Court recognized, however, that the *Gates* Court had made clear that certain aspects of the two-pronged test, specifically an informant's "veracity," "reliability," and "basis of knowledge," remained highly relevant in determining the value of the informant's report.<sup>72</sup>

While recognizing that the *Gates* Court asserted that an anonymous tip, standing alone, seldom sufficiently demonstrates an informant's basis of knowledge or veracity,<sup>73</sup> the majority determined

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rigid requirements, but as closely intertwined elements which aid in the common sense determination of an informant's reliability. *Id.* at 230.

<sup>63</sup> *Id.* at 238.

<sup>64</sup> Chief Justice Rehnquist and Justices Blackmun, O'Connor, Scalia, and Kennedy joined Justice White.

<sup>65</sup> *Alabama v. White*, 110 S. Ct. 2412, 2417 (1990).

<sup>66</sup> 462 U.S. 213 (1983). In *Gates*, the Supreme Court held that the two-pronged test was overly rigid, and that the better, more flexible "totality of the circumstances" approach was the proper test. *Id.* at 238. See *supra* note 59 for a further discussion of *Gates*.

<sup>67</sup> See *supra* note 61 for a discussion of the two-pronged test.

<sup>68</sup> 378 U.S. 108 (1964). In *Aguilar*, a search warrant obtained from a magistrate based upon an affidavit which stated only legal conclusions drawn from whom the affidavit referred to as "a credible person," was held insufficient, because the magistrate was not informed of any of the underlying circumstances upon which the legal conclusions or the informant's credibility were based. *Id.*

<sup>69</sup> 393 U.S. 410 (1969). In *Spinelli*, the Court explicated the principles set forth in *Aguilar*. The *Spinelli* Court held that a search warrant obtained from a magistrate, based upon an FBI affidavit which stated mainly that a "reliable informant" told the FBI that the defendant, who was "known" to the FBI as a gambler, presently was bookmaking, was insufficient because the affidavit did not provide information to the magistrate upon which he could independently judge both the informant's reliability and the reliability of the information itself. *Id.*

<sup>70</sup> See *supra* note 62 for a discussion of the totality of the circumstances approach.

<sup>71</sup> *Alabama v. White*, 110 S. Ct. 2412, 2415 (1990).

<sup>72</sup> *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 230 (1983)).

<sup>73</sup> *Gates*, 462 U.S. at 237. The *Gates* Court argued that ordinary citizens generally do not provide extensive recitations as to the basis of their everyday observations and that

that in the instant case, as in *Gates*, more than just the anonymous tip itself was available.<sup>74</sup> The Court argued that the anonymous tip, in both cases, had been corroborated by police investigation.<sup>75</sup>

While the Court acknowledged that the tip was not as detailed, and the corroboration not as complete as in *Gates*, it contended that "the required degree of suspicion was likewise not as high."<sup>76</sup> The probable cause standard applied by the *Gates* Court required a higher degree of suspicion than the reasonable suspicion standard required in the instant case.<sup>77</sup>

Explaining the reasonable suspicion standard, Justice White referred to *U.S. v. Sokolow*,<sup>78</sup> in which the Court had previously discussed the relationship between reasonable suspicion and probable cause:

The officer [making a *Terry* stop] . . . must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch.'" The Fourth Amendment requires 'some minimal level of objective justification' for making the stop . . . . We have held that probable cause means 'a probability that contraband . . . will be found,' and the level of suspicion required for a *Terry* stop is obviously less demanding than for probable cause.<sup>79</sup>

The majority further explained that reasonable suspicion is a less-demanding standard than probable cause, not only because the former can be established with information that is different in quantity or content, but also because reasonable suspicion can arise from less reliable information than that which is required to show probable cause.<sup>80</sup>

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the veracity of persons supplying anonymous tips was "by hypothesis largely unknown, and unknowable." *Id.*

<sup>74</sup> *White*, 110 S. Ct. at 2416.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> 109 S. Ct. 1581 (1989). In *Sokolow*, a drug courier profile case, the Supreme Court held that Drug Enforcement Administration (DEA) agents had the requisite reasonable suspicion to detain the defendant because (1) he paid \$2,100 for two airplane tickets from a roll of \$20 bills; (2) he travelled using a name that did not match the name under which his telephone number was listed; (3) his original destination was Miami, a source city for illicit drugs; (4) he stayed in Miami for only 48 hours, even though a round trip flight from Honolulu, his departure city, to Miami had taken 20 hours; (5) he appeared nervous during his trip; and (6) he checked none of his luggage. *Id.* at 1583.

<sup>79</sup> *White*, 110 S. Ct. at 2416 (quoting *Sokolow*, 109 S. Ct. at 1585). *Sokolow* in turn quoted *Terry*, 392 U.S. at 27, *INS v. Delgado*, 466 U.S. 210, 238 (1984), and *Gates*, 462 U.S. at 238. In *Delgado*, the Court held that Immigration and Naturalization Service (INS) agents did not "seize" employees when the agents conducted factory surveys pursuant to a warrant to determine whether any illegal aliens were present as employees, because the employees were free to leave the site and not to answer any questions. 466 U.S. at 219.

<sup>80</sup> *White*, 110 S. Ct. at 2416. Justice White argued that this proposition was set forth

Further, the Court proffered that reasonable suspicion, like probable cause, depends on both the quantity of information possessed by the police and its degree of reliability.<sup>81</sup> It concluded that, applying the totality of the circumstances approach under the reasonable suspicion standard, as with the probable cause standard, a tip with a relatively low degree of reliability can establish the requisite quantum of suspicion or cause if the tip contains sufficient information to counteract the deficiency of reliability.<sup>82</sup>

Finally, the Court gave credit to the concept proposed in *Gates* that an informant who is able to predict future actions of a third party probably is correct about other alleged facts concerning that party, including a claim that the party is engaged in criminal activity.<sup>83</sup> Applying the totality of the circumstances approach to the case before it, the majority concluded that the anonymous tip, as corroborated by the police investigation, exhibited sufficient indicia of reliability to provide the reasonable suspicion necessary to justify the investigatory stop of White's vehicle.<sup>84</sup>

#### B. THE DISSENTING OPINION

Writing the dissent,<sup>85</sup> Justice Stevens protested that under the majority's ruling, "[a]nybody with enough knowledge about a given person to make her the target of a prank, or to harbor a grudge against her, will certainly be able to formulate a tip about her like the one predicting Vanessa White's excursion."<sup>86</sup> Justice Stevens contended that millions of people depart from their apartments at approximately the same time each day carrying an attache case and heading for a destination known to their neighbors.<sup>87</sup> He argued further that the neighbors usually do not know what the attache case contains.<sup>88</sup> He concluded that an anonymous neighbor's prediction about someone's departure time and probable destination is any-

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in *Williams*, where the Court assumed that an unverified tip from a known informant, which had been held sufficiently reliable to justify an investigatory stop, might not have been reliable enough to establish probable cause. *Id.* (citing *Williams*, 407 U.S. at 147).

<sup>81</sup> *White*, 110 S. Ct. at 2416.

<sup>82</sup> *Id.* Justice White based this conclusion on the *Gates* Court's application of the totality of the circumstances approach in a probable cause situation in which the *Gates* Court had given the anonymous tip the weight which it deserved in light of its indicia of reliability as established through independent police investigation. *Gates*, 462 U.S. at 245-46.

<sup>83</sup> *Id.*

<sup>84</sup> *White*, 110 S. Ct. at 2417.

<sup>85</sup> Justice Stevens was joined by Justices Brennan and Marshall.

<sup>86</sup> *White*, 110 S. Ct. at 2418 (Stevens, J., dissenting).

<sup>87</sup> *Id.* at 2417 (Stevens, J., dissenting).

<sup>88</sup> *Id.* (Stevens, J., dissenting).

thing but a reliable basis for assuming that the person is in possession of an illegal substance.<sup>89</sup>

In addition, Justice Stevens asserted that under the majority's holding, "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."<sup>90</sup> Although he acknowledged that the majority of police officers would not adopt such a practice, he also recognized that the fourth amendment was intended to protect citizens from "overzealous and unscrupulous" officers as well as from those who are "conscientious and truthful."<sup>91</sup> Justice Stevens determined that the majority's decision made a mockery of the fourth amendment protection against unreasonable search and seizure.<sup>92</sup>

## V. ANALYSIS

The majority decision seriously threatens the constitutional right of the people of the United States to be free from unreasonable search and seizure. When an informant's tip provides the reasonable suspicion needed to make an investigatory stop, "the information [must carry] enough indicia of reliability to justify the [police] officer's forcible stop."<sup>93</sup> The Court's use of the totality of the circumstances approach for determining the reliability of an anonymous informant's tip in this reasonable suspicion context inadequately protects individual privacy rights. The two-pronged test better guarantees the dependability of such a tip and, therefore, is the proper methodology to apply. Moreover, the Court's extension of the investigatory stop doctrine to include not only dangerous crimes but also possessory crimes expands the scope of this doctrine far beyond its original purpose. Finally, even under the parameters set forth by the majority, the Court's conclusion in the instant case that the details supplied by the informant were sufficiently corroborated to provide an indicia of reliability is abominable.

### A. TOTALITY OF THE CIRCUMSTANCES APPROACH VERSUS TWO-PRONGED TEST

The Court blindly advocated the totality of the circumstances

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<sup>89</sup> *Id.* at 2417-18 (Stevens, J., dissenting). Justice Stevens did not cite any case law in the dissent.

<sup>90</sup> *Id.* at 2418 (Stevens, J., dissenting).

<sup>91</sup> *Id.* (Stevens, J., dissenting).

<sup>92</sup> *Id.* (Stevens, J., dissenting).

<sup>93</sup> *Adams v. Williams*, 407 U.S. 143, 147 (1972).

approach,<sup>94</sup> as opposed to the two-pronged test,<sup>95</sup> as the proper methodology for determining the reliability of an anonymous informant's tip under the reasonable suspicion standard without considering the effects of this decision on fourth amendment rights.<sup>96</sup>

By extending the totality of the circumstances approach from the probable cause to the reasonable suspicion context, the Court opened the door to police fabrication. Justice White's analysis that the factors which are relevant for a determination of probable cause based upon an informant's tip<sup>97</sup> "are also relevant in the reasonable suspicion context although allowance must be made in applying them for the lesser showing required to meet that standard" was oversimplified.<sup>98</sup> He failed to comprehend that the opportunity for police fabrication is much greater when applied to a reasonable suspicion standard.

To issue a warrant under the probable cause standard, a neutral magistrate must make an independent determination based upon the information which he or she received from a police officer who, in turn, may have allegedly received the information from an informant. This action is taken before the suspect is stopped or searched. On the other hand, to make a warrantless stop under the reasonable suspicion standard, a police officer, who allegedly received a tip from an informant, independently makes the determination of whether the information provides the reasonable suspicion necessary to make an investigatory stop.

Although the police officer's determination should be made prior to the warrantless stop, application of the totality of the circumstances approach to reasonable suspicion does not adequately foreclose the possibility of police fabrication of an alleged informant after an unjustifiable police stop has yielded incriminating evidence.<sup>99</sup> Any unscrupulous police officer who is prepared to com-

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<sup>94</sup> *Gates*, 462 U.S. 213, 238 (1982). See *supra* note 62 for a discussion of the totality of the circumstances approach.

<sup>95</sup> See *supra* note 61 for a discussion of the two-pronged test.

<sup>96</sup> The fourth amendment proscription against unreasonable search and seizure requires, under most circumstances, that search or arrest warrants be issued by a neutral magistrate. *Aguilar v. Texas*, 378 U.S. 108, 111 (1964). In *Gates*, a magistrate's use of the two-pronged test for a determination of probable cause based upon an anonymous informant's tip was overruled in favor of a totality of the circumstances approach. 462 U.S. at 238.

<sup>97</sup> The factors to which Justice White referred included those of the two-pronged test: an informant's veracity or reliability and basis of knowledge. *Alabama v. White*, 110 S. Ct. 2412, 2415 (1990).

<sup>98</sup> *Id.* He cited no authority and gave no reasoning for this determination.

<sup>99</sup> This point is underscored by Judge Friendly's strong suggestion in his *Williams* dissent that the police officer had fabricated the story of the unidentified informant,

mit perjury can testify that a warrantless stop was based on an anonymous informant's tip predicting whatever conduct the police officer just observed. A court could then determine that the totality of the circumstances approach was fulfilled, because the informant's tip was corroborated by independent police investigation, even though no informant ever existed. Indeed, the problem of *post hoc* police fabrications, especially in narcotics cases, is neither minute<sup>100</sup> nor solved by the totality of the circumstances approach.

As compared to the totality of the circumstances approach, use of the two-pronged test significantly reduces the likelihood of police fabrication. The two-pronged test guarantees not only that the informant has a reliable basis for his or her knowledge, but also that he or she is trustworthy.<sup>101</sup> Requiring proof of a basis of knowledge helps eliminate the possibility of police fabrication by forcing a disclosure of pertinent information concerning the tip. Without requiring an informant's basis of knowledge, the assertion of criminal activity "stands no better than the oath of the officer to the same effect."<sup>102</sup> Moreover, requiring proof of an informant's basis of knowledge is necessary; otherwise, a reliable informant could be getting information from an unreliable source or basing information upon a hunch.

Furthermore, in order to safeguard privacy rights, the information received by a police officer from an informant must be reliable. To determine the reliability of the information, the trustworthiness of the informant must be guaranteed. This assurance protects the right of innocent individuals to be free from unreasonable searches and seizures by guarding against undependable tips. Since the totality of the circumstances approach does not guarantee the presence of both of these elements, and the two-pronged approach

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because the story of the informant did not arise until the second suppression hearing. Note, 1971 *Term*, *supra* note 55, at 179-80 (citing *Williams v. Adams*, 436 F.2d 30, 38 (2d Cir. 1971) (Friendly, J., dissenting)).

<sup>100</sup> Note, 1971 *Term*, *supra* note 55, at 179-80 (citing, e.g., Kuh, *In-field Interrogation: Stop, Question, Detention, and Frisk*, 3 CRIM. L. BULL. 597, 604 (1967); Younger, *The Perjury Routine*, 3 CRIM. L. BULL. 551 (1967); Note, *Police Perjury in Narcotics "Drospy" Cases: A New Credibility Gap*, 60 GEO. L.J. 507 (1971)).

<sup>101</sup> *Aguilar v. Texas*, 378 U.S. 108, 114-15 (1964); *Spinelli v. U.S.*, 393 U.S. 410 (1969). The two-pronged test requires that an officer have specific facts on which to base conclusions—first, that the informant is telling the truth, and second, that the informant has obtained the information in a reliable way.

<sup>102</sup> *Spinelli*, 393 U.S. at 424 (White, J., concurring). Justice White continued, "Indeed, if the affidavit of an officer, known by the magistrate to be honest and experienced, stating that gambling equipment is located in a certain building is unacceptable, it would be quixotic if a similar statement from an honest informant were found to furnish probable cause." *Id.*

does, the latter better protects against police fabrication, thereby preserving the privacy rights guaranteed by the fourth amendment.

Justice White's reasoning behind not requiring a demonstration of both an informant's basis of knowledge and trustworthiness, but allowing the strong presence of one to compensate for the nonexistence of the other, is logically flawed. Justice White properly asserted that "[r]easonable suspicion . . . is dependent upon both the content of information possessed by police and its degree of reliability."<sup>103</sup> However, attempting to assert some support for the reliability of the anonymous tip, he argued that taking into consideration the totality of the circumstances, "if a tip has a relatively low degree of reliability, more information" can compensate for such an inadequacy and still provide the requisite reasonable suspicion for an investigatory stop.<sup>104</sup>

Justice White did not consider that quantum of information and degree of reliability are two distinct concepts. The fact that reasonable suspicion is a less burdensome standard than probable cause should only allow a police officer to make an investigatory stop on a lesser quantum of information rather than on information which he or she received in a less reliable manner.<sup>105</sup> By using this illogical reasoning, Justice White established a standard under the totality of the circumstances approach that allows a police officer to stop almost anyone, thereby severely limiting the fourth amendment proscription against unreasonable search and seizure.

#### B. INVESTIGATORY STOP FOR POSSESSORY CRIMES

In addition to refusing to impose any significant limitation on the power of a police officer to make a warrantless stop based upon an anonymous informant's tip, the Court implicitly rejected another potential limit on the police power to initiate street encounters. By applying the investigatory stop doctrine to a possessory crime situation, the Court eradicated much of the fourth amendment protection afforded by the Constitution. By not addressing this issue, the Court appeared to dismiss the widely supported view that the power to make a warrantless stop should be restricted according to the na-

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<sup>103</sup> *White*, 110 S.Ct at 2416.

<sup>104</sup> *Id.* Justice White's position on this issue appears to contradict his argument in *Spinelli* that to issue a warrant based upon information received from an informant, the informant's basis of knowledge should be required in order to establish the tip's reliability. *Spinelli*, 393 U.S. at 424 (White, J., concurring). See *supra* note 102 and accompanying text for a further discussion of Justice White's concurring opinion in *Spinelli*.

<sup>105</sup> Note, 1971 Term, *supra* note 55, at 178.



ture of the crime under suspicion.<sup>106</sup>

The power to make an investigatory stop is derived from *Terry v. Ohio*.<sup>107</sup> The *Terry* Court explicitly limited its holding to permit a police officer making a reasonable investigatory stop to conduct a frisk incident to the stop only to protect himself or herself.<sup>108</sup> This holding was premised on the condition that the police officer had reason to believe that the suspect was armed and dangerous.<sup>109</sup>

By including nonviolent crimes within the scope of the *Terry* doctrine, the Court expanded the investigatory stop doctrine far beyond its original intent. Possessory crimes, such as possession of marijuana and cocaine, do not necessarily involve the same degree of danger to the police officer as do crimes of violence. The dissent in *Williams* enunciated the worry of such an expansion, profoundly stating that if *Terry* is extended "to crimes like possession of narcotics . . . . There is too much danger that, instead of the stop being the object and the protective frisk an incident thereto, the reverse will be true."<sup>110</sup>

Several commentators have indicated that police stop and frisk powers are most often abused in narcotics possession investigations.<sup>111</sup> Moreover, warrantless stops or on-the-street frisks are not considered to be of significant value to the general enforcement of narcotics laws.<sup>112</sup> Hence, to extend the police power to stop to an area such as possession of narcotics where it is not valuable, though often abused, is illogical.

Justice White failed to address the extension of investigatory stops to the arena of possessory crimes effectuated by the majority's decision. If he had, however, he would likely have cited to *Adams v. Williams* as precedent for such an extension.<sup>113</sup> However, the *Williams* Court extension of the *Terry* doctrine to incorporate a suspected possessory crime can be distinguished by the fact that the

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<sup>106</sup> *Id.* at 180 (citing, e.g., *Williams v. Adams*, 436 F.2d. 30, 38 (2d Cir. 1971) (Friendly, J., dissenting)). Judge Friendly's dissent is quoted by Justice Brennan in *Williams*, 407 U.S. at 151-52 (Brennan, J., dissenting) and is cited by Justice Douglas in *Williams*, 407 U.S. at 149 (Douglas, J., & Marshall, J., dissenting).

<sup>107</sup> 392 U.S. 1 (1968). See *supra* note 51 for a discussion of *Terry*.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Williams*, 407 U.S. at 151 (Brennan, J., dissenting) (quoting *Williams*, 436 F.2d at 38-39 (Friendly, J., dissenting)).

<sup>111</sup> Note, 1971 Term, *supra* note 55, at 180 (citing, e.g., Younger, *The Perjury Routine*, 3 CRIM. L. BULL. 551 (1967); Note, *Police Perjury in Narcotics "Dropsy" Cases: A New Credibility Gap*, 60 GEO. L. J. 507 (1971)).

<sup>112</sup> Note, 1971 Term, *supra* note 55, at 180-81 (citations omitted).

<sup>113</sup> See *supra* notes 54 and 58 for a discussion of *Williams*. The majority in *Williams* also did not address the issue of extension to possessory crimes.

informant in that case told the police officer that the suspect had a gun;<sup>114</sup> the officer had "reason to fear for his own . . . safety."<sup>115</sup>

The *Terry* doctrine "was meant for the serious cases of imminent danger or of harm recently perpetrated to persons or property, not the conventional ones of possessory offenses."<sup>116</sup> The decision by the majority ignores the fact that the *Terry* Court begrudgingly accepted the necessity for a limited exception to the warrant requirement of the fourth amendment. The Court's decision "treat[s] this case as if warrantless searches were the rule rather than the 'narrowly drawn' exception."<sup>117</sup>

Each exception to the warrant requirement makes it more likely that innocent persons will be stopped and searched, retracting from the privacy rights afforded by the fourth amendment. Certain situations, such as the safety of police officers, dictate that the warrant requirement be displaced. In making this exception for possessory crimes, however, the Court was not cognizant that innocently taking away steps such as these may lead, one by one, to the irretrievable impairment of the substantial liberties upon which this nation was founded.<sup>118</sup>

#### C. CORROBORATION OF DETAILS

Even if the Court's totality of the circumstances approach and expansion of the investigatory stop doctrine are accepted and applied to the facts in the instant case, the majority's conclusion that the details supplied by the informant were sufficiently corroborated to provide an indicia of reliability was unfathomable.

Justice White properly recognized that an anonymous tip, such as the one received by Corporal Davis, "standing alone, would not 'warrant a man of reasonable caution in the belief that [a stop] was appropriate.'"<sup>119</sup> However, Justice White incorrectly asserted that the tip had been sufficiently corroborated to furnish reasonable suspicion. He attempted to justify the relatively small amount of detail in the tip and incompleteness in the corroboration, as compared to

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<sup>114</sup> *Williams*, 407 U.S. at 145.

<sup>115</sup> *Terry v. Ohio*, 392 U.S. 1, 30 (1968).

<sup>116</sup> *Williams*, 407 U.S. at 153 (Brennan, J., dissenting).

<sup>117</sup> *Id.* at 154 (Marshall, J., dissenting). Justice Marshall had previously stated in his dissenting opinion, "The most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions.'"<sup>118</sup> *Id.* (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971)).

<sup>118</sup> *Illinois v. Gates*, 462 U.S. 213, 290 (1983).

<sup>119</sup> *Alabama v. White*, 110 S. Ct. 2412, 2416 (1990) (quoting *Terry*, 392 U.S. at 22).

*Gates*, by proffering the difference between the degrees of suspicion required in the cases.<sup>120</sup>

The informant's tip in the instant case lacked detail, and the information which the tip contained was not sufficiently corroborated to demonstrate that the informant had special familiarity with the affairs of the suspect. The tip contained no description of White,<sup>121</sup> and the officers failed to identify positively the driver during the investigatory stop.<sup>122</sup> The informant indicated that White would carry a brown attache case as she left the building, but she did not.<sup>123</sup> The officers did not corroborate White's time of departure<sup>124</sup> or the fact that she left from apartment 235-C.<sup>125</sup> Finally, the destination was insufficiently corroborated.<sup>126</sup> Justice White evaded the *Gates* holding, which required a much more detailed tip accompanied by complete corroboration, by erroneously declaring that the tip was sufficiently corroborated.

Furthermore, the lenient standard developed by the majority allows for absurd consequences. According to this standard, any individual with sufficient information about another person could have that person harassed by formulating a tip and reporting it to the police.<sup>127</sup>

The instant case is merely an example of a vaguely corroborated anonymous tip consisting mostly of easily ascertainable details. As Justice Stevens argued in dissent:

Millions of people leave their apartments at about the same time every day carrying an attache case and heading for a destination known to their neighbors. Usually however the neighbors do not know what the briefcase contains. An 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—particularly when the person is not even carrying

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<sup>120</sup> *White*, 110 S. Ct. at 2416. Once again, this justification is grounded in Justice White's improper belief that reasonable suspicion allows a lower degree of reliability to accompany the lesser quantum of information. See *supra* note 59 for a further discussion of *Gates*.

<sup>121</sup> *White v. State*, 550 So. 2d 1074, 1079 (Ala. Crim. App. 1989).

<sup>122</sup> *Id.* In fact, the officers had no way of knowing the driver was actually White until she was arrested and processed.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Brief for Respondent, *supra* note 5, at 33.

<sup>126</sup> *Id.* at 34.

<sup>127</sup> *Alabama v. White*, 110 S. Ct. 2412, 2418 (1990) (Stevens, J., dissenting). Specifically Justice Stevens said, "Anybody with enough knowledge about a given person to make her the target of a prank, or to harbor a grudge against her, will certainly be able to formulate a tip about her like the one predicting Vanessa White's excursion." *Id.*

the attache case described by the tipster.<sup>128</sup>

Justice White tried to minimize the shortcomings of this anonymous tip by indicating that the anonymous caller was able "to predict [White's] future behavior."<sup>129</sup> However, when the future behavior concerns common activities, the tip does not "demonstrate inside information," but only perhaps an observant informant.

Because the strongest advocates of the fourth amendment rights against unreasonable search and seizure are frequently criminals, it is easy to forget that interpretations of such rights apply to the innocent and guilty alike.<sup>130</sup> By expanding the police power to make a warrantless stop to a situation where such easily predicted details are sufficient to supply the requisite reasonable suspicion, the Court diminished the rights of all citizens "to be secure in their person."<sup>131</sup>

## VI. CONCLUSION

The majority failed to guarantee the reliability of the anonymous tip by blindly extending the totality of the circumstances approach from the probable cause to the reasonable suspicion context, thereby eradicating individual privacy rights. The two-pronged test is the more acceptable standard by which to judge the reliability of information received from an anonymous informant, because it better assures the dependability of the information. The Court's expansion of the investigatory stop doctrine to include nonviolent crimes further diminishes the right to be free from unreasonable search and seizure by making warrantless stops the rule rather than the exception. The Court's conclusion that the corroboration of the easily predicted details was sufficient to justify the investigatory stop exemplifies the leniency of the standard set forth by the majority. This current standard seriously threatens the fourth amendment protection against unreasonable search and seizure.

ORRIN S. SHIFRIN

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<sup>128</sup> *Id.*, 110 S. Ct. at 2417-18 (Stevens, J., dissenting).

<sup>129</sup> *Id.* at 2417.

<sup>130</sup> *U.S. v. Sokolow*, 109 S. Ct. 1581, 1587 (1989) (Marshall, J., dissenting) (citing *Illinois v. Gates*, 462 U.S. 213, 290 (1983) (Brennan, J., dissenting)).

<sup>131</sup> U.S. CONST. amend. IV.