No. 12-9490

In the Supreme Court of the United States

LORENZO PRADO NAVARETTE, JOSE PRADO NAVARETTE, *Petitioners,*

v.

CALIFORNIA, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a 911 call from an unidentified citizen informant reporting that a specified vehicle ran the caller off the road provide reasonable suspicion to stop the vehicle when that fact, along with numerous confirmable innocent details, is relayed to the officers by trained dispatchers, and the officers confirm the innocent details?

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STATEMENT

1. Matia Moore and Sharon Odbert worked as a dispatch team in the California Highway Patrol (CHP) 911 call center in Mendocino County. Clerk's Transcript (C.T.) 51-52, 70.[1]

On August 23, 2008, at 3:47 p.m., Ms. Moore received a call on an internal "allied" CHP dispatch phone line from a CHP 911 dispatcher in Humboldt County. C.T. 54-55, 64. The Humboldt 911 dispatcher explained that she had received a 911 call from an unidentified citizen who reported being run off the road by a reckless driver. According to the Humboldt dispatcher, the 911 caller described the perpetrator's vehicle as a silver Ford F150 pickup truck, with license plate number 8D94925. C.T. 55-59. The incident happened on Highway 1 near mile marker 88, and the truck was traveling south. C.T. 55, 71-72.

As Ms. Moore received the call, she typed the information into her computer, which simultaneously displayed the information on her partner's computer and recorded it in a dispatch log. The entry stated: "Showing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-949925. Ran the reporting party off the roadway and was last seen approximately five ago." C.T. 55, 71-72.

Ms. Odbert promptly broadcast to coastal CHP units to be on the lookout for a California Vehicle

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[1] Citations to the clerk's transcript are to the transcripts prepared in connection with Lorenzo Navarette's appeal, which are generally more complete than those prepared for Jose Navarette's appeal.

Code section 23103 reckless driver, who ran the reporting party off the roadway. The broadcast included the truck's description, license plate number, location, and direction of travel. C.T. 70-72; App. 20-23.[2]

Two CHP units responded to the broadcast and reported they were en route from the nearby city of Fort Bragg, heading north. C.T. 72-73, 88. At 4:00 p.m., Sergeant Francis reported that he had passed the truck near mile marker 69. C.T. 73, 76. Officer Williams, who had been trailing Sergeant Francis, spotted the truck near mile marker 66 and saw Sergeant Francis following it. Officer Williams let them pass, made a U-turn, and then followed them. C.T. 88-90. At about 4:05 p.m., Sergeant Francis pulled the vehicle over and, soon thereafter, Officer Williams pulled up behind them. C.T. 83, 90.

The officers approached the car on the passenger side and asked the occupants (petitioners) for identification, then returned to Sergeant Francis's patrol car to run identification checks. The driver, Lorenzo Navarette, initially provided only a photocopy of identification, and the officers returned to the driver's side of the vehicle to request additional identification. C.T. 91, 102, 108, 111. From this location, they noticed the distinct odor of marijuana emanating from the truck and ordered petitioners to exit the vehicle. C.T. 92-94, 112. A search of the truck disclosed four large bags containing over thirty pounds of marijuana in the enclosed truck bed, along

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[2] Ms. Moore explained that CHP dispatchers are trained in evaluating calls and determining whether the reported conduct constitutes reckless driving under California Vehicle Code section 23103. C.T. 57.

with fertilizer, pruning shears, and oven bags for packaging. C.T. 94, 105, 136, 139-40. An expert opined that the marijuana was possessed for sale. C.T. 136, 139-40.

2. On August 20, 2009, the Mendocino County District Attorney filed an information charging petitioners with transportation of marijuana and possession of marijuana for sale. Cal. Health & Safety Code §§ 11359, 11360(a); C.T. 40-41.

At the preliminary hearing, petitioners moved to suppress evidence seized following the stop and search of the truck, contending the stop was unlawful. Cal. Penal Code § 1538.5(f). The magistrate denied the motion. The superior court heard and denied petitioners' motion to set aside the information based on a challenge to the denial of his suppression motion. App. 26-37.

Petitioners filed a petition for writ of mandate challenging the superior court's order, which the appellate court denied on procedural grounds. The California Supreme Court denied review. App. 7.

On December 13, 2010, petitioners pleaded guilty to transportation of marijuana, Cal. Health & Safety Code § 11360(a), and were placed on probation. C.T. 334, 362, 372-77, 381-86; App. 6.

3. On appeal, petitioners renewed their challenge to the denial of the suppression motion. See Cal. Penal Code § 1538.5(m). On October 12, 2012, the First District Court of Appeal rejected their claim and affirmed the judgment. App. 1-25. The court subsequently denied a petition for rehearing. App. 39.

On January 3, 2013, the California Supreme Court denied review. App. 38.

REASONS FOR DENYING CERTIORARI

Petitioners contend certiorari is warranted to decide whether the Fourth Amendment requires suppression of evidence obtained when law enforcement receives an anonymous, detailed 911 call that a driver is driving drunk or recklessly, and officers confirm only the innocent details of the call. Because California, consistent with a majority of jurisdictions, has correctly interpreted this Court's holding in *Florida* v. *J.L.*, 529 U.S. 266 (2000), as permitting a detention under such circumstances, review by this Court is not warranted.

1. An officer may detain a motorist on reasonable suspicion that the driver has violated the law. *Ornelas* v. *United States*, 517 U.S. 690, 693 (1996). The guiding principle in determining the propriety of an investigatory detention is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968). "Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and quality—are considered in the 'totality of the circumstances—the whole picture,' . . . that must be taken into account when evaluating whether there is reasonable suspicion." *Alabama* v. *White*, 496 U.S. 325, 330 (1990) (citation omitted). Reasonable suspicion to undertake a brief investigative detention "is a less demanding standard than probable cause not only in the sense that [it] can be established with information that is different in quantity of content than that required to establish probable cause, but also in the sense that reasonable

suspicion can arise from information that is less reliable than that required to show probable cause.'" *Id.*

In *J.L.*, this Court held that an anonymous tip that an individual was in possession of a firearm did not justify a stop and frisk absent some independent corroboration of the reliability of the tipster's assertion of illegal conduct. *J.L.*, 529 U.S. at 272-74. The anonymous tipster reported that an individual wearing a plaid shirt at a bus stop was carrying a concealed firearm, but did not explain the basis for his knowledge. The officers confirmed the innocent details of the tip, but did not corroborate any details showing illegal behavior before detaining the individual. *Id.* at 268. *J.L.* held "the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about" the suspect lacked even the "moderate indicia of reliability present in *White*," and did not provide reasonable suspicion justifying a *Terry* stop. *Id.* at 271. *J.L.* rejected the state's argument that firearms were sufficiently dangerous in and of themselves to justify dispensing with the requirement of reliability shown through corroboration of illegality. *Id.* at 272-73

The Court was careful, however, to limit *J.L.*'s holding to the specific nature of the reported conduct at issue, namely an anonymous report of a nonthreatening possessory offense. "The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person

carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk." *Id*. at 273-74. It held only "that an anonymous tip lacking indicia of reliability of the kind contemplated in *Adams* and *White* does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm." *Id.* at 274.

2. Following *J.L.*, many jurisdictions, including California, have drawn a distinction between cases involving nonthreatening possessory offenses and those offenses posing an immediate grave risk to public safety, such as drunk driving, with respect to the degree of corroboration required to justify a detention. For the latter class of offenses, the need for corroboration of illegal conduct identified by the anonymous tipster is offset by the inherent danger of the conduct itself and the overall reliability of the tip.

In *People* v. *Wells*, 38 Cal. 4th 1078, 1081, 136 P.3d 810 (2006), the California Supreme Court held that an anonymous phone tip reporting a possibly intoxicated driver in a vehicle "weaving all over the roadway" and accurately describing the vehicle and its location was sufficient to justify an investigatory detention, even though officers, upon encountering the vehicle, were able to corroborate only the innocent details of the tip. *Wells* found support in *United States* v. *Wheat*, 278 F.3d 722 (8th Cir. 2001), as well as numerous cases from other jurisdictions, which reached a similar conclusion. *Wells*, 38 Cal. 4th at 1084-85.

Wells noted that anonymous reports of erratic or drunk driving may provide reasonable suspicion

justifying a traffic stop if three key factors are present. "First, the tipster must furnish sufficient identifying information regarding the vehicle and its location, so the officer and reviewing courts may be reasonably sure the vehicle stopped is the one identified by the caller." *Id.* at 1086. "Second, the tip should indicate the caller had actually witnessed a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity." *Id.* "[T]hird, at least the 'innocent details' of the tip must be corroborated by the officers." *Id.*

Wells agreed with *Wheat* that, "in the context of reckless and possibly intoxicated driving, the tip's lack of 'predictive information' was not critical to determining its reliability. Such an analysis is more appropriate in cases involving tips of concealed criminal behavior such as possession offenses." *Id.* at 1086 (citation omitted); see also *Wheat*, 278 F.3d at 730.

> "[I]n contrast to the report of an individual in possession of a gun, an anonymous report of an erratic or drunk driver on the highway presents a qualitatively different level of danger, and concomitantly greater urgency for prompt action. In the case of a concealed gun, the possession itself might be legal, and the police could, in any event, surreptitiously observe the individual for a reasonable period of time without running the risk of death or injury with every passing moment. An officer in pursuit of a reportedly drunk driver on a freeway does not enjoy such a luxury. Indeed, a drunk driver is not at all unlike a 'bomb,' and a mobile one at that."

Wells, 38 Cal. 4th at 1086 (quoting *State* v. *Boyea*, 765 A.2d 862, 867 (Vt. 2000)); accord, *Virginia* v. *Harris*, 558 U.S. 978, 130 S. Ct. 10, 11 (2009) (Roberts, C.J., dissenting from the denial of certiorari).

Wells pointed to several factors supporting its conclusion. It observed that "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned-in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare." *Wells*, 38 Cal. 4th at 1087. Second, "the level of intrusion of personal privacy and inconvenience involved in a brief vehicle stop is considerably less than the 'embarrassing police search' on a public street condemned by *J.L.*" *Id.* Third, vehicles are subject to pervasive regulation, and thus, drivers have a reduced expectation of privacy while driving on public highways. *Id.* Also, "traffic stops are 'less invasive, both physically and psychologically, than the frisk' at issue in *J.L.*" *Id.* (quoting *Wheat*, 278 F.3d at 737). Fourth, a relatively precise and accurate description of the vehicle type, color, location, and direction of travel, when promptly confirmed by an investigating officer, enhances the reliability of a tip. *Id.* at 1088. *Wells* added that "[t]he investigating officer's inability to detect any erratic driving on defendant's part is not significant. Motorists who see a patrol car may be able to exercise increased caution." *Id.*

As petitioners acknowledge, California's interpretation of *J.L.* in the context of anonymous reports of drunk or reckless driving is in line with the majority of jurisdictions that have considered this

issue.[3] By contrast, the highest courts of only five states (and lower courts in only few more) have disagreed with California's approach.[4] As *Wells* observed, "although the law appears somewhat unsettled, the better rule, firmly supported by many cases as well as by considerations of public safety and

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[3] See *Wheat*, 278 F.3d at 726-37; *Bloomingdale* v. *State*, 842 A.2d 1212, 1217-22 (Del. 2004); *State* v. *Prendergast*, 83 P.3d 714, 721-24 (Haw. 2004); *State* v. *Walshire*, 634 N.W.2d 625, 626-30 (Iowa 2001); *State* v. *Crawford*, 67 P.3d 115, 119-20 (Kan. 2003); *State* v. *Vaughan*, 974 A.2d 930, 934 (Me. 2009); *State* v. *Sousa*, 855 A.2d 1284, 1288 (N.H. 2004); *State* v. *Golotta*, 837 A.2d 359, 366-73 (N.J. 2003); *State* v. *Scholl*, 684 N.W.2d 83, 89 (S.D. 2004); *State* v. *Hanning*, 296 S.W.3d 44, 49-53 (Tenn. 2009); *State* v. *Boyea*, 765 A.2d at 866-68; *State* v. *Rutzinski*, 623 N.W.2d 516, 523-28 (Wis. 2001); see also *Cottrell* v. *State*, 971 So. 2d 735, 745-46 (Ala. Crim. App. 2006); *State* v. *Torelli*, 931 A.2d 337, 343-45 (Conn. App. Ct. 2007); *People* v. *Shafer*, 868 N.E.2d 359, 362-67 (Ill. App. Ct. 2007); *State* v. *Barras*, 20 So. 3d 1100, 1104-05 (La. Ct. App. 2009); *State* v. *Contreras*, 79 P.3d 1111, 1117-18 (N.M. Ct. App. 2003); *People* v. *Jeffery*, 769 N.Y.S.2d 675 (N.Y. App. Div. 2003); cf. *United States* v. *Whitaker*, 546 F.3d 902, 908-11 (7th Cir. 2008) (noting reduced corroboration requirement for stop based on anonymous 911 call reporting an "ongoing emergency," and listing cases).

[4] See *Washington* v. *State*, 740 N.E.2d 1241, 1246 (Ind. Ct. App. 2000); *State* v. *Grayson*, 336 S.W.3d 138, 143-46 (Mo. 2011); *State* v. *Lee*, 938 P.2d 637, 639-40 (Mont. 1997); *State* v. *Miller*, 510 N.W.2d 638, 644-45 (N.D. 1994); *Nilsen* v. *State*, 203 P.3d 189, 192 (Okla. Crim. App. 2009); *Hall* v. *State*, 74 S.W.3d 521, 525-27 (Tex. App. 2002); *Harris* v. *Commonwealth*, 668 S.E.2d 141 (Va. 2009); *McChesney* v. *State*, 988 P.2d 1071, 1076-78 (Wyo. 1999); see also *Commonwealth* v. *Lubiejewski*, 729 N.E.2d 288, 290-92 (Mass. App. Ct. 2000); but see *Commonwealth* v. *Davis*, 823 N.E.2d 411, 412-14 (Mass. App. Ct. 2005) (finding anonymous tip of drunk driving created sufficient emergency to warrant officer immediately stopping driver without corroboration).

common sense, is that a limited traffic stop is permitted under such circumstances to confirm the officer's reasonable suspicion of intoxicated driving before a serious traffic accident can occur." 38 Cal. 4th at 1081.

3. In this case, the court of appeal applied *Wells*, finding that the tip provided by the unidentified driver sufficiently reliable to support a detention. The content of the 911 call—recounting that petitioners ran the caller off the road—supported the inference that the report was based on personal observation of reckless driving. App. 18. The tip also provided substantial innocent details, including the color, make, and model of petitioners' truck, the license plate number, and the truck's location and direction of travel. The officers' corroboration of these innocent details demonstrated the reliability of the unidentified citizen informant's tip as establishing reasonable suspicion. "Finally, the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists to justify the stop without direct corroboration of the vehicle's illegal activity." App. 18. As the court observed, "the vehicle was traveling on Highway 1, which (as the magistrate noted) was an undivided two-lane road, thus raising the risk of a collision with oncoming traffic, which poses a particular risk to human life and limb." App. 24. These factors were sufficient to support the court's determination that the officers had reasonable suspicion of unlawful activity justifying the investigative traffic stop.

4. Petitioners separately contend that this case presents a good vehicle for resolving questions "regarding the varying reliability of anonymous tips."

Pet. at 14, citing *J.L.*, 529 U.S. at 275 (Kennedy, J., concurring). However, this assertion is predicated on an incorrect factual premise.

Petitioners acknowledge that the content of the 911 call—recounting that petitioners ran the caller off the road—"ostensibly demonstrated that the tipster was an eyewitness to illegal activity," but they assert "that information was never conveyed to the detaining officer, who was told only to be on the lookout for the 'reckless driver' of a specific vehicle." Pet. at 15. Petitioners' contend that the police receipt of a broadcast reporting "reckless driving" is insufficient without further elaboration to establish reasonable suspicion, notwithstanding that the initial call provided greater detail.

Petitioners factual claim—that the details of the 911 call were not relayed to the officers—was expressly rejected by the court of appeal.

> As we read the record, the magistrate found that the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway. Because this finding was supported by substantial evidence in the record, we must accept it as true. We thus need not decide whether a report of "reckless driving" alone would have been too vague to support reasonable suspicion for the traffic stop.

App. 20-22 (footnotes omitted); see also *id.* at 21 n.8 (pointing to Ms. Odbert's testimony that she received the information on her computer from Ms. Moore, which included that the truck "[r]an the reporting party off the roadway," and "[s]he broadcast 'that information'").

Even if the 911 dispatchers did not relay the particular detail that the truck ran the caller off the road, that information known to the dispatchers is still properly deemed part of the collective knowledge of the officers. See *United States* v. *Whitaker*, 546 F.3d 902, 909 n.12 (7th Cir. 2008) (collective knowledge includes 911 dispatcher); *United States* v. *Fernandez-Castillo*, 324 F.3d 1114 (9th Cir. 2003) (explaining highway patrol "dispatcher's knowledge is properly considered as part of our analysis of reasonable suspicion"); *United States* v. *Kaplansky*, 42 F.3d 320, (6th Cir. 1994) (en banc) (observing "the court must look beyond the specific facts known to the officers on the scene to the facts known to the dispatcher"); *State* v. *Wollam*, 783 N.W.2d 612, 622-25 (Neb. 2010) (dispatcher part of collective knowledge, discussing cases); see generally *United States* v. *Hensley*, 469 U.S. 221, 231-32 (1985) (discussing collective knowledge doctrine); but cf. *United States* v. *Colon*, 250 F.3d 130, 138 (2d Cir. 2001) (civilian 911 operators not part of collective knowledge unless they have "training to assess the information in terms of reasonable suspicion").

Petitioners counter that "dispatchers are not trained officers, and the 'reasonableness of official suspicion must be measured by what the officers knew before they conducted their search.'" Pet. at 15, quoting *J.L.*, 529 U.S. at 271. Although the dispatchers here were not police officers, they had received training on eliciting and evaluating incoming information. C.T. 57; see *Colon*, 250 F.3d at 138.[5] Accordingly, information given to CHP

[5] See generally Cal. Penal Code § 13510(c) (authorizing California Commission on Peace Officer Standards and Training (continued…)

dispatchers is properly deemed part of the collective knowledge of the responding officers.

Petitioners acknowledge that 911 calls "may provide automatic caller identification that increases the reliability of the tip." Pet. at 16; see *J.L.*, 529 U.S. at p. 276 (noting "[i]nstant caller identification is widely available to police"); *People* v. *Lindsey*, 148 Cal. App. 4th 1390, 1397-98 (2007) ("The act of calling 911 and having a recorded telephone conversation involve a risk that the police could trace the call, as happened here when dispatch received an address and telephone number associated with the two 911 calls it received."). In this case, the 911 call was recorded. App. 12 n.5.

Petitioners question the significance of caller identification if tipsters are unaware that they can be identified. Pet. at 16. California, however, makes it a citable offense to "use[] the 911 telephone system for any reason other than because of an emergency." Cal. Penal Code § 653y. Thus, Californians are on notice of the potential consequences of misuse of the 911 system for harassment. See *J.L.*, 529 U.S. at 276.

Petitioners also suggest in the text of their second question presented that the officers followed petitioners for several miles without observing reckless driving. Pet. at i. However, this suggestion is misleading. The officers did not begin their pursuit from behind petitioners truck and did not

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(…continued)
(POST) to set training standards for dispatchers); POST, Training Specifications For The Public Safety Dispatchers' Basic Course (rev. July 2011) http://lib.post.ca.gov/Publications/DispatcherTrainingSpecsOnlineformat.pdf.

have a long period of observation. Rather, the officers drove north on Highway 1 to intercept petitioners, who were heading south. Sergeant Francis spotted the truck at 4:00 p.m. and pulled it over at 4:05 p.m. "The five-minute delay . . . resulted from the fact that both Francis and Williams were driving north on Highway 1 when they first observed [petitioners'] vehicle traveling south and thus needed to make U-turns and catch up to the vehicle before they could pull it over." App. 23-24. Given the circumstances, the appellate court reasonably found the officers had only a "brief observation" of the truck before making the stop. App. 24.

Finally, petitioners conclude that the officers could not plausibly investigate whether petitioners had run the reporting party off the road because the detention occurred over 20 minutes later and 20 miles from the first reported incident. Thus, they assert, "there was nothing that a stop could accomplish in terms of investigation." Pet. at 16. This claim misses the mark. The need for investigation stemmed from the reasonable possibility that petitioners, who failed to stop after running one driver off the road, were continuing to drive recklessly while possibly intoxicated. The threat to public safety posed by a possibly intoxicated driver on an undivided two-lane coastal highway amply justified further investigation and initiating a traffic stop.

In sum, the totality of circumstances support the lower court's conclusion that the officers had reasonable suspicion based on the 911 call by an unidentified citizen reporting petitioners' had run another car off the road. Plenary review is not warranted in this case.

CONCLUSION

Accordingly, the petition for certiorari should be denied.

Dated: August 9, 2013

Respectfully submitted

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