

Recent Case Report

U.S. v. Copening

(10th Cir. 2007) __ F.3d __

ISSUE

Can officers stop a car to investigate an anonymous citizen's report to 911 that the driver is carrying a concealed handgun?

FACTS

At 9:30 P.M., a man on a cell phone called 911 in Tulsa, Oklahoma and reported that he had just seen a man with a gun outside the QuikTrip convenience store. He said that the man, later identified as Copening, had arrived outside the store in a pickup truck driven by another man; and that, as Copening was walking toward the front door, he accidentally dropped a handgun on the ground. Copening then put the gun back inside the pickup and went into the store. The caller gave a detailed description of Copening and the pickup truck, including its license number. Although the caller refused to identify himself, the 911 operator's monitor displayed his phone number.

A few minutes later, the man called 911 again from the same phone and provided some additional information. He said that when Copening picked up the gun from the ground, he "stuck it in his pants," then he walked back to the pickup truck and put it under the seat. The caller said that Copening and the other man had just driven off, but that he was following them. He also gave their current location. Although the call "dropped" at that point, the man called 911 again and starting giving the dispatcher a turn-by-turn narrative of their route. When the connection dropped again, the man called back and continued to update the dispatcher on Copening's route.

At about this time, officers spotted the pickup truck and made a felony stop. After Copening and the driver were handcuffed, officers searched the pickup and found the handgun under the back seat. Copening was subsequently convicted of being a felon in possession of a firearm.

DISCUSSION

Copening contended that officers should not be permitted to make car stops based solely on information from 911 callers who refuse to give their names. This contention was based on a case decided by the United States Supreme Court in 2000, *Florida v. J.L.*¹ In *J.L.*, an anonymous caller phoned the Miami-Dade police department's non-emergency line and reported that a young black man wearing a plaid shirt was standing at a particular bus stop, and that he was carrying a concealed handgun. Officers who were dispatched to the call saw three black men "just hanging out" at the bus stop, and one of them, later identified as J.L., was wearing a plaid shirt. So the officers detained him and, during a pat search, found a gun.

¹ (2000) 529 U.S. 266.

But the Supreme Court ruled the detention and pat search were unlawful because the officers had no reason to believe that the anonymous caller was reliable or that his information was accurate. As the court explained, “All the police had to go on in this case was 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 J.L.”

In 2006, the California Supreme Court had occasion to apply *J.L.* to a somewhat different situation. In *People v. Wells*² an anonymous caller notified the CHP in Kern County that he had seen a “possibly intoxicated driver” on Highway 99, and that the driver was “weaving all over the roadway.” The court did not know whether the caller had called 911, so it apparently assumed that he had called a non-emergency number.

In any event, the caller described the car as a 1980’s model blue van, and he said it was headed northbound on Highway 99 just north of Bakersfield. CHP units in the area were immediately notified and, about two minutes later, an officer on Highway 99 saw a blue van heading northbound and stopped it. After determining that the driver, Susan Wells, was under the influence of drugs, he arrested her. An inventory search of the van netted several syringes and some heroin. Wells tested positive for THC (marijuana), cocaine, and opiates.

The California Supreme Court ruled that, even though the CHP officer had seen nothing to indicate that Wells was impaired, the car stop did not violate *J.L.* for essentially two reasons. First, the caller had given the CHP operator an accurate and fairly detailed description of Wells’ car and the route she was taking, both of which were corroborated by the arresting officer before he made the stop.³ Said the court, “[T]he relatively precise and accurate description given by the tipster in the present case regarding the vehicle type, color, location, and direction of travel, all confirmed by the investigating officer within minutes of receiving the report, enhanced the reliability of the tip.” Second, unlike the situation in *J.L.*, the caller had reported a crime that presented an imminent threat to other motorists. Thus, as the court pointed out, the officer needed to take immediate action.

The situation in *Copenig* differed significantly from both *Wells* and *J.L.* in that the record showed that the caller had phoned 911, not a non-emergency line. This was important because most people know that when they call 911 their phone numbers are displayed on the dispatcher’s monitor, and that their calls are recorded.⁴ Thus, even though a 911 caller refuses to state his name, he probably knows that officers may be able to identify him. Thus, the court in *Copenig* observed, “The caller should have expected that 911 dispatch tracks incoming calls and that the originating phone number could be used to investigate the caller’s identity.”⁵

² (2006) 38 Cal.4th 1078.

³ ALSO SEE *People v. Coulombe* (2000) 86 Cal.App.4th 52, 59 [“Even though anonymous, a tip from an unidentified citizen may have other features giving it sufficient reliability.”].

⁴ See *Commonwealth v. Costa* (2007) 862 N.E.2d 371, 377 [“By providing information to the police after knowing that her call was being recorded, and that the number she was calling from had been identified, we conclude that the caller placed her anonymity sufficiently at risk such that her reliability should have been accorded greater weight than that of an anonymous informant.”].

⁵ ALSO SEE *People v. Dolly* (2007) 40 Cal.4th 458, 467 [“[M]erely calling 911 and having a recorded telephone conversation risks the possibility that the police could trace the call or identify the caller by his voice.”]; *People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1398 [“It is unlikely that a

It was also significant that the caller in *Copening*, like the caller in *Wells*, provided a detailed account of what he had witnessed and where it had happened. In addition, he repeatedly called 911 to make sure that officers could locate the vehicle. “[T]aken together,” said the court, “the caller’s unusual efforts in reporting the QuikTrip events to 911 dispatch, detailing what he observed, following the vehicle, and updating dispatch regarding the truck’s location, bespeak an ordinary citizen acting in good faith.”

Consequently, the court ruled the detention was lawful because the arresting officer had sufficient reason to believe the caller was reliable. Said the court, “[T]he tip at issue in this case is readily distinguishable from the anonymous, unrecorded, and uncorroborated tip deemed unreliable in *J.L.* Multiple facts, known to [the arresting officer] when he initiated the stop, bolstered the tip’s reliability.”⁶

COMMENT

The question remains: Will California courts uphold detentions based solely on information from anonymous 911 callers if the crime did not present an imminent threat to other motorists? We think they will, but only if both of the following circumstances existed. First, 911 operators must have obtained a detailed report from the caller, including a particular description of the crime, the perpetrator, and his location. As the California Supreme Court said in *Wells*, 911 operators “should attempt to gather additional information supporting the tip’s reliability.”

Second, prosecutors must present testimony that the caller’s phone number was displayed on the dispatcher’s monitor, that the caller’s address was also displayed (if the call was made from a conventional phone), and that the call was recorded.

One other thing. Dispatchers should be sure to notify the responding officers if they had reason to believe that the caller was reliable or unreliable, as this information will assist the officers in determining whether there were grounds to make the stop. Relevant circumstances might include the caller’s manner of speaking, how he described the incident, and how he responded to questions. POV

caller would phone in a ‘hoax’ when police can travel to the person’s home after receiving only a [911] hang-up call.”]; *People v. Jordan* (2004) 121 Cal.App.4th 544, 561 [“As anonymity decreases and the informant’s risk of accountability increases, the inference that the tip is reliable strengthens.”]; *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1176 [“[A 911 call] is entitled to greater reliability than a tip concerning general criminality because the police must take 911 emergency calls seriously and respond with dispatch.”]; *Arizona v. Gomez* (2000) 6 P.3d 765, 768 [“One who dials 911 from a private phone is traceable, and does place credibility at risk in a way that an unidentifiable caller from a public phone does not.”]; *Wisconsin v. Williams* (2001) 623 N.W.2d 106, 115 [“The recording [of 911 calls] adds to the reliability of the tip in a number of ways. It provides a record of the tip and its specific content. It provides an opportunity for review, albeit somewhat limited, of the tipster’s veracity, not only based upon content, but also based upon its tone and delivery. The recording would also aid in the event need to find the anonymous caller.”]; *Wisconsin v. Williams* (2001) 623 N.W.2d 106, 114-5 [“Risking one’s identification intimates that, more likely than not, the informant is a genuinely concerned citizen as opposed to a fallacious prankster.”]. COMPARE: *People v. Jordan* (2004) 121 Cal.App.4th 544, 561 [“[A]lthough the 911 call was taped, the record does not reflect whether the call was subject to tracing by any means”].

⁶ **NOTE:** The court also ruled the “felony takedown” was “an appropriate precautionary measure under these circumstances.”