

# Detentions Based on 911 Calls

911 operator: You gonna leave your name?

Caller: No.<sup>1</sup>

Each day more than 500,000 people in the United States dial 911.<sup>2</sup> While some of these calls are pranks and “hang-ups,” many of the callers are reporting real emergencies, such as injury traffic accidents, robberies, assaults, and fires. As the U.S. Court of Appeal observed, “A 911 call is one of the most common—and universally recognized—means through which police and other emergency personnel learn that there is someone in a dangerous situation who urgently needs help.”<sup>3</sup>

There is, however, another type of 911 call to which officers regularly respond. These are calls from people who are reporting actual or suspected criminal activity that, although it is now occurring, does not constitute an imminent threat to life or property. Calls falling into this category include reports of drug dealing in a public place, a person carrying a concealed handgun, and run-of-the-mill “suspicious” activity. In addition, the CHP and other law enforcement agencies regularly receive cell phone calls from motorists reporting unsafe driving and possible DUI’s.<sup>4</sup>

When officers respond to investigative calls such as these, they need to know their options. If they locate a suspect can they detain him based solely on the caller’s information? Or must they try something else, such as conduct surveillance or attempt to engage the suspect in a contact?

The answer is that a detention is permitted if officers have sufficient reason to believe the caller’s information is accurate or, in the words of the United States Supreme Court, if the information bears “sufficient indicia of reliability.”<sup>5</sup> What circumstances are relevant in making this determination? And how can officers find out whether these circumstances exist? Those are the subjects of this article.

At the outset, it is important to recognize that in many cases the only person who can judge the reliability of a 911 caller’s information is the operator who spoke with him. It is therefore essential that 911 operators (as well as officers) thoroughly understand this area of the law. This will enable them to spot relevant information furnished by the caller, and to know when to seek additional information.<sup>6</sup>

Operators and dispatchers must also make sure that the responding officers are notified *why* a caller appears reliable or not. This can be done quickly—a condensed or coded explanation will suffice. In fact, it is possible that operators who have received training in this area could make a “reliable/not-reliable” determination and transmit this conclusion to the responding officers.<sup>7</sup>

In any event, officers need this information because anything that was not transmitted to them will not be considered by the courts in determining whether the detention was justified.<sup>8</sup> Although this puts an even greater burden on 911 operators and dispatchers, it is something that must be done.

<sup>1</sup> *People v. Jordan* (2004) 121 Cal.App.4th 544, 548.

<sup>2</sup> U.S. Department of Justice, “Misuse and Abuse of 911” (2002).

<sup>3</sup> *U.S. v. Richardson* (7th Cir. 2000) 208 F.3d 626, 630. **WHY “911?”** Why was 911 chosen instead of some other number? According to howstuffworks.com, there were three reasons: “It’s a short, easy to remember number, but more importantly, 911 was a unique number—it had never been designated for an office code, area code or service code.”

<sup>4</sup> **NOTE:** The CHP’s 911 operators answered over 8 million cell phone calls in 2002. Source: CHP’s “911 Statistics Yearly Report.”

<sup>5</sup> *Florida v. J.L.* (2000) 529 U.S. 266, 270. ALSO SEE *Alabama v. White* (1990) 496 U.S. 325, 327.

<sup>6</sup> See *City of Minot v. Nelson* (1990) 462 N.W.2d 460, 462 [“It would have been relatively easy for the dispatcher to solicit some minimal articulable facts from the anonymous informant to support the bare assertion that the vehicle was suspicious.”].

<sup>7</sup> See *U.S. v. Colon* (2nd Cir. 2001) 250 F.3d 130, 137-8 [“The problem presumably can be avoided by training 911 operators as to (i) the standards for evaluating the sufficiency of incoming information, or (ii) the type of information needed by law enforcement personnel and the importance of conveying this information to them, or (iii) both.”].

<sup>8</sup> See *People v. Jordan* (2004) 121 Cal.App.4th 544, 564, fn. 10; *Hickey v. City of New York* (S.D.N.Y. 2004) \_\_ F.Supp.2d \_\_ [2004 WL 2724079] [“(T)he evaluation of probable cause must depend solely on the information relayed by the operators and dispatcher to the arresting officers themselves.”].

## CITIZEN CALLERS

If a 911 caller qualifies as a “citizen informant” his information is presumptively reliable. This means that officers may detain a suspect based *solely* on such a communication.<sup>9</sup> What makes a caller a “citizen informant?” There are essentially two requirements:

- (1) **FIRSTHAND KNOWLEDGE:** The caller’s information must have been based on firsthand knowledge, not rumor or other hearsay. As a practical matter, most citizen informants who call 911 are either crime victims or eyewitnesses.
- (2) **IDENTITY KNOWN:** The caller must have directly or indirectly identified himself to the operator.<sup>10</sup> Knowing the caller’s identity is important because the courts consider it unlikely that a person would knowingly furnish false information if he knows the police can identify him.<sup>11</sup>

(Dispatchers sometimes characterize callers as “citizens”; e.g., “A citizen reported that . . .” Officers must not interpret this as a finding that the caller qualified as a citizen informant unless their department’s 911 operators have been trained in this area and are authorized to make this determination.)

It can be argued that even if a caller gives his name he cannot qualify as a citizen informant unless his identity is verified. After all, a caller can say any name that comes to mind. While this issue has not yet reached California’s appellate courts, the Ninth Circuit thinks it is ordinarily reasonable for officers to believe that a 911 caller who identifies himself is giving his true name, at least for purposes of conduct-

ing an investigative detention. As the court explained, “We decline to impose a duty on the police to confirm the identity of every 911 caller who provides his or her name.”<sup>12</sup> The court added, however that the presumption will not apply if a reasonable 911 operator would have disbelieved the caller. Said the court:

We acknowledge that any given caller reporting an emergency to 911 *could* provide a false name. Indeed, there may be circumstances in which the police know, or should know, that a caller has obviously given a false name to enshroud himself with anonymity, for example, a caller self-identifying as “Arnold Schwarzenegger” or “Jon Bon Jovi.”

## ANONYMOUS CALLERS

The courts are naturally skeptical about the reliability of 911 callers who will not identify themselves. This is because, as the United States Supreme Court noted, “Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity.”<sup>13</sup> The courts also know that some anonymous 911 callers are pranksters and some fabricate incriminating stories to cause problems for their adversaries.<sup>14</sup> Thus, most judges would agree with the North Dakota Supreme Court when it said, “At the low end of the reliability scale are tips from anonymous callers.”<sup>15</sup>

<sup>9</sup> See *People v. Ramey* (1976) 16 Cal.3d 263, 269; *People v. Superior Court (Bingham)* (1979) 91 Cal.App.3d 463, 471; *People v. Boissard* (1992) 5 Cal.App.4th 972, 979; *Cantrell v. Zolin* (1994) 23 Cal.App.4th 128, 133.

<sup>10</sup> See *Illinois v. Gates* (1983) 462 U.S. 213, 233-4; *Florida v. J.L.* (2000) 529 U.S. 266, 269-70.

<sup>11</sup> See *People v. Kershaw* (1983) 147 Cal.App.3d 750, 756; *People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1504; *Higgason v. Superior Court* (1985) 170 Cal.App.3d 929, 938; *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579, 584.

<sup>12</sup> *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1175. ALSO SEE *City of Minnetonka v. Shepherd* (1988) 420 N.W.2d 887, 890 [“(A)t least for the purpose of making a limited investigatory stop, the officer was justified in assuming that the caller was being truthful in so describing himself.”]; *U.S. v. Richardson* (7th Cir. 2000) 208 F.3d 626, 631 [“(W)e have no evidence indicating that the 911 system is abused so often that it is objectively unreasonable for the police to rely on a call like the one Carter made here.”]. COMPARE *People v. Saldana* (2002) 101 Cal.App.4th 170, 176 [anonymous 911 did not justify a “felony extraction”].

<sup>13</sup> *Florida v. J.L.* (2000) 529 U.S. 266, 270. ALSO SEE *Illinois v. Gates* (1983) 462 U.S. 213, 227.

<sup>14</sup> See *Davis v. United States* (D.C. Court of Appeal 2000) 759 A.2d 665, 670 [“A less exacting burden for establishing articulable suspicion would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by placing an anonymous call falsely reporting the target’s unlawful carriage of a gun.” Quoting from *Florida v. J.L.* (2000) 529 U.S. 266, 272]; *U.S. v. Wheat* (8th Cir. 2001) 278 F.3d 722, 735 [“We recognize the danger that, as with any anonymous tip, even a supposedly contemporaneous account of erratic driving could be a complete work of fiction, created by some malicious prankster to cause trouble for another motorist.”]. ALSO SEE *Arizona v. Gomez* (2000) 6 P.3d 765, 767-8 [court rejects the idea that the courts should consider anonymous “citizen complainants” somewhat more reliable than garden variety anonymous informants].

<sup>15</sup> *State v. Miller* (1994) 510 N.W.2d 638, 641.

Still, the courts are aware that most anonymous 911 callers are honest people who have good reason for not revealing their identity. As one such caller explained to a police operator, “If I leave you my name, and they start saying my name over there. I don’t wanna be, you know, I don’t want no problems because I have three children.”<sup>16</sup> With people like this in mind, the U.S. Court of Appeals pointed out, “[S]ome callers, particularly neighbors, may be understandably reticent to give identifying information for fear of retaliation or danger. Thus, the fact that a 911 caller chooses to remain anonymous may have little bearing on the veracity of the caller.”<sup>17</sup>

For this reason, the courts do not require that officers ignore information from anonymous 911 callers in determining whether a detention is warranted. Instead, such information may be considered if, as noted earlier, it bears “sufficient indicia of reliability.”<sup>18</sup> As Justice Kennedy observed in his concurring opinion in *Florida v. J.L.*:

[A] tip might be anonymous in some sense yet have certain other features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action.<sup>19</sup>

The question, then, is what indicia of reliability are sufficient? As we will explain, there are three, any of which should support a detention: (1) the caller risked being identified, (2) officers verified some of the caller’s information, and (3) there was circumstantial evidence of reliability.

### Caller exposed himself to identification

Even though a caller is technically anonymous, he may provide 911 operators with information through which they might be able to determine his identity. If so, a court could rule that the caller’s act of exposing himself to identification rendered his information sufficiently reliable to justify a detention. As the Minnesota Court of Appeals observed, “An informant who provides sufficient identifying information is not anonymous, even if the informant does not provide a name.”<sup>20</sup> Or, in the words of the California Court of Appeal:

As anonymity decreases and the informant’s risk of accountability increases, the inference that the tip is reliable strengthens.<sup>21</sup>

As we will now discuss, most of the 911 callers who expose themselves to identification do so by saying something that makes it possible—at least theoretically possible—for officers to identify or locate them. They may even risk exposure by calling 911 instead of a non-emergency number.

**AUTOMATIC TRACING AND RECORDING:** Most people in California are aware that when they call 911 from a telephone in a home or business (other than a cell phone), their name, phone number and address will be automatically displayed on the operator’s monitor.<sup>22</sup> It is also widely known that calls to 911 are recorded. For these reasons, the courts tend to view 911 callers as somewhat more reliable than people who furnish their information by calling non-emergency police lines.

<sup>16</sup> *U.S. v. Colon* (2<sup>nd</sup> Cir. 2001) 250 F.3d 130, 132.

<sup>17</sup> *U.S. v. Holloway* (11<sup>th</sup> Cir. 2002) 290 F.3d 1331, 1339.

<sup>18</sup> See *Florida v. J.L.* (2000) 529 U.S. 266, 270.

<sup>19</sup> (2000) 529 U.S. 266, 275 [conc. opn. of Kennedy, J.]. ALSO SEE *People v. Coulombe* (2000) 86 Cal.App.4<sup>th</sup> 52, 59 [“Even though anonymous, a tip from an unidentified citizen may have other features giving it sufficient reliability.”].

<sup>20</sup> *Rose v. Commissioner of Public Safety* (2001) 637 N.W.2d 326, 328. COMPARE *Marinis v. Village of Irvington* (S.D.N.Y. 2002) 212 F.Supp.2d 220, 223 [caller who “inadvertently reveals” identifying information should not be treated as an identified informant.”]

<sup>21</sup> *People v. Jordan* (2004) 121 Cal.App.4<sup>th</sup> 544, 561. ALSO SEE *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.”]. **NOTE:** This principle is often applied when an informant approaches an officer and provides information about a crime in progress. Even though the officer did not stop to determine the informant’s identity, the courts often rule the tip justified a detention because the informant “exposed himself to identification”; i.e., he did not know the officer would not first seek his ID. See *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579, 584; *People v. Amos* (1977) 70 Cal.App.3d 562, 568 [“The police were not required to elicit the informant’s curriculum vitae to determine whether the informant’s credentials were sufficiently impressive.”].

<sup>22</sup> **NOTE:** In January 1993, California completed implementation of the statewide “Enhanced 9-1-1” system. An “enhanced” system includes selective routing, automatic number identification (ANI), and automatic location identification (ALI). Source: California’s 911 Emergency Communications Office. ALSO SEE Gov. C. §§ 53100 et seq. [Warren-911 Emergency Assistance Act].

For example, in discussing the traceability of 911 calls, the court in *Arizona v. Gomez* observed, “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.”<sup>23</sup>

The same might be said of callers who know their voices will be recorded. As the Wisconsin Supreme Court noted:

The recording 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 the police need to find the anonymous caller.<sup>24</sup>

Although the courts have not ruled that *all* anonymous 911 callers expose themselves to identification, it is certainly a significant factor in determining their reliability.

**DISCLOSING THEIR WHEREABOUTS:** The most common way in which anonymous callers expose themselves to identification is by directly or indirectly disclosing their whereabouts.<sup>25</sup> For instance, in the case of *Wisconsin v. Williams*<sup>26</sup> a woman phoned Milwaukee 911 and said:

I don’t want to get involved but there’s some activity that’s going around in the back alley of my house where they’re selling drugs and everything and I want to know who I can call to report so they can come around here. They’re in a van and they are giving customers, you know, drugs. It’s a blue and burgundy Bronco. It’s right beside my apartment building at 4261 North Teutonia.

About four minutes later, officers arrived and spotted the Blazer parked in the alley. The officers detained the two occupants, one of whom was Williams. During the course of the detention, the officers found rock cocaine and marijuana in the Blazer.

Williams contended the detention was unlawful because the caller was anonymous. The caller was nameless, said the court, but not unknowable:

[T]he informant here identified her location, 4261 North Teutonia. And, more than merely identifying her location, she repeatedly identified it as her home: “my house,” “my apartment building,” “our apartment.”

Consequently, the court ruled the caller was sufficiently reliable, noting, “Although the caller said that she did not ‘want to get involved,’ by providing self-identifying information, she risked that her identity would be discovered.”

Similarly, in *City of Minnetonka v. Shepherd*<sup>27</sup> a man phoned the sheriff’s department, said he was “an attendant at the Q Petroleum Station in Minnetonka,” and reported that a drunk driver had just left the station. He also described the car and its direction of travel. About three minutes later, an officer stopped the car and, as things progressed, arrested the driver for DUI. In rejecting the argument that the caller was anonymous, the court said:

[The caller] identified himself as a station attendant at the Q Petroleum Station in Minnetonka. . . . We believe that, at least for the purpose of making a limited investigatory stop, the officer was justified in assuming that the caller was being truthful in so describing himself.

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<sup>23</sup> (2000) 6 P.3d 765, 768. ALSO SEE *U.S. v. Valentine* (3d Cir. 2000) 232 F.3d 350, 355 [“What matters for our purposes is not that the officers could guarantee that they could track down the informant again.”].

<sup>24</sup> *Wisconsin v. Williams* (2001) 623 N.W.2d 106, 115. ALSO SEE *Florida v. J.L.* (2000) 529 U.S. 266, 275-6 [“(v)oice recording of telephone tips might, in appropriate cases, be used by police to locate the caller.” Conc. opn. of Kennedy, J.]; *U.S. v. Terry-Crespo* (9<sup>th</sup> Cir. 2004) 356 F.3d 1170, 1175 [“(T)he Portland police recorded both of Mr. Domingis’s 911 calls and provided the court with a recording and transcription. Therefore, we do not believe that the same concerns that may have animated the Court to treat *J.L.* as an unreliable, anonymous tip apply here.”].

<sup>25</sup> See *People v. Pinckny* (2001) 729 N.Y.S.2d 830, 835 [“(T)he present caller’s connection to an apartment on a specific floor at a specific address still made the caller potentially identifiable which provides greater accountability than a mere anonymous informant who had no fear of ever being identified or located.”].

<sup>26</sup> (2001) 623 N.W.2d 106. Quote edited.

<sup>27</sup> (1988) 420 N.W.2d 887. ALSO SEE *Maine v. Sampson* (1996) 669 A.2d 1326, 1328 [“Although the tip was anonymous a reasonable inference from the information that ‘a possible drunk driver had just been through the drive-in window at Dunkin’ Donuts’ is that the tip was reported by a Dunkin’ Donuts employee.”]; *People v. Polander* (2001) 41 P.3d 698, 704 [“Whether or not the caller’s identification of himself as an employee of the [Burger King] in whose parking lot the criminal conduct was taking place would be enough to categorize him a ‘citizen-informant,’ it was an important factor”].



Callers may also expose themselves to identification by furnishing officers with a means of determining their identity. For example, in *Wisconsin v. Rutzinski*<sup>28</sup> an anonymous cell phone caller notified Milwaukee police that the driver of a pickup truck behind her was “weaving within its lane, varying its speed from too fast to too slow, and tailgating.” The dispatcher broadcast this information on the police radio and also reported that the caller was still in front of the truck. A few minutes later, an officer spotted the pickup truck and noticed a car traveling in front of it. Although he did not see any erratic driving, he stopped the pickup and subsequently arrested the driver, Rutzinski, for DUI.

Rutzinski contended the caller’s reliability was unknown because he was anonymous. The court disagreed:

[T]he informant in this case exposed him- or herself to being identified. The informant indicated to the police prior to the stop that he or she was in the vehicle in front of Rutzinski’s pickup. [The officer] thus could infer that by revealing that he or she was in a particular vehicle, the informant understood that the police could discover his or her identity by tracing the vehicle’s license plates or directing the vehicle to the side of the road.

**REFERENCE TO PRIOR INCIDENT:** Anonymous callers might also expose themselves to identification if they said something about a prior police incident or contact in which they had been identified. For example, in *U.S. v. Colon*<sup>29</sup> a 911 operator in New York City received a call from a woman who reported that a man in a bar had just hit her over the head with a gun. After describing the man, the caller said, “[T]his is the same guy that hit me over the face and I got 15 stitches like three weeks ago. So they know. The cops know about the incident so I don’t have to give you my name. They know who I would be. You understand?” When officers arrived at the bar and spotted a man who matched the perpetrator’s description, they pat searched him and discovered a gun in his waistband.

Although the caller was technically anonymous, the court said it was apparent that the detention and pat search would have been lawful if the officers had been told that she had indirectly identified herself.

**KNOWN POLICE INFORMANT:** In *U.S. v. Nelson*<sup>30</sup> an anonymous caller was deemed sufficiently reliable to justify a detention because there was reason to believe he was an informant working with a particular officer. The facts are as follows: At about 1 A.M., the caller phoned the watch commander of the Jersey City Police Department on a “private line used only by family members of the police officers and confidential informants.” The caller asked to speak with a particular narcotics officer, but the watch commander told him the officer was not there. The caller said that two men from Newark who were responsible for a string of robberies of drug dealers were now in a gray BMW with a temporary license plate. After giving the location of the car, the caller said, “It’s just cruising up and down the drive, sticking us up, man. You better do something.” The watch commander knew there had been recent robberies of drug dealers in that area.

Shortly after this information was broadcast over the police radio, an officer stopped the car and, during the course of the detention, saw a gun protruding from the passenger’s waistband. The passenger, Nelson, was arrested.

Nelson contended the car stop was unlawful because it was based solely on an anonymous tip. As in *Colon*, however, the court pointed out that, although the caller did not give his name, there was sufficient reason to believe he was reliable, at least for purposes making a car stop. Said the court:

[T]he informant used a private line whose number was disseminated only to family members and informants, and the caller asked for one of the [watch commander’s] coworkers by name. Here, the informant was not truly anonymous, because both the caller and [the watch commander] knew that another officer could potentially identify the caller. This risk increased the reliability of the caller.

<sup>28</sup> (2001) 623 N.W.2d 516.

<sup>29</sup> (2<sup>nd</sup> Cir. 2001) 250 F.3d 130.

<sup>30</sup> (2002) 284 F.3d 472.

## Verification

Information from an anonymous caller may be deemed sufficiently reliable to justify a detention if the responding officers were able to corroborate it in some way. As the United States Supreme Court noted in *Florida v. J.L.*, “[T]here are situations in which an anonymous tip, suitably corroborated, exhibits sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop.”<sup>31</sup>

There are essentially two types of corroboration that may be available to officers who are responding to such calls: (1) verification (which we will now discuss), and (2) circumstantial evidence of accuracy (which is covered in the next section).

As used here, the term “verification” means to confirm the accuracy of one or more specific pieces of information furnished by the caller. Verification works on the theory that a caller who is “right” about some facts is “more probably right about other facts.”<sup>32</sup>

**VERIFYING EASY-TO-GET INFORMATION:** The first principle of verification is that it is virtually meaningless if the verified information was widely known or easily obtained.<sup>33</sup> For example, in *Higgason v. Superior Court* an anonymous caller claimed that Higgason was selling drugs. He also provided some information that officers were able to verify; specifically: Higgason’s physical description, his address, and the kinds of cars he drove. In rejecting the argument that this verification proved the caller was reliable, the court observed, “The courts take a dim view of the significance of such pedestrian facts.”<sup>34</sup>

Another example is found in *Florida v. J.L.*<sup>35</sup> in which an anonymous caller reported that a young man who was now standing at a particular bus stop

was carrying a concealed handgun. The caller said the man was black and was wearing a plaid shirt. When officers arrived at the bus stop about six minutes later they spotted a person there who matched that description. Although they saw nothing to indicate he was armed or was otherwise involved in criminal activity, they pat searched him and found a gun in his pocket.

In ruling the pat search was unlawful, the U.S. Supreme Court pointed out that the caller’s knowledge that a black man wearing a plaid shirt was standing at a certain bus stop did not prove much about his reliability. Said the Court, “An accurate description of a subject’s readily observable location and appearance . . . does not show that the tipster has knowledge of concealed criminal activity.”

Finally, in *People v. Saldana*<sup>36</sup> an anonymous caller notified the Los Angeles County Sheriff’s Department that a gray Ford Taurus station wagon with a license number ending in “319” was parked in the parking lot of a certain restaurant, and that the driver “was carrying a gun and a kilo of cocaine.” A deputy arrived at the restaurant less than ten minutes later, spotted the station wagon and detained the occupant, Saldana. During the course of the detention, the deputy discovered marijuana and methamphetamine. The Court of Appeal ruled the detention was unlawful because the deputy merely verified “that a vehicle fitting the description was present at the described location.”

**VERIFYING “INSIDE” INFORMATION:** For the same reason that verifying easy-to-get information is insignificant, verification of “inside” information is highly relevant because it indicates the caller occupies a

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<sup>31</sup> (2000) 529 U.S. 266, 270. ALSO SEE *Illinois v. Gates* (1983) 462 U.S. 213, 241 [(“We have) consistently recognized the value of corroboration of details of an informant’s tip by independent police work.”)].

<sup>32</sup> See *Illinois v. Gates* (1963) 462 U.S. 213, 244.

<sup>33</sup> See *Alabama v. White* (1990) 496 U.S. 325, 332 [(“Anyone could have ‘predicted’ [that a certain make of car would be in front of a certain building] because it was a condition presumably existing at the time of the call.”)]; *People v. Jordan* (2004) 121 Cal.App.4<sup>th</sup> 544, 564 [corroboration of the suspect’s clothing “did not strengthen the weak inference that because the informant knew about the appearance of a person (information readily observable by the public), the informant also had knowledge of the concealed criminal activity alleged.”]; *U.S. v. Roberson* (3d Cir. 1996) 90 F.3d 75, 80 [tipster furnished “only readily observable information”]; *U.S. v. Lopez-Valdez* (W.D. Texas 2000) 102 F.Supp.2d 728, 731-2 [(“The agents’ independent investigation corroborated only the description of the vehicle.”)]; *U.S. v. Soto-Cervantes* (10<sup>th</sup> Cir. 1998) 138 F.3d 1319, 1323 [(“The fact that the tipster accurately described a particular group of men does not mean that the tipster also was correct that the men were engaged in drug dealing.”)]. COMPARE *Illinois v. Gates* (1983) 462 U.S. 213 245 [(“T)he anonymous letter contained a range of details relating not just to easily obtained facts and conditions existing at the time of the tip”].

<sup>34</sup> (1985) 170 Cal.App.3d 929, 940. ALSO SEE *People v. Johnson* (1990) 220 Cal.App.3d 742, 749.

<sup>35</sup> (2000) 529 U.S. 266.

<sup>36</sup> (2002) 101 Cal.App.4<sup>th</sup> 170.

position of trust with the suspect or is otherwise privy to his affairs.<sup>37</sup> What is “inside” information? It is essentially information about a suspect or his activities that is not easily obtained or predicted.

For example, in *Massachusetts v. Upton*<sup>38</sup> an anonymous caller notified Yarmouth police that George Upton had parked a motor home “full of stolen stuff” behind Upton’s house. The caller said the stolen property included jewelry, silver, and gold; that Upton bought it from Ricky Kelleher; and that Upton was getting ready to move the motor home because the police recently “raided” Kelleher’s motel room.

Officers verified a piece of easy-to-get information; i.e., that a motor home was parked behind Upton’s house. But they also verified three bits of “inside” information: (1) that property fitting the description furnished by the caller had, in fact, been taken in recent burglaries; (2) a few hours before receiving the call, officers had executed a warrant to search Kelleher’s motel room; and (3) during the search they found credit cards taken in recent residential burglaries. The U.S. Supreme Court ruled the caller’s tip, as corroborated, established probable cause to search Upton’s motor home.

**VERIFYING FUTURE ACTIONS:** It may be reasonable to believe an anonymous caller is reliable if he accurately predicted that the suspect would go somewhere or do something—even something “innocent.” This is significant because, like the verification of “inside” information, it indicates the caller has special knowledge about the suspect’s activities. As the court noted in *People v. Jordan*, “The ability to predict an individual’s future actions indicates the informant has some familiarity with that individual’s affairs.”<sup>39</sup>

For example, in *Alabama v. White*<sup>40</sup> an anonymous caller phoned the Montgomery Police Department in Alabama and said that Vanessa White would be leaving a certain apartment building at a particular time, that she would drive off in a brown Plymouth station wagon with a broken right taillight, and that she would be going to a certain motel. The caller also said that White would be carrying an ounce of cocaine in a brown attaché case. Officers staked out the apartment building and watched as White drove off in a brown Plymouth station wagon with a broken right taillight. They followed her and noted she was taking the most direct route to the motel. Before she arrived, however, they stopped her, obtained her consent to search the station wagon, and discovered marijuana in the attaché case.

White contended the car stop was unlawful because it was based solely on information from an anonymous caller. The United States Supreme Court acknowledged the caller was anonymous, but pointed out there was good reason to believe his tip was accurate:

What was important was the caller’s ability to predict [White’s] *future behavior*, because it demonstrated inside information—a special familiarity with [White’s] affairs. The general public would have no way of knowing that [White] would shortly leave the building, get in the described car, and drive the most direct route to Dobey’s Motel. [I]t is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual’s illegal activities.

<sup>37</sup> See *People v. McCarter* (1981) 117 Cal.App.3d 894, 902 [the caller “had independent information as to a crime detail not reported by the news media, i.e., that the murder victim was black.”]. COMPARE *Florida v. J.L.* (2000) 529 U.S. 266, 271 [caller did not supply “any basis for believing he had inside information about J.L.”].

<sup>38</sup> (1984) 466 U.S. 727. ALSO SEE *U.S. v. Nelson* (3d Cir. 2002) 283 F.3d 472, 484 [“(W)hat made the [caller’s] knowledge ‘particularized’ was the way in which the specific details of language, type of activity and location matched a pattern of criminal activity known to the police, but not to the general public.”].

<sup>39</sup> (2004) 121 Cal.App.4th 544, 559. ALSO SEE *Illinois v. Gates* (1983) 462 U.S. 213, 245 [accurate prediction of travel plans might indicate the caller “had access to reliable information of the [suspect’s] alleged illegal activities.”]; *Alabama v. White* (1990) 496 U.S. 325, 332 [“When significant aspects of the caller’s predictions were verified, there was reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop.”]. **NOTE:** Although courts sometimes note whether the caller provided predictive information that was corroborated, this is not a requirement. See *People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1616 [“We do not read [*Alabama v. White* as saying] an anonymous informant must supply predictions of a suspect’s future behavior”]; *Iowa v. Walshire* (Iowa Supreme Court 2001) 634 N.W.2d 625, 627 [“(W)e do not agree that reasonable suspicion necessarily requires an accurate prediction of future events”]; *Sanders v. U.S.* (D.C. Ct. App. 2000) 751 A.2d 952, 954 [“Of course, accurate prediction of future events has no ‘talismanic quality’ and is only one indicium of reliability.”].

<sup>40</sup> (1990) 496 U.S. 325.

**Circumstantial evidence of accuracy**

Even if officers cannot verify anything the caller said, a detention may nevertheless be justified if, when they arrived at the scene, they saw or heard something that was consistent with the caller's tip that the suspect was engaged in criminal activity. If that happens, the officers might reasonably conclude that the caller's tip and the circumstances at the scene "possessed an internal coherence that gave weight to the whole."<sup>41</sup>

How much circumstantial evidence is necessary? Not much, so long as the circumstances were sufficiently suspicious. In the words of the Court of Appeal, "Even observations of seemingly innocent activity suffice alone, as corroboration, if the anonymous tip casts the activity in a suspicious light."<sup>42</sup> Here are some examples.

**SUSPECT'S PHYSICAL CONDITION:** The fact that the suspect was injured, bleeding, dirty, out of breath, sweating, or had torn clothing would constitute circumstantial evidence of the caller's reliability if it was consistent with information he furnished about the perpetrator's actions or the nature of the crime.<sup>43</sup>

**CONDUCT CONSISTENT WITH CRIMINAL ACTIVITY:** It might be reasonable for officers to rely on an anonymous 911 tip if, before detaining the suspect, they saw him engage in conduct that, although not criminal in nature, was consistent with the type of criminal activity reported by the caller.

For example, in *People v. Butler*<sup>44</sup> an anonymous caller notified LASD that she believed "drugs were being sold from a gray Ford Explorer parked across

from 933 East Avenue. The first deputy to arrive saw a woman standing at the driver's door of the Explorer and the driver was handing her something. When the woman saw the officer, she walked off.

In ruling the detention of the driver was lawful, the court noted, "[U]pon arriving, Deputy Hayes saw conduct he believed, based on his training and experience, was a drug transaction—the criminal conduct explicitly alleged in the telephone call. This was sufficient to justify a temporary detention."

In another case, *U.S. v. Soto-Cervantes*,<sup>45</sup> an anonymous caller told the Bernalillo County (New Mexico) Sheriff's Department that "drug distribution activity" involving a "grey pickup truck" was occurring outside a certain house. When deputies arrived they saw the truck and four or five men "scattered around an adobe wall." When the men saw the deputies, one of them "quickly walked" behind the wall and returned moments later. In ruling the subsequent detention of the men was lawful, the court noted:

[A]s the deputies approached, they saw one of the men briefly disappear behind the wall. Although the officers did not observe the man drop anything behind the wall, the action could support an inference that the man had left to hide something upon spotting the officers.

Finally, in *U.S. v. Johnson*<sup>46</sup> an anonymous caller told St. Paul police that two men had arrived from Chicago that morning with a kilo of cocaine, that they were driving a black and gold Lexus, and that they were staying either at the Excel Inn or the Ramada Inn. Officers located the car at the Excel Inn and

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<sup>41</sup> See *Massachusetts v. Upton* (1984) 466 U.S. 727, 734.

<sup>42</sup> *People v. Costello* (1988) 204 Cal.App.3d 431, 446. ALSO SEE *People v. Jordan* (2004) 121 Cal.App.4th 544, 558 ["Where police officers follow up an anonymous tip and observe suspicious behavior, the totality of the circumstances may generate a reasonable suspicion that justifies a [detention]."]; *People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1616 ["The purpose of requiring corroboration of an anonymous tip is to ensure that there are probative indications of criminal activity along the lines suggested by the informant."]; *Illinois v. Gates* (1983) 462 U.S. 213, 245, fn.13 ["In making the determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of non-criminal acts."]; *Alabama v. White* (1990) 496 U.S. 325, 331-2; *People v. Glenos* (1992) 7 Cal.App.4th 1201, 1207; *People v. McFadin* (1982) 127 Cal.App.3d 751, 767 ["Defendant would apply the axiom that a chain is no stronger than its weakest link. Here, however, there are strands which have been spun into a rope. Although each alone may have insufficient strength, and some strands may be slightly frayed, the test is whether when spun together they will serve to carry the load of upholding the action of the magistrate in issuing the warrant."]; *People v. Lara* (1967) 67 Cal.2d 365, 374-5 ["(T)he issue is not whether the information obtained by the officers emanated from a reliable source, but whether the officers could reasonably rely upon that information under the circumstances."].

<sup>43</sup> See *People v. York* (1980) 108 Cal.App.3d 779, 785; *People v. Superior Court (Wells)* (1980) 27 Cal.3d 670; *People v. Kaurish* (1990) 52 Cal.3d 648, 676; *People v. Beal* (1974) 44 Cal.App.3d 216, 220.

<sup>44</sup> (2003) 111 Cal.App.4th 150. ALSO SEE *U.S. v. Sandoval* (9th Cir. 2004) 390 F.3d 1077.

<sup>45</sup> (10th Cir. 1998) 138 F.3d 1319.

<sup>46</sup> (8th Cir. 1995) 64 F.3d 1120.



began surveillance. A little later, they saw two men get into the Lexus and drive off. As the officers followed, two things caught their attention. First, the men drove to two homes that were “associated with drugs.” Second, the driver engaged in counter-surveillance driving. Among other things, he drove “at a speed significantly slower than other traffic, changed lanes several times without signaling, and glanced around frequently.”

In ruling the officers had grounds to stop the Lexus, the court noted that the caller’s tip was corroborated by “appellants’ conduct during the surveillance. The Lexus went to two addresses which the officers associated with drugs, and drove in and out of the parking lots of those buildings several times. The driver of the car appeared to be using counter-surveillance tactics.”

**“SUSPICIOUS” CONDUCT:** If officers located a suspect, and if he was engaging in unusual or “suspicious” activity, this may constitute circumstantial evidence of the caller’s reliability. Two examples:

- At 3:20 A.M. a caller reported there was a man with a gun in the parking lot of a Wendy’s restaurant. When officers arrived, the suspect was the only person in the parking lot, and he was “sort of peeking around as if he was trying to keep his position concealed.”<sup>47</sup>

- At 2 A.M., officers received a report of an intoxicated man brandishing a handgun. The man was reportedly wearing an orange shirt and tan pants. About five minutes later, they spotted a man who matched this description. The man was “crouched down” on the porch of a house.<sup>48</sup>

**SUSPECT’S RESPONSE TO SEEING OFFICERS:** A suspect’s unusual reaction to seeing officers as they arrived or approached might also indicate the tip was accurate. The following reactions are usually considered suspicious, at least to some extent:

**EXTREME ATTENTION TO OFFICERS:** The suspect exhibited extreme attention to officers.<sup>49</sup>

**EXTREME INATTENTION TO OFFICERS:** The suspect was obviously attempting to ignore the officers or pretend he did not see them.<sup>50</sup>

**NERVOUSNESS:** The suspect appeared to be unusually nervous.<sup>51</sup>

**SHOCK:** The suspect appeared shocked when he saw the officers.<sup>52</sup>

**SHOUTED WARNING:** The suspect or a companion shouted a warning to others that officers were approaching.<sup>53</sup>

**FURTIVE GESTURES:** The suspect apparently attempted to hide, discard, retrieve, or distance himself from something.<sup>54</sup>

<sup>47</sup> See *U.S. v. Thompson* (D.C. Cir. 2000) 234 F.3d 725, 729 [“(W)hat the police themselves observed of Thompson’s conduct was clearly suspicious. [T]he officers observed Thompson concealing himself behind the fence and peering out toward the street. Moreover, he was doing so in the parking lot of a closed restaurant at 3 a.m.”].

<sup>48</sup> See *U.S. v. Holmes* (D.C. Cir. 2004) 360 F.3d 1339, 1345.

<sup>49</sup> See *Flores v. Superior Court* (1971) 17 Cal.App.3d 219, 224; *People v. Fields* (1984) 159 Cal.App.3d 555, 564 [“(The officer) also noticed that [the suspect] appeared to be startled by him, had a ‘look of fear in his eyes’ and then quickly looked away.”]; *People v. Harris* (1980) 105 Cal.App.3d 204, 212 [“scrutinizing the movements of the officers.”]; *People v. Juarez* (1973) 35 Cal.App.3d 631, 635 [“(Suspect) twice looked back at the marked police car.”]; *People v. Joines* (1970) 11 Cal.App.3d 259, 263 [“(The suspects) stared intently at the officers. [One of the officers] characterized it as just about ‘eyeball contact’ and explained that in his experience people who had shown that much attention to him as a police officer turned out to have been up to something.”]; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1513 [six suspects inside a moving vehicle all turned to look at officer as they drove past him].

<sup>50</sup> See *United States v. Arvizu* (2002) 534 U.S. 266, 270 [driver, as he passed a patrol car, “appeared stiff and his posture very rigid. He did not look at [the officer] and seemed to be trying to pretend that [the officer] was not there.”].

<sup>51</sup> See *Illinois v. Wardlow* (2000) 528 U.S. 119, 124 [“(N)ervous, evasive behavior is a pertinent factor in determining reasonable suspicion.”]; *People v. Profit* (1986) 183 Cal.App.3d 849, 882; *People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1743].

<sup>52</sup> See *People v. Garcia* (1981) 121 Cal.App.3d 239, 246 [“A citizen innocently loading a television into a car trunk at 7 P.M. . . is not likely to be ‘shocked’ by the nonthreatening observation of his activities by uniformed police officers.”]; *People v. Gonzales* (1989) 216 Cal.App.3d 1185, 1189; *People v. Fay* (1986) 184 Cal.App.3d 882, 893; *People v. Fields* (1984) 159 Cal.App.3d 555, 564.

<sup>53</sup> See *Sibron v. New York* (1968) 392 U.S. 40, 66-7; *Florida v. Rodriguez* (1984) 469 U.S. 1, 6.

<sup>54</sup> See *People v. Johnson* (1991) 231 Cal.App.3d 1, 12 [upon seeing the officers, the suspect quickly made a “hand-to-mouth movement, as though secreting drugs.”]; *People v. Rosales* (1989) 211 Cal.App.3d 325, 330 [suspect “suddenly put his hand into the bulging pocket.”]; *People v. Woods* (1970) 6 Cal.App.3d 832, 838 [hand of “shots fired” suspect were concealed in jacket pocket].

**ATTEMPT TO HIDE HIMSELF:** The suspect attempted to hide from officers.<sup>55</sup>

**FLIGHT:** To run from officers is one of the strongest nonverbal admissions of guilt a suspect can make.<sup>56</sup>

**PHYSICAL EVIDENCE:** Officers might reasonably believe that an anonymous caller's tip was accurate if, upon arrival, they saw some physical evidence of the type they might expect to find if the caller was truthful. For example, in *People v. Orozco*<sup>57</sup> an anonymous caller reported that the occupants of a car were firing shots out of it. The caller said there were several men in the car which she described. When officers arrived, the car was parked on the street and there were five people inside. They also saw two expended cartridges within a four-foot span of the passenger door. The court ruled the detention of the occupants was lawful.

Similarly, in *Davis v. U.S.*<sup>58</sup> a person reported that a man in a wheelchair was now selling crack cocaine on a certain street, and that he was hiding the cocaine in his right shoe. Upon arrival, officers spotted a man in a wheelchair and they also noticed that the shoe laces on both of his boots were untied. In ruling the search of the man's boots was lawful, the court noted, "[M]ost people do not leave their boots untied. . . . If the information provided by the citizen had been false, then the fact that the laces were untied would have been rather a remarkable coincidence."

### Other relevant circumstances

As noted, the courts consider all relevant circumstances in determining whether information from an anonymous caller appeared to be sufficiently reliable to justify a detention. The following circumstances, although not determinative, are considered relevant.

**DETAILED INFORMATION:** The courts often note whether the caller provided detailed information as opposed to a conclusory statement or bare-bones tip. As the United States Supreme Court explained, "[E]ven if we entertain some doubt as to an [anonymous] informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first-hand, entitles his tip to greater weight than might otherwise be the case."<sup>59</sup> On the other hand, a tip that a certain person is acting "suspiciously" would not justify a detention because the term is too general.

**FIRSTHAND KNOWLEDGE:** It is significant that the caller indicated his information was based on personal observation, as opposed to rumor or other hearsay.<sup>60</sup> For example, in *Florida v. J.L.* the U.S. Supreme Court ruled a 911-based detention was unlawful because, among other things, "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 [the suspect]."<sup>61</sup>

Similarly, in *People v. Jordan* the court ruled an anonymous 911 call did *not* justify a detention largely because:

[T]he 911 operator did not ask and the informant did not tell how he knew that appellant was carrying a small caliber handgun in his right jacket pocket. The informant did not say whether he personally saw the gun, inferred its presence from other facts he observed, inferred its presence from appellant's reputation, or received the information from another individual.<sup>62</sup>

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<sup>55</sup> See *People v. Overten* (1994) 28 Cal.App.4<sup>th</sup> 1497, 1504; *In re Jonathan M.* (1981) 117 Cal.App.3d 530, 535; *People v. Souza* (1994) 9 Cal.4<sup>th</sup> 224, 240; *U.S. v. Woodrum* (1<sup>st</sup> Cir. 2000) 202 F.3d 1, 7 ["(S)louching, crouching, or any other arguably evasive movement, when combined with other factors particular to the defendant or his vehicle, can add up to reasonable suspicion."]; *People v. Nonnette* (1990) 221 Cal.App.3d 659, 668 [four men in a parked car were "ducking up and down"].

<sup>56</sup> See *Illinois v. Wardlow* (2000) 528 U.S. 119, 124 ["Headlong flight—wherever it occurs—is the consummate act of evasion; it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."]; *California v. Hodari* (1991) 499 U.S. 621, 623, fn.1]; *People v. Souza* (1994) 9 Cal.4<sup>th</sup> 224, 235; *People v. Mims* (1992) 9 Cal.App.4<sup>th</sup> 1244, 1249.

<sup>57</sup> (1981) 114 Cal.App.3d 435.

<sup>58</sup> (D.C. Ct. App. 2000) 759 A.2d 665, 675-6.

<sup>59</sup> *Illinois v. Gates* (1983) 462 U.S. 213, 234. ALSO SEE *U.S. v. Sierra-Hernandez* (9<sup>th</sup> Cir. 1978) 581 F.2d 760, 763 ["The tip here was neither vague as to the time of the criminal activity, nor imprecise as to the kind of crime being committed."].

<sup>60</sup> See *Illinois v. Gates* (1983) 462 U.S. 213, 230 [caller's "basis of knowledge" is "highly relevant"].

<sup>61</sup> (2000) 529 U.S. 266, 271; *U.S. v. Wheat* (8<sup>th</sup> Cir. 2001) 278 F.3d 722, 732 ["(T)he anonymous caller specifically alleged that he had personally observed several different traffic violations involving erratic driving."].

<sup>62</sup> (2004) 121 Cal.App.4<sup>th</sup> 544, 559.

In contrast, in *State v. Williams*, the Wisconsin Supreme Court ruled a detention of suspected drug dealers was justified because, among other things:

[T]he anonymous tipster explains exactly how she knows about the criminal activity she is reporting: she is observing it. She says “there’s some activity that’s going around in the back alley of my house.” Quite simply, the tipster here had made plain that she is an eyewitness.<sup>63</sup>

In a similar case, *People v. Pinckny*, the court pointed out, “Here, the caller told the 911 operator that he was looking through his peephole when he saw someone with a gun which demonstrates the basis of the informant’s knowledge.”<sup>64</sup>

**EXCITED CALLER:** Did it appear the caller was excited about the incident he was reporting? This is a relevant circumstance when the caller is reporting a crime in progress or other situation that would naturally be frightening or alarming. As the United States Court of Appeals pointed out, “[A] person is unlikely to fabricate lies (which presumably takes some deliberate reflection) while his mind is preoccupied with the stress of an exciting event.”<sup>65</sup>

For example in *United States v. Nelson*<sup>66</sup> an anonymous caller reported that two “jump out boys” from Newark who had been “running our pockets” were now in a certain location in a car he described in some detail. The caller added, “It’s just cruising up and down the drive, sticking us up, man. You better do something.” The officer who took the call testified that the term “running pockets” is street lingo for

“armed hold-ups of drug dealers.” In ruling the tip justified the subsequent car stop, the court noted, among other things, the caller’s “urgency” and “details of language,” and that he “was complaining of activity that was happening to him; he was one of the people being victimized, and was likely an informant.”

**TIME LAPSE:** The courts may view an anonymous tip as slightly more reliable if the caller was reporting something that was now occurring or had just occurred. For example, in upholding a detention based on anonymous information, the court in *U.S. v. Valentine* noted, “[T]he officers in our case knew that the informant was reporting what he had observed moments ago, not what he learned from stale or second-hand sources. . . . So the officers could expect that the informant had a reasonable basis for his beliefs.”<sup>67</sup>

The courts also take into account the time lapse between the caller’s observations and the detention of the suspect. If the time lapse was fairly brief, and if the circumstances upon the officers’ arrival were essentially as the caller reported, this may indicate the caller was an eyewitness. As the Wisconsin Supreme Court noted in *State v. Williams*,<sup>68</sup> “It is also noteworthy that the officers arrived at the scene four minutes after the dispatch. Consequently, they were able to, nearly contemporaneously, verify details of the anonymous tip. The proximity of the dispatch and the police arrival makes it much less likely that the tip was a prank or otherwise unreliable.”

<sup>63</sup> (2001) 623 N.W.2d 106, 114. ALSO SEE *U.S. v. Terry-Crespo* (9<sup>th</sup> Cir. 2004) 356 F.3d 1170, 1176 [caller provided “first-hand information”].

<sup>64</sup> (2001) 729 N.Y.S.2d 830, 835. ALSO SEE *Illinois v. Gates* (1983) 462 U.S. 213, 234 [“that the event was observed first-hand” is relevant]; *U.S. v. Holmes* (D.C. Cir. 2004) 360 F.3d 1339, 1343 [the informant “made clear to [the officer] that his knowledge was based upon firsthand observation by telling [the officer] that he ‘had observed a man with a gun.’”]; *Wisconsin v. Rutzinski* (2001) 623 N.W.2d 516, 526 [“The informant explained that he or she was making personal observations of Rutzinski’s contemporaneous actions.”].

<sup>65</sup> See *U.S. v. Joy* (7<sup>th</sup> Cir. 1999) 192 F.3d 761. **NOTE:** Information from an excited caller might also be deemed a “spontaneous declaration” which may be considered inherently reliable. *People v. Farmer* (1989) 47 Cal.3d 888, 904, 254; *People v. Roybal* (1998) 19 Cal.4th 481, 516; *People v. Gutierrez* (2000) 78 Cal.App.4th 170; *People v. Gallego* (1990) 52 Cal.3d 115, 175.

<sup>66</sup> (3d Cir. 2002) 284 F.3d 472.

<sup>67</sup> (3d Cir. 2000) 232 F.3d 350, 354. **NOTE:** The court in *Valentine* added, “The Supreme Court has recognized the greater weight carried by a witness’s recent report,” citing *Adams v. Williams* (1972) 407 U.S. 143, 147.

<sup>68</sup> (2001) 623 N.W.2d 106, 117, fn.17. ALSO SEE *U.S. v. Wheat* (8<sup>th</sup> Cir. 2001) 278 F.3d 722, 731 [“The time interval between receipt of the tip and location of the suspect vehicle [goes] principally to the question of reliability”]; *People v. Jordan* (2004) 121 Cal.App.4th 544, 557 [“In *Florida v. J.L.*, the police officers reached the bus stop approximately six minutes after being [dispatched]. . . . The record did not show how much time had elapsed between the anonymous telephone call and the instructions to the officers to respond.”].

**MULTIPLE ANONYMOUS TIPS:** An anonymous tip may be deemed sufficiently corroborated to justify a detention if one or more other anonymous callers provided essentially the same information.<sup>69</sup> The key, here, is that there must be reason to believe the callers are not the same person.

**DANGER:** The courts also consider the extent to which the crime reported by the caller presents a threat to life or property, even though the threat does not constitute an exigent circumstance. In other words, the greater the threat, the more likely a detention will be warranted. As the United States Supreme Court said in *Florida v. J.L.*, “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.”<sup>70</sup>

For example, when an anonymous caller notifies 911 of an erratic driver or a possible DUI, the threat

to other motorists is so great and imminent that the courts will usually place a lot of weight on this factor. As the U.S. Court of Appeals pointed out, “The rationale for allowing less rigorous corroboration of tips alleging erratic driving is that the imminent danger present in this context is substantially greater (and more difficult to thwart by less intrusive means) than the danger posed by a person in possession of a concealed handgun.”<sup>71</sup>

Similarly, a report that a person is carrying a concealed weapon in a bar would not generate the same need for quick action as a report that an armed person was inside an airport, or that the person was threatening people with the gun.<sup>72</sup> As the court noted in *People v. Pinckney*, “There is a difference of significant degree between a report only that a man has a gun in his possession and another report that a person not only has a gun but that he has just used it for the commission of a crime.”<sup>73</sup>

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<sup>69</sup> See *Higgason v. Superior Court* (1985) 170 Cal.App.3d 929, 938; *People v. Fein* (1971) 4 Cal.3d 747, 753; *People v. Terrones* (1989) 212 Cal.App.3d 139, 147; *People v. Camarella* (1991) 54 Cal.3d 592, 606 [sufficient corroboration may exist even though information for second informant was somewhat stale]; *U.S. v. Nielsen* (9<sup>th</sup> Cir. 2004) 371 F.3d 574, 580 [(“T)he veracity of [the three police informants] is buttressed by the similarity of their accounts.”]; *People v. Coulombe* (2000) 86 Cal.App.4<sup>th</sup> 52, 58 [“Here we have not one, but two independent tips.”]; *U.S. v. Landis* (9<sup>th</sup> Cir. 1984) 726 F.2d 540, 543 [“Interlocking tips from different confidential informants enhance the credibility of each.”]; *U.S. v. Nelson* (3d Cir. 2002) 284 F.3d 472, 482-3 [the second anonymous call “served both to confirm the type of activity reported in the first call and to heighten the officers’ awareness of the need for intervention, since the second call confirmed that the crimes were ongoing.”]; *Marinis v. Village of Irvington* (S.D.N.Y. 2002) 212 F.Supp.2d 220, 226 [(“T)he two tips together might well have provided reasonable suspicion to justify a *Terry* stop of Marinis.”].

<sup>70</sup> (2000) 529 U.S. 266, 273-4. ALSO SEE *People v. Profit* (1986) 183 Cal.App.3d 849, 883 [“Nor can we ignore the seriousness of the offense involved, which is a highly determinative factor in any evaluation of police conduct.” Citing *People v. Johnson* (1971) 15 Cal.App.3d 936, 940-1]; *People v. Herrera* (1975) 52 Cal.App.3d 177, 182 [“The more serious the crime under investigation, the greater the governmental interest in its prevention and detection.”].

<sup>71</sup> *U.S. v. Wheat* (8<sup>th</sup> Cir. 2001) 278 F.3d 722, 732, fn.8. ALSO SEE *State v. Walshire* (Iowa Supreme Court 2001) 634 N.W.2d 625, 630 [(“A) serious public hazard [DUI] allegedly existed that, in the view of the Supreme Court, might call for a relaxed threshold of reliability.”]; *Wisconsin v. Rutzinski* (2001) 623 N.W.2d 516, 526 [erratic driver “posed an imminent threat to the public safety”]; *State v. Boyea* (2000) 765 A.2d 862, 867 [“In 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.”]. BUT ALSO SEE *People v. Jordan* (2004) 121 Cal.App.4<sup>th</sup> 544, 563, 563, fn. 11 [“Many of the cases that consider the level of danger created by erratic or drunk driving nonetheless require some indicia of reliability to support allegations of reckless driving in a telephone tip.” Citations omitted.]. **NOTE:** The California Supreme Court has granted review of *People v. Wells* (2004) 122 Cal.App.4<sup>th</sup> 155 in which the Court of Appeal ruled an anonymous 911 report of a DUI driver will justify a car stop even if there are no circumstances indicating the information is accurate.

<sup>72</sup> See *Florida v. J.L.* (2000) 529 U.S. 266, 274 [“Nor do we hold that public safety officials in quarters where the reasonable expectation of Fourth Amendment privacy is diminished, such as airports, cannot conduct protective searches on the basis of information insufficient to justify searches elsewhere.”]; *U.S. v. Holloway* (11<sup>th</sup> Cir. 2002) 290 F.3d 1331, 1339 [(“T)he information given by the caller [gunshots and arguing] involved a serious threat to human life.”].

<sup>73</sup> (2001) 729 N.Y.S.2d 830, 834. ALSO SEE *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579, 585 [“Officer Perkins reasonably concluded that a vehicle driven recklessly on the freeway by a man pointing a gun at other cars was the kind of hazard which required him to proceed immediately to find the car and question its occupants.”]; *U.S. v. Nelson* (3d Cir. 2002) 284 F.3d 472, 483 [(“I)n determining whether there is reasonable suspicion, [the courts] may take into account reports of an active threat, including the presence and use of dangerous weapons.”].