

**Florida v. J.L.**

(March 28, 2000) \_\_ US \_\_

**ISSUE**

Can officers lawfully pat search a person based solely on an anonymous telephone tip that the person is carrying a concealed weapon?

**FACTS**

Miami-Dade police received an anonymous telephone call from a person who said a young black man standing at a particular bus stop was carrying a gun. The caller also said the man was wearing a plaid shirt. Officers who were dispatched to the call saw three black men "just hanging out" at the bus stop. One of the men, later identified as J.L., was wearing a plaid shirt.

One of the officers approached J.L., ordered him to put his hands up, then pat searched him. During the search, the officer felt a gun in one of J.L.'s pockets. The officer seized the gun and arrested J.L. for carrying a concealed weapon.

**DISCUSSION**

J.L. contended the pat search was unlawful because, (1) it was based solely on an anonymous tip, and (2) the officers were not aware of any circumstances that made it reasonable for them to believe the tip was accurate or reliable. The United States Supreme Court agreed.

**Background**

It is settled that officers may pat search a person for weapons if they reasonably believe he is armed with a weapon.<sup>(1)</sup> Although officers need not be absolutely certain the person is armed,<sup>(2)</sup> they must at least have some reason to believe so.<sup>(3)</sup>

In most cases, an officer's belief that a suspect is carrying a concealed weapon is based on circumstances known or apparent to the officer, such as a bulge under the suspect's clothing that is consistent with a weapon, extreme nervousness, furtive gestures, or hostility toward officers. Or, such a belief may be based on the fact the suspect was lawfully detained for a crime in which weapons are commonly used.<sup>(4)</sup>

In other cases, such as *J.L.*, an officer's belief that a suspect is carrying a concealed weapon is based solely on information from another person, such as a police informant or a citizen informant. As a general rule, officers may act upon such a tip only if there is reason to believe it was accurate or reliable.

For example, it is usually reasonable for officers to rely on information from a "tested" police informant, meaning an informant who has a history or "track record" of providing accurate information.<sup>(5)</sup> If an informant is not tested, it may nevertheless be reasonable to rely on his tip if officers have been able to corroborate some or all of the information he furnished,<sup>(6)</sup> or if the informant provided information that was not easily obtained or predictable.<sup>(7)</sup>

It may also be reasonable for officers to rely on information furnished by so-called "citizen informants"; i.e., victims or witnesses who identify themselves to police and furnish information as an act of good citizenship.<sup>(8)</sup> It is settled that information from a "citizen informant" will be presumed reliable if it was based on the informant's personal knowledge.<sup>(9)</sup>

### **The Court's ruling**

In light of these principles, the United States Supreme Court ruled the pat search of J.L. was unlawful for the following reasons:

First, because the caller was anonymous, the officers had no way of knowing whether he had furnished accurate information in the past. Therefore, the caller could not qualify as a "tested" informant. As Justice Kennedy observed in his concurring opinion, "If the telephone call is truly anonymous, the informant has not placed his credibility at risk and can lie with impunity."

Second, the officers were unable to develop any information that constituted corroboration of the tip. Nor was the caller's information so detailed as to be deemed sufficiently reliable. Said the court, "The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. . . . 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."

Third, although the officers were able to corroborate the caller's information that a man in a plaid shirt was standing at a certain bus stop, this type of corroboration—commonly known as corroboration of "innocent" information—is usually insufficient to render a tip reliable. Said the Court, "An accurate description of a suspect's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person."

Consequently, the Court ruled that under current law, the search of J.L. was unlawful.

### **Court refuses to change the law**

Although the pat search was unlawful under present law, the Government urged the Court to change the law—to adopt a so-called "firearm exception" that would permit pat searches based on unreliable, or at least less reliable information. The Court, however, was unwilling to do this. As the Court explained, "Firearms are dangerous, and extraordinary dangers sometimes justify unusual precautions. Our decisions recognize the serious threat that armed criminals pose to public safety . . . But an automatic firearm exception to our established reliability analysis would rove too far."

### **DA's COMMENT**

The Court's decision in *J.L.* does not mean officers are powerless to act when responding to anonymous calls that a person in a public place is in possession of a concealed weapon. In the absence of grounds to

detain or pat search the suspect, officers can "contact" the suspect and question him about the tip. If the suspect lies, gives inconsistent statements, becomes extremely nervous, or says or does anything else that tends to corroborate the tip, the officer may, depending on the totality of circumstances, have sufficient grounds to pat search the suspect.

The officer may also ask the suspect to consent to a pat search. Note, however, that the suspect's refusal to be pat searched is not a circumstance that can be considered in determining whether grounds to detain or pat search exist.<sup>(10)</sup>

It should also be noted that the Court's decision in *J.L.* pertains only to truly anonymous calls in which officers have no way of knowing the identity of the caller. The ruling would not apply in a situation in which a person approaches officers, points out an individual and says he has personal knowledge that the person is now in possession of a concealed weapon. Under such circumstances, officers may usually act on the tip immediately (i.e., pat search the suspect) without waiting to confirm the identity of the informant. As we explained in *California Criminal Investigation 2000*, "If, because of a need for quick action, an officer does not obtain the name or other identifying information from a victim or witness who personally gave him information, the victim or witness may nevertheless be deemed a 'citizen informant' because he 'exposed himself to identification'; i.e., he did not know the officer would not stop to obtain his ID."<sup>(11)</sup>

In his concurring opinion, Justice Kennedy seemed to endorse this view when he wrote, "An instance where a tip might be considered anonymous but nevertheless sufficiently reliable to justify a proportionate police response may be when an unnamed person driving a car the police officer later describes stops for a moment and, face to face, informs the police that criminal activity is occurring."

It is not clear whether the result in this case would have been different if there were testimony that the informant called police on a 9-1-1 line that gave dispatchers the location from which the call was made. It could be argued that most people who call 9-1-1 are aware that their phone number, and in some cases their address, is automatically displayed on the operator's consoles. That being the case, the caller might not be deemed a truly anonymous informant and may, depending on the circumstances, qualify as a citizen informant. This, too, was noted by Justice Kennedy who said, "[T]he ability of the police to trace the identity of anonymous telephone informants may be a factor which lends reliability to what, years earlier, might have been considered unreliable anonymous tips."

Finally, police dispatchers should be sure to notify officers whether they are responding to call based on an anonymous tip or whether the tip came from an identified caller. This information is essential so that officers will know whether they can immediately act if they locate the suspect, or whether they must try to develop additional information. Although the caller's name need not be broadcast to the officers, they should be notified that the information came from an identified caller.

(1) See *Terry v. Ohio* (1968) 392 US 1, 27-8; *Ybarra v. Illinois* (1979) 444 US 85, 93-4; *Adams v. Williams* (1972) 407 US 143; *People v. Williams* (1992) 3 Cal.App.4th 1100, 1104; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240; *People v. Dickey* (1994) 21 Cal.App.4th 952, 956.

(2) See *Terry v. Ohio* (1968) 392 US 1, 20, 27; *Michigan v. Long* (1983) 463 US 1032, fn.11; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240; *People v. Hubbard* (1970) 9 Cal.App.3d 827, 830; *People v. Franklin* (1985) 171 Cal.App.3d 627, 635; *People v. Allen* (1975) 50 Cal.App.3d 896, 902.

(3) See *Sibron v. New York* (1968) 392 US 40, 64; *People v. Dickey* (1994) 21 Cal.App.4th 952, 956.

(4) See *Terry v. Ohio* (1968) 392 US 1, 6, 30 [detention for suspected casing for robbery]; *People v. Franklin* (1985) 171 Cal.App.3d 627 [detention for armed robbery]; *People v. Anthony* (1970) 7 Cal.App.3d 751, 762 [detention for armed robbery]; *People v. Craig* (1978) 86 Cal.App.3d 905, 912 [detention for armed robbery]; *People v. Stone* (1981) 117 Cal.App.3d 15, 19 [detention for strong-arm robbery]; *People v. Gonzalez* (1998) 64 Cal.App.4th 432, 439 [detention for armed robbery]. **Re possession of weapon:** See *Adams v. Williams* (1972) 407 US 143; *People v. Duren* (1973) 9 Cal.3d 218; *People v. Superior Court (Saari)* (1969) 2 Cal.App.3d 197; *In re Richard C.* (1979) 89 Cal.App.3d 477; *People v. Methey* (1991) 227 Cal.App.3d 349, 358. **Re Burglary:** See *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1230; *People v. Myles* (1975) 50 Cal.App.3d 423, 430; *People v. Smith* (1973) 30 Cal.App.3d 277, 279-80; *People v. Juarez* (1973) 35 Cal.App.3d 631, 636; *People v. Suennen* (1980) 114 Cal.App.3d 192, 199; *U.S. v. Mattarolo* (9th Cir. 1999) 191 F.3d 1082. **Re drug sales:** See *People v. Thurman* (1989) 209 Cal.App.3d 817, 822; *People v. Glaser* (1995) 11 Cal.4th 354, 367-8; *People v. Limon* (1993) 17 Cal.App.4th 524, 534-5; *People v. Lee* (1987) 194 Cal.App.3d 975, 983; *People v. Campbell* (1981) 118 Cal.App.3d 588, 595.

(5) ) See *Adams v. Williams* (1972) 407 US 143, 146-7; *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1577; *People v. Terrones* (1989) 212 Cal.App.3d 139, 146; *People v. Barger* (1974) 40 Cal.App.3d 662, 667; *People v. Stewart* (1983) 140 Cal.App.3d 11, 15; *People v. Gray* (1976) 63 Cal.App.3d 282, 288; *People v. Hansborough* (1988) 199 Cal.App.3d 579, 584.

(6) See *Alabama v. White* (1990) 496 US 325; *Adams v. Williams* (1972) 407 US 143, 147; *People v. Johnson* (1987) 189 Cal.App.3d 1315; *People v. Orozco* (1981) 114 Cal.App.3d 435; *People v. Superior Court (McBride)* (1981) 122 Cal.App.3d 156, 164; *People v. Superior Court (Saari)* (1969) 2 Cal.App.3d 197, 201; *People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1616-20; *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1580; *People v. Pressley* (1966) 242 Cal.App.2d 555, 558-9.

(7) See *Massachusetts v. Upton* (1984) 466 US 727, 733; *Alabama v. White* (1990) 496 US 325, 332; *People v. McCarter* (1981) 117 Cal.App.3d 894, 902; *People v. Costello* (1988) 204 Cal.App.3d 431, 447-8; *People v. Dumas* (1973) 9 Cal.3d 871, 876; *People v. Superior Court (Williams)* (1978) 77 Cal.App.3d 69, 75; *People v. Stewart* (1983) 140 Cal.App.3d 11, 15; *People v. Lopez* (1985) 173 Cal.App.3d 125, 135.

(8) See *People v. Ramey* (1976) 16 Cal.3d 263, 268-9; *People v. Schulle* (1975) 51 Cal.App.3d 809, 814-5; *People v. Kershaw* (1983) 147 Cal.App.3d 750, 754; *Illinois v. Gates* (1983) 462 US 213, 233-4; *People v. Terrones* (1989) 212 Cal.App.3d 139, 147-8; *People v. Lombera* (1989) 210 Cal.App.3d 29, 32-3; *People v. Gray* (1976) 63 Cal.App.3d 282, 287-8; *People v. Scoma* (1969) 71 Cal.2d 332, 338, fn.7; *People v. Smith* (1976) 17 Cal.3d 845, 852; *In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1741; *People v. Vasquez* (1983) 138 Cal.App.3d 995, 999-1000. **NOTE:** If, because of a need for quick action, an officer does not obtain the name or other identifying information from a victim or witness who personally gave him information, the victim or witness may nevertheless be deemed a "citizen

informant" because he "exposed himself to identification"; i.e., he did not know the officer would not stop to obtain his ID. See *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579, 584; *In re Alexander B.* (1990) 220 Cal.App.3d 1572, 1577; *People v. Terrones* (1989) 212 Cal.App.3d 139, 148; *People v. Lombera* (1989) 210 Cal.App.3d 29, 32; *People v. Superior Court (Haflich)* (1986) 180 Cal.App.3d 759, 768.

(9) See *People v. Kershaw* (1983) 147 Cal.App.3d 750, 754; *People v. Schulle* (1975) 51 Cal.App.3d 809, 814; *People v. Vasquez* (1983) 138 Cal.App.3d 995, 999-1000.

(10) See *People v. Miller* (1972) 7 Cal.3d 219, 225.

(11) See *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579, 584; *In re Alexander B.* (1990) 220 Cal.App.3d 1572, 1577; *People v. Terrones* (1989) 212 Cal.App.3d 139, 148; *People v. Lombera* (1989) 210 Cal.App.3d 29, 32; *People v. Superior Court (Haflich)* (1986) 180 Cal.App.3d 759, 768 ["Unless the informant is a well known public figure whose reputation for probity is virtually synonymous with his name, determination of his name alone adds nothing to his reliability. Rather the police must have reason to believe, and in fact believe, the informant is truly a citizen informant as opposed to a police informant].