

Recent Case Report

People v. Wells

(2006) 38 Cal.4th 1078

ISSUE

May officers stop a suspected drunk driver based solely on an anonymous tip?

FACTS

At 1:43 A.M., a CHP dispatcher notified officers patrolling Highway 99 in Kern County that an anonymous caller had just reported seeing a “possibly intoxicated driver” on the freeway “weaving all over the roadway.”¹ The caller described the car as a 1980’s model blue van, and said it was headed northbound on Highway 99 just north of Bakersfield. An officer in the vicinity was in a position to intercept the van, so he stopped at the side of the freeway and waited.

About two minutes later, he 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.

DISCUSSION

Wells contended that the evidence should have been suppressed because the traffic stop was unlawful. Specifically, she contended that officers should not be permitted to stop suspected drunk drivers based solely on telephone tips from anonymous callers. The California Supreme Court disagreed.

Officers may not, of course, detain a motorist unless they have reasonable suspicion that he has violated the law. Although reasonable suspicion is a fairly low level of proof,² officers must be able to point to specific facts that support their belief that the stop was warranted.³ In most cases, this is not a problem because the officers will have witnessed the violation.

But with the proliferation of cell phones, the CHP and other law enforcement agencies are receiving more and more calls from motorists reporting dangerous driving, especially suspected DUI’s. Understandably, some of these callers want to remain anonymous and will refuse to identify themselves.

¹ **NOTE:** There was little information in the record regarding the call or the caller. The court assumed it was an anonymous call.

² See *Illinois v. Wardlow* (2000) 528 U.S. 119, 123 [“[R]easonable suspicion’ is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.”]; *Richards v. Wisconsin* (1997) 520 U.S. 385, 394 [“This showing [for reasonable suspicion] is not high”].

³ See *Illinois v. Gates* (1983) 462 U.S. 213, 239.

If so, and if officers locate the vehicle, they may, of course, stop it if they observe erratic driving or some other infraction. But what if the officer stops the car before he can independently develop reasonable suspicion? In other words, can the officer stop the car based solely on the anonymous tip?

It's an important question because officers will naturally want to stop the car immediately rather than take a chance that the driver will cause an accident while they are watching for confirmation. As the court pointed out, an officer who is following a suspected drunk driver "does not enjoy [the] luxury" of waiting around for more proof. Furthermore, any officer who did so "undoubtedly would be criticized . . . if an accident subsequently occurred."⁴

For this reason, the court ruled that officers may stop a car to investigate an anonymous report that the driver is impaired if the following circumstances existed:

- (1) **SAME CAR:** The caller must have provided a sufficient description of the car and its location so that officers can be reasonably certain they are stopping the right car.⁵
- (2) **CALLER SAW THE VIOLATION:** It must appear that the caller had witnessed the violation and was not merely "speculating or surmising unlawful activity."
- (3) **DANGER:** The caller's description of the erratic driving must have reasonably indicated the driver posed an imminent threat.⁶
- (4) **CALLER'S RELIABILITY:** There must be some reason to believe the caller was reliable. In these cases, he will be deemed sufficiently reliable if the officers were able to confirm that his description of the vehicle and its approximate location were accurate.

In discussing whether these requirements were met in *Wells*, the court noted the following. First, the officer reasonably believed he had stopped the "right" vehicle. As the court pointed out, the van "matched the description, and was traveling in the same direction and at the same time and location as described." Second, although the caller did not specifically say he was an eyewitness to the erratic driving, the court concluded that, given the nature of the report, this can be implied. Said the court, "[W]e may reasonably infer that the tip came from a passing motorist. Where else would it have come from?"

Third, the violation was plainly dangerous as "a possibly intoxicated highway driver, weaving all over the roadway" poses a "grave and immediate risk to the public." (Although the officer did not see anything to indicate the driver was impaired, the court pointed out that "[m]otorists who see a patrol car may be temporarily able to exercise

⁴ Quoting from *State v. Boyea* (Vt. 2000) 765 A.2d 862, 867-8.

⁵ See *U.S. v. Wheat* (8th Cir. 2001) 278 F.3d 722, 731 ["First, the anonymous tipster must provide a sufficient quantity of information, such as the make and model of the vehicle, its license plate numbers, its location and bearing, and similar innocent details, so that the officer, and the court, may be certain that the vehicle stopped is the same as the one identified by the caller. The time interval between receipt of the tip and location of the suspect vehicle, though going principally to the question of reliability, may also be a factor here."].

⁶ See *U.S. v. Wheat* (8th Cir. 2001) 278 F.3d 722, 732, fn. 8 ["Therefore, the moving violation or violations alleged must suggest real exigency. An allegation of erratic driving will generally pass this test since it strongly suggests that the driver is operating under the influence of alcohol or drugs and is unable to control his vehicle. So too would an anonymous tip of drag racing or a game of "chicken"; at the other end of the spectrum, a report of a vehicle being driven one mile per hour over the posted limit would almost certainly not. . . . In all cases, however, the more extensive the description of the alleged offense, the greater the likelihood that the tip will give rise to reasonable suspicion."].

increased caution.”) Fourth, the officer had reason to believe the caller was reliable because, within minutes of receiving the call, he confirmed the caller’s “relatively precise and accurate description” of the van.

Consequently, the court ruled that the traffic stop was lawful.⁷

COMMENT

It is apparent that the legality of car stops based on anonymous calls will depend largely on the efforts of 911 operators. This is because the caller’s reliability must necessarily be based on the amount of detailed information he furnished to the operator; e.g., information about the vehicle, its location and direction of travel, the driver, and why the caller believed the driver constituted a threat. Said the court, “[W]e endorse efforts by law enforcement to gather more information to assess the reliability of 911 calls reporting criminal activity.”⁸

⁷ ALSO SEE *Lowry v. Gutierrez* (2005) 129 Cal.App.4th 926 [telephone tip of erratic driving].

NOTE: The court distinguished *Florida v. J.L.* (2000) 529 U.S. 266, in which the U.S. Supreme Court ruled that a detention based on an anonymous call was unlawful. The caller had reported that a young man standing at a bus stop was carrying a concealed weapon. The Court indicated, however, that it might have reached a different conclusion if the caller had reported that the person presented an imminent danger to others; e.g., if he were carrying a bomb. Citing this language, the court in *Wells* said, “[A] report of a possibly intoxicated highway driver, ‘weaving all over the roadway,’ poses a far more grave and immediate risk to the public than a report of mere passive gun possession.”].

⁸ Quoting the Court of Appeal decision in *Wells*.