

## Navarette v. California

(2014) \_\_ U.S. \_\_ [2014 WL 1577513]

### Issue

Under what circumstances can a 9-1-1 caller provide officers with grounds for a traffic stop?

### Facts

A woman phoned 9-1-1 in Humboldt County and notified the CHP that another vehicle had just “run her off the road” and that (1) both vehicles were traveling southbound on Highway 1, (2) the incident occurred at mile marker 88; and (3) the responsible vehicle was a Ford 150 pickup truck, license number 8D94925. This information was immediately broadcast to CHP units in the vicinity.

About 12 minutes later, a CHP officer spotted the truck near mile marker 69 and pulled it over. As he approached the truck, he could smell the odor of marijuana emanating from it, so he searched the vehicle and found 30 pounds of marijuana in the truck bed. The driver, Lorenzo Navarette, was arrested. Navarette later filed a motion to suppress the evidence on grounds the officer lacked reasonable suspicion to stop his truck. The motion was denied by both the trial court and the Court of Appeal. Navarette appealed to the United States Supreme Court.

### Discussion

At the outset, it should be noted that although the 9-1-1 caller had identified herself by name, for technical reasons the Court was required to view her as an anonymous caller.<sup>1</sup> (It would seem that all 9-1-1 callers are technically anonymous because, even if the call was traced and the caller gave a name, he or she is essentially just a voice on the phone.) Thus, the issue before the Court was whether a tip from a 9-1-1 caller about a traffic infraction (or other crime) can, in and of itself, provide officers with grounds for a traffic stop to investigate the matter.<sup>2</sup>

It is settled that a traffic stop requires only reasonable suspicion to believe the driver committed a traffic infraction.<sup>3</sup> Although reasonable suspicion is usually based on an officer’s observation of the violation, it may also be based solely on information from another motorist—even an anonymous one—but only if the officer had reason to believe the information was reliable.<sup>4</sup> As the First Circuit put it, “The test, of course, does not hinge on the definition of ‘anonymous’ but, rather, on whether the 911 call possessed sufficient indicia of reliability.”<sup>5</sup>

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<sup>1</sup> **NOTE:** It was undisputed that the woman identified herself by name but, as the Court explained, “[b]ecause neither the caller nor the [CHP] dispatcher who received the call was present at the [suppression] hearing, the prosecution did not introduce the recording into evidence. The prosecution proceeded to treat the tip as anonymous, and the lower courts followed suit.”

<sup>2</sup> **NOTE:** A traffic infraction is a “crime.” See Pen. Code § 16.

<sup>3</sup> See *U.S. v. Hartz* (9th Cir. 2006) 458 F.3d 1011, 1017 [“A police-initiated traffic stop is reasonable under the Fourth Amendment if the police stop the vehicle because of reasonable suspicion that the vehicle’s occupants have broken the law.”].

<sup>4</sup> See *Florida v. J.L.* (2000) 529 U.S. 266, 271 [a “moderate indicia of reliability” is “essential”].

<sup>5</sup> *U.S. v. Ruidiaz* (1st Cir. 2008) 529 F.3d 25, 31.

Over the years, the courts have taken note of various circumstances that are relevant in determining whether information from an anonymous caller is sufficiently reliable to warrant a car stop. The most common circumstances are as follows:

**CALLING 9-1-1:** That the caller phoned 9-1-1 instead of a non-emergency line is some indication of reliability because it is common knowledge that 9-1-1 calls are automatically traced and recorded, and therefore people who phone 9-1-1 are—at least to some extent—leaving themselves vulnerable to being identified even if they give a false name.<sup>6</sup>

**CALLER IDENTIFIED HIMSELF OR REVEALED HIS WHEREABOUTS:** Although the caller's identity was not confirmed, it is somewhat relevant that he voluntarily gave his name or phone number,<sup>7</sup> or that he furnished information from which his whereabouts might have been determined; e.g., caller said he was following the suspect on a certain street.<sup>8</sup>

**CALLER PROVIDED DETAILS:** The courts often note whether the caller provided a detailed account of what he had seen or heard.<sup>9</sup>

**DEMEANOR:** The caller's manner of speaking—his “tone, demeanor, or actual words”<sup>10</sup>—may add to his reliability if it was consistent with the nature of his report; e.g., caller who was reporting an emergency sounded upset.<sup>11</sup>

**TIME LAPSE:** It is relevant that the caller was reporting something that was currently happening or had just occurred.<sup>12</sup>

**MULTIPLE CALLERS:** It is very significant that other 9-1-1 callers reported the same or similar information.<sup>13</sup>

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<sup>6</sup> 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 caller would phone in a ‘hoax’ when police can travel to the person’s home after receiving only a [911] hang-up call.”]. Also see *Florida v. J.L.* (2000) 529 US 266, 276 (conc. opn. of Kennedy, J.) [“Instant caller identification is widely available to police ... [and] [v]oice recording of telephone tips might, in appropriate cases, be used by police to locate the caller.”].

<sup>7</sup> See *Massachusetts v. Upton* (1984) 466 U.S. 727, 734 [“Lieutenant Beland noted that the caller ‘admitted she was the girl I had named’”]; *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1174 [called gave his name and thus, the call “was not anonymous”]; *U.S. v. Ruidiaz* (1st Cir. 2008) 529 F.3d 25, 31 [the caller identified himself as a neighbor and “confirmed his telephone number”].

<sup>8</sup> See *U.S. v. Woods* (8th Cir. 2014) \_\_ F.3d \_\_ [2014 WL 1282292] [“Officer Jamieson recontacted the 911 caller, the caller indicated that he was still in the vicinity and was watching the officers.”]; *U.S. v. Chavez* (10th Cir. 2011) 660 F.3d 1215, 1222 [the caller “told them he was a Wal-Mart employee at a specific Wal-Mart store and thereby provided the police with information to discover his identity”].

<sup>9</sup> See *People v. Dolly* (2007) 40 Cal.4th 458, 467 [the caller provided “an accurate and complete description of the perpetrator and his location”]; *People v. Wells* (2006) 38 Cal.4th 1078, 1088 [a “relatively precise and accurate description”].

<sup>10</sup> *People v. Dolly* (2007) 40 Cal.4th 458, 467, fn.2.

<sup>11</sup> See *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1176 [the caller was “laboring under the stress of recent excitement”].

<sup>12</sup> See *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]”]; *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1177 [the caller “sought immediate police assistance within minutes of being threatened”].

One other thing. Although it has no bearing on the reliability of the caller, the fact that he was reporting a situation that constituted an imminent threat will also be considered in determining the reasonableness of the stop.<sup>14</sup>

Applying this totality of the circumstances test, the Court in *Navarette* took note of the following: (1) the caller had phoned 9-1-1 which “has some features that allow for identifying and tracing callers, and thus provides some safeguards against making false reports with immunity”; (2) the caller identified the responsible vehicle by make, model, and license plate number; (3) the caller described the incident in some detail; (4) the caller immediately reported the incident; and (5) the officer stopped the truck about 18 minutes after the woman phoned 9-1-1 and the stop occurred “roughly 19 miles south of the location reported in the 911 call.” The Court also noted that the caller was reporting a dangerous situation in that “[r]unning another vehicle off the road suggests lane-positioning problems, decreased vigilance, impaired judgment, or some combination of those recognized drunk driving cues.”

Taking these circumstances into account, the Court ruled that “the call bore adequate indicia of reliability for the officer to credit the caller’s account” and that the officer “was therefore justified in proceeding from the premise that the truck had, in fact, caused the caller’s car to be dangerously diverted from the highway.” POV

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<sup>13</sup> See *People v. Coulombe* (2000) 86 Cal.App.4th 52, 58 [“Here we have not one, but two independent tips.”]; *People v. Hirsch* (1977) 71 Cal.App.3d 987, 991, fn.1 [“The totality of information coming from a number of independent sources, may be sufficient even though no single item meets the test of reliability. If the smoke is heavy enough, the deduction of a fire becomes reasonable.”]; *U.S. v. Hampton* (7th Cir. 2009) 585 F.3d 1033, 1039 [“Three people in addition to Smith had called 911”].

<sup>14</sup> See *Florida v. J.L.* (2000) 529 U.S. 266, 273-74 [“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.”]; *People v. Wells* (2006) 38 Cal.4th 1078, 1083 [“[A] citizen’s tip may itself create a reasonable suspicion sufficient to justify a temporary vehicle stop or detention, especially if the circumstances are deemed exigent by reason of possible reckless driving or similar threats to public safety.”].