

# Recent Case Report

## **People v. Rodgers**

(2005) 131 Cal.App.4<sup>th</sup> 1560

### **ISSUE**

Under what circumstances may officers detain a suspect based on an anonymous 911 call?

### **FACTS**

At about 3:40 A.M., an anonymous caller notified the Riverside County Sheriff's Department that a man and a woman were arguing inside a red sedan parked in the driveway of a certain apartment complex. The caller said she heard the man say he was going to kill the woman. The first deputy arrived about four minutes later. As he pulled into the driveway, he saw a red sedan just leaving.

The deputy stopped the car and, as he approached, saw that the occupants were a man and a woman. The driver was Rodgers; the woman, his wife, was crying. After Rodgers admitted that he and his wife had been having an argument, the deputy pat searched him and placed him inside his patrol car. He then spoke with Mrs. Rodgers who, at some point, gave him consent to search the car. In the trunk, the deputy found a gun and ammunition. As the result, Rodgers was arrested for being a felon in possession of a firearm.

### **DISCUSSION**

Rodgers contended the detention was unlawful because it was based solely on a report from an anonymous caller whose reliability was unknown. And because the gun and ammunition were obtained as the result of the detention, they should have been suppressed.

It has been a long-standing rule that information from an anonymous caller will not justify a detention.<sup>1</sup> Recently, however, the courts have been loosening this restriction somewhat when the caller was reporting a serious crime in progress.

The main reason for this development is the proliferation of cell phones. With so many of them out on the streets and freeways, law enforcement agencies are receiving growing numbers of calls from people reporting crimes in progress, oftentimes crimes they are witnessing as they are speaking with 911 operators. Furthermore, unlike the presumptively unreliable "police informant," most people who phone in these reports are honest citizens who, understandably, want to remain anonymous.

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<sup>1</sup> See *U.S. v. Hawk* (10<sup>th</sup> Cir. 2005) 412 F.3d 1179, 1188 ["Information is only as good as its source"]; *Higgason v. Superior Court* (1985) 170 Cal.App.3d 929, 946 [conc. opn. of Crosby, J.] ["There are few principles of human affairs more self-evident than this: The unverified story of an untested informer is of no more moment than a fairy tale on the lips of a child"].

For these reasons, the courts have been permitting brief detentions based on information from anonymous callers when the following circumstances existed:

- (1) **Crime in progress:** The caller was reporting a crime in progress.
- (2) **Substantial threat:** The crime presented a substantial threat of harm to someone.<sup>2</sup>
- (3) **No reasonable alternatives:** There did not appear to be any reasonable alternatives to detaining the suspect.
- (4) **Indication of reliability:** There was some indication the caller was reliable. Not much is required, but there must be something. For example, it might be sufficient that the caller, although he refused to identify himself, “exposed himself to identification” by giving the 911 operator some information by which his identity might be determined.<sup>3</sup> (This actually occurred in *Rodgers* because the caller had phoned the sheriff’s department on a cell phone and, as the result, the dispatcher knew his phone number. But the Court of Appeal could not consider this information because it was not introduced at the hearing on the motion to suppress.)

In *Rodgers*, it was apparent that the first two requirements were met. The court ruled the third requirement was also met because the officers had only one way of confirming the caller’s story: stop the red sedan:

[The deputy] faced a stark choice as he pulled up to the moving red sedan. He could stop the vehicle long enough to determine whether there were facts corroborating the tipster’s report of criminal activity; or he could decline to stop the vehicle, allowing it to proceed out of the parking lot. If [the deputy] had not stopped the vehicle, the driver may well have carried out the alleged threat once he was safely away from the police.

As for the fourth requirement, the court ruled there were, in fact, two circumstances that provided “some foundation as to the tipster’s credibility and [reduced] the risk of fabrication.” First, it was apparent that the caller was someone in the apartment complex who was close enough to the car to hear *Rodgers*’ threats. As the court pointed out:

[T]he fact that the caller correctly identified the location of the red car and overheard the man’s threatening words indicates that the anonymous caller was close enough to have first-hand knowledge of the reported criminal conduct just prior to the officer’s arrival. This is a circumstance that narrows the likely class of informants to someone in or near the parking lot, and demonstrates the informant’s basis of knowledge or veracity.

Second, the deputy arrived at the scene within a few minutes after receiving the call. This is somewhat relevant because, as the Wisconsin Supreme Court noted in *State v. Wil-*

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<sup>2</sup> See *Florida v. J.L.* (2000) 529 U.S. 266, 273 [“We do not say 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>3</sup> See *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579, 584 [by approaching the Highway Patrolman, the reporting party “exposed himself to identification.”]; *People v. Coulombe* (2000) 86 Cal.App.4th 52, 58 [“The citizens who supplied the information subjected themselves to scrutiny and the risk of losing their anonymity by directly approaching the police officers rather than calling in their information.”]; *People v. Jordan* (2004) 121 Cal.App.4th 544, 561 [“As anonymity decreases and the informant’s risk of accountability increases, the inference that the tip is reliable strengthens.”].

liams, “The proximity of the dispatch and the police arrival makes it much less likely that the tip was a prank or otherwise unreliable.”<sup>4</sup>

Accordingly, the court ruled the deputy “was justified in making the initial stop to determine whether additional facts existed to further corroborate the anonymous caller’s tip” that Rodgers “posed an imminent threat to safety.”

#### COMMENT

On December 15, 2004, the California Supreme Court granted review of *People v. Wells*,<sup>5</sup> a case in which the main issue was whether an anonymous 911 report of a DUI driver justified a car stop. POV

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<sup>4</sup> (2001) 623 N.W.2d 106, 117, fn.17. ALSO SEE *People v. Jordan* (2004) 121 Cal.App.4<sup>th</sup> 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.”]; *U.S. v. Valentine* (3d Cir. 2000) 232 F.3d 350, 354 [“[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.”]; *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.”].

<sup>5</sup> (2004) 122 Cal.App.4<sup>th</sup> 155.