

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

ANONYMOUS TIPS, REASONABLE SUSPICION, and DUI STOPS

Michele McKay McCoy, J.D.

When does an anonymous tip provide enough reasonable suspicion of criminal activity to temporarily detain a suspect in a Terry stop?

The officer's suspicion of criminal activity must be supported by specific facts (not a hunch) based on the totality of the circumstances. It doesn't matter if a search of the suspect or her car revealed contraband. All that matters is what the officer knew before he detained the suspect.

An anonymous tip, *without more*, will not support a detention. The problem with anonymous tips is that there's no way to tell if the caller is a concerned citizen reporting actual criminal activity or a vindictive ex-boyfriend or girlfriend of the suspect making a false report. The "more" that is required is usually some sort of corroboration of the information given in the anonymous report. Compare the following two cases.

In *Florida v. J.L.* (2000) 529 U.S. 266 an anonymous caller told police that a young African-American male wearing a plaid shirt and standing at a particular bus stop was carrying a gun. Officers responded to the bus stop, saw an individual matching the description, frisked him, and found a gun. The suspect was charged with carrying a concealed firearm, but the evidence was suppressed because the detention was illegal. Note that there was no observation of suspicious activity by the officers once they arrived at the scene.

In *Alabama v. White* (1990) 496 U.S. 325 the anonymous tip had what the courts call "predictive" information, an indication of inside knowledge. The tip was that a woman carrying cocaine would leave an apartment building at a specified time, get into a described car, and drive to a named motel. Based on this tip, the police observed the suspect, who left the apartment building at the identified time, got into the described car, and went to the identified motel. The detention was upheld.

The "more" can also be an exigent circumstance. Although the United States Supreme Court decision in *Florida v. J.L.* was unanimous, the opinion contained language that seemed to leave open the possibility of acting on an uncorroborated anonymous tip if the

reported activity was an immediate threat to public safety, like a report of someone with a bomb.

The California Supreme Court appears to have used this language to carve out an exception for DUI stops based on anonymous tips. In *People v. Wells* (2006) 38 Cal.4th 1078 an anonymous caller told a 911 operator that a driver was “weaving all over the road.” The caller described the car (a 1980’s model blue van), the location and the direction of travel. The officer observed the described vehicle and immediately made the stop. The driver was under the influence of cocaine, and an inventory search of the vehicle revealed syringes and heroin.

In upholding the stop, the majority in this 6-3 decision noted the accuracy of the description given by the caller of the car and the location, but also noted that drunk or erratic drivers are an inherent threat to public safety requiring prompt action. (“[A] drunk driver is not at all unlike a ‘bomb’, and a mobile one at that.”) The dissent criticized the majority for failing to point out that there was no other traffic on the road when this stop was made, at about 1:45 a.m., and for assuming, without evidence, that the caller had personal knowledge of the events.

The majority adopted the reasoning of a federal appellate case from the Eighth Circuit, *U.S. v. Wheat* (8th Circ. 2001) 278 F.3d 722. (This is a little odd, because the only federal decisions binding on state courts are those of the United States Supreme Court, and California is in the Ninth Circuit, not the Eighth. But we’ll let that pass.) Henceforth, in California, a DUI stop can be based on an anonymous tip provided that three requirements are met.

First, the tip must contain enough detail about the car and the location to establish that the car stopped is the one identified by the caller. Second, the caller’s information must be based on personal knowledge of a contemporaneous event. This shouldn’t be too hard, since almost everybody carries cell phones, and drunk drivers are often surrounded by other drivers who can call in the report. Third, at least the innocent details given by the anonymous caller, like the direction of travel, must be corroborated by the officer.

There are two ways to help make sure a detention based on an anonymous 911 call holds up in court. . The first is to bring coffee and donuts to the 911 operators and encourage them to ask anonymous callers if they personally observed the drunk driving or other criminal activity that they are reporting. The second, assuming you can do this consistent with public safety, is to observe the suspect until you see some indication of illegal activity, like speeding, weaving, or furtive movements, before making the stop.

Michele McKay McCoy is a veteran prosecutor who now teaches criminal law and related subjects.

[Join Our E-Mail List – Click Here](#)