

# **THIRD DEGREE COMMUNICATIONS, INC.**

## TRAINING BULLETIN: LEGAL UPDATE

### ***ANONYMOUS TIPS, REASONABLE SUSPICION AND PUBLIC SAFETY***

Michele McKay McCoy

In a recent case the California Supreme Court held that an anonymous call to 911 could provide enough reasonable suspicion to initiate a vehicle stop for driving under the influence, provided that the caller's information was detailed enough to describe the erratic driving, the description of the car, and the location and direction of travel of the car (*People v. Wells* [2006] 38 Cal.4<sup>th</sup> 1078).

We now have a logical extension of that ruling, in *People v. Dolly* (2007) DJDAR 1443. In *Dolly* the anonymous caller described the suspect's gender and apparent ethnicity and said the suspect had "just pulled a gun" on him and mentioned a gang name. The caller stated the suspect had a bandage on his left hand and was in the driver's seat of a gray Nissan Maxima parked at a specific intersection.

The caller felt that the suspect "was gonna shoot me right there at that minute" but didn't want to identify himself because "if they find out I'm snitching, they're going to kill me around here."

The caller called again four minutes later, gave his own first name as "Drew", and corrected his description of the vehicle as black, not gray.

Within three minutes responding officers saw a black Nissan Maxima parked at the location given by the caller. They ordered the driver out of the car and face down on the pavement with his hands at his side. The driver was wearing a cast on his left hand. Two passengers (without casts) were ordered out of the vehicle as well.

A search of the vehicle revealed a loaded handgun under the front passenger seat. The defendant admitted ownership of the handgun. The actual charge was felon in possession of a firearm, not assault or attempted assault.

Please notice a couple of issues here. Ordering a driver face down on the pavement is a lot more intrusive than the ordinary vehicle stop authorized by *Wells*. On the other hand the information from the caller in this case clearly was based on personal observation of a very recent event. In *Wells*, personal observation was an assumption.

Also, this defendant had a strike prior conviction. Under the three strikes law, the prior convictions must be serious or violent, but the current offense can be *any* felony at all.

This is why search and seizure law is more important than ever before; the stakes are higher.

The majority of the court upheld the anonymous tip as establishing reasonable suspicion for the detention, based on four reasons. First, the defendant's conduct was an immediate threat to public safety.

Second, a 911 call is widely known to be recorded. The possibility that the caller's voice could be recognized by the suspect reduces the possibility of a hoax. Further, 911 calls typically result in an immediate police response precisely because officers are expected to rely on the information given in 911 calls.

Third, the caller gave firsthand and contemporaneous information, including detailed descriptions of the suspect, the car, and the location, which could be confirmed by the police as soon as they arrived.

Fourth, the caller had a plausible reason for wishing to remain anonymous, namely "I don't have anyone to defend me from all this gang shit."

Three of the justices (Werdegar, Kennard and Moreno) agreed with the result but not the reasoning of the majority. They weren't impressed with the "public safety" argument because they think it introduces a sort of sliding scale to search and seizure that would relax the rules for more serious crimes. They thought that there was enough corroboration of the anonymous caller's information to justify the detention, apart from the nature of the crime.

Together, what *Wells* and *Dolly* teach is that officers should be aware of all the details given by the anonymous caller, respond as quickly as possible, and corroborate as much of the caller's information as possible.

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