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Police Law Bulletin

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UNITED STATES SUPREME COURT

Court Held in "Close Case" That Officer Had Reasonable Suspicion to Stop Vehicle Based on 911 Call

Navarette v. California, 572 U. S. ____ (2014).

A California Highway Patrol officer stopped the pickup truck occupied by petitioners because it matched the description of a vehicle that a 911 caller had recently reported as having run her off the road. As he and a second officer approached the truck, they smelled marijuana. They searched the truck's bed, found 30 pounds of marijuana, and arrested petitioners, Lorenzo and Jose Navarette.

Petitioners moved to suppress the evidence, arguing that the traffic stop violated the Fourth Amendment. Their motion was denied, and they pleaded guilty to transporting marijuana. The California Court of Appeal affirmed, concluding that the officer had reasonable suspicion to conduct an investigative stop. The court reasoned that the content of the tip indicated that it came from an eyewitness victim of reckless driving, and that the officer's corroboration of the truck's description, location, and direction established that the tip was reliable enough to justify a traffic stop. Finally, the court concluded that the caller reported driving that was sufficiently dangerous to merit an investigative stop without waiting for the officer to observe additional reckless driving himself. The California Supreme Court denied review. Petitioners then requested, and were granted, review by the United States Supreme Court. The Supreme Court held that the traffic stop complied with the Fourth Amendment because, under the totality of the circumstances, the officer had reasonable suspicion that the truck's driver was intoxicated.

The Fourth Amendment permits brief investigative stops when an officer has a particularized and objective basis for suspecting the particular person stopped of criminal activity. Reasonable suspicion takes into account "the totality of the circumstances and depends upon both the content of information possessed by police and its degree of reliability.

An anonymous tip *alone* seldom demonstrates the informant's basis of knowledge or veracity. That is because ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations and an anonymous tipster's veracity is largely unknown, and unknowable. But under appropriate circumstances, it is possible that an anonymous tip can demonstrate sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop.

The 911 call in this case bore adequate indicia of reliability for the officer to credit the caller's account. By reporting that she had been run off the road by a specific vehicle, the caller necessarily claimed an eyewitness knowledge of the alleged dangerous driving. That basis of knowledge lends significant support to the tip's reliability. An informant's explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case. Also, the apparently short time between the reported incident and the 911 call suggests that the caller had little time to fabricate the report. Another indicator of veracity is the caller's use of the 911 emergency system. A 911 call has some features that allow for identifying and tracing callers, and thus provide some safeguards against making false reports with immunity. This is not to suggest that tips in 911 calls are *per se* reliable. However, given technological and regulatory developments, a reasonable officer could conclude that a false tipster would think twice before using such a system. The caller's use of the 911 system is therefore one of the relevant circumstances that, taken together, justified the officer's reliance on the information reported in the 911 call.

A reliable tip will justify an investigative stop though only if it creates reasonable suspicion that "criminal activity may be afoot." The Court therefore had to determine whether the 911 caller's report of being run off the roadway created reasonable suspicion of an ongoing crime such as drunk driving as opposed to an isolated episode of past recklessness. The Court noted that by commonsense we can recognize certain driving behaviors as sound indicia of drunk driving. See, *e.g., People* v. *Wells*, 38 Cal. 4th 1078, 1081, 136 P. 3d 810, 811 (2006) ("weaving all over the roadway"); *State* v. *Prendergast*, 103 Haw. 451, 452–453, 83 P. 3d 714, 715–716 (2004) ("cross[ing]over the center line" on a highway and "almost caus[ing]several head-on collisions"); *State* v. *Golotta*, 178 N. J. 205, 209, 837 A. 2d 359, 361 (2003) (driving "all over the road" and "weaving back and forth"); *State* v. *Walshire*, 634 N. W. 2d 625, 626 (Iowa 2001) ("driving in the median"). The accumulated experience of thousands of officers suggests that these sorts of erratic behaviors are strongly correlated with drunk driving. See Nat. Highway Traffic Safety Admin., The Visual Detection of DWI Motorists 4–5 (Mar. 2010), online athttp://nhtsa.gov/staticfiles/nti/pdf/808677.pdf.Of course, not all traffic infractions imply intoxication. Unconfirmed reports of driving without a seatbelt or slightly over the speed limit, for example, are so tenuously connected to drunk driving that a stop on those grounds alone would be constitutionally suspect. But a reliable tip alleging the dangerous behaviors discussed above generally would justify a traffic stop on suspicion of drunk driving. In the case at hand, running another car off the road suggests the sort of impairment that characterizes drunk driving. While that conduct might be explained by another cause, such as driver distraction, reasonable suspicion need not rule out the possibility of innocent conduct. Nor did the absence of additional suspicious conduct, after the vehicle was first spotted by an officer, dispel the reasonable suspicion of drunk driving. It is hardly surprising that the appearance of a marked police car would inspire more careful driving for a time. Extended observation of an allegedly drunk driver might eventually dispel a reasonable suspicion of intoxication, but the 5-minute period in this case hardly sufficed in that regard. Allowing a drunk driver a second chance for dangerous conduct could have disastrous consequences. Based upon the foregoing, the Court concluded that the behavior alleged by the 911 caller, viewed from the standpoint of an objectively reasonable police officer, amounted to reasonable suspicion of drunk driving and that the stop was therefore proper.

The Court noted that this was a "close case," but under the totality of the circumstances, it found the indicia of reliability sufficient to provide the officer with reasonable suspicion that the driver of the reported vehicle had run another vehicle off the road. That made it reasonable under the circumstances for the officer to execute a traffic stop.

Officers Did Not Use Excessive Force in Violation of the Fourth Amendment When Using Deadly Force to End a High Speed Chase

***Plumhoff v. Rickard*, 572 U.S. _____ (2014).**

Near midnight on July 18, 2004, Lieutenant Forthman of the West Memphis, Arkansas Police Department pulled over a white Honda Accord because the car had only one operating headlight. Donald Rickard was the driver of the Accord, and Kelly Allen was in the passenger seat. Forthman noticed an indentation, "roughly the size of a head or a basketball" in the windshield of the car. Forthman also saw glass shavings on the dashboard of Rickard's car and beer within the vehicle. He asked Rickard if he had been drinking, and Rickard responded that he had not. Because Rickard failed to produce his driver's license upon request and appeared nervous, Forthman asked him to step out of the car. Rather than comply with Forthman's request, Rickard sped away. Forthman gave chase and was soon joined by five other police cruisers driven by Sergeant Plumhoff and Officers Evans, Ellis, Galtelli, and Gardner. The officers pursued Rickard east on Interstate 40 toward Memphis, Tennessee. While on I–40, they attempted to stop Rickard using a "rolling roadblock," but they were unsuccessful. The District Court described the vehicles as "swerving through traffic at high speeds," and respondent does not dispute that the cars attained speeds over 100 miles per hour. After passing more than a dozen cars, Rickard eventually exited I–40 in Memphis, and shortly afterward he made "a quick right turn," causing contact to occur between his car and Evans' cruiser. As a result of that contact, Rickard's car spun-out into a parking lot and collided with Plumhoff 's cruiser. Now in danger of being cornered, Rickard put his car into reverse in an attempt to escape. As he did so, Evans and Plumhoff got out of their cruisers and approached Rickard's car, and Evans, gun in hand, pounded on the passenger-side window. At that point, Rickard's car made contact with yet another police cruiser. Rickard's tires started spinning, and his car was rocking back and forth, indicating that Rickard was using the accelerator even though his bumper was flush against a police cruiser. At that point, Plumhoff fired three shots into Rickard's car. Rickard then reversed in a 180 degree arc and maneuvered onto another street, forcing Ellis to step to his right to avoid the vehicle. As Rickard continued fleeing down that street, Gardner and Galtelli fired 12 shots toward Rickard's car, bringing the total number of shots fired during this incident to 15. Rickard then lost control of the car and crashed into a building. Rickard and Allen both died from some combination of gunshot wounds and injuries suffered in the crash that ended the chase.

Respondent, Rickard's minor daughter, filed a 42 U. S. C. §1983 action, alleging that the officers used excessive force in violation of the Fourth and Fourteenth Amendments. The District Court denied the officers' motion for summary judgment based on qualified immunity, holding that their conduct violated the Fourth Amendment and was contrary to clearly established law at the time in question. The Sixth Circuit held that the officers' conduct violated the Fourth Amendment. It affirmed the District Court's order, suggesting that it agreed that the officers violated clearly established law. The United States Supreme Court reviewed the case and held that the officers' conduct did *not* violate the Fourth Amendment.

A claim that law enforcement officers used excessive force to effect a seizure is governed by the Fourth Amendment's "reasonableness" standard. Determining the objective reasonableness of a particular seizure under the Fourth amendment "requires careful balancing of the nature and quality of the intrusion

on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." The inquiry requires analyzing the totality of the circumstances.

Respondent, in her excessive-force claim, argued that the Fourth Amendment did not allow the officers to use deadly force to terminate the chase, and that, even if they were permitted to fire their weapons, they went too far when they fired as many rounds as they did.

The Supreme Court found that the officers acted reasonably in using deadly force. A "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." Rickard's outrageously reckless driving—which lasted more than five minutes, exceeded 100 miles per hour, and included the passing of more than two dozen other motorists—posed a grave public safety risk, and the record conclusively disproves that the chase was over when Rickard's car came to a temporary standstill and officers began shooting. Under the circumstances when the shots were fired, all that a reasonable officer could have concluded from Rickard's conduct was that he was intent on resuming his flight, which would again pose a threat to others on the road.

Further, the Court found that Petitioners did not fire more shots than necessary to end the public safety risk. It makes sense that, if officers are justified in firing at a suspect in order to end a severe threat to public safety, they need not stop shooting until the threat has ended. Here, during the 10-second span when all the shots were fired, Rickard never abandoned his attempt to flee and eventually managed to drive away.

Even if the officers' conduct had violated the Fourth Amendment, petitioners would still be entitled to summary judgment based on qualified immunity. An official sued under §1983 is entitled to qualified immunity unless it is shown that the official violated a statutory or constitutional right that was "clearly established' " at the time of the challenged conduct. Respondent's made no showing of clearly established law which precluded the officer's conduct.