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Breaking Down Navarette: 911 Tips Inherently More Reliable

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The Supreme Court's decision in *Navarette v. California* is a modest victory for law enforcement, adding clarity to "reasonable suspicion" based exclusively on an anonymous tip. Interestingly, in deciding the veracity of an anonymous tipster, the Court gave greater weight to tips received in the 911 dispatch system, reasoning that there are inherent safeguards that enhance the reliability of anonymous 911 tips.¹

Navarette Facts

In 2008, an anonymous caller phoned a Mendocino County, California 911 dispatcher to report being run off the road by a reckless driver five minutes prior to the call. The caller identified the offending driver's license plate information, as well as the make, model, and color of the vehicle. Specifically, the caller explained that the offending driver had run the caller off the road at approximately mile marker 88 on Highway 1. Dispatch relayed the caller's information to a California High Patrol (CPH) officer who located the vehicle approximately 20 minutes later at mile marker 69, and initiated a traffic stop. While the officer did confirm

the information provided by the anonymous caller, the officer did not personally witness the driver make any driving infractions. Once the vehicle was stopped, the officer noticed a strong smell of marijuana emanating from the vehicle. A subsequent search of the vehicle revealed that the driver and passenger were transporting 30 pounds of marijuana. After both men were convicted of transporting marijuana, they filed appeals claiming that, supplied with only the information provided by the anonymous caller, the CHP officer did not have reasonable suspicion to initiate a stop.²

The Legal Analysis

In *Navarette*, the Court again rejected the defense assertion that reasonable suspicion must be based solely on an officer's personal observation,³ but cautioned that an "anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity."⁴ In other words, when it comes to anonymous tips and reasonable suspicion, the poles are set. At the safe end, an officer bases reasonable suspicion on his or her first-hand observations. At the other, an officer develops reasonable suspicion relying exclusively on information provided by an

anonymous source. *Navarette* adds clarity to the bounds of the latter. The Court reiterated that sufficient reasonable suspicion based solely on an anonymous tip is rarely sufficient because it is difficult for an officer to ascertain the informant's basis of knowledge or veracity.⁵ However, in certain circumstances an anonymous tip can include "sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop."⁶ So, that begs the question: what constitutes "sufficient indicia of reliability?"

In their analysis, the Court explained that anonymous tips become more reliable with: 1) specific details that can be corroborated by police; 2) evidence that a tip has been made contemporaneous to the event; and 3) evidence that the tipster has first-hand knowledge of the event.⁷ As to the first assertion, the Court has repeatedly deduced that "an informant who is proved to tell the truth about some things is more likely to tell the truth about other things."⁸ Police corroboration of specific details establishes the accuracy of anonymous information, and thus adds to its veracity. Contemporaneousness is also useful for establishing veracity and credibility. The closer to the event a report is made the less the "likelihood of deliberate or conscious misrepresentation"⁹—logic similar to that used in the present sense impression exception to hearsay evidence rules. Put simply, the closer in time a report is made to an event, the less time an informant has to make up facts. Finally, establishing the tipster's first-hand knowledge of the event is important to show that the informant police are relying on is the same person who actually witnessed a crime or infraction.¹⁰

Applying these three parameters to the *Navarette* facts, the Court found that the 911 call "bore adequate indicia of reliability for the officer to credit the caller's account."¹¹ The Court went on to emphasize that the caller provided very specific details to the dispatcher (make, model, color, and license plate of the suspect and the mile post where the incident occurred), and that the officer had been able to confirm those details. The Court found that the call was made contemporaneously with the event. The Court noted that the suspect was located 19 miles from where the caller reported the incident had occurred about 18 minutes after the call. Finally, the Court deduced that the caller had personally witnessed the event because the caller reported that she had been run off the road by the suspect.¹²

New Development in Anonymous Tip Analysis

In deciding that the anonymous tip in the *Navarette* case "bore adequate indicia of reliability" by which to establish reasonable suspicion, the Court expounded upon the traditional inquiry and made an important comment on the reliability of information transmitted via the 911 emergency phone system.¹³ Essentially, the Court elevated anonymous 911 tips over other anonymous infor-

mation, creating a quasi-anonymous category. In doing so, they identified various safeguards with the 911 system as follows: 1) 911 calls can be recorded; 2) It's a crime to falsely report or harass another person using 911, and violators are subject to prosecution for such acts; and, 3) 911 caller information, such as phone number and call location, cannot be blocked per FCC regulations.¹⁴ These safeguards work to bolster the reliability of 911 tips in two important ways. First, the caller isn't truly anonymous. Police have access to a recording of the caller's voice, the telephone number of the caller, the location from which the call was made, and potentially other personal information of the caller electronically stored by the 911 operating system. Second, with such personal information easily collected by 911 systems, subsequent prosecution for false reporting is a realistic deterrent.¹⁵

The new treatment of 911 tips is not without bounds. The Court was careful to mention that none of these safeguards "suggest that tips in 911 calls are *per se* reliable," just more reliable than the average anonymous tip.¹⁶ Justice Thomas explained, "given the foregoing technological and regulatory developments . . . a reasonable officer could conclude that a false tipster would think twice before using such a system."¹⁷ In sum, due to technological and legal safeguards, anonymous 911 tips are inherently more trustworthy than most anonymous tips, but not so much so that they can always be deemed reliable. The ultimate question, even when dealing with 911 tips is whether, given the totality of the circumstances, the officer can substantiate an informant's "basis of knowledge [and] veracity."¹⁸

Best Practices

Going forward, police and dispatchers need to be vigilant and gather as much specific detail from tipsters as possible, including establishing whether the offense occurred at or near the time of the report and if the tipster has first-hand knowledge of the offense. Further, it is imperative that officers attempt to corroborate as much of the anonymous information as possible and document those details in a report. When possible, officers should combine their own personal observation of a suspect's suspicious behavior with an anonymous tip to greatly increase the objective strength of the reasonable suspicion.

With regards to the role of prosecuting attorneys, the risk of losing a case because the investigating officer relied on a 911 tip can be substantially mitigated by establishing a complete and detailed record. In reality, this case did not involve an anonymous tip at all. A footnote in the *Navarette* holding revealed that the prosecutor did not introduce the 911 recording because neither the caller nor the dispatcher were available as witnesses (presumably to lay a foundation for the recording).¹⁹ On the 911 recording,

the caller actually identified herself by name, but unfortunately, the Court could not consider that evidence as it was not part of the record.²⁰ Most prosecutors would agree that calling witnesses and introducing evidence in practice can be very challenging for a myriad of reasons. The takeaway for prosecutors is to try to introduce 911 recordings at motions hearings if possible—or, other evidence identifying an anonymous caller. If doing so proves to be a practical impossibility, prosecutors should glean as much specific information as possible from the police officer about the details he or she received (contemporaneity, personal observation, specificity of the incident) and the ways the officer verified the detail in the subsequent investigation.

Conclusion

While the *Navarette* ruling did not drastically change the standing rules and analysis surrounding anonymous tips and reasonable suspicion, it was a minor victory for law enforcement. The unique takeaway from *Navarette* is the Court recognizing anonymous 911 tips hold fundamental safeguards that make them, at least to a degree, more reliable than other standard tips.

Endnotes

- 1 *Prado Navarette Et Al v. California*, 572 U.S. ____ (2014).
- 2 *Prado Navarette Et Al v. California*, supra.
- 3 *Adams v. Williams*, 407 U.S. 143, 147 (1972).
- 4 *Alabama v. White*, 496 U.S. 325, 330 (1990).
- 5 *Alabama v. White*, supra.
- 6 *Alabama v. White*, supra.
- 7 *Prado Navarette Et Al v. California*, supra.
- 8 *Prado Navarette Et Al v. California*, supra (citing *Illinois v. Gates*, 462 U.S. 213, 244 (1983)).
- 9 *Prado Navarette Et Al v. California*, supra (citing Advisory Committee's Notes on Fed. Rule Evid. 803(1), 28 U.S.C. App., P. 371).
- 10 *Illinois v. Gates* 462 U.S. 213, 234 and *Spinelli v. United States*, 393 U.S. 410, 416 (1969).
- 11 *Prado Navarette Et Al v. California*, supra.
- 12 *Prado Navarette Et Al v. California*, supra.
- 13 *Prado Navarette Et Al v. California*, supra.
- 14 *Prado Navarette Et Al v. California*, supra.
- 15 *Prado Navarette Et Al v. California*, supra.
- 16 *Prado Navarette Et Al v. California*, supra.
- 17 *Prado Navarette Et Al v. California*, supra.
- 18 *Alabama v. White*, supra.
- 19 *Prado Navarette Et Al v. California*, supra.
- 20 *Prado Navarette Et Al v. California*, supra.

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