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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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)
NORMAN JEROME DOLLY,)
)
Petitioner,)
)
v.)
)
THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Respondent.)
_____)

RESPONDENT'S BRIEF ON THE MERITS

On Appeal from the Judgment of the Superior Court of the
State of California, County of Los Angeles
The Honorable Jesse I. Rodriguez, Judge

Review of the Decision of the Court of Appeal,
Second District

Round #1: 6:00 p.m.
April 3, 2007

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ISSUE PRESENTED

Whether an anonymous tip to the police that a specific suspect threatened the tipster with a gun constitutes reasonable suspicion for a detention.

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STATEMENT OF THE CASE

Procedural History

On October 25, 2002, the Los Angeles District Attorney charged Petitioner with possession of a firearm by a felon. (R.T. 19.) On January 24, 2003, Petitioner filed a motion to suppress all evidence seized without a warrant on the grounds that Petitioner's detention and incident search were not supported by reasonable suspicion. (R.T. 27, 50A.) The trial court denied Petitioner's motion at a pre-trial hearing on March 6, 2003. (R.T. 48D-51D.)

The jury convicted Petitioner of possession of a firearm by a felon on March 12, 2003. (R.T. 36.) On July 22, 2003, the trial court sentenced Petitioner to four years in state prison. (R.T. 39-40.) On September 8, 2003, Petitioner filed an appeal

from the final judgment of conviction on the grounds that his motion to suppress should have been granted. (R.T. 42, 66.) The Court of Appeal affirmed the judgment on May 5, 2005. (R.T. 65.) Petitioner sought review of the Court of Appeal's ruling, which this Court granted on August 10, 2005. People v. Dolly, 32 Cal. 3d 758 (2005).

Statement of the Facts

Los Angeles Police Department Officer Dominguez and his partner, Officer Goldstein, received a radio call while on patrol at approximately 3:20 p.m. on April 17, 2002. (R.T. 56A-B.) An anonymous informant called 911 to report that "a guy just pulled a gun on me" and that it "felt fucking like he was going to shoot me right there at that minute." (R.T. 62.) The caller indicated that his assailant was sitting on the driver's side of a gray Nissan Maxima parked on "the north side of Jefferson [Boulevard]" at Ninth Avenue. (R.T. 62.) He described the assailant as a "light skinned" Black male with a "bandage over his left hand, like it's been broke or something." (R.T. 62.) The informant later called back to confirm that his assailant was still at the same location, but actually in a black Nissan. (R.T. 63.) The caller indicated multiple times that he wished to remain anonymous "[b]ecause if they find out I'm snitching, they are going to kill me." (R.T. 63.)

Officers Dominguez and Goldstein responded to the call and arrived at Ninth and Jefferson "approximately two to three minutes" after the call. (R.T. 56C.) Upon arrival, Officer Dominguez saw Petitioner sitting in the driver's seat of a black

Nissan Maxima at the exact location described by the caller. (R.T. 56C-D.) Officer Dominguez further confirmed the caller's information by observing a cast on Petitioner's left arm. (R.T. 56D.) There were two other passengers inside the car, neither of whom had a cast or bandage on their arms. (R.T. 57A-B.) The officers conducted an investigatory detention and told the occupants to exit the vehicle. (R.T. 56D-57A.) Two backup units arrived while the occupants exited the vehicle. (R.T. 57A.) An officer from a backup unit searched the car and found a loaded "blue steel revolver" under the front passenger seat. (R.T. 57C.) The officers arrested Petitioner. (R.T. 57D.)

ARGUMENT

I. REASONABLE SUSPICION JUSTIFIED THE INVESTIGATORY DETENTION WHEN THE ANONYMOUS TIPSTER INFORMED THE POLICE THAT A SPECIFIC SUSPECT THREATENED THE TIPSTER WITH A GUN.

The Fourth Amendment guarantees that people shall not be subjected to "unreasonable searches and seizures." U.S. Const. amend. IV. A police officer can conduct an investigatory detention if the officer has a reasonable suspicion supported by articulable facts that "criminal activity may be afoot." Terry v. Ohio, 392 U.S. 1, 21, 27, 30 (1967).

In determining whether an anonymous tip is sufficient to support reasonable suspicion, the "indicia of reliability" must be examined under the "totality-of-the-circumstances." Ill. v. Gates, 462 U.S. 213, 233 (1983); see also Ala. v. White, 496 U.S. 325 (1990). In weighing the indicia of reliability, "a deficiency in one may be compensated for . . . by a strong showing as to the other." Gates, 462 U.S. at 233. For example,

an "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles [a] tip to greater weight than might otherwise be the case." Id. at 234.

In the leading case of Florida v. J.L., the United States Supreme Court considered "whether an anonymous tip that a person is carrying a gun is, without more, sufficient to justify a police officer's stop and frisk of that person." 529 U.S. 266, 268 (2000). The Court held the search invalid because the "tip in the instant case lacked the moderate indicia of reliability" necessary to justify an investigatory detention. Id. at 271. Here, the Second District Court of Appeal considered the analysis from J.L. to determine whether the anonymous tip in this case had sufficient indicia of reliability to support reasonable suspicion. The court below distinguished J.L. and properly concluded that the investigatory detention was justified and supported by specific and articulable facts.

A. Anonymous Tips Alleging Armed Threats, Where Facts Are Verified Immediately, Justify an Investigatory Detention Under the Totality of the Circumstances.

The United States Supreme Court has repeatedly held that courts must look at the totality of the circumstances "[w]hen discussing how reviewing courts should make reasonable-suspicion determinations." U.S. v. Arvizu, 534 U.S. 266, 273 (2002); see also U.S. v. Cortez, 449 U.S. 411, 417-18 (1981). An anonymous tip regarding criminal activity must be corroborated by "sufficient indicia of reliability to provide reasonable suspicion to make" an investigatory detention. White, 496 U.S.

at 326-27. By confirming the facts provided in a tip, the police are justified in assuming other facts alleged, "including the claim that the object of the tip is engaged in criminal activity." Id. at 331.

In White, the police department received an anonymous tip that Vanessa White, the defendant,

would be leaving 235-C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with the right taillight lens broken, that she would be going to Dobey's Motel, and that she would be in possession of about an ounce of cocaine inside a brown attache [sic] case.

496 U.S. at 327. When the arresting officers arrived at Lynwood Terrace Apartments, they spotted a brown Plymouth station wagon with a broken right taillight in the parking lot. Id. The officers observed the defendant leaving the apartment building and entering the brown Plymouth, but she had nothing in her hands. Id. The officers followed as the defendant drove away, and they stopped the defendant in her car just short of the specified motel. Id. The defendant voluntarily submitted to a search, where the officers found marijuana in her attaché case and cocaine in her purse. Id. The Court held that the officers had reasonable suspicion to make an investigatory detention, reasoning that "the tip, as corroborated by independent police work, exhibited sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." Id. at 326-27.

Here, as in White, the arresting officer conducted an investigatory detention in response to an anonymous tip alleging criminal conduct. In White, the arresting officer had several

indicia to test the reliability of the anonymous tip, including: (1) the make, model, and description of the defendant's vehicle; (2) the exact location of the vehicle; (3) a description of the defendant; and (4) the future actions of the defendant. Officer Dominguez had almost identical indicia supporting his reasonable suspicion. Like White, the tip here provided the make, model, description, and precise location of Petitioner's vehicle. Additionally, the tipster's description of his assailant as a Black male with light complexion, wearing a cast on his left arm, and sitting in the driver's seat of the car exactly matched Officer Dominguez's observations of Petitioner. By contrast, in White, the tip provided a flawed description of the defendant, where the tipster incorrectly said the defendant would be carrying a brown attaché case. The Court in White conceded "[i]t is true that not every detail mentioned by the tipster was verified." 496 U.S. at 331. The present case is distinguished from White because Officer Dominguez verified all of the non-criminal details provided by the anonymous information. Under the totality of the circumstances, the numerous indicia verified by Officer Dominguez justified his reasonable suspicion that the allegations of Petitioner's armed threats were also true.

Unlike White, the tip Officer Dominguez relied upon did not provide predictive information about Petitioner. The lack of predictive information is not dispositive, where the court in United States v. Wheat held that "White did not create a rule requiring that a tip predict future action . . . and neither did J.L." 278 F.3d 722, 734 (8th Cir. 2001). When the tipster's

information "comes from his eyewitness observations," there is no need for predictive information. Id. Even without predictive information, a detention is justified when an anonymous tip has "certain other features . . . supporting reliability" J.L., 529 U.S. at 275 (Kennedy, J., concurring).

In contrast, White required predictive information because the tip alleged a possessory offense, where "corroboration of the predictive elements of a tip may be the only means of ascertaining the informant's basis of knowledge." Wheat, 278 F.3d at 734. Here, despite the lack of predictive information, there were still sufficient indicia of reliability to support reasonable suspicion. Because the tipster alleged that he was threatened with a gun in public, his eyewitness observations eliminated the need for predictive information.

In J.L., the Court held that an anonymous tip that a person is carrying a gun is not "sufficient to justify a police officer's stop and frisk of that person." 529 U.S. at 268. The Court reasoned that:

The tip in the instant case lacked the moderate indicia of reliability present in White and essential to the Court's decision in that case. The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. . . . The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

Id. at 271-72.

In J.L., an anonymous caller reported to the police that a "young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." 529 U.S. at 268. The police

did not make an audio recording of the call and knew nothing about the informant. Id. After an unknown amount of time, two police officers responded to the call and arrived at the specified bus stop. Id. They observed three Black males at the bus stop, one of whom wore a plaid shirt. Id. One officer detained the defendant, frisked him, and seized a gun from his pocket. Id. The Court held that the officers did not have reasonable suspicion justifying an investigatory detention, reasoning that the anonymous tip lacked sufficient "indicia of reliability." Id. at 271.

Here, unlike J.L., Officer Dominguez confirmed numerous facts from the anonymous tip prior to conducting the investigatory detention. In J.L., the officer only had two indicia upon which to test the informant's information: (1) a vague description of the defendant; and (2) the location of the defendant. Furthermore, there is no evidence as to the amount of time that passed between the call and the officer's response, during which time the tip could have become less reliable as the information turned stale. Most importantly, the officer in J.L. had no information regarding how the tipster knew the defendant had a concealed firearm. In contrast, Officer Dominguez had a precise description of Petitioner and his location. Also, unlike J.L., the tipster reported that he had been subjected to an armed threat. Therefore, the tip was more reliable both because it was an eyewitness observation and because it explained how the tipster knew Petitioner had a gun. The tip went beyond simply identifying a definite person and, given the totality of the

circumstances, made a reliable assertion of illegality that supported the officer's reasonable suspicion.

Petitioner cites United States v. Morales in support of the motion to suppress. 252 F.3d 1070 (9th Cir. 2001) (anonymous report that a specific vehicle would be transporting drugs from Washington to Montana, where police did not confirm the destination of the vehicle before stopping, insufficient to justify a detention). Relying on White and J.L., that court held "for an anonymous tip to serve as the basis for reasonable suspicion . . . [it] must predict the suspect's future movements." Morales, 252 F.3d at 1076. This clearly contradicts People v. Wells, where this Court held that predictive information is "not critical to determining" the reliability of an anonymous tip. 38 Cal. 4th 1078, 1086 (2006) (anonymous report of a driver weaving all over the road, but where the police observed no erratic driving, sufficient to justify a detention). Predictive information only becomes a critical element "in cases involving tips of concealed criminal behavior such as possession offenses." Id. Numerous other courts have followed this Court in holding that neither White nor J.L. created a rule requiring predictive information. Wheat, 278 F.3d at 734; see also U.S. v. Johnson, 64 F.3d 1120, 1125 (8th Cir. 1995); U.S. v. Cox, 942 F.2d 1282 (8th Cir. 1991), cert. denied, 503 U.S. 921 (1992); U.S. v. Clipper, 973 F.2d 944, 949-50 (D.C. Cir. 1992), cert. denied, 506 U.S. 1070 (1993). Here, unlike Morales, the anonymous tip alleged an armed threat in public. Because the present case does not involve an allegation of a

possessory offense, the opinion of the Morales court does not control.

B. Anonymous Tips to 911 Are Sufficiently Reliable to Justify an Investigatory Detention When the Tipster Immediately Reports an Armed Threat.

This Court has previously held that "a citizen's tip may itself create a reasonable suspicion sufficient to justify a temporary vehicle stop or detention, especially if the circumstances are deemed exigent by . . . threats to public safety." Wells, 38 Cal. 4th at 1083. This is especially applicable to 911 calls, which are "entitled to greater reliability than a tip concerning general criminality because the police must be able to take seriously, and respond promptly to, emergency 911 calls." U.S. v. Terry-Crespo, 356 F.3d 1170, 1172 (9th Cir. 2004). Tips should be considered more reliable when the "informant was reporting what he had observed moments ago, not what he learned from stale or second-hand sources." U.S. v. Valentine, 232 F.3d 350, 354 (3d Cir. 2000). Police should also place additional reliability on tips that contain "first-hand information from a crime victim laboring under the stress of recent excitement." Terry-Crespo, 356 F.3d at 1176.

In Terry-Crespo, a non-anonymous tipster called 911 to report that a man had just threatened him with a handgun. 356 F.3d at 1172. The tipster described his assailant as "a twenty-year old Hispanic male, attired 'like a gang member' with a hat, white and blue jersey, brown jacket, and backpack." Id. The caller reported that the threat occurred within the vicinity of a particular street intersection. Id. Within thirty seconds of

the dispatch, a police officer performed an "area check" and located the defendant in a hotel parking lot. Id. The officer detained the suspect and recovered a handgun from him after a pat-down. Id. The court held that the officers had reasonable suspicion for the detention and search, reasoning that the 911 call provided "sufficient indicia of reliability *prior* to the Terry stop to justify reliance on it." Id. at 1174.

Here, as in Terry-Crespo, a tipster called 911 to report an armed threat by a gang member on the street immediately after being threatened. But, unlike Terry-Crespo, Officer Dominguez relied on an anonymous tip for his investigatory detention. Despite the anonymity, the nature of the call and the alleged threat to public safety were sufficient to establish the requisite quantum of suspicion demanded for a detention.

Anonymous tips are considered less reliable because "the informant has not placed his credibility at risk and can lie with impunity." J.L., 529 U.S. at 275 (Kennedy, J., concurring). An anonymous tipster may falsely report a crime simply to harass or embarrass another. But an individual's right to be protected against unreasonable searches and seizures must be balanced against the government's interest in investigating allegations of criminal activity. Arvizu, 534 U.S. at 273. Consequently, an anonymous tip may be sufficiently reliable to justify reasonable suspicion when there is a "strong showing" of "some other indicia of reliability." Gates, 462 U.S. at 233.

Officer Dominguez responded to a report of an armed threat in public, which, using the rationale in Wells, is an exigent

circumstance that makes a tip sufficiently reliable to justify a detention. The court in United States v. Nelson supported this position by holding that, in addition to the reliability of the information, the level of danger alleged by an anonymous tip must also be considered. 284 F.3d 472, 483 (3d Cir.), cert. denied, 537 U.S. 940 (2002); see also People v. Coulombe, 86 Cal. App. 4th 52, 57-58 (4th Dist. 2000) (anonymous report of a person carrying a firearm in a crowded New Year's Eve celebration presented sufficient danger to the public to justify a detention). Public policy supports the "Imminent Danger Exception" by requiring police to respond appropriately when presented with threats to the public or themselves. Jason K. Bryk, Anonymous Tips to Law Enforcement and the Fourth Amendment: Arguments for Adopting an Imminent Danger Exception and Retaining the Totality of the Circumstances Test, 13 Geo. Mason U. Civ. Rts. L.J. 277, 304 (2003) (arguing that the threat to police while investigating currently armed individuals is a always an exigent circumstance).

In addition to the exigent circumstance of an armed threat, the nature of the tip also made it sufficiently reliable to justify Officer Dominguez's reasonable suspicion. The police could place additional reliability on the tip because it was reported to 911, to which police must be able to respond seriously. Additionally, like Terry-Crespo, the tipster called 911 only minutes after the alleged threat and provided contemporaneous information about his assailant. Like Valentine, information of this nature is more reliable because it is not

"stale or second-hand." Finally, like Terry-Crespo, the tipster was a "crime victim laboring under the stress of recent excitement." 356 F.3d at 1176. The excited utterance doctrine allows such hearsay statements to be admitted as evidence. Fed. Rules Evid. § 803 (Lexis 2006). Similarly, Terry-Crespo holds that such tips are more reliable. See also Adams v. Williams, 407 U.S. 143, 147 (1972) (holding that "when the victim of a street crime seeks immediate police aid and gives a description of his assailant, . . . the subtleties of the hearsay rule should not thwart an appropriate police response.").

CONCLUSION

Under the totality of the circumstances, the trial court properly denied Petitioner's motion to suppress. This case substantially differs from Florida v. J.L. because the anonymous tip: (1) was made to 911; (2) alleged an armed threat; (3) was followed by an immediate police response; and (4) bore comprehensive indicia of reliability. Therefore, Respondent urges this Court to affirm the Court of Appeal's decision holding that the trial court properly denied petitioners motion to suppress.

Dated: March 8, 2007

Respectfully Submitted,

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