No. 12-9490

IN THE

SUPREME COURT OF THE UNITED STATES

October Term: _____

LORENZO NAVARETTE,
JOSE P. NAVARETTE,

Petitioners,

v.

THE STATE OF CALIFORNIA,

Respondent.

On Petition For a Writ of Certiorari
To The Court of Appeal Of The
State of California, First Appellate District, Division Five

PETITION FOR A WRIT OF CERTIORARI

PAUL KLEVEN (CA State Bar No: 95338)
LAW OFFICE OF PAUL KLEVEN
1604 Solano Avenue
Berkeley, CA 94707
(510) 528-7347 Telephone

Counsel for Petitioners

QUESTIONS PRESENTED

1. Does the Fourth Amendment require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle?
2. Does an anonymous tip that a specific vehicle ran someone off the road provide reasonable suspicion to stop a vehicle, where the detaining officer was only advised to be on the lookout for a reckless driver, and the officer could not corroborate dangerous driving despite following the suspect vehicle for several miles?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES:

CONSTITUTION:

STATUTES:

OTHER AUTHORITIES:

PETITION FOR A WRIT OF CERTIORARI

Petitioners Lorenzo Prado Navarette and Jose Prado Navarette respectfully pray that a writ of certiorari issue to review the judgment and opinion of the First Appellate District Court of Appeal for the State of California, entered and filed in the above proceedings on October 12, 2012.

OPINIONS BELOW

The opinion of the First Appellate District Court of Appeal for the State of California appears at Appendix A to the petition and is unpublished. The opinions of the Mendocino County Superior Court appear at Appendix B to the petition and are unpublished. The order of the California Supreme Court denying a petition for review appears at Appendix C to the petition and is unpublished. The order of the First Appellate District denying a petition for rehearing appears at Appendix D to the petition and is unpublished.

JURISDICTION

The date on which the First Appellate District Court of Appeal for the State of California decided this case was October 12, 2012. A copy of that decision appears at Appendix A. A timely petition for review to the California Supreme Court was thereafter denied on January 3, 2013, and a

copy of the order denying that petition appears at Appendix C.

This Court's jurisdiction is invoked under 28 U.S.C. section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 23, 2008, a California Highway Patrol dispatcher working out of Mendocino County received a telephone call from a Humboldt County dispatcher, who described a pickup truck that had run someone off the roadway and was last seen five minutes before heading south on California's Highway 1, approximately 3 miles south of the county border. (Clerk's Transcript on Appeal ("CT") 51-52, 55-56, 62-63, 66-80.) The Humboldt dispatcher said that the information had come from a 911 call, but provided no further information. (CT 56-57, 59, 63.)

The information from Humboldt was routed to the computer of Sharon Odbert, another Mendocino County dispatcher, where it appeared as follows:

> Showing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-949925. Ran the reporting party off the roadway and was last seen approximately five ago.

(CT 71.)

Odbert broadcast the information over the radio at 3:47 p.m, stating "Attention, coastal units. BOL for ... reckless driver, 23103...." (CT 64, 71-72, 76; see also CT 82.)

CHP Officer Thaddeus Williams was on duty in central Fort Bragg when he heard a "dispatch of a reckless driver southbound on Highway 1,"

in the area he was covering. (CT 87-88; see also CT 98.)[1] Williams, who received only verbal information from the dispatcher, recalled that the vehicle was described as a silver pickup truck with a specific license plate number. (CT 88, 99-100.) Williams headed north, driving a few miles behind a Sergeant Francis, who was also enroute from Fort Bragg. (CT 72-73, 88-89.)

At 4:00, Francis advised dispatch that he had passed the pickup, which was going the opposite direction just south of mile marker 69, approximately 19 miles south of the last sighting. (CT 73-74, 76-77, 80-83.) Shortly after hearing that Francis had spotted the vehicle, and while located a few miles north of a state park, Williams saw Francis following the pickup; he let both vehicles pass, and then made a U-turn to follow Francis. (CT 89-90, 100-101.) At 4:05, Francis advised dispatch that he was making a stop at the entrance to the state park, and Williams pulled up behind him. (CT 73-74, 83, 90, 105-106.)

---

[1] The First Appellate District found that substantial evidence supported an implied finding by the magistrate that dispatchers had told the officers that the suspect vehicle ran the tipster off the road. (Opinion, Appendix A at 14.) Petitioner filed a petition for rehearing, arguing that the magistrate had not made that finding, which was contrary to the testimony of both Odbert and Williams, and that there was no substantial evidence to support such a finding had it been made. The petition was denied on October 30, 2012. (Appendix D.)

Petitioner Jose Prado Navarette was a passenger in the pickup, which was being driven by petitioner Lorenzo Prado Navarette. (CT 102.) Officers searched the vehicle after detecting the smell of marijuana, and discovered four large, closed bags of marijuana in the bed. (CT 92-97, 103-105, 111-113, 118.)

In an Information filed on August 20, 2009, the Mendocino County District Attorney alleged that petitioners had transported marijuana in violation of California Health and Safety Code section 11360, subdivision (a), and possessed marijuana for sale in violation of section 11359. (Clerk's Transcript on Appeal ("CT") 40-42.)

Petitioners had previously filed a motion to suppress pursuant to California Penal Code section 1538.5, which was heard and denied as part of the Preliminary Hearing. (CT 39, 173; Reporter's Transcript on Appeal ("RT") 11; Appendix B.) After the filing of the Information, petitioner filed a motion to dismiss pursuant to California Penal Code section 995 based in part on the magistrate's denial of the motion to suppress. (CT 179-197; Appendix B.) The trial court denied the section 995 motion, as well as a motion to reconsider. (CT 209-214, 240-242, Appendix B.)

Petitioners filed a joint petition for writ of mandate with the First Appellate District, but the Court denied the petition on timeliness and procedural grounds. (*Navarette v. Superior Court*, Case No. A127541.)

Petitioners then filed a petition for review with the California Supreme Court. (*Navarette v. Superior Court*, Case No. S180366.) The California Supreme Court denied the petition on April 28, 2010.

Petitioners ultimately pled guilty to transportation of marijuana in violation of section 11360, subdivision (a), pursuant to a plea agreement. (CT 268, RT 147-148, 153-156.) On June 10, 2011, the trial court suspended imposition of judgment, placed petitioners on thirty-six months formal probation, and ordered them to serve 90 days in county jail. (CT 303-309, RT 177-178.)

Petitioners timely appealed, but the First Appellate District affirmed the judgment in an Opinion filed on October 12, 2012. (Appendix A.) The Court of Appeal denied a timely petition for rehearing on October 30, 2012. (Appendix D.) The California Supreme Court denied petitioners' timely petitions for review on January 3, 2013. (Appendix C.)

REASONS FOR GRANTING THE WRIT

The California Court of Appeal approved a seizure based on an anonymous tip that, though reliable in its "tendency to identify a determinate person," had not proven to be "reliable in its assertion of illegality." *Florida v. J.L.* (2000) 529 U.S. 266, 272. Following the majority of federal and state court precedents, the Court of Appeal relied on *dicta* in

J.L to fashion an automatic "drunk or reckless driver exception" to the Fourth Amendment, despite this Court's unanimous rejection of the automatic "firearm exception" that had previously crept into federal and state courts' constitutional caselaw. 529 U.S. at 272-273.

Four years ago, this Court denied a petition for *certiorari* from the Virginia Supreme Court's decision in *Harris v. Commonwealth*, 276 Va. 689, 668 S.E.2d 141 (2008), a minority holding that required independent corroboration of anonymous tips involving an allegedly drunk driver. Dissenting from the denial, Chief Justice Roberts stated that whether the Fourth Amendment requires such corroboration "is an important question that is not answered by our past decisions, and that has deeply divided federal and state courts." *Virginia v. Harris*, 558 U.S. 978, 979 (2009)(Roberts, C.J., dissenting from denial of certiorari.)

This case provides the Court with the perfect opportunity to answer that important question and ensure that lower courts do not sanction further violations of the Fourth Amendment.

1. This Court Held In *Florida v. J.L.* That The Fourth Amendment Requires Officers to Corroborate Anonymous Tips

Florida v. J.L., 529 U.S. 266 (2000), involved an anonymous tip about a young Black male wearing a plaid shirt and standing at a particular

bus stop who was also carrying a gun. The Court found that the tip did not have the "moderate 'indicia of reliability'" required to provide reasonable suspicion for a *Terry* stop under the Fourth Amendment, in part because the lack of "predictive information" meant the officers could not test the informant's knowledge or credibility. 529 U.S. at 268, 271. "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." 529 U.S. at 272.

The Court also rejected the prosecution's request that it adopt a "firearms exception" to its Fourth Amendment analysis. 529 U.S. at 272-274. While recognizing that firearms "are dangerous, and extraordinary dangers sometimes justify unusual precautions," 529 U.S. at 272, the Court held that "an automatic firearm exception to our established reliability analysis would rove too far" because it would be impossible to confine the exception to allegations regarding firearms, and harassers could subject anyone to an intrusive police search simply by making a false, anonymous "bare-boned tip about guns." 529 U.S. at 272-273; see 4 Wayne R. LaFave, *Search and Seizure* § 9.5(i), p. 809-816 (4th ed. 2012.) The Court did not, however, rule out the possibility that "the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability," citing the example of "a report of a person carrying a bomb."

529 U.S. at 273-274.

2. Federal And State Courts Have Undermined The Fourth Amendment's Requirement That Anonymous Tips Be Corroborated

In this case, California's First Appellate District Court of Appeal approved a vehicle stop based on an anonymous tip involving reckless driving even though the officers involved were unable to corroborate any dangerous driving after following the vehicle for approximately five miles. (Appendix A, October 12, 2012 Opinion, at 15-16; see CT 73-75, 83, 89-90, 100-101, 209.) While the opportunity for corroboration distinguished this case from the precedents the lower court primarily relied upon, *United States v. Wheat*, 278 F.3d 722 (8th Cir. 2001), and *People v. Wells*, 38 Cal.4th 1078, 45 Cal.Rptr.3d 8, 136 P.3d 810 (2006), the Court of Appeal joined a long line of federal and state court cases involving anonymous tips of drunk or reckless driving that have flouted this Court's holding in *Florida v. J.L.*, 529 U.S. 266 (2000).

While drunk drivers constitute a serious danger to the public, *see Virginia v. Harris*, 558 U.S. 978, 978 (2009)(Roberts, C.J., dissenting from denial of certiorari), the recent tragic events in Newtown, Connecticut remind us that firearms pose a comparable threat, *see* Colby J. Morrissey, Note, *Anonymous Tips Reporting Drunk Driving: Rejecting a Fourth*

Amendment Exception for Investigatory Traffic Stops, 45 New Eng. L. Rev. 167, 190-194 (2010), and that a lone gunman can, like a bomb, potentially kill many more people than a drunken driver. Despite *J.L.'s* unanimous rejection of seizures based on uncorroborated anonymous tips involving firearms, 529 U.S. at 272-273, *Wheat* approved a vehicle stop without corroboration of an anonymous tip of reckless driving, largely due to the bomb-like danger of an "erratic and possibly drunk driver." 278 F.3d at 736-737. The Eighth Circuit found that the danger justified an immediate stop of the vehicle without any corroboration of dangerous driving, but specifically noted that "when the officer does *not* effect an immediate stop of a potentially drunk driver, the force of this justification rapidly diminishes." 278 F.3d at 724-725, 737 n. 13 (emphasis in original).

Relying heavily on *Wheat's* analysis of the dangers posed by drunk drivers, the California Supreme Court in *Wells* also approved an officer's immediate stop of a vehicle without any corroboration of dangerous driving, dismissing the officer's failure to observe such driving as "not significant," in part because "the officer in this case stopped defendant's van immediately after spotting it." *Wells*, 38 Cal.4th at 1088.

In contrast to *Wheat* and *Wells*, the Virginia Supreme Court in *Harris v. Commonwealth*, 276 Va. 689, 668 S.E.2d 141 (2008), followed *J.L's* holding that an anonymous tip must provide predictive information

about alleged criminal activity. *Harris* held that an anonymous tip about a drunk driver did not constitutionally justify a vehicle stop because the officer was unable to corroborate any drunken or erratic driving, though the officer had the opportunity to observe some unusual driving before making the stop. 276 Va. at 696-698. The tip's specific description of the vehicle, including its location and direction of travel, was not the required predictive information but "information available to any observer, whether a concerned citizen, prankster, or someone with a grudge ...." 276 Va. at 696.

Unfortunately, the Virginia Supreme Court falls within a distinct minority in adhering to the holding in *J.L.*, instead of its *dicta*.[2] By the time the Eighth Circuit handed down *Wheat* – less than two years after this Court's decision in *J.L* – the Vermont, Iowa and Wisconsin Supreme

---

[2] The Wyoming Supreme Court correctly anticipated the *J.L.* holding in *McChesney v. State*, 988 P.2d 1071 (Wyo. 1999), and the Supreme Courts of North Dakota and Kentucky have followed *J.L.*'s holding in *Anderson v. Director, North Dakota Dep't of Transp.*, 2005 ND 97, 696 N.W.2d 918 (N.D. 2005), and *Collins v. Commonwealth*, 142 S.W.3d 113 (Ky. 2004), as has Oklahoma's highest criminal court in *Nilsen v. State*, 2009 OK CR 6, 203 P.3d 189 (2009); *see* James Michael Scears, Comment, *Anonymous Tips Alleging Drunk Driving: Why "One Free Swerve" is One Too Many*, 64 Okla.L.Rev. 759, 784-785 (2012). A handful of lower state court decisions have also adopted the minority view, including *Washington v. State*, 740 N.E.2d 1241 (Ind. App. 2000), *Commonwealth v. Lubiejewski*, 49 Mass.App. 212, 729 N.E.2d 288 (Mass. App. 2000), and *Stewart v. State*, 22 S.W.3d 646 (Tex.App. 2000).

Courts had already "held that *J.L.* does not prevent an anonymous tip" from constitutionally justifying an immediate vehicle stop "even when the investigating officer is unable to corroborate that the driver is operating the vehicle recklessly and therefore unlawfully." *Wheat*, 278 F.3d at 728, citing *State v. Boyea,* 171 Vt. 401, 765 A.2d 862 (Vt. 2000), *State v. Walshire*, 634 N.W. 2d 625 (Iowa 2001), and *State v. Rutzinski*, 241 Wis.2d 729, 623 N.W.2d 516 (2001). Since *Wheat* was decided in 2001, Tennessee, Delaware and Hawaii have followed suit, in addition to California's decision in *Wells*. See *State v. Hanning*, 296 S.W. 44 (Tenn. 2009), *Bloomingdale v. State*, 842 A.2d 1212 (Del. 2004), and *State v. Prendergast*, 83 P.3d 714 (Haw. 2004). The Eleventh Circuit has even used the *dicta* in *J.L.* to justify the search of a home based on an anonymous report of an emergency situation. *United States v. Holloway*, 290 F.3d 1331, 1338-1339 n (11th Cir. 2002); *see* Melanie D. Wilson, *Since When Is Dicta Enough To Trump Fourth Amendment Rights? The Aftermath of Florida v. J.L.* 31 Ohio N.U.L. Rev. 225-229 (2005).[3]

---

[3] Legal scholars continue to address the two lines of authority that have developed since *J.L.* more than a decade after the Court decided the case. *See, e.g.*, Andrew B. Kartchner, Note, *Virginia in the Driver's Seat: How the Supreme Court of Virginia Can Help the Supreme Court of the United States Finally Establish the Drunk-Driving Exception to Anonymous Tips Law*, 25 Regent U. L. Rev. 185, 191-198 (2012); Scears, *supra* at 771-785; Chris La Tronica, Comment, *Could You? Should You? Florida v. J.L.: Danger Dicta,*

J.L.'s staunch protection of citizens from the risk of unconstitutional searches based on anonymous, possibly vindictive tips has been undermined by the lower courts' reliance on *J.L.*'s *dicta*, "thus allowing the exception to swallow the rule." *J.L.*, 529 U.S. at 273. This Court should grant certiorari in this case and stop the widespread erosion of this critical area of Fourth Amendment protection. It was undisputed in this case that the officers did not see any erratic driving (CT 73-75, 83, 89-90, 100-101, 209), and without such corroboration the anonymous tip did not provide officers with the reasonable suspicion constitutionally required to stop the vehicle under *J.L.*, 529 U.S. at 270-271.

3. This Court Should Resolve The Controversy Regarding The Varying Reliability of Anonymous Tips

As Justice Kennedy noted in his concurrence in *Florida v. J.L.* (2000) 529 U.S. 266, while a truly anonymous informant has "not placed

---

Drunken Bombs, and the Universe of Anonymity, 85 Tul. L. Rev. 831, 844-857 (2011); Morrissey, *supra* at 182-188; Denise N. Trauth, Comment and Casenote, *Requiring Independent Police Corroboration of Anonymous Tips Reporting Drunk Drivers: How Several State Courts Are Endangering the Safety of Motorists*, 76 U. Cin. L. Rev. 323, 329-338 (2007); Wilson, *supra* at 218-229; and Jon A York, Note, *Search and Seizure: Law Enforcement Officers' Ability to Conduct Investigative Stops Based Upon An Anonymous Tip Alleging Dangerous Driving When the Officers Do Not Personally Observe Any Traffic Violations*, 34 U. Mem. L. Rev. 173, 185-197 (2003).

his credibility at risk and may lie with impunity," even anonymous tips may "have certain features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action." 529 U.S. at 275 (Kennedy, J., concurring). In explaining why lower courts have not followed the holding in *J.L*, the Chief Justice identified not only the dangers posed by drunk driving, but also "the enhanced reliability of tips alleging illegal activity in public, to which the tipster was presumably an eyewitness;..." *Virginia v. Harris*, 558 U.S. 978, 980 (2009)(Roberts, C.J., dissenting from denial of certiorari); *see also United States v. Wheat*, 278 F.3d 722, 734-735 (8th Cir. 2001); and *People v. Wells*, 38 Cal.4th 1078, 1086-1087, 45 Cal.Rptr.3d 8, 136 P.3d 810 (2006). Legal scholars have struggled to explain how the varying reliability of anonymous tips affects Fourth Amendment analysis. [4]

This case provides the Court with a perfect opportunity to analyze and resolve the controversial issues that arise when officers attempt to use anonymous tips to provide them with reasonable suspicion to seize vehicles, as well as to search homes. *United States v. Holloway*, 290 F.3d 1331 (11th

---

[4] *See, e.g.*, 4 LaFave, *Search and Seizure, supra* § 9.5(i), p. 809-816; Kartchner, *supra* at 187-198; Scears, *supra* at 776-777, 792-804; La Tronica, *supra* at 844-857; Morrissey, *supra* at 194–197; Trauth, *supra* at 340-341; Wilson, *supra* at 218-229; and York, *supra* at 178-180, 185-197.

cir. 2002.) The original tip in this case – that a specific vehicle "[r]an the reporting party off the roadway" (CT 71) – ostensibly demonstrated that the tipster was an eyewitness to illegal activity, but that information was never conveyed to the detaining officer, who was told only to be on the lookout for the "reckless driver" of a specific vehicle. (CT 71-72, 82, 88, 98.) The dispatcher's failure to apprise the officer of the information necessary to evaluate the reliability of the tip is crucial because dispatchers are not trained officers, and the "reasonableness of official suspicion must be measured by what the officers knew before they conducted their search." *J.L.*, 529 U.S. at 271; *see also Anderson v. Director, North Dakota Dep't of Transp.*, 2005 ND 97, 696 N.W.2d 918, 923 (N.D. 2005).

The tip to the dispatcher provided the type of detailed information about the suspect's activities that can enhance reliability and "give rise to reasonable suspicion." *See Wheat*, 278 F.3d at 732, 732 n.8; Morrissey, *supra* at 184-185. But once again, the officer only heard that there was a reckless driver, which is the sort of "bare assertion" that does not support reasonable suspicion. *Anderson*, 696 N.W.2d at 923; *see also Harris v. Commonwealth*, 276 Va. 689, 696, 668 S.E.2d 141 (2008), and Scears, *supra* at 799 (if only bare assertion, "just as likely that the tip is false").

The tip came from a 911 call (CT 56-57, 59, 63), which may provide automatic caller identification that increases the reliability of the tip. *J.L.*,

529 U.S. at 275-276 (Kennedy, J., concurring); Scears, *supra* at 7792-795. But Professor LaFave has argued that caller identification only makes an anonymous tip more reliable if potential informants are aware that they can be identified and criminally charged for providing false information. 4 LaFave, *Search and Seizure, supra* § 9.5(i), p. 816.

Finally, the responding officers could not plausibly investigate whether the driver of the suspect vehicle had run the caller off the roadway, or driven recklessly, because the stop would occur more than twenty minutes after and more than twenty miles away from the incident. (CT 71-72, 76-77, 80, 83, 89-90, 100-101.) The only way to determine any illegality was to observe dangerous driving, *Commonwealth v. Lubiejewski*, 49 Mass.App. 212, 729 N.E.2d 288 (Mass. App. 2000) , because unless the driver simply admitted to having driven recklessly, there was nothing that a stop could accomplish in terms of investigation. *See Harris v. Commonwealth*, 276 Va. 689, 696, 668 S.E.2d 141 (2008).

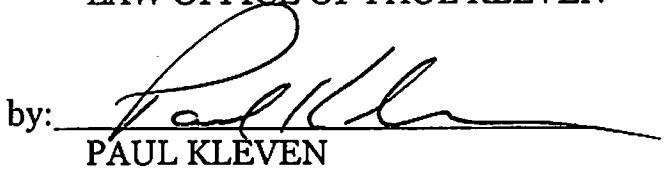
CONCLUSION

While anonymous tips can perform a valuable function in assisting the police to protect the public, unscrupulous accusers can also use them to subject innocent people to intrusive, unconstitutional police seizures. Due to the two separate, conflicting lines of authority that have developed in the wake of this Court's decision in *Florida v. J.L.*, this aspect of Fourth Amendment protection now depends entirely on jurisdiction – officers in some, but not all, parts of the country can stop vehicles based on anonymous tips, even though they cannot corroborate any dangerous driving.

This Court should grant certiorari to ensure that the constitution protects citizens uniformly throughout the country.

DATED: March 28, 2013

LAW OFFICE OF PAUL KLEVEN

by: 

PAUL KLEVEN
Attorney for Petitioners

Filed 10/12/12

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,
Plaintiff and Respondent,
v.
LORENZO PRADO NAVARETTE et al.,
Defendants and Appellants.

A132353

(Mendocino County
Super. Ct. Nos.
SCUK-CRCR-08-86137-02,
SCUK-CRCR-08-86137-03)

Appellants Lorenzo Prado Navarette and Jose Prado Navarette (collectively, Appellants)[1] were detained by officers of the California Highway Patrol (CHP) and subsequently arrested for transportation of marijuana and possession of marijuana for sale (Health & Saf. Code, §§ 11359, 11360). The marijuana was discovered in Appellants' pickup truck during a traffic detention after the officers received a report from an unidentified citizen that the vehicle had been observed driving recklessly. Appellants' motion to suppress the evidence seized from their truck was denied, and they pled guilty to transportation of marijuana (Health & Saf. Code, § 11360).

Citing *People v. Wells* (2006) 38 Cal.4th 1078 (*Wells*), Appellants contend that the evidence against them should have been suppressed because the anonymous tip received by police was insufficient to provide reasonable suspicion of criminal activity justifying an investigative stop of the vehicle, where the officers directly confirmed only significant

[1] Because Appellants share the same last name, references to each as an individual is by first name only for purposes of clarity. We intend no disrespect.

EXHIBIT A

innocent details of the tip but did not directly observe any illegal activity. We conclude that the totality of the circumstances in this case justified the traffic stop. We also reject an argument that the *Harvey-Madden* rule[2] required the police dispatcher who originally received the call to personally testify at the suppression hearing. Because the detention was supported by reasonable suspicion, Appellants' suppression motion was properly denied and the judgments are affirmed.

I. BACKGROUND

On August 20, 2009, the Mendocino County District Attorney charged Appellants with transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)) and possession of marijuana for sale (Health & Saf. Code, § 11359). At the preliminary hearing, Appellants each made a motion to suppress evidence (Pen. Code, § 1538.5, subd. (f)). The following facts are taken from the preliminary hearing testimony.

On the afternoon of August 23, 2008, Matia Moore and Sharon Odbert were working as a dispatch team at a CHP 911 call center in Mendocino County. Moore was the receiver who took incoming calls, and Odbert was the dispatcher who broadcast messages to CHP officers over the radio. Moore and Odbert communicated with each other via computer, with those communications recorded in what are called CAD logs.

At about 3:47 p.m., Moore received a call over an allied agency line, which is a dedicated phone line for calls from other dispatch offices. The caller identified herself as a Humboldt County CHP dispatcher. Moore generated a CAD log from the information she received and at the hearing she authenticated a printed record of that log. In the log, she recorded that a silver Ford F150 pickup truck with license plate number 8D94925 had run an unidentified reporting party off the roadway and was last seen five minutes earlier (i.e., five minutes before Moore wrote the log) at mile marker 88 on Highway 1, heading southbound. Moore did not hear the original 911 report to the Humboldt CHP. She also

---

[2] *People v. Harvey* (1958) 156 Cal.App.2d 516, 522–524 (conc. opn. of Dooling, J., Draper, J.); *People v. Madden* (1970) 2 Cal.3d 1017.

A

did not know whether the Humboldt dispatcher who spoke to her was the person who took the original 911 call.

Odbert testified that she saw the following information generated on her screen: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five minutes ago." She broadcasted the information to officers at 3:47 p.m. Two CHP units responded to the broadcast and reported they were en route from Fort Bragg, heading north. At 4:00 p.m., Sergeant Francis reported that he had passed the vehicle near mile marker 69. Officer Thaddeus Williams testified that he spotted the vehicle near mile marker 66 and saw Francis following behind it. Williams let them pass, made a U-turn, and then followed them heading south. At about 4:05 p.m., Francis pulled the vehicle over by MacKerricher State Park and soon thereafter Williams pulled up behind them.

The officers approached the car on the passenger side and asked both occupants (Appellants) for identification, then returned to Francis's patrol car to run identification checks. The driver, Lorenzo, initially provided only a photocopy of identification, and the officers returned to the driver's side of the vehicle to request additional identification. From this location, they smelled marijuana and ordered Appellants to exit the vehicle. A search of the vehicle disclosed four large bags of marijuana in the truck bed, along with fertilizer, hand clippers, and oven bags. Appellants were arrested. An expert testified that in his opinion the marijuana was possessed for sale.

Appellants argued that the evidence did not establish reasonable suspicion of criminal activity justifying the traffic stop. Specifically, they asserted that the tipster's report was too vague to support the stop without further inquiry by the officers, and the officers who pulled over the vehicle did not directly observe any erratic driving that might have established reasonable suspicion of unlawful activity. They also argued that the prosecutor failed to provide sufficient evidence that the reported tip was actually received by the Humboldt County CHP, in violation of the *Harvey-Madden* rule. The prosecutor responded that, under *Wells, supra,* 38 Cal.4th 1078, the information provided

in the anonymous tip coupled with the officers' observations confirming significant innocent details of the tip established reasonable suspicion for the stop given the alleged dangerous conduct of the driver. Moreover, the officers' corroboration of much of the detailed information provided in the report sufficiently established the veracity of the tip as required by *Harvey-Madden*.

The magistrate denied the motion to suppress and held Appellants to answer. He found no *Harvey-Madden* violation, commenting, "I think there's a fairly reliable chain from Humboldt County to the officer." He further ruled that reasonable suspicion was established under the standards announced in *Wells, supra,* 38 Cal.4th 1078: the anonymous tipster's report of reckless driving[3] here was comparable to the report of a vehicle weaving all over the road in *Wells*, and the officers confirmed innocent details of the anonymous tip just as the officers did in *Wells*.

Appellants moved to set aside the charges under Penal Code section 995 on the ground that the magistrate erred in denying the motion to suppress per *Wells, supra,* 38 Cal.4th 1078. In a written order, Superior Court Judge Clayton Brennan denied the motion.

Appellants petitioned for writ review of the trial court's order, which this court denied for untimeliness, an insufficient showing of entitlement to pretrial review, and an inadequate record. (*Navarette v. Superior Court* (Feb. 11, 2010, A127541) [nonpub. order].) Appellants petitioned for review by the Supreme Court which, after requesting and receiving an answer, denied the petition. (*Navarette v. Superior Court* (Apr. 28, 2010, S180366).)

---

[3] Jose twice draws this court's attention to the fact that the magistrate erroneously stated during argument that there was evidence the driver crossed "a double-yellow line to the extent it forced someone off the road." He correctly notes there was no evidence presented at the preliminary hearing that the vehicle had crossed a double yellow line. As the trial court ruled, the statement was clearly a result of the "magistrate's faulty recollection." We agree with the People that the magistrate's misstatement is immaterial because the record strongly suggests the magistrate did not ultimately make such a finding. Defense counsel promptly corrected the misstatement, and the magistrate did not reiterate it when he made his final ruling.

Appellants subsequently pled guilty to transportation of marijuana and the possession for sale charge was dismissed. The court suspended imposition of sentence and placed Appellants on three years' probation on the condition they serve 90 days in county jail.

II. DISCUSSION

"When, as here, a magistrate rules on a motion to suppress under Penal Code section 1538.5 raised at the preliminary examination, he or she sits as the finder of fact with the power to judge credibility, resolve conflicts, weigh evidence, and draw inferences. In reviewing the magistrate's ruling on a subsequent motion . . . the superior court sits as a reviewing court—it must draw every legitimate inference in favor of the information, and cannot substitute its judgment for that of the magistrate on issues of credibility or weight of the evidence. On review of the superior court ruling by appeal or writ, we in effect disregard the ruling of the superior court and directly review the determination of the magistrate. . . . [Citation.] [¶] . . . [W]e defer to the magistrate's factual determinations when supported by substantial evidence, but exercise our independent judgment in determining whether, on such facts, the challenged search was reasonable under the Fourth Amendment. [Citation.]" (*People v. Shafrir* (2010) 183 Cal.App.4th 1238, 1244–1245, fn. omitted.)

We first consider the *Harvey-Madden* issue—whether there was sufficient evidence before the magistrate to establish that an anonymous tip was in fact received by the police department and was not fabricated.

A. *The* Harvey-Madden *Rule*

" 'It is well settled that while it may be perfectly reasonable for officers in the field to make arrests on the basis of information furnished to them by other officers, "when it comes to justifying the total police activity in a court, the People must prove that the source of the information is something other than the imagination of an officer who does not become a witness." [Citations.] To hold otherwise would permit the manufacture of reasonable grounds for arrest within a police department by one officer transmitting information purportedly known by him to another officer who did not know such

information, without establishing under oath how the information had in fact been obtained by the former officer. [Citations.]' " (*People v. Madden, supra,* 2 Cal.3d at p. 1021, quoting *People v. Remers* (1970) 2 Cal.3d 659, 666–667 (*Remers*); see also *Whiteley v. Warden* (1971) 401 U.S. 560, 568, disapproved on other grounds by *Arizona v. Evans* (1995) 514 U.S. 1, 13.) "The absence of such a requirement would allow a police officer to manufacture reasonable grounds to arrest while circumventing the necessity of pointing to 'specific and articulable facts' [citation] justifying his suspicions." (*Remers,* at p. 667.) This rule applies to the requirement of reasonable suspicion for investigatory stops. (*In re Richard G.* (2009) 173 Cal.App.4th 1252, 1259 (*Richard G.*).)

In informant cases, "[t]he best way of negating 'do it yourself probable cause' is to have the officer who received the information from outside the police department testify, but that is not the only way." (*People v. Orozco* (1981) 114 Cal.App.3d 435, 444 (*Orozco*).) Evidence that corroborates information in the tip may also satisfy the *Harvey-Madden* rule. (*Orozco,* at pp. 444–445.) In *Orozco*, for example, an "anonymous caller supposedly said that people were shooting out of [a] car. The [P]eople never proved that such a call was made but they did prove that there were cartridges within four to five feet of the passenger door of the car when the police looked for them. . . . The presence of the cartridges certainly supports a very strong inference that the police did not make up the information from the informant. Thus, the veracity of the dispatcher's statement that he received a call was circumstantially proved." (*Ibid.*; see also *People v. Johnson* (1987) 189 Cal.App.3d 1315, 1317–1318, 1320 (*Johnson*); *Richard G., supra,* 173 Cal.App.4th at p. 1256; cf. *In re Eskiel S.* (1993) 15 Cal.App.4th 1638, 1644 (*Eskiel S.*).)[4]

---

[4] In *Johnson*, the court found sufficient corroboration where an anonymous tipster had reported that two Black males—between 25 and 30 years old; one with a moustache and wearing a red jacket and black pants and the other wearing a black jacket and jeans—were climbing a fence into the backyard of a specific residence, and upon arrival police observed two Black males—in their 20's; each with a moustache and a beard or goatee; one wearing a red and black top with jeans and the other wearing a dark long-sleeved

Jose argues the *Harvey-Madden* rule was violated here because the prosecution did not present the testimony of the Humboldt County dispatcher who actually received the original report. We disagree. The testimony was unnecessary because there was sufficient corroborating evidence to establish that the tip was not manufactured by the police department. First, the Mendocino County dispatchers established—by testifying based on their personal knowledge and by authenticating a business record—that a tip was received from the Humboldt County dispatch office shortly before the dispatch was broadcast and that the tip contained the information received by Williams. Second, several significant facts in the tip were corroborated by Williams's personal observations shortly after receiving the tip: the description, license plate number, location and

---

shirt and jean overalls—10 yards from the address. (*Johnson, supra,* 189 Cal.App.3d at pp. 1317–1318, 1320.)

In *Richard G.*, a dispatch reported that two males—one wearing a black t-shirt and the other a blue Pendleton-type jacket—were creating a disturbance at a particular address and walking in the direction of a nearby park, and one was possibly armed. (*Richard G., supra,* 173 Cal.App.4th at p. 1256.) Within minutes of receiving the dispatch, two patrol officers observed two men matching the description walking near the park with two women, and ordered the men to stop. (*Ibid.*) The court held the *Harvey-Madden* rule was satisfied based solely on the detaining officers' testimony because there clearly "was no 'manufacture' of information. . . . [T]here is no way that the dispatcher could have manufactured these detailed descriptions at or near the place and time the officers saw appellant and his companion matching the detailed descriptions." (*Id.* at pp. 1256, 1259.)

In *Eskiel S.*, in contrast, the court found insufficient corroboration to satisfy the *Harvey-Madden* rule. (*Eskiel S., supra,* 15 Cal.App.4th at p. 1644.) The only evidence presented was a radio broadcast reporting a possible gang fight involving 10 to 12 Black persons, including one possibly armed with a rifle, in the area of a certain intersection. The defendant and others were detained in a nearby park. (*Id.* at p. 1641.) While recognizing that "[w]here *significant* portions of the broadcast can be verified, it is reasonable to conclude that the source of the information 'is probably right about other facts . . . including the claim that the object of the tip is engaged in criminal activity,' " the court held that "[b]ecause of the general nature of the information contained in the radio broadcast . . . , no amount of corroboration could have justified a detention based on the broadcast. . . . The individuals allegedly involved in the 'possible' criminal activity were not described other than by race and only a general 'area' was given as their location." (*Id.* at p. 1644, fn. omitted.)

direction of the vehicle. These corroborated details serve the purpose of the *Harvey-Madden* rule: they provide persuasive evidence that the reported tip was genuine and not a fabrication of a " 'phantom informer' " by a law enforcement official.[5] (See *People v. Poehner* (1971) 16 Cal.App.3d 481, 487.)

Jose argues there is a split in the case law between strict (*Eskiel S., supra,* 15 Cal.App.4th 1638) and relaxed (*Orozco, supra,* 114 Cal.App.3d 435, *Richard G., supra,* 173 Cal.App.4th 1252) adherence to the *Harvey-Madden* rule and urge us to follow *Eskiel S.* He further argues that *Eskiel S.* permits reliance on corroboration only where alleged illegal activity is corroborated, not where innocent details are corroborated. We disagree with both arguments. First, we see no real divergence in the case law. It is true that *Richard G.* criticizes *Eskiel S.* for "requir[ing] strict adherence to the '*Harvey-Madden*' rule without addressing the crucial role of independent corroboration," and states, "We think a plausible argument could be made that the crime report at issue in *Eskiel S.* was sufficiently corroborated . . . ." (*Richard G.*, at p. 1260.) However, *Eskiel S.* expressly acknowledges that sufficient corroboration can satisfy the *Harvey-Madden* rule and simply holds that insufficient corroboration was present in that case. (*Eskiel S.*, at p. 1644.) We view *Eskiel S.* as consistent with the approach taken in *Orozco*, *Richard G.*, and *Johnson, supra,* 189 Cal.App.3d 1315, and see no reason to argue with the court's application of the law to the facts before it. Second, we disagree that *Eskiel S.* draws a distinction between corroboration of innocent details versus alleged illegal activity. *Eskiel S.* makes no such distinction. Rather, it refers to "significant" details in the tip, which may include innocent or incriminating details. (*Eskiel S.*, at p. 1644.) Moreover, *Eskiel S.* specifically distinguished *Johnson*, which was decided by the same appellate district, because the corroborating facts there were significant, even though those facts simply included detailed descriptions of the suspects and their location and did not involve criminal activity. (*Eskiel S.*, at p. 1644; *Johnson*, at pp. 1317–1320.)

---

[5] We also note that, although not offered in evidence at the evidentiary hearing, Jose's counsel acknowledged on the record receipt of a recording of the original citizen call to the CHP dispatcher.

In *People v. Ramirez* (1997) 59 Cal.App.4th 1548 (*Ramirez*), the court held that probable cause or reasonable suspicion can be established by the collective knowledge of officers involved in an arrest or detention even if not all of that information is conveyed to the specific officer or officers who carry out the arrest or detention. (*Ramirez,* at p. 1555 ["when police officers work together to build 'collective knowledge' of probable cause, the important question is not what each officer knew about probable cause, but how valid and reasonable the probable cause was that developed in the officers' collective knowledge"]. Neither party disputes that the rule applies to reasonable suspicion as well.

Jose argues *Ramirez, supra,* 59 Cal.App.4th at page 1556, is distinguishable because the arrest in that case was "based on a fellow officer's determination of probable cause, which in turn was based on the officer's direct observation that the vehicle was speeding." Here, on the other hand, he argues, "the dispatcher is not trained to make reasonable suspicion determinations, and the information was not based on her observations, but was supplied by an anonymous tipster."

The assertion that dispatchers are not trained in determining probable cause suggests an argument that the collective knowledge rule should not apply when an officer relies on a *dispatcher's* express or implied statement of reasonable suspicion. While perhaps an interesting argument, it is not relevant on the facts of this case. Here, the question is not whether the officers properly relied on the dispatcher's *determination* of reasonable suspicion, but whether they properly relied on *information* relayed to them by the dispatchers. As we explain *post*, that information and the officers' corroboration of significant parts of that information justified the stop here in light of the public danger posed by reported reckless driving. The dispatchers were merely the conduits of the relevant information.

We find no *Harvey-Madden* violation.

B. *Reasonable Suspicion for the Traffic Stop*

1. *The* Wells *Legal Standard*

In *Wells*, the Supreme Court reiterated the well-established reasonable suspicion standard for investigative stops by law enforcement officers: "[A]n officer may stop and detain a motorist on reasonable suspicion that the driver has violated the law. [Citations.] The guiding principle in determining the propriety of an investigatory detention is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' [Citations.] . . . [¶] Reasonable suspicion is a lesser standard than probable cause, and can arise from less reliable information than required for probable cause, including an anonymous tip. [Citation.] But to be reasonable, the officer's suspicion must be supported by some specific, articulable facts that are 'reasonably "consistent with criminal activity." ' [Citation.]" (*Wells, supra,* 38 Cal.4th at pp. 1082–1083.)

The Court explained that citizen tips by victims or eyewitnesses generally are sufficient alone to supply reasonable suspicion, "especially if the circumstances are deemed exigent by reason of possible reckless driving or similar threats to public safety. (*Lowry v. Gutierrez* (2005) 129 Cal.App.4th 926 [phoned-in tip of erratic driving]; *People v. Rios* (1983) 140 Cal.App.3d 616 [car illegally parked and traffic hazard]; *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579 [reckless driving, driver pointing gun]." (*Wells, supra,* 38 Cal.4th at p. 1083, parallel citations omitted; see also *People v. Smith* (1976) 17 Cal.3d 845, 850–851 [it is reasonable for police to rely on tips of citizen-informants].) Nevertheless, special concerns arise when such a tip comes from an anonymous source. As explained by the United States Supreme Court, "Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated [citation], 'an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity,' [citation]." (*Florida v. J.L.* (2000) 529 U.S. 266, 270 (*J.L.*).) To establish reasonable suspicion in an anonymous victim or eyewitness tip case, the tip must exhibit sufficient indicia of reliability, be "suitably corroborated," and be "reliable in its assertion of illegality, not

just in its tendency to identify a determinate person." (*Id.* at pp. 270, 272.) However, the court held open the possibility that there may be "circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability," such as a report of a person carrying a bomb. (*Id.* at pp. 273–274.)

In *Wells*, the California Supreme Court held that the danger exception postulated in *J.L., supra,* 529 U.S. at pp. 273–274, applies when an anonymous tipster contemporaneously reports drunken or erratic driving on a public roadway and officers are able to corroborate significant innocent details of the tip, such as detailed descriptions of the vehicle and its location. (*Wells, supra,* 38 Cal.4th at pp. 1080–1081, 1087–1088; *People v. Dolly* (2007) 40 Cal.4th 458, 464 (*Dolly*).) In *Wells*, a CHP officer received a dispatch report of a possibly intoxicated driver " 'weaving all over the roadway' " in "a 1980's model blue van traveling north on Highway 99 at Airport Drive." (*Wells*, at p. 1081.) The officer was about three to four miles north of Airport Drive and saw a blue van driving north on the highway about two to three minutes after receiving the dispatch. Without observing any erratic driving or other illegal activity, the officer pulled the car over for an investigative stop. (*Ibid.*) The Supreme Court held the stop was supported by reasonable suspicion. (*Id.* at p. 1082.) First, circumstantial evidence supported the inference that the tipster was an eyewitness (*id.* at p. 1088), a fact that itself enhanced the reliability of the tip: "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned-in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare. [Citations.]" (*Id.* at p. 1087) Second, officers confirmed detailed identifying information in the tip before pulling the vehicle over, thus further enhancing the reliability of the tip. (*Id.* at p. 1088.) Finally, the report of a reckless driver poses a "grave and immediate risk to the public." (*Id.* at p. 1087.)

Wells found an opinion of the Eighth Circuit in *United States v. Wheat* (2001) 278 F.3d 722 (*Wheat*) particularly persuasive (*Wells, supra,* 38 Cal.4th at pp. 1084–1088), so we take guidance from that case as well. The *Wheat* court held that reasonable

suspicion was established in the totality of the following circumstances: "An anonymous caller provided an extensive description of a vehicle that, based on his contemporaneous eyewitness observations, he believed was being operated dangerously, and cited specific examples of moving violations. When Officer Samuelson caught up with the vehicle minutes later while it was stopped at an intersection, he corroborated all its innocent details, confirming that it was the one identified by the tipster. Within seconds after the vehicle resumed motion, Officer Samuelson effected an immediate investigatory stop, rather than allow it to proceed and potentially endanger other vehicles." (*Wheat*, at p. 737.) The tipster had reported that the vehicle was "passing on the wrong side of the road, cutting off other cars, and otherwise being driven as if by a 'complete maniac.' " (*Id.* at p. 724.)

2. *Application of* Wells *in this Case*

Under the *Wells* standard, the officers here had reasonable suspicion to conduct an investigative stop of Appellants' vehicle. The contents of the tip supported an inference that it came from the victim of the reported reckless driving. The officers' prompt corroboration of significant innocent details of the tip—the detailed description of the vehicle including its license plate number and the accurate description of its location and traveling direction—sufficiently established the reliability of the tip to support reasonable suspicion. Finally, the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists to justify the stop without direct corroboration of the vehicle's illegal activity.

Appellants argue the tipster here did not provide enough information about the alleged illegal driving to render the tip reliable without corroboration of illegal activity by the officers.[6] They argue a report that the vehicle ran the reporting party off the roadway

---

[6] In support of this argument, Lorenzo criticizes the *Wells* majority's reasoning and extensively cites the *Wells* dissent as well as the concurring opinion in *Dolly* (authored by the *Wells* dissenters, expanding on views expressed in *Wells*). He also argues that the *Wells* majority erred by stating that harassment was unlikely in the context of phone-in tips of erratic driving by vehicles that can quickly be located and stopped. The *Wells* dissent and *Dolly* concurrence are irrelevant to our analysis of the issues, as is

was not an unambiguous report of unlawful activity or of an ongoing public danger because the vehicle might have simply swerved to avoid an obstacle in the road. In contrast, they argue, the report in *Wells* of a car " 'weaving all over the roadway' " strongly indicated unlawful activity and an ongoing danger to the public. (See *Wells, supra,* 38 Cal.4th at p. 1087.) They note that both *Wells* and *Wheat* emphasized the importance of receiving detailed information about the alleged dangerous driving and warned that a stop might not be justified on limited or vague information about the suspect vehicle's alleged erratic driving. (See *Wells,* at p. 1088; *Wheat, supra,* 278 F.3d at p. 731–732 & fn. 8.) Lorenzo specifically argues there was no evidence that the informant characterized the driving as "reckless"; instead, the record only shows that the Humboldt County dispatcher told Moore the driving was "reckless," a characterization that might have been nothing more than the Humboldt dispatcher's personal speculation.

In our view, it is immaterial whether the caller or the Humboldt dispatcher characterized the driving as "reckless" because the phrase "ran the reporting party off the roadway" itself strongly implies reckless if not deliberately aggressive driving. While it is *possible* the driver's actions were misinterpreted by the caller, or by the dispatcher, this possibility does not undermine the lawfulness of the stop. Officers only need reasonable suspicion to detain people for investigative purposes, not proof of illegal activity or even probable cause to believe they engaged in or were about to engage in criminal activity. " 'The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.' " (*People v. Souza* (1995) 9 Cal.4th 224, 233.)

Jose argues that the officers lacked reasonable suspicion because the dispatcher's radio broadcast about the tip may have referred only to "reckless driving" rather than a

---

Lorenzo's criticism of the *Wells* majority's reasoning, because we are bound to follow the majority opinions in the *Wells* and *Dolly* cases, which clearly hold that confirmation of innocent details alone is sufficient to establish reasonable cause. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; *Wells, supra,* 38 Cal.4th at pp. 1086, 1088; *Dolly, supra,* 40 Cal.4th at p. 465.)

report that the vehicle "ran the reporting party off the roadway." As we read the record, the magistrate found that the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway.[7] Because this finding was supported by substantial evidence in the record,[8] we must accept it as true. We thus need not decide whether a

---

[7] In posthearing argument, Jose's counsel told the magistrate, "The issue is whether the information to communicated [*sic*] the officer was enough for him to detain the car." Immediately thereafter, the magistrate said, "[I]n *Wells* the only conduct that was reported to the officer was that the car was weaving. [¶] . . . [S]o what the officer had there was testimony that there was some kind of erratic driving that could be consistent with drunk driving. [¶] And I think this is conduct similar to that where someone forced another person off the road . . . ." This statement implies that the magistrate found the officers were told that the vehicle reportedly ran another vehicle off the road. Supporting this conclusion is the fact that Jose's counsel had previously conceded in argument that the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway. For example, he said, "I don't think the officer testified . . . [he heard about] crossing the double-yellow line . . . . [¶] The information conveyed to them was 'ran this person off the road,' " and, "Based on my own memory . . . about what the detaining officer testified he heard[was] . . . the Ford pickup . . . almost or did run the reporting party off the road. [¶] I don't think we're disputing that."

[8] Odbert testified that she saw the following information on her screen: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five minutes ago." She broadcast "that information" to officers in the field at 3:47 p.m. When she was further questioned about that broadcast, she testified, "I would say, Attention, coastal units. BOL for . . . a reckless driver, 23103. And then [I would] give the information, the silver, the F150 pickup, etc." She was then specifically asked whether she broadcast the license plate number and location and traveling direction of the vehicle and she confirmed that she had. She was not specifically asked whether she broadcast the information that the vehicle ran the reporting party off the road.

Moore testified that the dispatcher reads from the computer screen when she makes her broadcast, although she does not necessarily read exactly what is written there. She further testified that the dispatchers are required to ask callers who report reckless driving what specific conduct is involved and they are required to convey that information to the officers: "The highway patrol is not okay with us broadcasting just a vehicle description with no reason why it would be reported as a reckless or possible drunk driver. They have to have a reason for what they believe is reckless."

When Williams was asked what he heard on the dispatch, he testified, "I remember hearing dispatch of a reckless driver southbound on Highway 1. I don't recall the exact location. . . . [¶] . . . [¶] . . . The description was a silver pickup truck with a

report of "reckless driving" alone would have been too vague to support reasonable suspicion for the traffic stop.

Finally, Appellants place great emphasis on the fact that the officers here did not pull the car over immediately, but only after they had followed it for five minutes without observing any erratic driving. They imply that this period of observation belied any genuine apprehension of public danger in the officers, which was necessary to justify the stop without corroboration of the driver's illegal activity. Jose argues alternatively that, even if the officers initially perceived a public danger, the extended period of observation without incident *dispelled* that concern and *negated* any reasonable suspicion they might have initially had. Appellants note that *Wheat* emphasized that the public danger of a possibly drunk driver justified quick police action without direct corroboration of illegal activity. The court commented that a stop might not be justified if officers follow the vehicle for a substantial period of time without observing illegal activity. (*Wheat, supra,* 278 F.3d at pp. 736–737 & fn. 13.) Along the same lines, *Wells* twice notes that the officers' stop of the vehicle was immediate, thus explaining why direct corroboration of illegal activity was not possible. (*Wells, supra,* 38 Cal.4th at pp. 1081, 1088.)

---

specific license plate number." He was not specifically asked whether he was paraphrasing or whether he specifically recalled hearing the words "reckless driving" without further description.

On this record, the magistrate could find that the dispatch to the officers stated that the caller reported the vehicle ran the reporting party off the road. " '[W]e must uphold the magistrate's express or implied findings if they are supported by substantial evidence. [Citations.]' [Citation.]" (*People v. Magee* (2011) 194 Cal.App.4th 178, 183.)

Jose acknowledges on appeal that Odbert's testimony "implied that she provided additional information" to the officers beyond the report of "reckless driving" and the vehicle description and location. However, he notes that the "audio tapes of the actual dispatch [broadcast] were no longer available at the time of the Preliminary Hearing [citations], despite defense counsel's repeated requests. [Citations]." In the trial court, Appellants based their motion to dismiss in part on this alleged discovery violation. The trial court denied the motion because the officers' "subjective belief" in the existence of reasonable suspicion was immaterial. Appellants do not renew their discovery argument on appeal. Therefore, the alleged discovery violation plays no role in our analysis of whether substantial evidence supports the magistrate's implied finding.

In the circumstances presented here, we cannot agree the officers' brief observation of the vehicle without incident belied or dispelled any reasonable concern about public safety. The five-minute delay in pulling over Appellants' vehicle resulted from the fact that both Francis and Williams were driving north on Highway 1 when they first observed Appellants' vehicle traveling south and thus needed to make U-turns and catch up to the vehicle before they could pull it over. The reported illegal driving—running another car off the roadway—was a serious traffic violation that carried an unusually high risk of collision and injury. Further, the vehicle was traveling on Highway 1, which (as the magistrate noted) was an undivided two-lane road, thus raising the risk of a collision with oncoming traffic, which poses a particular risk to human life and limb. Finally, the anonymous tip itself had several indicia of reliability—the content of the tip strongly suggested it came from the victim and the tipster accurately described the appearance, location and direction of the vehicle. In these circumstances, the officers could reasonably conclude there was a risk to public safety that necessitated a prompt investigative stop despite their brief observation of the vehicle without incident.[9]

In sum, the People established that the officers had reasonable suspicion of unlawful activity justifying their investigative stop of Appellants' vehicle. The court properly denied Appellants' motion to suppress the fruits of that stop.

---

[9] In a footnote, *Wheat* cites three cases that purportedly illustrate that "when the officer does not effect an immediate stop of a potentially drunk driver, the force of this justification [i.e., the need to stop a suspected drunk driver quickly] rapidly diminishes." (See *Wheat, supra,* 278 F.3d at p. 737, fn. 13.) In each of the three cited cases, however, the courts held—inconsistent with *Wells, supra,* 38 Cal.4th 1078—that an anonymous citizen's tip about erratic or drunk driving does not establish reasonable suspicion for an investigatory stop even if its innocent details are confirmed. The officers' failure to directly observe erratic driving in those cases, therefore, left the officers without any reasonable suspicion to pull over the drivers. In other words, the period of observation without incident did not *dispel* reasonable suspicion raised by the anonymous tip; it failed to provide reasonable suspicion in the first place. (See *McChesney v. State* (Wyo. 1999) 988 P.2d 1071, 1076–1077; *State v. Boyle* (La.Ct.App. 2001) 793 So.2d 1281, 1283–1285; *Washington v. State* (Ind.Ct.App. 2000) 740 N.E.2d 1241, 1246.)

III. DISPOSITION

The judgments are affirmed.

Bruiniers, J.

We concur:

Jones, P. J.

Simons, J.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO
CLERK'S DOCKET & MINUTES

Clerk: Donna Rae
Court Reporter: [illegible]
Judge: Hon. RICHARD HENDERSON
Bailiff:

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
JOSE PRADO NAVARRETE,
Defendant.

APPEARANCES:
D.A. Houston
P.O.
ATTY/PD/APD Schwartz
INTERPRETER Cline
Language: [ ]Sworn [ ]Cert/Reg
CASE# MC-UK-CR-CR-08-0088137-003
HEARING TYPE: PRELIMINARY HEARING

[X]Present [ ]In Custody [ ]Remanded [ ]Not Present [ ]Cash/Bond Posted/Fort. $30K - Whole

DATE: 08/14/2009 TIME: 1:30 P.M. COURTROOM: A

CHARGES:

1	HS	11359	F	POSSESS MARIJ F/SALE	08/23/2008
2	HS	11360(A)	F	TRANSPORT/SELL/MARJ	08/23/2008
3	PC	1465.8		SECURITY ASSESSMENT	08/28/2008

1538.5 denied

art

PRELIMINARY EXAMINATION HELD

MATTER CONTINUED TO 9-4-09 130 A

[ ] [X] Preliminary examination was held on the above date and it appearing to the above Judge that a felony violation of 182 has been committed and that there is sufficient cause to believe the above named defendant GUILTY there of, it is ordered that he be held to answer the same.

WITNESS SWORN AND TESTIFIED	EXHIBITS	marked	admitted
1.	No. 1	[ ]	[ ]
2.	No. 2	[ ]	[ ]
3.	No. 3	[ ]	[ ]
4.	No. 4	[ ]	[ ]
5. See Attached Witness List	No. 6 See Attached Exhibit List	[ ]	[ ]

[ ] [ ] 1538.5 Motion [ ]Granted [ ]Denied
[ ] [ ] Misdemeanor charges will accompany the felony to Superior Court for arraignment on the same date.
[ ] [ ] 17(b)PC reduction as to counts _____ by motion of _____, granted.

PRELIMINARY EXAMINATION WAIVED

[ ] [ ] The above named defendant, being charged in a complaint on file in this Court under the above case number, and having waived preliminary examination on the charges, the Court and the District Attorney consenting thereto, it is ordered that he be held to answer on the same.

PLEA OF GUILTY

[ ] [ ] The above named defendant, being charged in a complaint on file in this Court under the above case number, and having entered a plea of [ ]GUILTY [ ]NOLO CONTENDRE to a felony conviction of _____ _____, it is ordered that this case is certified to the Superior Court for sentencing. Court finds that a factual basis for the plea exists.
[ ] [ ] Defendant advised of, understands and knowingly, and voluntarily waives all the following rights: [ ]the right to jury or court trial, [ ]the right to confrontation and cross-examination of the witnesses against him, the right to present evidence to show not guilty of offense, [ ]the privilege against self-incrimination.

CUSTODIAL STATUS

[ ] [ ] Defendant is committed to custody of Sheriff until he is legally discharged.
[ ] [ ] Admitted to bail in amount of $_____ and is committed to the Sheriff of this county until he gives such bail.
[ ] [ ] Defendant is released on his own recognizance.
[ ] [ ] Defendant to remain free on bail.
[ ] [ ] Order for Warrant Rescinded.

FURTHER PROCEEDINGS

[ ] [ ] Count(s) _____ dismissed by judge. Count(s) _____ dismissed at request of District Attorney.
[ ] [ ] Defendant ordered to report immediately to Probation Department
[ ] [ ] Defendant certified to Superior Court under 1368PC
[ ] [ ] Defendant ordered to appear in Superior Court Department ____ in Ukiah/Ten Mile on _____ at 8:30AM ARR/J&S
[ ] [ ] Bench Warrant ordered issued with bail set in the amount of $_____

Judge of the Superior Court

I certify the foregoing is a true copy of the judgment rendered on the above date by the above named judge.

Certified copy delivered to Sheriff on _____ _____, Clerk

EXHIBIT B

FILED

DEC 08 2009

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MENDOCINO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. LORENZO NAVARETTE and JOSE NAVARETTE, Defendants.	Case No.: SCUK-CRCR-08-86137 RULING ON PENAL CODE SECTION 995 MOTION AND NON-STATUTORY MOTION TO DISMISS

I. Procedural Background:

The court heard argument in this matter on November 16, 2009 and it was taken under submission. Both defendants had joined in the motion. Defendants argue that no evidence of sufficient reasonable suspicion to detain their vehicle was introduced at the preliminary hearing, and that their motion to suppress should have been granted. In addition, defendants argue that the destruction of evidence that the defendants had repeatedly requested prevented them from effectively cross-examining the witnesses at the preliminary hearing and motion to suppress.

If a Penal Code Section 1538.5 motion is heard and denied at the preliminary examination, and if the holding order concerning one or more counts could not stand without the challenged evidence, review of the motion is available through Penal Code Section 995. A 995 motion is a review of the magistrate's action and is based solely on the transcript of the preliminary examination; no new evidence may be heard or considered. People v. Sabagun (1979) 89 Cal.App.3d 1, 20. Moreover, the judge ruling on the 995 motion is bound to defer to the preliminary examination ruling and uphold it if the record supports it. People v. Alonzo (1993) 13 Cal.App.4th 535.

II. Factual Background:

Defendants contend that an anonymous tip about their erratic driving did not provide the officers with reasonable suspicion to pull them over. The evidence was undisputed that the detaining officers did not personally observe any erratic driving. Rather, a complaint about defendants' driving was made via a 911 call. This information was then relayed to the arresting officers who intercepted the

defendants about 18 miles and 13 minutes from where they were located at the time the 911 call was first received (TX:38 and 34-35).

Owing to the vicissitudes of cell phone reception in remote areas, the 911 call was first received by Humboldt County CHP and ultimately relayed to Mendocino County CHP dispatch for transmission to the officers in the field. The information regarding the complaint was that the defendants' "vehicle ran RP (reporting party) off the roadway." (TX 13:22-25) Specific identifying information regarding the defendants' car was also supplied by the reporting party and relayed through dispatch; namely, the location, model, make and color of defendants' vehicle as well as the exact license plate number. (TX 29:11-15)

The Dispatcher who first received the information from Humboldt County (Matia Moore) testified at the preliminary hearing. She testified that Humboldt County Dispatch advised they had taken a 911 call about a reckless driver heading toward Mendocino County. (TX 15:15-20) She further testified that the "highway patrol is not okay with us broadcasting just a vehicle description with no reason why it would be reported as a reckless or possible drunk driver. They [CHP] have to have a reason for what they believe is reckless." (TX 15) She also stated that when she receives a call directly from a reporting party, she is required to ask why the reporting party believes the offending driver is reckless or possibly intoxicated. Although she could not positively state that making such inquiry was official CHP policy, she stated she was trained at the academy to "get a reason for why we are broadcasting that someone is being reported as a reckless driver." (TX 16:1-4) Although the Humboldt County Dispatcher who actually took the call did not testify, it appears in this case that the stated reason for asserting that the car was driving in a reckless manner is the reporting party's explanation that the defendants ran him/her off the road.

CHP Officer Williams also testified at the preliminary examination. He testified that remembered "hearing dispatch of a reckless driver southbound on Highway 1." (TX 46:13-14) He also recalled being provided a description of a silver pickup truck with a specific license plate number. (TX 46:21-22) A short time later he encountered the vehicle southbound on Highway 1, made a U-turn to follow the vehicle, and initiated a traffic stop at the entrance to MacKerricher State Park. (TX 47:5-48:9) Neither Officer Williams nor any other witness testified as having personally observed any erratic driving or violations of the vehicle code. The defendants' vehicle was pulled over solely on account of the anonymous tip.

III. Denial of 1538.3 Motion:

The magistrate denied defendants' 1538.5 motion, relying on the 3 part test set forth in the California Supreme Court case People v. Wells (2006) 38 Cal.4th 1078. The Wells Court held that tips of drunken or erratic driving may indeed

provide reasonable suspicion justifying a traffic stop if the following factors are present:

1) The tipster must furnish sufficient identifying information regarding the vehicle and its location, so the officer and reviewing courts may be reasonably sure the vehicle stopped is the one identified by the caller;

2) The tip should indicate the caller had actually witnessed a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity. And,

3) At least the "innocent details" of the tip must be corroborated by the officers.

It is clear on the record of this case that the first and third prongs of the Wells test are satisfied. The defendants' truck was precisely described with an accurate license plate number and intercepted as expected given the initial information about its location and direction of travel.

The question of whether the second prong has been satisfied is complicated somewhat by the magistrate's statement that the defendants' vehicle crossed the double-yellow line and forced the reporting party off the road. The magistrate's statement regarding the double yellow line violation is clearly an invention of faulty recollection. Nowhere in the record does there appear any evidence that the defendants' vehicle crossed the double yellow line. Nor is there any evidence that the defendants' vehicle was ever reported to have crossed the double yellow line. However, even if one ignores the invented fact of the double yellow line violation, the record is still sufficient for a finding that the officers had reasonable suspicion to justify the traffic stop.

As the Wells court emphasized, "reasonable suspicion" is a lesser standard than probable cause, and can arise from less reliable information than required by probable cause, including an anonymous tip. (Ibid, p. 1083). But to be reasonable, the officer's suspicion must be supported by some specific, articulable facts that are "reasonably "consistent with criminal "activity.'" The question becomes, then, is a citizen's tip of an erratic driver who "ran me off the road" sufficient to raise a reasonable suspicion that would justify an investigatory stop and detention? This court believes it does.

As the Wells court notes, "The California cases indicate 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 reason of possible reckless driving or similar threats to public safety." (Ibid, at p. 1083) For example, the Wells court relied on Lowry v. Guttierrez 129 Cal.App.4th 926 which involved "an anonymous cell phone tip that a specific vehicle was being

driven the wrong way on a city street and had turned into oncoming traffic. Although the detaining officer himself observed no erratic driving, the Court of Appeal agreed that an immediate investigatory stop was appropriate under these exigent circumstances. The court, citing California Highway Patrol statistics, noted the grave public safety hazard posed by drunken drivers The court also stressed the unlikelihood of a false report, and the tipster's detailed description of the car, its location, and the nature of the erratic driving, making it likely the caller was an eyewitness."

Defendants contend that the tipster's mere assertion that they "ran me off the road" is too vague an assertion of illegal conduct. Defendants argue that the Wells court in relying on United States v. Wheat (8th Cir. 2001) 278 F.3d 722 requires "the tip must contain a sufficient quantity of information to support an inference that the tipster has witnessed an actual traffic violation that compels an immediate stop." Because there are ostensibly innocent ways a driver might run another driver off the road, or alternatively, circumstances that may lead a person to call 911 complaining they were run off the when there was in fact no unlawful conduct, defendants argue that the tipster must identify particular vehicle code violations (e.g. crossing the double yellow line, unsafe lane change, running a stop sign, etc.) to meet the sufficient quantity of information compelling an immediate stop. The court disagrees with this argument. Where, as here, an anonymous tipster claims to have been run off the road, they are an eyewitness to the erratic driving. The reliability of the tip is enhanced by the fact that the report involved a precise vehicle traveling in a remote area that was then located a short time later where expected. Moreover, although a precise vehicle code violation was not identified, the conduct at issue, running someone off the road, is the exact kind of harm that elevates the exigency of erratic/intoxicated driving tips above tips involving only possessory offenses. As the Wells court notes, "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned-in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare." (Wells, supra, at 1087, citing Lowry v. Gutierrez, supra, 129 Cal.App.4th at p. 941).

Accordingly, on the facts in the record of this case, it is immaterial that the tipster did not identify a particular vehicle code violation. A report of being run off the road is sufficient to raise reasonable suspicion justifying an investigatory stop. The magistrate's faulty recollection that defendants' vehicle crossing the double yellow line is of no significance. The record, even excising the invented double yellow line violation, is still sufficient to establish reasonable suspicion. Therefore, the defendant's P.C. Section 1538.5 motion was properly denied.

///

///

IV. Non-Statutory Motion To Dismiss Based on Deprivation of Constitutional Right to Confront and Cross-Examine:

Defendant's argue that the destruction of the dispatch audio recordings of what the detaining officers were told by their dispatchers denied them the right to effectively cross-examine the officer's regarding their subjective knowledge in deciding to detain defendants. However, as the prosecution correctly point out, "the reasonable suspicion necessary to justify a detention is measured solely by an objective standard." (People v. Lloyd (1992) 4 Cal.App.4th 724, 733). The officer's subjective belief is immaterial. Accordingly, defendants have suffered no prejudice on the salient issue before the court and the non-statutory motion to dismiss is denied.

V. Conclusion:

For the reasons set forth above, defendants' 995 motion and non-statutory motion to dismiss are denied.

SO ORDERED.

DATED: 12-8-09

JUDGE OF THE SUPERIOR COURT

Copies to the parties,
Katherine Houston, Esq. Mendocino County District Attorney's Office
Jeffrey D. Schwartz, Esq.
Brian J. Petersen, Esq.

FILED

JAN 22 2010

CLERK OF MENDOCINO COUNTY SUPERIOR COURT OF CALIFORNIA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MENDOCINO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. LORENZO NAVARETTE and JOSE NAVARETTE, Defendants.	Case No.: SCUK-CRCR-08-86137 RULING ON MOTION TO RECONSIDER

The record amply demonstrated that a 911 call was received by CHP Dispatch from a driver who claimed that he had been run off the road by defendants' vehicle. This "tip" contained further innocent details which precisely identified defendants' car as the vehicle in question. In addition, the officer testified that he had received information via dispatch of "a reckless driver southbound on Highway 1". The officer's testimony did not specifically note anything about a driver being run off the road. However, this omission is immaterial.

The three prong test articulated in People v. Wells 38 Cal.4th 1078, 1086 requires:

1) The tipster must furnish sufficient identifying information regarding the vehicle and its location, so the officer and reviewing courts may be reasonably sure the vehicle stopped is the one identified by the caller;

2) The tip should indicate the caller had actually witnessed a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity; and,

3) At least the "innocent details" of the tip must be corroborated.

The first and third prongs are obviously met. The second prong is also met given the testimony of the CHP dispatch operators concerning the tip about the erratic driving. The record demonstrates that the information imparted to CHP dispatch was that defendants' vehicle ran the tipster off the road. This information constitutes a sufficient showing of erratic driving justifying the stop.

The Wells case does not appear to require that information regarding the precise nature of the erratic driving be imparted to the investigating officer. The second prong of the Wells test simply focuses on the information in the tip to law enforcement. In this case, the tip received by the CHP dispatchers was that the defendants ran the tipster off the road. The court finds that description sufficiently indicative of a traffic violation to compel an immediate stop. Moreover, this court is convinced that the Wells court was more concerned about the information in the tip than the information imparted to the officer by dispatch because the officer in the Wells case never observed any bad driving of Wells vehicle.

Finally, even if the Wells case were read to require that the investigating officer himself must be informed of the tipster's description of the offending vehicle's driving, the record indicates the officer understood that the defendant's vehicle was reported to be driving recklessly. Reckless driving can manifest in many ways, but it is clearly a violation of Vehicle Code Section 23103, and clearly a basis to be concerned about a possible DUI driver. Accordingly, the stop is this case was justified and defendant's motion to reconsider is denied.

SO ORDERED.

DATED: 1/15/10

JUDGE OF THE SUPERIOR COURT

Copies to the parties,
Katherine Houston, Esq. Mendocino County District Attorney's Office
Jeffrey D. Schwartz, Esq.
Brian J. Petersen, Esq.

Court of Appeal, First Appellate District, Division Five - No. A132353

S206841

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

LORENZO PRADO NAVARETTE et al., Defendants and Appellants.

The petitions for review are denied.

SUPREME COURT
FILED

JAN – 3 2013

Frank A. McGuire Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

EXHIBIT C

COPY

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 5

THE PEOPLE,
Plaintiff and Respondent,
v.
LORENZO NAVARETTE et al.,
Defendants and Appellants.

A132353
Mendocino County No. SCUKCRCR0886137, CR088613703

BY THE COURT:

The petition for rehearing from appellant Jose Navarette, filed herein on October 17, 2012, is denied.

Date: OCT 30 2012

JONES, P.J.
P.J.

EXHIBIT D

oruu