

## Can an Anonymous Tip Give Police Probable Cause?

### Description

In a recent training video, we sang the praises of the 9<sup>th</sup> Circuit when the appellate court approved officers seizing a cell phone during an inventory search. Today, however, we review a 9<sup>th</sup> Circuit case where the court was not so kind. For those of you who may remember the 2000 Supreme Court case – Florida v J.L.[1] – today’s case, United States vs Brown[2], may come as no surprise. In Florida v J.L. an anonymous caller provided a clothing description of a young black male and claimed the party had a gun. Arriving officers detained “J.L.” and found him in possession of a handgun. SCOTUS upheld the trial court’s suppression of the handgun, finding that an anonymous tip, without more, cannot form the basis for a *Terry* stop. So, without further ado let’s see what the 9<sup>th</sup> Circuit had to say about today’s case.

### FACTS

Seattle Police received a call that a YWCA resident recounted that he had seen “someone with a gun”. Officers responded to the YWCA and spoke with an employee who claimed a resident walked in and told her he had seen a man carrying a handgun. The employee provided a general clothing description and did not provide any further information describing what the suspect was doing with the gun. The officers did not speak with the resident who had actually seen the man with the gun.

Responding officers provided the general description of the suspect and a Metro Transit field unit spotted the defendant – Daniel Derek Brown – walking down the street. The officers followed behind Brown for a short distance, however when they turned on their lights Brown ran. After a short foot chase Brown was subdued and officers found a handgun, drugs and cash in his waistband. Brown was arrested and, prior to trial, filed a motion to suppress the gun and drugs, claiming the officers lacked reasonable suspicion. The trial court denied the motion and this appeal followed.

### 9th Circuit Findings

The court determined that the “tip suffered from two key infirmities – an unknown anonymous tipster and the absence of any presumptively unlawful activity”. While the YWCA employee identified herself, the individual who actually saw the person with the gun remained anonymous and there was no “predictive information” provided by the anonymous tipster. More importantly, the information must describe actual criminal activity. In this case, the court determined that, at best, “the officers had nothing more than an unsupported hunch of wrongdoing”.

In support of its finding, the court stated that it is “presumptively lawful” to carry a gun in Washington state noting that the law requires local law enforcement to issue a license to carry if applicants meet certain criteria. The state countered that the officers’ suspicions were heightened by the MANNER in which Brown was carrying the gun. The court quickly discounted the state’s claim finding that there was no evidence that Brown had threatened anyone with the gun or was improperly loitering at the women’s shelter. The court also dismissed Brown’s flight as support for reasonable suspicion, determining that “There is little doubt that uneven policing may reasonably affect the reaction of certain individuals –

including those who are innocent – to law enforcement”. With that, the court reversed the lower court ruling.

## WRAP UP

In a number of prior articles, we have discussed the limitations presented when tips are received anonymously. Simply put, an anonymous tip, by itself, cannot form the basis for a *Terry* stop. When confronted with information from an anonymous source officers will need to gather further information before taking action. Slow the situation down, take the time to seek out additional witnesses or attempt to identify the caller. Another strategy would be to stay back and surveil the suspect from a distance until your observations provide more information before confronting the suspect. And, of course, be sure to document all the information known to you and all other police personnel, including the dispatcher.

1. Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375 (2000) [?](#)
2. United States v Brown, 2019 U.S. App. LEXIS 16886 (9<sup>th</sup> Cir. WA 2019) [?](#)

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