

## Does a 911 Tip Count as Reasonable Suspicion?

### Description

Our case of the day comes from the Seventh Circuit in Illinois. The suspect in the case was charged under an Illinois-specific law with possessing a firearm in a place licensed to sell alcohol. It is important to note that the location is relevant because the law that the suspect was charged under may not apply in other states.

The case before us involves the credibility of an anonymous tip. This raises the question of whether such a tip requires an officer to perform a Terry stop. The seminal decision in *Terry v. Ohio* states that police officers may detain a suspect for a brief investigatory stop if they have a “reasonable suspicion based on articulable facts that a crime is about to be or has been committed.”

The general assumption regarding anonymous tips is that they are not reliable enough to establish reasonable suspicion. These tips often fail to demonstrate the informant’s basis of knowledge or veracity, so an anonymous tip alone falls below the standard necessary to establish requisite reliability.

However, in the case of *Navarette v. California*, the Supreme Court articulated a three-factor framework that can elevate the credibility of a single anonymous tip, making it sufficiently reliable to create reasonable suspicion. Under the *Navarette* factors, the tipster must (1) assert eyewitness knowledge of the reported event, (2) report contemporaneously with the event, and (3) use the 911 emergency system, which permits call tracing. In short, if the anonymous tipster is a live witness to the crime and subsequently calls to report it, the tip is reliable enough to establish reasonable suspicion.

### FACTS

Around 9:30 a.m. on November 19, 2018, an anonymous woman called 911 to report a sighting of an armed individual on the street, alleging that she witnessed the man take a silver handgun out of his pocket. The woman described the man as wearing blue jeans, white gym shoes, a black skullcap, and a black coat with fur around the collar. The woman explained to the operator that she was currently watching the man walk in the direction of the AIDA liquor store, holding his hand in his right coat pocket, where the gun was located.

As the 911 operator began to ask follow-up questions, the woman’s tone of voice became more emotional, as she eventually indicated that the man had entered the liquor store. The recorded phone call lasted for ninety seconds, and the caller’s cell phone number was obtained by the 911 operating system. After the conversation, the dispatcher notified the officers that an unidentified male who was wearing “a black skull cap and a coat with fur, had pulled a large gun from his pocket,” and, “just walked into the AIDA liquor store.”

Shortly after hearing the radio dispatch, several officers responded to the call and entered the liquor store. The officers witnessed a man, later identified as Tyshawn Swinney, waiting in line at the front register. Swinney was wearing a black coat with a fur-trimmed hood, a black skullcap, blue jeans, and white sneakers. After requesting that Swinney step out of line, the officers began patting him down, and recovered a loaded .45-caliber semiautomatic pistol from Swinney’s right coat pocket. Swinney was

arrested and charged in violation of Illinois law which prohibits possession of a firearm in a place that is licensed to sell alcohol. The government subsequently charged Swinney with possession of a firearm by a felon.

Swinney filed a motion to suppress the evidence of the gun, asserting that the pistol was the fruit of an illegal search. He further argued that the police did not have reasonable suspicion to conduct a *Terry* stop because the anonymous tip did not reliably report that Swinney had committed or was committing a crime. The district court denied Swinney's motion, finding that there was sufficient reliable information to establish reasonable suspicion that Swinney was carrying a gun. Swinney pled guilty but preserved his right to appeal the denial of his suppression motion.

## SEVENTH CIRCUIT COURT OPINION

The Seventh Circuit Court of Appeals held that the dispatcher's description of Swinney's clothing—his "black skullcap" and "black coat with fur"—was sufficiently detailed for the officers to be able to identify him. In addition, while the officers were not able to directly listen to the caller's report of Swinney's movements, the dispatcher still relayed the immediacy of the caller's account; the officers knew that the man "*just* pulled a large gun out of his pocket" and "*just* walked into the AIDA liquor store."

The court concluded this language indicated that the caller had observed these actions in real time, as they were happening—the reporter satisfied both requirements here, having "eyewitness knowledge of the reported event" and then she "reported contemporaneously with the event." Finally, the caller used the 911 emergency system and was, therefore, able to be tracked down, fulfilling the Supreme Court's third and final factor indicating reliability. Based on these facts, the court held that the anonymous call provided enough information to establish reasonable suspicion that Swinney was carrying a firearm in a liquor store, a violation of Illinois law.

## TAKEAWAYS

Under the facts of this case, an anonymous 911 tip was sufficiently reliable to sustain a finding of reasonable suspicion. When a 911 caller witnesses something that may escalate into a crime in real time, it is law enforcement's job to arrive at the scene and prevent the crime from occurring. Although it is possible that anonymous tips may turn out to have little or no value, it is undisputed that immediacy plays a role in assessing such situations. Therefore, when officers receive a tip that concerns a live situation and are provided with a location, the faster their response time, the better.

In this case, a defining element of the 911 tip was the tipster's use of the word "just," indicating that these observations were made in real time, at the exact moment the tip was received. This case also highlights the importance of listening and comprehension when the dispatcher provides information or a description of the suspect, further ensuring accuracy in the apprehension of a suspect. The tipster in this case offered law enforcement officers the opportunity to combat a crime before it was committed, highlighting the potential impact of a reliable and accurate tip in the context of law enforcement.

## Date Created

12/06/2022