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By **DLG Learning Center**

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In *Prado Navarette v. California*[1], the United States Supreme Court held that an anonymous 911 call (alleging specific reckless driving behavior), which resulted in the caller's car being run off the road, gave officers reasonable suspicion of drunk driving. This, then, justified the traffic stop of that vehicle, and the arrest of the occupants for transporting marijuana. The vote was a 5-4 split.

On August 23, 2008, a 911 dispatcher for the California Highway Patrol (CHP) received a call from another CHP dispatcher from a neighboring county. The dispatcher relayed a 911 call received from a motorist claiming that a vehicle had run her off the road. The 911 caller indicated that a Silver Ford 150 pickup, bearing license plate number 8D94925, had run her off the road at Highway 1, marker 88, and was last seen five minutes prior to the call. The information was broadcast to officers at 3:47 p.m.

A CHP officer responded to the broadcast and, at 4:00 p.m., passed the truck near mile marker 69. The CHP officer pulled the truck over at 4:05 p.m., and a second officer arrived at the scene. As the two officers approached the truck, they smelled marijuana. Upon searching the truck bed, the officers discovered 30 pounds of marijuana. The officers arrested the driver and passenger of the vehicle, Lorenzo Prado Navarette and José Prado Navarette ("Petitioners").

The Petitioners moved to suppress the evidence located in the truck bed, claiming that the traffic stop violated the Fourth Amendment because the officers lacked reasonable suspicion of criminal activity. The Superior Court denied the motion to suppress and the petitioners pled guilty to transporting marijuana. The California Appellate Court affirmed the lower court decision, concluding that the tip received from the 911 caller was reliable, and the officers did have a reasonable suspicion to conduct the traffic stop. The California Supreme Court denied review. The United States Supreme Court granted certiorari and affirmed the decision of the lower courts.

The Supreme Court first noted that the Fourth Amendment permits a brief investigative stop when an officer has a "particularized and object basis from suspecting the particular person stopped of criminal activity."[2] The reasonable suspicion necessary to justify such a stop "is dependent upon both the content of the information possessed by police and its degree of reliability."[3]

The Supreme Court stated that these same principles apply to any investigative stop that is based on an anonymous tip. The Court noted that while an anonymous tip, by itself, is seldom sufficient to

“demonstrate the informant’s basis of knowledge or veracity,”[4] under appropriate circumstances an anonymous tip can demonstrate “sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop.”[5]

The Supreme Court first addressed the question of whether the 911 call, and claim that the petitioners vehicle “ran the [caller] off the road,” was sufficiently reliable. The Court concluded that even assuming that the call was anonymous, the call was sufficiently reliable and, therefore, the officers were justified in relying on the information received that the truck had in fact dangerously run the caller’s car off the road.

The Supreme Court reasoned that by indicating that she had been run off the road, and providing the description of the vehicle, license plate number, and location of the incident, the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving. The court found that this basis of knowledge lent support to the reliability of the anonymous tip. The Court specifically stated that the driver’s claim that the driver of the truck ran her off the road implied first-hand knowledge that the other vehicle was driving in a dangerous manner.

The Court also pointed out that the timeline from the receipt of the 911 call to the officer locating the truck was further evidence that the 911 caller was telling the truth. The Court noted that the police located the truck near mile marker 69 (roughly 19 highway miles away from the reported location of the incident) at 4:00 p.m., approximately 18 minutes after the 911 call was received. The Court stated that this timeline suggests that the caller reported the incident soon after she was run off the road, indicating that it was a “contemporaneous report.” Reports of this nature have long been treated as especially reliable. The Court pointed out that in evidence law, “statements about an event and made soon after perceiving that event are especially trustworthy because ‘substantial contemporaneity of event and statement negate the likelihood of deliberate or conscious misrepresentation.” Calls received through the 911 system that would otherwise be inadmissible hearsay in court have often been admitted under the hearsay exception of “excited utterances.” As with contemporaneous reports, statements that are related to a “startling event,” like getting run off the road, made while the declarant was “under the stress of the excitement that it caused” are generally seen as trustworthy.

Finally, the Court found that another indicator of veracity is that the caller utilized the 911 emergency system. The 911 system features allow operators to identify and track a caller, which provides some safeguards and deterrence against making false reports. Furthermore, the 911 system permits law enforcement to verify important information about the caller. For example, callers are unable to block call recipients from obtaining their caller identification information. The Court noted that while 911 calls are not *per se* reliable, the advanced technology allowing for the identification of callers would make it

less likely that a false tipster would utilize the system. The Court stated that “the caller’s use of the 911 system is therefore one of the relevant circumstances that, taken together, justified the officer’s reliance on the information reported in the 911 call.”

The Court next turned its attention to whether “the 911 caller’s report of being run off the roadway created reasonable suspicion of an ongoing crime such as drunk driving as opposed to an isolated episode of past recklessness.” The Court concluded that the traffic stop was proper as an objectively reasonable police officer could conclude that the reckless driving reported in the 911 call amounted to reasonable suspicion of drunk driving. The court reasoned that it could “appropriately recognize that certain driving behaviors as sound indicia of drunk driving.” While not every traffic infraction implies intoxication, a reliable tip alleging reckless and dangerous driving behavior would justify a traffic stop based on suspicion of drunk driving.

In the present case, the Court noted that the 911 caller reported “more than a minor traffic infraction and more than a conclusory allegation of drunk or reckless driving.” Rather, the 911 caller alleged specific reckless and dangerous driving that resulted in her car being run off the road. The court found that “conduct bears too great a resemblance to paradigmatic manifestations of drunk driving to be dismissed as an isolated example of reckless driving.” The Court concluded that based on the foregoing, it could not say that the officer acted unreasonable in stopping a driver whose alleged conduct was a significant indicator of drunk driving.

The Court stated that while the driver’s behavior could be related to distracted driving or other reason, it has “consistently recognized that reasonable suspicion ‘need not rule out the possibility of innocent conduct.’”

The Court held that under the totality of the circumstances, there was an indicia of reliability in the present case “to provide an officer with reasonable suspicion that the driver of the reported vehicle had run another vehicle off the road. That made it reasonable under the circumstances for the officer to execute the traffic stop. Therefore, the Supreme Court affirmed the lower courts holding.

Justice Scalia wrote the dissenting opinion in this case which is an interesting read for Law Enforcement. He summarized his analysis by stating:

Drunken driving is a serious matter, but so is the loss of our freedom to come and go as we please without police interference. To prevent and detect murder we do not allow searches without probable cause or targeted *Terry* stops without reasonable suspicion. We should not do so for drunken driving either. After today’s opinion all of us on the road, and not just drug dealers, are at risk of having our freedom of movement curtailed on suspicion of drunkenness, based upon a phone tip, true or false, of

a single instance of careless driving. I respectfully dissent.

http://www.supremecourt.gov/opinions/13pdf/12-9490_3fb4.pdf

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1. *Prado Navarette v. California*, 572 U.S. ___ (2014) ?
2. *United States v. Cortez,* 449 U.S. 411, 417-418 (1981) ↑
3. *Cortez*, 449 U.S. at 417) ↑
4. *Alabama v. White*, 496 U.S. 325, 329 (1990)) ↑
5. *White*, 496 U.S. at 327. ↑