

**LEGAL AND REGULATORY NOTES, JUNE 2014**

**Uncorroborated, Anonymous 911 Call Proves Sufficient Basis for Traffic Stop**

A divided U.S. Supreme Court ruled in January that a traffic stop, made by police officers responding to an anonymous 911 call, did not violate the constitutional right to be free from unreasonable search and seizure, despite the lack of observation of criminal activity by those police officers. *Navarette v. California*, 572 U.S. \_\_\_\_ (2014).

The facts of the case are as follows: California Highway Patrol received information that a 911 caller reported that a silver pick-up truck on Highway 1 had run the caller off the road and was continuing southbound on that highway. The officers responded to the call, located the truck, and pulled it over. As they approached the truck they detected the smell of marijuana. They searched the truck, discovered 30 pounds of marijuana, and promptly arrested the driver and passenger.

The driver and passenger endeavored to have evidence of the marijuana suppressed from their court case on the basis that the traffic stop violated their rights under the 4<sup>th</sup> Amendment to the U.S. Constitution to be free from unreasonable search and seizure. In theory, the 4<sup>th</sup> Amendment insulates individuals from government/police intrusions. It states “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. ...” The 11<sup>th</sup> Article of the Vermont Constitution, which was not at issue in this case, contains similar though not identical language.

The U.S. Supreme Court declined the defendants’ challenge and held that the traffic stop was lawful in this circumstance because the officers had reasonable suspicion to believe that the driver was engaged in criminal activity – specifically, that he was driving while intoxicated.

Previous cases have established that a police officer may make a brief investigatory stop when he or she has a “reasonable suspicion” that an individual is engaged in criminal activity. Whether the officer has a “reasonable suspicion” is based on the totality of the circumstances and depends on the content of the information that the officer possesses and the degree of its reliability. Past cases have also established that an anonymous tip is usually not sufficient on its own to establish reasonable suspicion. The present case seems to be a departure from that precedent, as pointed out by the dissenting opinion. This case indicates that a police officer may make a stop based on an anonymous report and without an independent observation by that officer when: (1) there are indications of reliability of the report; and (2) the report creates a reasonable suspicion of ongoing or completed criminal activity.

The “indications of reliability” that the Court articulated were that the caller was an eyewitness to certain conduct (being run off the road); that there was no time lapse between the activity and the report, so the caller had little time to fabricate the report; and that the 911 system has features that safeguard against making false reports without immunity. The Court found that the officers had “reasonable suspicion” of criminal activity because the conduct that was reported may have been a sign of ongoing criminal behavior (drunk driving).

The dissenting decision in this case, written by a clearly frustrated Justice Scalia, states that the majority opinion “serves up a freedom-destroying cocktail.” Scalia states that this decision is an ill-advised departure from the Court’s past cases that held that an anonymous tip must be corroborated and that a single instance of careless or reckless driving does not support a reasonable suspicion of drunk driving. This departure, he maintains, does not allow individuals to be free from unreasonable searches and seizures as the 4<sup>th</sup> Amendment demands.

Although this case is instructive, it is not determinative within the confines of Vermont. In other words, we do not yet know how the Vermont Supreme Court would decide a similar challenge presented to it under Article 11 of Vermont’s Constitution (which is similar but not identical to the 4<sup>th</sup> Amendment to the U.S. Constitution). It is possible that this kind of case would have a different outcome in the Vermont Supreme Court, as those justices may construe the rights guaranteed under the Vermont Constitution as more protective than those under the U.S. Constitution.

The Court’s decision is archived at [http://www.supremecourt.gov/opinions/13pdf/12-9490\\_3fb4.pdf](http://www.supremecourt.gov/opinions/13pdf/12-9490_3fb4.pdf).

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