

"US Supreme Court to Decide Case on Anonymous Tips"

On October 1, 2013, the United States Supreme Court agreed to hear an appeal out of California regarding "reasonable suspicion" and "anonymous tips." In Navarette v California, a California Court of Appeals panel held that a police officer can stop a vehicle pursuant to an "anonymous tip" alone if some details of the tip are corroborated. The defendants in Navarette have appealed the decision to the United States Supreme Court.

The primary issues before the Court in Navarette are as follows:

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 the necessary legal "reasonable suspicion" to stop the vehicle, where the officer could not corroborate any dangerous driving despite following the suspect vehicle for almost five minutes?

To state it another way, does a police officer need to observe evidence of illegal or reckless driving firsthand in order to lawfully initiate a traffic stop on the vehicle?

The US Supreme Court's decision in Navarette will have an impact on South Carolina drivers. In 2010, the South Carolina Court of Appeals issued an opinion debunking "anonymous tips" as providing basis for legal "reasonable suspicion" to initiate an investigation or a stop. The ultimate decision in Navarette could have a huge impact on South Carolina drivers in DUI/drunk driving investigations. Will an anonymous call from another motorist provide legal "probable cause" for a DUI/drunk driving traffic stop to be initiated? Only time will tell; but in the meantime, below please find a memorandum summarizing the 2010 opinion from the South Carolina Court of Appeals on "anonymous tips."

State v. Taylor, 388 S.C. 101, 694 S.E.2d 60 (S.C.App. 2010)

On July 25, 2006 Florence County Sheriff's Deputy Bellamy received an anonymous tip indicating "a black man on a bicycle was possibly selling dope" on the "dirt portion of Ervin Street." Bellamy arrived near the location and observed a black male, later identified as Taylor, riding a bicycle on the dirt road. As Bellamy and another officer approached the scene, he again observed Taylor, but this time "huddled close together" with another black male. Bellamy did not witness anything pass between the two men.

Taylor pedaled past Bellamy on his bicycle, glanced at him, and Bellamy ordered him to stop. When Taylor ignored Bellamy's second command to stop and get on the ground, Bellamy conducted an arm-bar takedown. Once apprehended, Bellamy searched Taylor and discovered a tennis ball containing crack cocaine. Taylor was arrested and charged with PWID cocaine base. At trial, Taylor sought to exclude the drug evidence, arguing the stop, search and arrest were unlawful.

Taylor argued the drug evidence should be suppressed. Specifically, he maintained this incident arose as the result of an unreliable anonymous tip. He contended the anonymous tip and being in close proximity to somebody while in a high-crime area did not rise to reasonable suspicion. The trial court admitted the drug evidence, finding the stop was based on more than the tip. The trial judge referred

to the officers' observations, the high-crime nature of the area, and Taylor's close proximity to his companion. While conceding Taylor's reasonable suspicion argument was persuasive, the court nevertheless believed the tipster's anonymity affected the credibility and the weight of the evidence, not its existence.

The issue on appeal was whether the anonymous tip, combined with the officers' observations, high-crime nature of the area, and Taylor's close proximity to his companion constitute reasonable suspicion.

The Court of Appeals began its analysis with a detailed examination of what constitutes reasonable suspicion. When determining whether the circumstances are sufficiently suspicious to warrant further investigation, officers are not required to ignore the relevant characteristics of a location. However, "an individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000).

In addition to location, the lateness of the hour is another fact that may raise the level of suspicion. Nervous, evasive behavior is also considered a pertinent factor when determining reasonable suspicion. Similarly, evasion can contribute to reasonable suspicion. Likewise, headlong flight, the consummate act of evasion, is suggestive of wrongdoing. However, flight is not necessarily indicative of criminal activity because innocent reasons to depart from police exist. Therefore, when an officer approaches an individual without reasonable suspicion or probable cause, the individual can lawfully ignore the officer.

Another factor to consider when determining whether reasonable suspicion has been aroused is the existence of a tip and the quality thereof. Third party tips "completely lacking in indicia of reliability either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. Therefore, when "a tip has a relatively low degree of reliability, more information is required to establish the requisite quantum of suspicion than would be required if the tip were more reliable." *Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

In *Adams v. Washington*, 407 U.S. at 146, 92 S.Ct. 1921, The United States Supreme Court found the officer was justified in responding to a known informant's tip alleging illegal activity because the officer personally knew the informant, the informant provided tips in the past, and the informant "came forward personally to give information that was immediately verifiable at the scene." Additionally, the Court referenced the location, time of day, and the suspect's behavior AS ADDITIONAL justification for the officer's actions.

On the other hand, "reasonable suspicion based solely on a call made from an unknown location by an unknown caller lacks sufficient indicia of reliability to make an investigatory stop." *State v. Green*, 341 S.C. 214, 217 (Ct.App. 2000). Anonymous tips are generally less reliable than tips from known informants and can form the basis for reasonable suspicion **only** if accompanied by specific indicia of reliability, for example, the correct forecast of a subject's not easily predicted movements. Therefore, in order for an anonymous tip to justify an investigatory stop, its reliability must be verified. Furthermore, anonymous tips providing readily observable information do not supply sufficient indicia of reliability to establish reasonable suspicion to justify an investigatory stop. In *Green*, the Court of Appeals for South Carolina stated because the tipster remained anonymous, he did not risk his credibility and could lie with impunity; hence, because we could not "judge the credibility of the caller, the risk of fabrication became unacceptable."

In the instant case, the Court found the anonymous tip Bellamy relied on was one in which the reliability could not be tested because the tipster was nameless, the tipster's location was unidentified, the tipster remained unaccountable, and the tipster failed to explain the origin of the allegation of criminal activity, provide any predictive information, or supply a basis for believing the tipster possessed inside information into Taylor's affairs. Furthermore, the tip failed to provide any specific information indicating the tipster's knowledge of the concealed criminal activity; therefore, the tipster did not risk his or her credibility and was free to fabricate the information with impunity. Also, the tip demonstrated neither an extensive degree of familiarity with Taylor's actions, nor any independent reliability in terms of the alleged possibility of criminal activity.

Therefore, due to the tip's inherent unreliability, the tip was merely a conclusory allegation and more information was required to establish the requisite quantum of suspicion before the officers were entitled to stop Taylor. Consequently, the Court found that Bellamy failed to articulate facts leading to a conclusion that an objective manifestation of criminal activity existed under the totality of the circumstances. Any inference of illegal activity drawn from Taylor's close proximity to his companion was dispelled by Bellamy's failure to observe anything pass between the two men or Taylor act in a way to indicate criminal activity. Additionally, the anonymous tip was substantially unreliable. Further, the high-crime nature of the area and the time of day are not in and of themselves indicative of criminal activity. Taylor's conviction was reversed and his sentence vacated.

South Carolina DUI Attorney Steve Sumner primarily handles misdemeanor and felony DUI/drunk driving defense. Steve is a South Carolina Super Lawyer® in the field of DUI defense. He is a member of the National Trial Lawyers: Top 100 Trial Lawyers™ and the National College for DUI Defense. He holds an AV-preeminent rating from Martindale-Hubbell® and a "Superb" ranking with Avvo. He is a frequent lecturer and author on topics related to the defense of DUI charges. He represents clients in Greenville, Spartanburg and Anderson counties, South Carolina. Attorney Mark Foster, Associate with Steve Sumner Attorney at Law, was a contributing author on this article.