

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 LORENZO PRADO NAVARETTE :

4 AND JOSE PRADO NAVARETTE, :

5 Petitioners : No. 12-9490

6 v. :

7 CALIFORNIA :

8 - - - - - x

9 Washington, D.C.

10 Tuesday, January 21, 2014

11

12 The above-entitled matter came on for oral
13 argument before the Supreme Court of the United States
14 at 1:00 p.m.

15 APPEARANCES:

16 PAUL R. KLEVEN, ESQ., Berkeley, California; on behalf of
17 Petitioners, appointed by this Court.

18 JEFFREY M. K. LAURENCE, ESQ., Supervising Deputy
19 Attorney General, San Francisco, California; on
20 behalf of Respondents.

21 RACHEL P. KOVNER, ESQ., Assistant to the Solicitor
22 General, Department of Justice, Washington, D.C.; for
23 United States, as amicus curiae, supporting
24 Respondents.

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1 P R O C E E D I N G S

2 (1:00 p.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 in Case 12-9490, Navarette v. California.

5 Mr. Kleven.

6 ORAL ARGUMENT OF PAUL R. KLEVEN,

7 ON BEHALF OF THE PETITIONERS,

8 APPOINTED BY THIS COURT

9 MR. KLEVEN: Mr. Chief Justice, and may it
10 please the Court:

11 In this case, the Court should hold that
12 officers acting on anonymous tips must corroborate the
13 tips' assertions of illegal conduct, as well as the
14 identifying details before making a stop, whether that
15 tip involves erratic driving, illegal gun possession, or
16 any other allegation of misconduct.

17 Now, the State proposes that the reasonable
18 suspicion rule in-- established in Terry v. Ohio, which
19 courts and law enforcement officials have been applying
20 now for more than 40 years, should be altered so that,
21 now, it applies as a sliding scale where the level of
22 suspicion varies depending on the nature of the crime
23 that an anonymous tipster claims someone has committed.

24 CHIEF JUSTICE ROBERTS: So if the tip -- so
25 if the tip is, is this car is driving by and throwing

1 bombs out the window, okay, every -- you know, whatever,
2 500 yards, the police find the car, they have to wait
3 until they see the person actually throw a bomb out the
4 window themselves, before pulling them over?

5 MR. KLEVEN: Well, Your Honor, in terms of
6 the reasonable suspicion, yes. If there -- if all they
7 have is an anonymous tip and there is no -- they have no
8 way of corroborating any of the -- any of the innocent
9 details, except that they can identify the car, then,
10 yes, under --

11 CHIEF JUSTICE ROBERTS: So your answer is
12 yes, the car is going there, and he's throwing a bomb
13 out, and it goes off, but he has to wait till he sees
14 them throw out another bomb?

15 MR. KLEVEN: Your Honor, under the
16 Florida-J.L., the Court has said that when they are
17 looking -- when all that they are able to corroborate
18 are obvious reasonably observable details, such as that,
19 then there is no basis for the Court to go beyond
20 that -- and

21 JUSTICE GINSBURG: I thought that -- that
22 J.L. gave an example of an exception that the report is
23 somebody is carrying a bomb?

24 MR. KLEVEN: Well, there is that exception,
25 Your Honor. And in Florida-J.L., it said that it was

1 not -- the Court said that it was not required on the
2 facts of that case to speculate about a situation where
3 such a serious danger --

4 JUSTICE SCALIA: Throwing bombs doesn't
5 count, but carrying a bomb does, is that it? Were they
6 throwing bombs that they weren't carrying?

7 MR. KLEVEN: Your Honor, that would not make
8 a difference. However, in this case, in terms of
9 adjusting the reasonable suspicion standard, the Court
10 should not address that. The Court has never said --

11 JUSTICE ALITO: Excuse me. I'm sorry.
12 Could I ask you what you mean by an "anonymous tip"?
13 Suppose somebody calls up 911 and gives a name? Does
14 that make it not an anonymous tip?

15 MR. KLEVEN: Your Honor, technically, it
16 would not be, but in the circumstances here, I think it
17 should be treated as an anonymous tip because, again,
18 the name could be false when the tip first comes in. If
19 it's corroborated in some way, then --

20 JUSTICE ALITO: Well, how would you
21 corroborate it? Let's say the person calls up and gives
22 a name and gives an address? So what would be
23 necessary? What would the police have to do then before
24 they could stop the vehicle, other than observing the
25 vehicle do something illegal?

Official

1 MR. KLEVEN: Well again, if all they have is an
2 assertion by the -- by the tipster that this is the name
3 and the address, and if the officers can somehow, again,
4 by caller identification or some other method verify
5 that, in fact, that is the person so that, somewhere
6 down the line, that person will be -- will be held
7 accountable for a false tip, then it can be treated
8 differently.

9 CHIEF JUSTICE ROBERTS: Well, what if you
10 have caller ID. I mean, you have one of these anonymous
11 flip phones, right? You can buy them, it's prepaid.
12 You call up and say, I'm -- you know, John Smith, I've
13 seen this, and they look, there's the caller, there's
14 the number.

15 Then they can do it.

16 MR. KLEVEN: No, Your Honor. That would not-- If all they
17 have is a number, then they are not going to be able to
18 use that as a basis for --

19 CHIEF JUSTICE ROBERTS: Well, isn't that all
20 caller ID gives you?

21 MR. KLEVEN: Well, with caller ID, if they
22 are somehow able to verify, not just that this is coming
23 from this phone, but that, in fact, there's a particular
24 person there, if they can identify the location, that
25 sort of thing. As the -- as the tip gets more and more

1 like the known informant in the Adams case, then the court--
2 officers can take more solace in the fact that that
3 person is going to be able to be held responsible.

4 In Adams, of course, there's a situation
5 where there is a known informant who can be arrested
6 immediately if, in fact, the tip turns out to be false.
7 The problem with so many of these cases, with the 911
8 tape -- 911 caller, is that even if -- is that there's
9 not going to be any sort of accountability even if they
10 do manage to identify the person in terms of showing the
11 tip is false where the allegation, for example, is
12 weaving.

13 There's no way to prove that that --

14 JUSTICE ALITO: If we transport the standard
15 that applies outside of the vehicle context to this
16 context, what would happen in this situation? A person
17 calls up and says, this is my name, this is my address
18 and it's -- it's not blocked by caller ID, so the 911
19 operator can see that that's the name, that's the
20 address.

21 The person says, this guy ran me off the
22 road. The police find the vehicle. They drive behind
23 the vehicle for a while. They don't -- they don't see
24 any -- they don't see any violation. So then they
25 think, well, this guy must have lied.

1 So are they going to prosecute the guy for
2 calling -- calling that in?

3 MR. KLEVEN: No, Your Honor, because still
4 they wouldn't be able to prosecute them because the fact
5 that the vehicle is now not weaving doesn't show that
6 they were -- that it was or was not weaving --

7 JUSTICE ALITO: I mean, your argument goes
8 well beyond. You're saying this has to do with
9 anonymous tips, but it really goes well beyond anonymous
10 tips. It covers tips where you know exactly who called
11 in, and what you're saying is that they really can never
12 stop a vehicle no matter what kind of a tip they get,
13 unless they see the vehicle committing an illegal act.
14 That's the argument.

15 MR. KLEVEN: No, Your Honor. I'm sorry.
16 No, I don't think it goes that far, Your Honor. I think
17 as the tip becomes -- as the tip contains more detail
18 and as the tipster becomes more accountable for a false
19 tip, again, getting more over toward the Adams v.
20 Kennedy, then, at some point, the anonymous tip would be
21 or that the tip --

22 JUSTICE ALITO: Well, give me an example of a
23 situation in which the police can pull somebody over
24 after receiving a tip without actually seeing the
25 vehicle commit an illegal act?

1 MR. KLEVEN: I think, Your Honor, in a
2 situation where the caller calls in, says I'm -- I've
3 been -- this car is driving erratically. The caller
4 then says, I'm following the car. Now, we're at
5 such-and-such a location. The vehicle has just done
6 something else that's wrong.

7 And they continue to follow up to the point
8 where, okay, I can now see the -- the patrol car coming
9 up, again, where the tipster is putting his or her
10 credibility on the line and becomes more and more
11 accountable towards the Adams v. Kennedy known
12 informant, then if you add that together under the
13 totality of the circumstances, then you will have a
14 situation probably to do it.

15 I think it's going to be rare, and I think
16 it should be rare because it is so easy -- as the Court
17 has indicated, the Court has shown skepticism for
18 anonymous tips because the tipsters are able to harass
19 other people without running any risk of being held
20 accountable.

21 And it should be particularly skeptical in
22 the case of anonymous tips about erratic driving
23 because, with the ubiquitous cell phones, it's so easy
24 for somebody who's on the road, who's been annoyed by
25 somebody else, to just pull out the cell phone and call

1 in a false tip.

2 And so --

3 CHIEF JUSTICE ROBERTS: Do we have any
4 indication that this is a serious problem? The false
5 tips?

6 MR. KLEVEN: Well, there's no empirical
7 evidence in the record. However, it was the same
8 concern that led the Court, in J.L., to refuse to adopt
9 the firearm exception, the concern that making it so
10 easy for people to subject others to the harassment of
11 a -- of a stop and -- and potential -- potential search
12 concerned the Court enough that it denied -- it refused
13 to adopt the firearm exception.

14 And in this case, we have a firearm
15 exception -- we have an exception that's being requested
16 that's doctrinally the same as a firearm exception.
17 There is-- there is no indication in the record that drunk
18 driving on its own, in totality, presents a more serious
19 threat to public safety than -- than firearms do.

20 In fact, it --

21 CHIEF JUSTICE ROBERTS: Well, is that -- is
22 that true? I mean, how many people die from drunk
23 driving versus how many people dry--die from firearms?

24 MR. KLEVEN: The most recent -- the most
25 recent statistics show a little more, about 11,000

1 people die from homicides by firearms, and it's usually
2 under 10,000 now that are driving -- dying by drunk
3 driving.

4 And in terms of public safety, approximately
5 two-thirds of the people who die as a result of drunk
6 driving are the drunk drivers themselves. So, in fact,
7 the overall threat to public safety is not as great when
8 you're talking about drunk driving as -- as with
9 firearms.

10 And the Court indicated, in J.L., that it
11 was specifically concerned about the serious threat that
12 armed criminals pose to public safety, and, despite that
13 serious threat, they denied -- the Court denied the
14 firearms exception.

15 Now, what the -- excuse me.

16 CHIEF JUSTICE ROBERTS: I was just going to
17 say, we have held that the -- the standards are loosened
18 in the vehicle context because your expectation of
19 privacy is diminished when you're out on the road
20 driving along in -- in a vehicle. Does that have any
21 pertinence?

22 MR. KLEVEN: I don't think so in this case,
23 Your Honor, because even though it's diminished as
24 opposed to, for example, in the home, it's -- in J.L.,
25 of course, the person was on a public sidewalk; the

1 person was not in the home.

2 And in -- in Prouse, the Court talked about
3 the fact that, in modern day times, people -- a lot of
4 people will feel more of a sense of security, they'll
5 feel more privacy in a vehicle than they would out on
6 the street.

7 JUSTICE KAGAN: But in the context in which
8 we've approved sobriety checkpoints, why should we get
9 bent out of shape over this?

10 MR. KLEVEN: Well, Your Honor, in the
11 sobriety checkpoint case, the Court has looked at the
12 intrusion and found that to be at the very rock bottom
13 in terms of intrusion, the fact that somebody is --
14 along with a number of other people, that they have to
15 submit to a brief stop, it has put that on the lowest --
16 on the lowest level.

17 And so it's a -- the Court has not approved
18 any situation where individual vehicles, as in this
19 case, are pulled over without reasonable suspicion that,
20 in fact, somebody in that vehicle is engaged in -- in
21 criminal activity.

22 JUSTICE KAGAN: Well, but why is that an
23 important line? Why should we be more concerned when an
24 individual automobile is pulled over?

25 MR. KLEVEN: Well, because the -- the

1 intrusion is greater, Your Honor. And the
2 Martinez-Fuentes case and the Brignoni-Ponce case, the
3 Court talked about the very minimal intrusion of the
4 checkpoints, as opposed to -- and Prouse talks about
5 this also, that there is a serious intrusion when
6 somebody is pulled over.

7 You have the activation of the emergency
8 lights, you have a siren, you're pulled over, possibly,
9 in a neighborhood where -- where you're known and people
10 see it, possibly out in the middle of a road in the
11 middle of the night as in the -- the Wells case. And in
12 either circumstance, it is a serious intrusion and one
13 that people are not going to take that lightly. So
14 it's -- it's a different situation.

15 And the Court, again, if they're going to be
16 pulling over individual cars, signaling them out for --
17 for stops which could, under the Court's rules, again,
18 the driver, all the passengers can be ordered out of the
19 car if -- if the Terry standards are met.

20 They can --

21 JUSTICE SOTOMAYOR: White suggested that we
22 don't have an absolute rule with respect to requiring
23 independent corroboration of the actual illegal conduct.
24 In White, the -- the tipster gave future predictive
25 information, but all of it was innocent, somebody

1 driving a car and going to a particular place.

2 Now, you're asking us to import that
3 wholesale. Why don't we just stick to our general
4 standard, which is the totality of the circumstances,
5 and look at what failure there is in the logic of the
6 California court below. It -- it looked at the quality
7 of the information regarding the vehicle, which is a
8 legitimate tipster will tell you what the vehicle looks
9 like and its license plate or enough information so it
10 can be identified.

11 It looked at the caller actually witnessing
12 the event and giving you enough detail to know that it's
13 not a legal conclusion, but an actual event that
14 suggests recklessness, and a corroboration of the -- of
15 the details given by the tipster.

16 Isn't that the application of our
17 traditional test?

18 MR. KLEVEN: No, Your Honor. And that's
19 exactly what the court was looking at in Florida J.L.--v. J.L.

20 JUSTICE SOTOMAYOR: Well, that's just not
21 true in Florida v. J.L. because the individual didn't
22 match the description completely, and there were two or
23 three individuals there, not just one, and so -- and
24 there was no predictive or no other detail, other than
25 someone in this general area.

1 MR. KLEVEN: Well, there was no predictive
2 detail, but in J.L., the tip was young black male in a
3 plaid shirt at a bus stop. Those details were
4 confirmed.

5 JUSTICE KENNEDY: Correct me if -- if I'm
6 wrong. I might be missing something. The tip in J.L.
7 was not a -- did not assert that a crime was being
8 committed, so there was something suspicious. There was
9 no crime in possession of the gun. Or correct me if I'm
10 wrong.

11 MR. KLEVEN: Well, it was -- it was
12 Possession of the gun --

13 JUSTICE KENNEDY: But -- but here -- here,
14 there was -- the report was a crime. Or is that not a
15 correct distinction?

16 MR. KLEVEN: Well, in -- in J.L., they
17 didn't say illegal gun possession, but presumably, the
18 tipster thought it was an illegal gun possession, and
19 the officer must have thought it was illegal gun
20 possession.

21 JUSTICE KENNEDY: Well --

22 JUSTICE SCALIA: And it was illegal.

23 MR. KLEVEN: What?

24 JUSTICE SCALIA: It was illegal.

25 MR. KLEVEN: Oh, it was because he turned

1 out to be under 21.

2 JUSTICE KENNEDY: But -- but the tip, in and
3 of itself, did not indicate that a crime was being
4 committed, which is different from this case.

5 MR. KLEVEN: I'll agree that the tipster
6 didn't say it, but I think the assumption --

7 JUSTICE KENNEDY: No, I'm talking about an
8 interpretation of what the tip said.

9 MR. KLEVEN: Well -- unless -- unless
10 the -- the implication is that the gun possession is
11 illegal, then there's no reason for the officer to --

12 JUSTICE KENNEDY: No, a Terry stop.

13 MR. KLEVEN: Hmm?

14 JUSTICE KENNEDY: You might have had grounds
15 for a Terry stop.

16 MR. KLEVEN: But if -- if the tip calls --
17 if the tips says, I'm looking at a case of gun
18 possession that, as far as I know, is perfectly legal,
19 it's like, in this case, if the tip came in and said,
20 I've just been passed by a car whose -- which was driven
21 very skillfully, there's no point in -- in pursuing the
22 tip in J.L., unless there's some -- some element of
23 illegality.

24 JUSTICE KENNEDY: Well, I -- I think there's
25 a difference, but I think, for our purposes, we can

1 assume that the cases are comparable in that respect --

2 MR. KLEVEN: Okay.

3 JUSTICE KENNEDY: -- but not comparable,
4 perhaps, in others.

5 MR. KLEVEN: Okay.

6 Justice Sotomayor, going back to -- to
7 your concern, so in Florida v. J.L., those elements
8 were -- were confirmed and -- but the Court found that
9 the fact that those elements which could be observable
10 by anybody who was looking at the situation and probably
11 even more clearly an observation where the plaid shirt
12 was identified, that that didn't give any reason to
13 believe that the person was also being truthful in
14 talking about concealment.

15 JUSTICE SOTOMAYOR: No reason to believe the
16 caller had personal knowledge.

17 MR. KLEVEN: Pardon me?

18 JUSTICE SOTOMAYOR: No reason to believe the
19 person had personal knowledge.

20 MR. KLEVEN: Well, but personal knowledge --

21 JUSTICE SOTOMAYOR: He didn't say that the
22 gun was pulled on him or that -- or how he saw it or how
23 he knew.

24 MR. KLEVEN: Right. There was no indication
25 as to how the person knew about the gun.

1 JUSTICE SOTOMAYOR: So you don't think
2 there's something significant about calling up and
3 saying, someone forced me off the road?

4 MR. KLEVEN: Well, there is something
5 significant, Your Honor. But, by itself, that just
6 gives the officers some reason to go check and see
7 whether, in fact, there's a chance to corroborate.

8 In the case of an inebriated driver, the
9 fact that the driver is inebriated is concealed in the
10 same way that J.L.'s gun was, unless there's some sort
11 of erratic driving going on.

12 CHIEF JUSTICE ROBERTS: What if there's no
13 way for the officer to corroborate the allegation? You
14 know, you see -- see somebody on the street grab a young
15 child, throw her in the trunk of the car, and then take
16 off.

17 And somebody calls with an anonymous tip
18 saying, this fellow -- you know, in this car, has got a
19 child in the trunk. The police can follow the person --
20 you know, for hours and they're not going to see any
21 corroborating evidence.

22 Can they pull that car over?

23 MR. KLEVEN: Well, Your Honor, if -- if
24 that's all they have to go on, then, under Florida v.
25 J.L., they would not --

1 CHIEF JUSTICE ROBERTS: So just -- your
2 answer in that case is that the police cannot pull that
3 car over?

4 MR. KLEVEN: If -- in terms of -- obviously,
5 it's a more serious situation, but the Court has not
6 held that the seriousness --

7 CHIEF JUSTICE ROBERTS: Well, let's expand
8 it a little bit. It's a -- it's a one-lane -- two-lane
9 road going down, but it merges into -- you know, an
10 eight-lane expressway. You have one police car. It's
11 going to be hard for that police car to maintain
12 surveillance. And you say they've just got to let them
13 go.

14 MR. KLEVEN: Well, Your Honor, if you're
15 talking in terms of just the seriousness and you're
16 looking in terms of the Florida v. J.L. exception, the
17 Court seemed to be indicating, in that case, that there
18 would be a danger that was so extreme where the Court
19 would find a search or a stop justified without any
20 showing of --

21 CHIEF JUSTICE ROBERTS: Well, just in terms
22 of your position, do you think they could pull the car
23 over?

24 MR. KLEVEN: No, Your Honor. I don't think
25 it would change.

1 CHIEF JUSTICE ROBERTS: Really? Okay.

2 MR. KLEVEN: Because, again, it's just
3 the -- the seriousness of the claim should not affect
4 whether there is, in fact, reasonable suspicion.

5 JUSTICE KENNEDY: You get an A for
6 consistency. I'm -- I'm not sure about common sense.

7 (Laughter.)

8 JUSTICE SCALIA: I'm -- I'm not sure he gets
9 an A for consistency. I thought -- I thought you said
10 you acknowledged or didn't repudiate the statement in --
11 in our opinion in J.L., that, if there was a bomb in the
12 car, that would be something else.

13 What -- what if there's in the car -- the
14 tip is this person has an atomic bomb given him by Al
15 Qaeda; he is driving it into the center of Los Angeles
16 to -- to eradicate the entire city, okay?

17 Let it go?

18 MR. KLEVEN: Your Honor, I believe --

19 JUSTICE SCALIA: He tells you the license
20 number, where the car is. You can't stop the car?

21 MR. KLEVEN: I believe, consistent with what
22 the court said in Florida v. J.L., that may be a
23 situation, again, where the Court decides that -- that
24 the risk is so great --

25 JUSTICE SCALIA: So you see, he's not

1 consistent. I mean --

2 MR. KLEVEN: No, but it would not be -- it
3 should not change -- it should not be in terms of the
4 level of suspicion required under -- under Terry. The
5 reasonable suspicion standard should not change on that.
6 The Court seemed to be indicating, in Florida v. J.L.,
7 that at some point, the level of danger becomes so great
8 that, in fact, there was --

9 CHIEF JUSTICE ROBERTS: So the -- the atomic
10 bomb, the level of danger is great enough, but the young
11 girl in the trunk, the level of danger is not great
12 enough?

13 MR. KLEVEN: Your Honor, what I'm saying, in
14 either of those situations, the Court may want to
15 consider some sort of exception to the reasonable
16 suspicion standard and that seems to be --

17 JUSTICE KENNEDY: What is your position what
18 you would do if you were on this Court, with those
19 hypotheticals? What is your position that should happen
20 in those two hypotheticals?

21 MR. KLEVEN: Well, Your Honor, I think that
22 the Court may well want to -- to craft some --

23 JUSTICE KENNEDY: What is your position as
24 to what the Court should do in those cases?

25 MR. KLEVEN: Well, let me start off by

1 saying, if I could, that I don't think the Court needs
2 to reach that question in this case, just as it did not
3 need to reach that question in J.L.

4 JUSTICE KENNEDY: I understand it, but we're
5 interested in a hypothetical.

6 MR. KLEVEN: Right. Your Honor, I believe
7 that, again, I don't know what particular doctrine the
8 Court would -- would choose, but I think that probably
9 the Court could find some -- some doctrine that would
10 allow it, in that circumstance, to find it.

11 But it shouldn't be -- it shouldn't be
12 moving toward the sliding scale element in -- that --
13 that we're talking about.

14 JUSTICE BREYER: What about this: In J.L.,
15 the Court made quite a point of saying, "An accurate
16 description of a subject's readily observable location
17 is reliable in a limited -- limited sense, namely,
18 identifying the person. Such a tip, however, does not
19 show that the tipster has knowledge of concealed
20 criminal activity."

21 MR. KLEVEN: That's right.

22 JUSTICE BREYER: All right. Not concealed
23 here.

24 MR. KLEVEN: I mean --

25 JUSTICE BREYER: So that's an obvious

1 difference. I mean, one case, it was concealed; this
2 case, it isn't concealed. What do you say?

3 MR. KLEVEN: Oh, but, except, Your Honor, that, in
4 fact, when we're talking about drunk driving, whether
5 the person is inebriated or not --

6 JUSTICE BREYER: Didn't -- didn't the tip
7 here have something to do with his driving around in a
8 wild way -- or at least an unusual way? I'm not sure I
9 would have followed him, if it had been me. Anyway, you
10 see the point.

11 MR. KLEVEN: Right. But the question is,
12 Your Honor, is the person inebriated or not, to take
13 the -- the State's best example. And that -- that
14 issue, that is a concealed element of criminal behavior,
15 unless the person is actually driving erratically.

16 If the person is driving erratically when
17 the officers appear, then there's no Fourth Amendment
18 issue, and it's clear that they have either reasonable
19 suspicion or probable cause to pull over the vehicle.

20 JUSTICE SCALIA: It seems to me you're
21 willing to accept our allowing -- or allowing the police
22 to stop the car with the atom bomb and even allowing the
23 police to stop the car with the kidnapped girl in the
24 trunk.

25 Once -- you know, once you give away those,

1 we're just arguing about details, where you draw the
2 line. Does -- does drunken driving fall on one side or
3 the other of the line, and some of us may think drunken
4 driving is -- is pretty serious and probably -- you
5 know, as serious as having a kidnapped girl in the
6 trunk.

7 MR. KLEVEN: And, Your Honor, I didn't mean
8 to concede that the Court should -- should reduce the
9 level of suspicion for reasonable suspicion in order to
10 do that --

11 JUSTICE SCALIA: Okay. More than that, I
12 want you to say the Court shouldn't. Let the car go.
13 Bye-bye, Los Angeles.

14 JUSTICE KENNEDY: In this case, your -- your
15 grade for consistency depends on this answer.

16 (Laughter.)

17 MR. KLEVEN: Excuse me?

18 JUSTICE KENNEDY: Your grade for consistency
19 depends on this answer.

20 MR. KLEVEN: What I'm saying, Your Honors,
21 is the State is arguing for a sliding scale that changes
22 things. The Court postulated, in Florida v. J.L., a
23 situation that was so extreme, that was so unique, that
24 the Court might decide to address it without even
25 getting into reasonable suspicion.

1 JUSTICE BREYER: But -- that's why I asked
2 you, and I pressed the point a little bit, because in
3 the beginning of your brief, it says that the anonymous
4 tip, what did you say, indicated that a Ford F-150
5 pickup truck had run someone off the road.

6 MR. KLEVEN: That's right.

7 JUSTICE BREYER: Now, maybe you do have to be
8 known specially whether the person's drunk or not, but
9 you don't have to have some special knowledge of
10 anything concealed to know if somebody has run somebody
11 off the road.

12 MR. KLEVEN: But, Your Honor, the -- the
13 idea of running off the road is concealed --

14 JUSTICE BREYER: Even if the person weren't
15 drunk, I think it's illegal to run someone else off the
16 road.

17 (Laughter.)

18 MR. KLEVEN: I'm not disagreeing with Your
19 Honor.

20 JUSTICE BREYER: No.

21 MR. KLEVEN: What I'm saying is that, unless
22 the person is still driving erratically by the time that
23 the officers arrive, then that activity is concealed in
24 the same way that the question of whether J.L. had a gun
25 or not was concealed. You can't -- the officers can't

1 see it, and, therefore, there's no reason to treat this
2 case any differently than the case in J.L.

3 They have to be able to see something like
4 erratic driving or something else, in order to be able
5 to corroborate that.

6 JUSTICE SCALIA: And I assume you would --
7 you would also say, to tie it into Justice Breyer's
8 question, you would also say that that tip, "Somebody
9 ran me off the road," would not justify the court -- the
10 police in stopping the car, just to make sure that this
11 car was not the one that drove the guy off the road,
12 right?

13 MR. KLEVEN: That's right, Your Honor.

14 JUSTICE SCALIA: Never mind drunkenness.
15 The tip doesn't say anything about drunkenness. It just
16 said, this car drove me off the road. You'd say the
17 police could not follow that car, pull him over, and --
18 and ask did you -- did you drive somebody off the road?

19 MR. KLEVEN: Your Honor, absolutely, the
20 police can follow that car, and that's what they should
21 do. And, in fact, that's what they did here. In this
22 case, there was a --

23 JUSTICE SCALIA: Following the car is going
24 to do them no good as to whether he drove -- drove
25 somebody off the road. They're not looking for a drunk.

1 They're looking for somebody who drove somebody off the
2 road, right?

3 MR. KLEVEN: Right. If they can't see any
4 erratic driving still going on, then where is it going
5 to go? They're not going to prosecute for the reckless
6 driving that allegedly took place 19 miles away, and
7 they have followed that car for an additional --

8 JUSTICE SCALIA: They could if the guy
9 admitted it, you know.

10 MR. KLEVEN: Other than that, Your Honor --

11 JUSTICE SCALIA: They could play Mutt and
12 Jeff with him and he -- oh, yeah, I did, yes.

13 MR. KLEVEN: But, Your Honor, the -- the
14 person who's making the claim is -- is nowhere to be
15 found. She's gone. There's -- there's nowhere there.
16 So there's no additional investigation --

17 CHIEF JUSTICE ROBERTS: Well, but you --
18 what if -- what if the person said, okay, my name is
19 this -- you know, my phone number is this; this guy
20 drove me off the road. They can't corroborate that
21 until they stop the guy. Or you're saying they have to?
22 They have to wait, they have to make the call, see if
23 the guy is there. Are you the guy that just called? So
24 that guy's got to talk on his cell phone while he's
25 driving.

1 MR. KLEVEN: Well, what I'm saying is, yes,
2 they have to verify in some way so that they have some
3 reason to believe that, in fact, the person that's
4 telling them this is actually the person that is
5 being -- so I'd like to reserve the remainder of my
6 time.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.
8 Mr. Laurence.

9 ORAL ARGUMENT OF JEFFREY M.K. LAURENCE
10 ON BEHALF OF THE RESPONDENTS

11 MR. LAURENCE: Mr. Chief Justice, and may it
12 please the Court:

13 A police officer may act on an anonymous tip
14 that reports reckless or drunk driving by immediately
15 stopping the vehicle, without waiting to personally
16 observe dangerous driving that could threaten others.

17 An officer can reasonably rely on such a tip
18 because the importance of the governmental interest in
19 protecting the public from the ongoing and immediate
20 threat of drunk driving outweighs the minimal intrusion
21 of a traffic stop.

22 Now, Petitioners argue that -- -

23 JUSTICE SOTOMAYOR: Is every reckless
24 driving drunk driving?

25 MR. LAURENCE: I'm sorry?

1 JUSTICE SOTOMAYOR: Is every reckless
2 driving drunk driving?

3 MR. LAURENCE: Not every reckless driving is
4 drunk driving. But a report of reckless driving gives
5 reasonable suspicion that the person may be drunk, and
6 that's sufficient for the stop in this case.

7 JUSTICE SOTOMAYOR: How about if somebody
8 just calls and says, X vehicle is driving recklessly,
9 says no more, doesn't describe how, doesn't give you any
10 details as to how they know it. Is that enough for
11 reasonable suspicion?

12 MR. LAURENCE: I would say that the term
13 "reckless" is. And the reason I say that is because
14 driving is something that's intimately familiar to the
15 average citizen. And when a citizen is going to call in
16 and make a report, when they use the language
17 "reckless," that has meaning. That describes a behavior
18 that poses an ongoing threat to the public.

19 JUSTICE SCALIA: But not necessarily
20 drunkenness. I think there -- there are a lot of people
21 that get tickets for reckless driving who have not
22 served jail terms for driving drunk. The two are far
23 from synonymous.

24 MR. LAURENCE: Well, I wouldn't say they're
25 synonymous, but I would say that one is the indicator of

1 the other because while you can --

2 JUSTICE SOTOMAYOR: Why? How about
3 speeding? There's plenty of people who speed regularly.

4 MR. LAURENCE: I would say a report of
5 speeding is not sufficient to have reasonable suspicion.

6 JUSTICE SOTOMAYOR: Isn't that reckless
7 behavior? So how do you know someone who calls -- my
8 mother, who can't drive above 50, thinks that, when I go
9 51, that I'm speeding and reckless.

10 MR. LAURENCE: I would say that, once again,
11 the public has lots of familiarity with driving, and
12 they can recognize the difference between poor driving
13 and reckless driving, or something, or drunk driving.
14 And when people are going to pick up the phone and make
15 that call to 911, they're doing so because they perceive
16 a danger on the roadway.

17 And I think while the statistics are sparse
18 on this, the footnote 2 in the government's brief is
19 particularly helpful in this regard, in that they note
20 that for calls that are made to 911 centers for -- that
21 are tracked by the States, between 25 and 50 percent of
22 those calls result in arrests. And what that shows is
23 that the public knows what they see when they make these
24 calls.

25 This is a far --

1 JUSTICE SCALIA: And -- and between the,
2 what, 50 and 75 percent, they've stopped people without
3 just cause.

4 MR. LAURENCE: Yes, but we are talking about
5 reasonable suspicion. So it doesn't require certainty
6 or probability.

7 JUSTICE SCALIA: Or they've -- they've
8 troubled people who shouldn't have been troubled.

9 MR. LAURENCE: That is correct. And that is
10 always a possibility in the reasonable suspicion
11 context.

12 CHIEF JUSTICE ROBERTS: What -- what if the
13 call is -- you know, I'm driving, this guy just drove by
14 me, I looked over, he didn't have his seatbelt on. I
15 mean, can the police pull that guy over?

16 MR. LAURENCE: No, I don't believe that
17 would be sufficient to pull him over because you don't
18 have any governmental -- you don't have a threat to
19 public safety in that context.

20 CHIEF JUSTICE ROBERTS: Well yeah, there are laws
21 against driving without a seatbelt because that protects
22 people's lives.

23 MR. LAURENCE: Certainly, there are laws,
24 and the officer, I guess, would have reasonable
25 suspicion that there is a traffic violation, but I don't

1 know that it would rise to the level of implicating
2 public safety in this context.

3 JUSTICE SCALIA: Well, reckless driving
4 always does, whether it -- whether it's the consequence
5 of inebriation or not.

6 MR. LAURENCE: Yes.

7 JUSTICE SCALIA: So a simple call saying,
8 boy, this guy -- you know, he cut in, in front of me.
9 He's changing lanes too frequently --

10 MR. LAURENCE: Yes.

11 JUSTICE SCALIA: -- that -- that enables the
12 policeman, without observing any of that reckless
13 driving, to stop the car further down the road.

14 MR. LAURENCE: Yes. And provided, of
15 course, that you have the additional details of the
16 description of the car, the location, that you can --

17 CHIEF JUSTICE ROBERTS: I've never
18 understood -- what good do those -- you know, let's say
19 that I'm at a party, I don't like somebody there. I see
20 they have a couple of drinks. I know what kind of car
21 he drives. I know the -- I can look at the license
22 plate.

23 I call -- you know, ten minutes later. I
24 know where he goes driving home. There's this car.
25 It's a white whatever. It's got this license plate.

1 It's swerving all over the road.

2 MR. LAURENCE: Well --

3 CHIEF JUSTICE ROBERTS: Whether he is or
4 not, the police go up, they pull him over and find out,
5 yeah -- you know, he fails the breathalyzer, and I
6 get my revenge.

7 MR. LAURENCE: The importance of those
8 details is that they allow the officers to confirm that
9 this is a personal observation, which is an important
10 fact that's noted in Gates, that when you have a report
11 of personal observation of illegal conduct, we can take
12 that report more seriously.

13 It's entitled to more credibility than just
14 a bare --

15 JUSTICE BREYER: My question --

16 CHIEF JUSTICE ROBERTS: I was just going to
17 say my point is it need not necessarily be a personal
18 observation of the person operating the car. It may be
19 prior knowledge. And I gather one of the issues we're
20 concerned about is people using this to -- you know,
21 exact revenge or -- or do something else having nothing
22 to do with whether or not the person is violating the
23 law on the highway.

24 MR. LAURENCE: Yes, that is true. But if
25 the personal knowledge -- if the officer can use that

1 personal knowledge to confirm, okay, he was correct
2 about the report of the car, report of the location,
3 report of the direction where it's supposed to be going,
4 then you have some indication that the personal
5 knowledge is accurate, as opposed to a bare tip when
6 you're talking about hidden conduct, then you have to
7 look to predicted details.

8 And that takes us into the J.L. context or
9 the --

10 JUSTICE KAGAN: If I understand you
11 correctly, as long as you can identify the car, you need
12 no specificity as to what the car has actually done. In
13 other words -- you know, just saying the driver was
14 reckless is enough. Is that -- is that correct?

15 MR. LAURENCE: Well, I would say that
16 recklessness carries information that is -- has some
17 specificity.

18 JUSTICE KAGAN: What would fail your test?

19 MR. LAURENCE: Well, if a caller calls in
20 and says, I saw him in a bar, he had one drink, he came
21 out and got on the road and went away. One drink is not
22 going to rise to the level --

23 JUSTICE BREYER: Yes. But you're just
24 saying -- I mean, but his basic point is, on the other
25 side, is these are all variations of the famous white

1 horse defense. You don't know the -- the white horse
2 defense? Your Honor, my client was innocent because, at
3 the time of the crime, he was in Yugoslavia wearing a
4 white horse -- riding a white horse.

5 And to prove it, I have the horse here in
6 court. You see? I mean, you can't -- it's
7 bootstrapping to put it more succinctly. All you know
8 is that somebody came in and quoted -- and said there
9 was a crime. And that's all you know. And now -- now
10 when -- when are instances where no more than the report
11 that it's a crime, that's reasonable suspicion.

12 That's -- give me some other instances where
13 the courts have upheld, well, that's enough.

14 MR. LAURENCE: Well, if a caller says --

15 JUSTICE BREYER: I'm not saying common
16 sense. I'm saying what the courts have held. Sorry.

17 (Laughter.)

18 MR. LAURENCE: Where the courts have upheld
19 based on just a bare tip or --

20 JUSTICE BREYER: Not a bare--, a
21 description that a crime is occurring, where has --
22 that's all, I mean, and -- and then we have a question
23 of, well, is it in the one category or the other?
24 Because what we have here, someone phones in and says, a
25 crime is occurring.

1 And -- and we know, we've corroborated the
2 following. If a crime was occurring, he was in a
3 position to know because he can define -- he can talk
4 about the white horse, or he can talk about the car.

5 MR. LAURENCE: The closest case I can think
6 of is Hensley, where an officer was relying on an arrest
7 bulletin from another jurisdiction. And in that case,
8 United States v. Hensley, in that case, the court did
9 consider, for purposes of whether a prior crime had been
10 committed, whether the officer had reasonable suspicion
11 to stop that individual, it took into account the nature
12 of the offense and whether there's a current threat to
13 public safety.

14 JUSTICE KENNEDY: Well, correct me if I'm
15 wrong, but my recollection of Hensley is, you're right,
16 the police department 1 notifies police department 2.
17 But a premise of the case, I had thought, was that
18 police department 1 had reasonable suspicion.

19 MR. LAURENCE: Well, there were two parts to
20 the -- to the case. The second -- the first part was
21 whether you could make a detention based on a prior
22 crime, as opposed to current -- an immediate occurring
23 crime.

24 JUSTICE KENNEDY: I understand that.

25 MR. LAURENCE: And so it looked to the

1 nature of the crime and whether there was threat to
2 public safety is a validation consideration in
3 authorizing a stop for a prior offense.

4 The second part of that was the -- allowing
5 the officer to rely on another jurisdiction
6 is reasonable --

7 JUSTICE SOTOMAYOR: Hensley's victim wasn't
8 a victim; meaning there was -- it was an anonymous tip?

9 MR. LAURENCE: No, it was from another
10 police jurisdiction.

11 JUSTICE SOTOMAYOR: Yeah, that's what I'm
12 saying. So it wasn't an anonymous tip?

13 MR. LAURENCE: No, it was not an anonymous
14 tip.

15 JUSTICE SOTOMAYOR: It wasn't public safety.
16 It was the report of a crime by a known person.

17 MR. LAURENCE: Yes, it was. And in that
18 case, the Court said that you could arrest for prior --
19 for a prior offense, if it was a felony. It reserved
20 the question of whether you could do so for a
21 misdemeanor. So it's already looking at the nature of
22 the offense and the threat to public safety.

23 JUSTICE KAGAN: And, Mr. Laurence, do I
24 understand what you're saying? You're saying that in
25 every case when we have to decide whether the threshold

1 level of reasonable suspicion has been met or whether
2 the level of probable cause has been met, that courts
3 can take into account the seriousness of the offense,
4 and what would not count as probable cause for one crime
5 will count as probable cause for another? Is that what
6 you're saying?

7 MR. LAURENCE: What I'm saying is that, in
8 terms of when we can deem a tip reliable -- White
9 identified two components to the inquiry. One is the
10 indicia of reliability, and the other was the content of
11 the tip. And so we have to take the seriousness of the
12 offense and the threat to public safety into account, in
13 determining when the officer can rely on that
14 information.

15 JUSTICE KAGAN: Well, I don't understand how
16 what you're saying is different from what I just said,
17 and that would seem to me to work quite a substantial
18 change in -- in Fourth Amendment law, that when we
19 decide whether reasonable suspicion exists, when --
20 whether probable cause exists, that we get to take into
21 account how serious the offense is.

22 MR. LAURENCE: Well, I think, since the
23 inception of the doctrine, this Court identified in
24 Terry that reasonable suspicion results from a balancing
25 of the governmental interest --

1 JUSTICE KAGAN: The balancing occurs
2 categorically. We decide that there's a reasonable
3 suspicion standard by balancing interests. What we
4 don't do is say -- you know, depending on how serious we
5 think this crime is, more or less will meet that
6 reasonable suspicion standard.

7 That would be a very substantial reworking
8 of Fourth Amendment law -- or so it seems to me. Maybe
9 I'm wrong.

10 MR. LAURENCE: Well, I believe that was
11 something that was indicated in Hensley. This Court
12 looked to the nature of the offense in deciding whether
13 or not the officer had reasonable suspicion at the
14 inception in making that stop for a crime that had
15 occurred two weeks earlier.

16 And it didn't -- it declined to consider
17 whether or not that would be sufficient for a
18 misdemeanor. But in taking the seriousness of the crime
19 into account, in determining whether or not they could
20 make that stop, that's a recognition that balancing does
21 play some role.

22 And in White, this Court recognized that the
23 reliability component is variable. There's a difference
24 between probable cause and reasonable suspicion. And in
25 J.L., this Court left open the question of at what point

1 do we need no reliability because of the seriousness of
2 the government --

3 JUSTICE KENNEDY: Could you explain to me
4 one more time why it's relevant that there were these
5 details that it was a particular kind of crime, that it
6 was silver, the license plate, that's this case.
7 Suppose in another case, a car just ran me off the road,
8 and it's the only -- the only car that's on Highway 1
9 between Fort Bragg and the state park.

10 MR. LAURENCE: Well, I think it helps
11 twofold. There's particularity, so you know who you're
12 stopping. And it goes to the totality of the
13 circumstances in helping confirm that the person
14 actually observed what they're saying.

15 So that you have -- it goes to the
16 reliability of the personal observation. So it
17 builds -- it adds an additional layer of -- of the
18 indices reliability so the officer can rely on it
19 sooner.

20 JUSTICE KENNEDY: And incidentally -- it
21 doesn't have much to do with the case -- is this a
22 two -- a two-lane road?

23 MR. LAURENCE: Yes, it is, Your Honor.

24 JUSTICE KENNEDY: That's what I thought.

25 MR. LAURENCE: Two-lane coastal highway,

1 which, obviously, when someone runs somebody off the
2 road, poses a grave threat to public safety in that
3 context.

4 JUSTICE GINSBURG: There's a tip that
5 someone is carrying a concealed weapon, and we have held
6 that that has to be corroborated -- corroborated. You
7 can take out a concealed weapon in an instant and fire
8 it and kill lots of people. In fact, it was pointed out
9 that there are more deaths caused by guns than there are
10 from drunk driving.

11 So what's the difference? The -- the
12 argument on the drunk driving is very, very dangerous,
13 but so is having a gun in one's pocket.

14 MR. LAURENCE: Well, I think there's a
15 significant difference between having a gun in your
16 pocket and actually brandishing it or firing it. I
17 think, if the J.L. case involved somebody threatening
18 other people with a gun or firing the gun, it would have
19 involved a different calculus.

20 And so --

21 JUSTICE GINSBURG: But if you -- once --
22 once you brandish it, it's too late. The damage will be
23 caused.

24 MR. LAURENCE: That is -- that is correct.
25 But once you're driving drunk down the road, it's -- you

1 have -- the threat is now posed to everybody on the
2 highway because of the potential for that person to lose
3 control because --

4 JUSTICE SCALIA: Of course, this call didn't
5 say, I think the guy was drunk. It just said, somebody
6 drove -- you know, drove me off the road.

7 MR. LAURENCE: Yes.

8 JUSTICE SCALIA: Right? So this isn't -- it
9 isn't a call that says there's a drunken driver. It's
10 just a call that says somebody drove irresponsibly,
11 right? And that's enough to stop them.

12 MR. LAURENCE: Well, I would say -- I would
13 say that, in this case, it is enough. But I would say
14 it's more than just driving irresponsibly. Running
15 somebody off the road reflects that they're incapable of
16 driving their car in a way that's -- without posing a
17 safety threat to other people, and when you're dealing
18 with reasonable suspicion --

19 JUSTICE SCALIA: Okay. Really
20 irresponsibly, okay?

21 MR. LAURENCE: Okay.

22 JUSTICE SCALIA: Really irresponsibly.

23 MR. LAURENCE: Very irresponsibly.

24 JUSTICE KAGAN: So do you think,
25 Mr. Laurence, if the police had followed this man for

1 half an hour and seen no other signs of erratic
2 driving and nobody can drunk drive -- can drive drunk
3 for half an hour without swerving, without doing
4 something else.

5 So they could still have stopped the car?

6 MR. LAURENCE: I think there may be a point
7 where the threat to public safety would suggest that the
8 reasonable suspicion is dissipated in that context. And
9 so after -- after 50 miles --

10 JUSTICE KAGAN: Well, I thought you were
11 saying as long as somebody had -- had given an account
12 that, some time ago, he had driven another driver off --
13 he had run another driver off the road, doesn't matter
14 whether you're drunk, doesn't matter anything, there was
15 an account of an illegal act taking place, and that was
16 enough to stop him. It doesn't matter what he's doing
17 now.

18 MR. LAURENCE: Well, I believe that the
19 threat to public safety plays a role in the balance.
20 And so if that's dissipated, then at that point, you
21 have -- the -- the reliability of the tip that you're
22 relying on is not as significant. Put it this way:
23 When you have the threat to public safety balanced in
24 the totality for purposes of reliability, if that
25 dissipates, then you have to go back to the tip itself,

1 whether it is internally reliable or whether it has
2 enough to satisfy J.L.

3 I think that, when you have an immediate
4 threat and you have a report of drunk driving, the
5 officer shouldn't have to wait to see that 50 miles, to
6 see if they can pass or fail.

7 JUSTICE SCALIA: It wasn't a report of drunk
8 driving.

9 MR. LAURENCE: I'm sorry. Yes. A report
10 that someone ran him off the road.

11 JUSTICE SCALIA: Somebody ran me off the
12 road. Somebody was driving really irresponsibly.

13 MR. LAURENCE: Yes. Yes.

14 JUSTICE SCALIA: That's enough to stop him
15 down the road.

16 MR. LAURENCE: It is, it is, because this is
17 how drunk drivers display their actions. And when
18 you're dealing with reasonable suspicion --

19 JUSTICE SCALIA: What about cutting me off
20 too quickly, you know?

21 MR. LAURENCE: I think that --

22 JUSTICE SCALIA: Cuts right in front of me.
23 Really ticks me off.

24 (Laughter.)

25 MR. LAURENCE: That would present a

1 different set of circumstances. If you have an
2 instant -- a recognizable instant of bad driving as
3 opposed to something that reflects recklessness or
4 drunkenness, then you analyze the tip differently. And
5 I think that --

6 JUSTICE ALITO: Well, how would somebody --
7 how would somebody ever be able -- who observes another
8 car driving ever be able to say that person was drunk?
9 All they could -- all they could observe is what they
10 see. They don't know whether the person -- what is
11 causing that kind of behavior.

12 MR. LAURENCE: I agree. And that's because
13 what we do -- we look to the nature of their driving,
14 draw reasonable inferences from that. And that's all
15 officers can ever do. When they observe something, they
16 draw reasonable inferences and determine whether it
17 gives them suspicion.

18 One thing I would point out, that the CHP
19 dispatchers, the testimony in this case reflects that
20 they asked. They asked the driver, well, what did you
21 see? So that they can get that information and pass it
22 along to give the officers as much as possible--

23 JUSTICE SCALIA: I think it's an entirely
24 different case if the tip -- if the tip here was -- you
25 know, I was at a party, this guy got in his car, he

1 should not have turned the key on in that car, this guy
2 is really drunk, you should stop that car on the road.

3 I think that's totally different from
4 somebody just saying, this guy swerved, or this guy
5 drove me off the road. You're -- you're just making the
6 assumption that -- that every -- every one of those
7 incidents demonstrates a drunk behind the wheel, and I
8 just don't think that's true.

9 MR. LAURENCE: Well, again, I would say it's
10 not about demonstrating. It's not about certainty or
11 probabilities. It's suspicion. And that behavior
12 allows the officer to suspect drunk driving.

13 JUSTICE ALITO: Well, why is it limited to
14 drunk driving? I don't understand that. I've been --
15 I've been on an expressway, and I've had people go by
16 me at -- they went by in a blur. They must have been
17 going well over a hundred miles an hour.

18 Now, if the police catch up with that
19 person, of course, the person's going to slow down while
20 the police follow the person. And then when the police
21 decide to stop, they're going to go back to engaging in
22 this intentional, extremely dangerous conduct.

23 So I don't understand why there's a
24 distinction between reporting that somebody necessarily
25 is driving erratically, so the person may be impaired,

1 and somebody who is -- where you have extremely reckless
2 driving that's intentional.

3 MR. LAURENCE: Well, I wouldn't draw that
4 distinction. I think reckless driving, in and of
5 itself, can pose a threat to public safety that also
6 mandates an immediate stop. If someone's playing
7 chicken with another car on the road, if someone
8 is -- you know, trying-- testing out their new Ferrari, is going
9 a hundred miles an hour, weaving in and out of lanes,
10 those all represent threats to public safety.

11 All those circumstances --

12 JUSTICE KAGAN: But all crime represents a
13 threat to public safety, and yet, we have these
14 standards.

15 MR. LAURENCE: Yes, we do have standards.
16 But that -- the threat to public safety is part of the
17 totality of circumstances. It's not something you
18 invoke that wipes away all other inquiries. What we
19 have here is we have a tip that, if it was given by a
20 known person, I think would undoubtedly allow the
21 officer to pull that car over immediately.

22 The question is because it was anonymous --

23 JUSTICE GINSBURG: Why? Why -- the -- we
24 have the case of the trusted informer. The informer
25 several times has given the police tips and it turned

1 out to be right. And then we have another side, the
2 anonymous person. Then there's somebody who calls,
3 gives a correct name and address, but no record at all
4 of reliability.

5 Why should the fact that the name is
6 known -- the name of the informant is known, if the
7 police have no reason to believe one way or another that
8 this informer is reliable?

9 MR. LAURENCE: Well, I believe that, when
10 you're looking at -- at what point it's reasonable for
11 the officer to rely on the content of that tip or to
12 rely on -- on that tip coming in and act on it, that
13 when somebody gives their name, that adds a layer of
14 reliability to it, even without verification.

15 And I think one thing that Gates says in the
16 context of somebody who reports a -- a personal
17 observation of a crime is that even if we doubt their
18 veracity, even if we have some question as to their
19 motives, the fact that they are giving a personal
20 observation, they note that it's a personal observation,
21 and giving a detailed account of what occurs, that
22 report is entitled to a greater degree of reliability
23 than --

24 JUSTICE SCALIA: You don't think that a
25 teenager standing on a street corner with a couple of

1 other teenagers with a gun in his belt represents a
2 threat to public safety?

3 MR. LAURENCE: Not the same threat as in
4 this case, Your Honor.

5 JUSTICE SCALIA: No? All right.

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 No, no. We're going to hear from Ms. Kovner
8 first.

9 Ms. Kovner.

10 ORAL ARGUMENT OF RACHEL P. KOVNER

11 FOR UNITED STATES, AS AMICUS CURIAE,

12 SUPPORTING THE RESPONDENTS

13 MS. KOVNER: Mr. Chief Justice, and may it
14 please the Court:

15 Brief car stops based on anonymous tips of
16 reckless or drunken driving are reasonable under the
17 Fourth Amendment because they serve a critical
18 government interest in removing drunk drivers from the
19 roadway --

20 JUSTICE SOTOMAYOR: All right. Please
21 define for me what behavior would give police officers
22 or what descriptors would be adequate for the police to
23 think someone's drunk. Swerving, I know, has been
24 mentioned. But reckless driving, there's been a lot of
25 discussion that there could be a wide variety of

1 reckless driving.

2 MS. KOVNER: So --

3 JUSTICE SOTOMAYOR: What -- what other
4 things would a -- would a caller have to say?

5 MS. KOVNER: So, Your Honor, I think -- I
6 agree with the observation that there are some behaviors
7 that pose an ongoing threat to others on the roadway,
8 and some driving violations that don't. NHTSA, the
9 National Highway and Traffic Safety Administration and
10 other organizations, do keep track of what kinds of
11 behavior are associated with drunkenness.

12 And the Court, in this case, of course,
13 looked at the particular behavior and said, is this
14 really a reckless driving behavior, the kind of behavior
15 that poses this imminent danger? So there is a line
16 that courts would need to draw, but the courts that are
17 engaging in this kind of analysis do draw that.

18 And of course --

19 JUSTICE KAGAN: Well, what -- what goes on
20 the other side of the line? I mean, why -- why is this
21 on one side? And then tell me what's on the other.

22 MS. KOVNER: Sure. So examples of behavior
23 on the other might be a seatbelt violation, and they
24 also might be behaviors that it's a real judgment call
25 whether a violation occurred or not.

1 So for instance, that person didn't fully
2 stop at a stop sign. We might have doubts about whether
3 an informant, who we don't know anything about, can
4 accurately perceive that. But when we're talking about
5 behavior like --

6 JUSTICE SOTOMAYOR: I think what you're
7 saying to me, am I correct, that almost any moving
8 violation counts? Changing a lane without a signal,
9 which seems to be endemic in Washington, but --

10 (Laughter.)

11 MS. KOVNER: I think that would be a harder
12 case. I'm not sure that it's correlated with -- with
13 intoxication or impairment. As you say, it's very
14 common, but I think the behavior that we're talking
15 about here, driving somebody else off the road, is the
16 kind of behavior that shows this person is a --

17 JUSTICE KAGAN: How about somebody cutting
18 someone off in their lane?

19 MS. KOVNER: I think that's close to the
20 line, Your Honor. I'm not sure that it's always
21 illegal, and it's something where we may have doubts
22 about whether the informant can accurately separate this
23 person was breaking the law from this person wasn't. I
24 think the courts are going to have to answer the
25 question of whether this is the -- you know, kind of

1 behavior that poses --

2 CHIEF JUSTICE ROBERTS: Well, where does
3 that -- I think this is the question Justice Kagan asked
4 earlier -- how does the nature of the offense affect the
5 reasonableness of the suspicion?

6 MS. KOVNER: So --

7 CHIEF JUSTICE ROBERTS: I mean, in either
8 case, you have -- let's say the seatbelt and the
9 swerving driver. It's the same witness. He said,
10 still, it's a white Ford. The reasonableness of the
11 suspicion would seem, to me, to be totally divorced from
12 what it's about.

13 MS. KOVNER: I think that's true, Your
14 Honor, and we actually think and -- you know, we argued
15 in our brief that there is reasonable suspicion here.
16 When an informant gives a basis for knowledge, you have
17 reason to think they are an eyewitness.

18 But the Court has also recognized that there
19 are certain dangers on the roadway that allow
20 intrusions, even when we might not otherwise allow them.
21 So, for instance, in the Sitz case, the Court said drunk
22 that drunk driving is such a great danger that we're
23 going to allow even random stops of vehicles to detect
24 drunk drivers. So I think the court has indicated there
25 are certain driving behaviors that are so dangerous

1 we'll allow even suspicionless stops.

2 And here, of course, we're not dealing with
3 suspicionless stops. The questions from the Court have
4 indicated some of the reasons why that's the case.
5 Here, we have a caller who has demonstrated their basis
6 for knowledge, and officers have been able to confirm
7 that. So we're talking about tips where the person
8 relays the kind of details you can really only have if
9 you are an eyewitness to this person's driving on the
10 road.

11 CHIEF JUSTICE ROBERTS: Well, that's just
12 not true. It's -- it's an acquaintance, I know what
13 kind of car he drives, I know where he's going. I
14 didn't see anything on the road, but I call the police
15 and say, oh, there's this -- you know, white Ford
16 swerving all over the road.

17 MS. KOVNER: So, Your Honor, I think this
18 class of people who are going to have the relevant
19 knowledge is almost exclusively eyewitnesses. You may
20 also have a few people who have seen the person's car
21 and happen to know what direction they're headed in, but
22 for the most part, we're talking about a very narrow
23 class of individuals that are largely going to be
24 eyewitnesses to this person's driving on the road.

25 CHIEF JUSTICE ROBERTS: No, I'm talking

1 about the concern that you want to have the police pull
2 over people that you don't like, where you know
3 somebody's got something bad in the car, and you don't
4 like it, and so you're going to take advantage of the
5 fact that the police don't have to observe anything, and
6 yet, you can still get them to pull over this person.

7 MS. KOVNER: So somebody who's malicious,
8 who's a prankster, is still going to have this kind of
9 specialized knowledge, and that's not something a
10 malicious prankster is necessarily going to have. I --

11 JUSTICE GINSBURG: Why is that different
12 from the knowledge in J.L., that they were three young
13 men, and they were described, and the caller said, "The
14 one with the gun is the one with the plaid shirt." All
15 of that was corroborated by the police, and yet, we held
16 that that was no indication that a crime had been
17 committed.

18 MS. KOVNER: Your Honor, I think the
19 critical thing that's present here that wasn't present
20 in J.L. is the basis for knowledge. So as the passage
21 that Justice Breyer read signals, we're talking there
22 about concealed criminal activity, and the Court pointed
23 out in that case there's nothing in the tip that signals
24 how the informant knows this person had a gun.

25 Here, in contrast, the person is telling you

1 "I'm an eyewitness. This person just ran me off the
2 road."

3 JUSTICE KAGAN: But then you think J.L.
4 would have come out differently if the tipster had said,
5 "I just saw these guys and I saw -- you know, one of
6 them had a gun"?

7 MS. KOVNER: I think this case comes out
8 differently for two reasons. One is, yes, the tip would
9 be stronger than the tip in J.L., if the person related
10 eyewitness basis. But the second has to do with the
11 imminent danger here that's posed by a car that's moving
12 down the roadway and that's being operated by a
13 potentially drunk driver, and the reduced expectations
14 of privacy you have when you're talking about a vehicle
15 stop.

16 And those were front and center in Sitz,
17 where the Court said that even suspicionless stops can
18 be justified by that particular danger.

19 JUSTICE SCALIA: Yeah, but that -- but that
20 second danger -- you may have a drunken driver on the
21 road; that danger can be eliminated by following the
22 car. You don't have to stop the car right away. You
23 can follow it and if, indeed, the driver seems to be
24 driving erratically, then you can stop. You'd have
25 probable cause.

1 I don't think you have to automatically
2 allow a stop in order to prevent all of the horrors
3 that are going to arise from drunk driving. Follow the
4 car. If he's behaving like a drunk driver, then stop
5 him.

6 MS. KOVNER: Your Honor, officers could
7 follow the car, and if they do, they may witness a
8 subsequent dangerous behavior that could justify pulling
9 over the car. The problem is that the subsequent
10 dangerous behavior they may observe may be the car
11 swerving into another lane and hitting another vehicle.

12 JUSTICE SCALIA: That is so remote. I mean,
13 it seems to me you're asking us to adopt a broad rule
14 that is contrary to what we normally do for searches and
15 seizures because, now and then, it would seem, to me,
16 very rarely, before the police can stop the drunk
17 driver, he kills somebody.

18 I mean, I suppose that could happen now and
19 then but it's pretty fanciful.

20 MS. KOVNER: Your Honor, I don't think it's
21 a remote harm at all. Now, this is a harm that causes
22 one-third of all traffic accidents, that takes tens of
23 thousands of lives a year, and it's a harm that this
24 Court has always said is a harm of the first order that
25 justifies the kind of intrusions that we might not

1 otherwise allow in --

2 JUSTICE GINSBURG: But here, we have the
3 police did follow the vehicle for about 5 miles and saw
4 nothing erratic about the driving. So perhaps, if the
5 police had immediately stopped the person or -- but
6 don't -- don't we have to take account that there was no
7 corroboration? When the police get there. Even if they
8 could stop him instantly, when they have no
9 corroboration, then that doesn't amount to reasonable
10 suspicion.

11 MS. KOVNER: Your Honor, I agree that police
12 might follow a car for such a long period of time that
13 the reasonable suspicion would dissipate. On the facts
14 of this case, Your Honor, the record indicates there
15 were five minutes between when the officers first saw
16 the car and when they pulled it over.

17 They weren't five minutes of uninterrupted
18 observation. They were five minutes in which the
19 officers were turning their cars around because they
20 were headed in the opposite direction, were catching up
21 to a car along the freeway. So the California Supreme
22 Court analyzed that delay and found the fact that they
23 didn't observe additional --

24 JUSTICE BREYER: I don't know if we have to
25 get into the drunk driving. It's 3 miles south of the

1 Humboldt County border on -- do you know the answer to
2 this? Is it in the record? I mean, on many sections of
3 that road, in Mendocino County, you drive someone off
4 the road, they are dead.

5 I mean, there are sheer drops, and so I just
6 wonder, if I look that up here, what's the situation
7 where this supposedly took place?

8 MS. KOVNER: The only thing I can point to
9 about that, Your Honor, is the way that the California
10 Supreme Court treated this, which is that, because they
11 pointed to the fact that this is a two-lane highway and
12 that it's particularly dangerous on this particular road
13 to engage in this behavior.

14 But I don't know about -- you know, whether
15 there are cliffs on the side of the road.

16 CHIEF JUSTICE ROBERTS: What about the
17 danger from the police side? In other words, they
18 know -- or they suspect that the guy driving the white
19 car has a lot of marijuana in the trunk. They have no
20 basis for pulling him over. And they say, well, guess
21 what, we got an anonymous tip that he was driving
22 erratically, so we pulled him over.

23 MS. KOVNER: Your Honor --

24 CHIEF JUSTICE ROBERTS: What protection is
25 there against that?

1 MS. KOVNER: Your Honor, if police are
2 willing to lie about what they saw or -- you know, in
3 the cases of some rogue officers, they may exist, but
4 this rule isn't going to prevent -- no rule is going to
5 prevent that. Officers could just as easily lie about
6 what they saw.

7 Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you, counsel.
9 Mr. Kleven, you have 3 minutes remaining.

10 REBUTTAL ARGUMENT OF PAUL R. KLEVEN,
11 ON BEHALF OF THE PETITIONERS,
12 APPOINTED BY THIS COURT

13 MR. KLEVEN: In this case, we're talking
14 about a single uncorroborated tip of reckless driving.
15 After that single incident, the car -- the truck went
16 for approximately 19 miles with no indication of any
17 other problem and then was followed for up to 5 miles by
18 the police officers, again, with no indication of any
19 erratic driving or any other violation that would have
20 been a reason for pulling him over immediately.

21 There's no reason to believe that the driver
22 of this truck presented any kind of danger about being
23 about to lose control, which is the argument that the
24 State is relying on, and the Federal government, and
25 neither one of them came up with any anecdote, even,

1 where that actually occurred, much less any statistics
2 that show that that is a serious problem, of people
3 losing control while they're being under surveillance by
4 the police officers.

5 This case is even farther away from the bomb
6 situation than J.L. was. In J.L., you had a person who
7 was armed, who could have pulled out a gun and started
8 firing at any moment. Here, you have something where
9 there's no indication of any ongoing risk to the public.
10 I don't think -- I don't know that there's a good answer
11 to the bomb question.

12 I read through the transcript from the oral
13 argument in J.L. I didn't see any -- you know, there
14 didn't seem to be any good arguments -- any good
15 discussions there, either, as to which way the Court
16 could go.

17 But this case -- in J.L., the Court said,
18 there's no reason for us to resolve that. We don't have
19 to speculate about a situation where that would happen.
20 In this case, I submit, there's even less reason for the
21 Court to speculate about the bomb situation or even the
22 kidnapping situation.

23 JUSTICE ALITO: Well, I find that
24 unsatisfactory because if you -- unless you're willing
25 to say, it doesn't matter whether it's a bomb, an atomic

1 bomb, a little bomb, then there -- there must be -- if
2 you're going to draw the line someplace, then you're
3 going to have to distinguish between those reports of
4 crimes that are serious enough to be on one side of the
5 line and those reports of a crime that are not serious
6 enough to be on that side of the line.

7 You either have to go all the way, or you
8 have to draw a line, and if you're going to draw a line,
9 I would like to know where the line is.

10 MR. KLEVEN: Well, Your Honor, except I
11 don't think -- I don't think you can draw the line in
12 terms of reasonable suspicion because, then, you're
13 going to have this --

14 JUSTICE ALITO: All right. Forget about
15 reasonable suspicion. Just can it be done?

16 MR. KLEVEN: Well, certainly, Your Honor --

17 JUSTICE ALITO: You can say it can never
18 done, even if it's an atomic bomb, even if it's some
19 other type of bomb. You can say that. Or you can say,
20 no, there's a line someplace. If you're going to say
21 there's a line someplace, then, really, I think you need
22 to tell us where the line is.

23 MR. KLEVEN: Your Honor, I think the line is
24 certainly, when we get into the bomb situation, but not
25 in terms of reasonable suspicion. The severity of the

1 crime does not affect it, but the Court could fashion a
2 rule that would say there's an exception in this case
3 that would apply --

4 JUSTICE ALITO: For a bomb. For any kind of
5 a bomb?

6 MR. KLEVEN: Well, I don't think -- I think
7 if -- if there's a call in that --

8 JUSTICE ALITO: It has to be a big bomb.

9 MR. KLEVEN: -- that says a white -- a white
10 Prius has a bomb -- you know, that doesn't seem to be
11 the sort of case under the -- under the established
12 circumstances where this Court would find a reasonable
13 suspicion --

14 JUSTICE SCALIA: What about drawing the line
15 at intentional conduct? The guy who has a bomb is going
16 to use it. He's intentionally going to use it.

17 MR. KLEVEN: Well --

18 JUSTICE SCALIA: Or maybe intentionally
19 doing an action that is going to harm more than one
20 person, as opposed to, hmm, maybe this person might
21 accidentally, because he's inub-- inebriated, hurt somebody?

22 It seems to me there's a clear line between
23 somebody who's -- who's bent on an intentional crime and
24 somebody who might harm somebody because of his conduct.
25 You like that one?

1 CHIEF JUSTICE ROBERTS: Yes, I have another
2 one, too.

3 MR. KLEVEN: Yes, Your Honor, I think
4 those -- those are two significant distinctions,
5 certainly, between the -- the bomb analogy and the
6 situation, even in the drunken driving situation, where
7 you don't have anybody who is intentionally trying to
8 harm anyone and the magnitude of the risk is -- is much
9 greater. The --

10 CHIEF JUSTICE ROBERTS: So somebody has five
11 drinks and goes and gets in the car, that's not
12 intentionally trying to harm someone? Or recklessly
13 trying to harm --

14 MR. KLEVEN: Well, in terms of their --
15 their decision to get drunk, there's intent there, in
16 terms of -- by the time the officer becomes aware of it,
17 there's no indication that that drunk driver is going
18 down the road trying to harm somebody.

19 There is an indication that they may be
20 too -- too inebriated to be driving properly, and police
21 officers are pulling people over for that situation
22 since the car was invented, and they're really good at
23 it.

24 CHIEF JUSTICE ROBERTS: Thank you, counsel.

25 MR. KLEVEN: Thank you.

1 CHIEF JUSTICE ROBERTS: Counsel.

2 The case is submitted.

3 (Whereupon, at 2:01 p.m., the case in the
4 above-entitled matter was submitted.)

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