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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM BIRD,

Defendant and Appellant.

B286561

(Los Angeles County  
Super. Ct. No. BA450763)

APPEAL from a judgment of the Superior Court of Los Angeles County, Drew E. Edwards, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

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Following denial of his motion to suppress evidence, William Bird pleaded no contest to possession of a controlled substance and a firearm and admitted to having served a prior prison term. On appeal, he contends the trial court erred in denying his motion to suppress evidence that was discovered during a search occasioned by an anonymous 911 tip. We affirm the judgment.

### **BACKGROUND**

On October 2, 2016, at 12:54 p.m., an anonymous caller stated to a 911 dispatcher, “ ‘I want to disclose something serious. There’s a white Jeep parked with a male and female and they just pulled a gun on somebody and he placed the gun under his seat.’ ” The caller stated the Jeep was parked on Ceres Avenue between Sixth and Seventh streets.<sup>1</sup>

The caller refused to give her name or return phone number, and when police called the number from which the 911 call had been made, no one answered.

At 12:56 p.m., the dispatcher informed Los Angeles Police officers that “a man brandishing a firearm” in a Jeep was parked on Ceres Avenue between Sixth and Seventh. The officers arrived at the scene three minutes later (i.e., five minutes after the anonymous tip), and pulled up behind a parked white Jeep occupied by Bird and a woman. The officers observed no suspicious behavior, but with guns drawn ordered both occupants to exit the Jeep and lie prone on the pavement, then handcuffed and detained them.

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<sup>1</sup> The record on appeal does not contain a transcript of the call. We obtained a recording of the 911 call from the superior court, and listened to it for ourselves.

One of the officers opened the driver's side door of the Jeep and looked inside, including under the seat, finding nothing. The officer then pulled a cushion off the seat (or pulled back the seat cushion) and discovered a loaded handgun wedged between the driver's seat and center console. The gun had not been in plain view. Officers later found large quantities of narcotics in the glove compartment and center console.

Before trial, Bird moved to exclude all evidence obtained from his vehicle on the ground that the search violated his Fourth Amendment rights. (Pen. Code, § 1538.5.) The trial court denied the motion, after which Bird pleaded no contest to possession of a controlled substance while also in possession of a firearm (Health & Saf. Code, § 11370.1, subd. (a)), and admitted to having served a prior prison term (Pen. Code, § 667.5, subd. (b)). The court sentenced him to four years in prison for the offense plus one year for the prior prison term.

Bird timely appealed.

After briefing on appeal was complete, we wrote to both parties inquiring about the state of the record on appeal, the content of the 911 call, and the dispatcher's report. Both sides filed supplemental briefs in response.

### **DISCUSSION**

Bird contends the anonymous 911 call failed to give rise to a reasonable suspicion that he was involved in criminal activity, and therefore failed to justify his detention and the search of his Jeep.

“The Fourth Amendment prohibits ‘unreasonable searches and seizures’ by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. [Citations.] Because the ‘balance between the

public interest and the individual's right to personal security,' [citation], tilts in favor of a standard less than probable cause in such cases, the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity '“may be afoot.”' (*United States v. Arvizu* (2002) 534 U.S. 266, 273 [122 S.Ct. 744, 151 L.Ed.2d 740]; see *People v. Dolly* (2007) 40 Cal.4th 458, 463 [“An investigatory detention of an individual in a vehicle is permissible under the Fourth Amendment if supported by reasonable suspicion that the individual has violated the law”].) To determine whether an officer has reasonable suspicion of criminal activity, we “must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” (*United States v. Arvizu*, *supra*, at p. 273.)

When police have no basis for suspicion other than an anonymous tip, we must decide whether, under the totality of circumstances, the tip “gave the detaining officers a ‘“particularized and objective basis” for suspecting legal wrongdoing.’” (*People v. Dolly*, *supra*, 40 Cal.4th at p. 472, Kennard, J., concurring.) Whether an anonymous tip gives police a particularized and objective basis for suspecting illegal activity depends on both the information conveyed by the tip and its degree of reliability. (See *Navarette v. California* (2014) 572 U.S. \_\_\_\_ [134 S.Ct. 1683, 1687, 188 L.Ed.2d 680] (*Navarette*).)

Five cases provide useful guides.

In *Florida v. J.L.* (2000) 529 U.S. 266 [120 S.Ct. 1375, 146 L.Ed.2d 254] (*J.L.*), an anonymous caller reported to police that a young African-American male standing at a particular bus stop in a plaid shirt was carrying a gun. Some unspecified time after

police received the tip, officers were instructed to respond. They arrived at the bus stop about six minutes later and saw three Black males, one of whom, J.L., was wearing a plaid shirt. “Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct.” (*Id.* at p. 268.) They saw no firearm, “and J.L. made no threatening or otherwise unusual movements.” (*Ibid.*) The officers approached J.L., frisked him, and seized a gun from his pocket. (*Ibid.*)

The high court held that the anonymous tip was insufficient to justify the detention and search “absent some independent corroboration of the reliability of the tip and tipster’s assertion of illegal conduct. [Citation.] As the court stated, ‘[a]ll the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J. L.’ [Citation.] The high court stressed that the tip contained no ‘predictive information’ (such as predicting the suspect’s future behavior) that might demonstrate the tipster had inside information of concealed criminal activity.” (*People v. Wells* (2006) 38 Cal.4th 1078, 1084.)

The court in *J.L.* recognized there could be a situation where “an anonymous tip, suitably corroborated, exhibits ‘sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.’ ” (*J.L.*, *supra*, 529 U.S. at p. 270.)

For example, in *Alabama v. White* (1990) 496 U.S. 325 [110 S.Ct. 2412, 110 L.Ed.2d 301] (*White*), an anonymous caller informed police that Vanessa White would be leaving a specified apartment building at a particular time in a brown Plymouth station wagon that had a broken right taillight, that she would go to a specified motel, and that she would be in possession of about

an ounce of cocaine inside a brown attache case. Police went to the apartment building, saw a brown Plymouth station wagon with a broken right taillight in the parking lot, and observed White leave the building in the car and drive to the motel. Police stopped her, obtained her consent to search, and found a locked brown attache case in the car containing marijuana. After arresting White, police found cocaine in her purse. The Supreme Court held that police corroboration of events predicted by the anonymous tip provided sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop. (*Id.* at p. 327.)

In *Navarette, supra*, 572 U.S. \_\_\_\_ [134 S.Ct. 1683], an anonymous 911 caller reported that the driver of a silver Ford 150 pickup with a specific license plate number had run the caller off the highway. (*Id.* at pp. 1686, 1689.) Within 18 minutes, California Highway Patrol officers spotted the truck near the reported location and followed it for about five minutes before pulling it over. As the responding officers approached the truck, they smelled marijuana. They searched the truck and seized 30 pounds of marijuana. The court found the 911 report sufficiently reliable to justify the traffic stop because the caller (1) “necessarily claimed eyewitness knowledge” of the dangerous driving, (2) must have known the truck was near the location where it was stopped, and (3) used the 911 system to report the incident and, in doing so, was presumably aware 911 calls are recorded and traceable. (*Id.* at pp. 1689-1690.)

Two California cases fill out our guide.

In *People v. Wells* (2006) 38 Cal.4th 1078 (*Wells*) an anonymous caller reported that a blue van was “‘weaving all over the roadway’” on a certain stretch of highway. Police located a

van matching the description given, but it was neither weaving nor speeding, and the driver was apparently obeying all relevant traffic laws. However, based solely on information provided in the anonymous tip, police stopped the vehicle, found the driver appeared to be intoxicated, and arrested her. Our Supreme Court upheld the search and seizure, distinguishing *J.L.* because a drunk driver weaving on the highway posed “a far more grave and immediate risk to the public than a report of mere passive gun possession [as in *J.L.*]” (*Wells*, at p. 1087); the state had a strong interest in preventing drunk driving (*ibid.*); the anonymous caller had presumably viewed the van weaving, and therefore had personal knowledge of the crime (*ibid.*); the level of personal intrusion accompanying a traffic stop is considerably less than a patdown search such as that conducted in *J.L.* (*Wells*, at p. 1087); drivers have a reduced expectation of privacy when in their cars on public roadways due to the state’s pervasive driving regulations (*ibid.*); and the anonymous caller’s description of the van was sufficiently detailed to support an inference that it was reliable (*id.* at p. 1088).

In *People v. Dolly*, an unidentified 911 caller reported that an African-American male had “just pulled a gun” on him and mentioned a gang name. “The caller said he felt the perpetrator ‘was gonna shoot me right there at that minute.’ According to the caller, the perpetrator had a bandage over his left hand, as though it had been broken, and was in the driver’s seat of a gray Nissan Maxima parked on the north side of Jefferson Boulevard at Ninth Avenue, near the recycling center. When asked whether he wanted to talk to the police when they arrived, the caller said, ‘No, no, I don’t. I sure don’t. Because if they find out I’m snitching, they’re going to kill me around here.’ The call ended at

3:18 p.m. [¶] At 3:20 p.m., the tipster-victim made a second call to 911. Identifying himself as ‘Drew,’ he said that he had just driven by the Nissan Maxima again and wanted to correct his description of the vehicle. It was black, not gray.” (*Dolly, supra*, 40 Cal.4th at p. 462.)

Two or three minutes after the second call, police officers “arrived at the scene and spotted a black Nissan Maxima parked on the north side of Jefferson, just east of Ninth. There were three people in the car. [The] Defendant, who was sitting in the driver’s seat, matched the description provided in the radio dispatch. He also had a cast on his left arm.” (*Dolly, supra*, 40 Cal.4th at p. 462.) The officers ordered the occupants out of the vehicle and ordered the defendant to exit the vehicle and lie down in the street with his hands at his side. A loaded handgun was found underneath the front passenger seat. (*Ibid.*)

Distinguishing *J.L.*, the Court held that under the totality of the circumstances, the anonymous tip provided police with grounds for a reasonable suspicion of criminal activity sufficient to justify the defendant’s detention. First, the defendant pointed a gun at the caller in an apparent threat to shoot him, which “posed a grave and immediate risk not only to the caller but also to anyone nearby.” (*Dolly, supra*, 40 Cal.4th at p. 465.) The Court reasoned that “ ‘allegations of the threatening use of a weapon, made by [a] person claiming to be an eyewitness to the threats, required immediate police action,’ and ‘is materially distinguishable from the anonymous tip at issue in *Florida v. J.L.*,’ which involved only an allegation of a concealed weapon.” (*Ibid.*)

Second, the Court reasoned that a recorded 911 call bears an indicum of reliability because a caller wishing to make a false



accusation would be wary of the possibility that his or her voice will be recognized during any follow-up police investigation.

Third, the Court reasoned that the anonymous tip was reliable because the caller gave a firsthand contemporaneous description of the crime and a plausible reason for remaining anonymous. The Court emphasized that “ ‘a primary determinant of a tipster’s reliability is the basis of his or her knowledge.’ ” (*Dolly, supra*, 40 Cal.4th at p. 468.)

When analyzing a ruling on a suppression motion, we “ ‘defer to the superior court’s express and implied factual findings if they are supported by substantial evidence, [but] we exercise our independent judgment in determining the legality of a search on the facts so found.’ ” (*People v. Tully* (2012) 54 Cal.4th 952, 979.) “ ‘As the finder of fact . . . the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable.’ ” (*Ibid.*)

We conclude that under the totality of the circumstances, information conveyed in the anonymous 911 call supported a reasonable suspicion of criminal activity.

As in *Navarette*, the 911 call here was contemporaneous with and showed the caller’s personal knowledge of criminal activity. The caller stated Bird had “just pulled” a gun on somebody, then re-stowed it in his Jeep. She accurately described the Jeep, its passengers, and its location. By reporting what had just occurred, the caller necessarily claimed eyewitness knowledge of the alleged display of the gun. Eyewitness knowledge lends support to the tip’s reliability. (See *Illinois v. Gates* (1983) 462 U.S. 213, 234 [103 S.Ct. 2317, 76 L.Ed.2d 527]

[“[an informant’s] explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case”].) In *J.L.*, on the other hand, the tip provided no basis for concluding that the caller had actually seen the gun being reported. (*J.L.*, *supra*, 529 U.S. at p. 271.)

There is also reason to think the 911 caller here told the truth. Police confirmed the Jeep’s location within a very few minutes, which suggests the caller reported the incident soon after she observed the gun. A contemporaneous report “has long been treated as especially reliable.” (*Navarette*, *supra*, 134 S.Ct. at p. 1689 [“ ‘substantial contemporaneity of event and statement negate the likelihood of deliberate or conscious misrepresentation’ ”].) In *J.L.* there was no indication that the tip was contemporaneous with the reported observation of criminal activity.

“Another indicator of veracity is the caller’s use of the 911 emergency system. [Citation.] A 911 call has some features that allow for identifying and tracing callers, and thus provide some safeguards against making false reports with immunity. [Citation.] As this case illustrates . . . , 911 calls can be recorded, which provides victims with an opportunity to identify the false tipster’s voice and subject him to prosecution [citations]. The 911 system also permits law enforcement to verify important information about the caller.” (*Navarette*, *supra*, 134 S.Ct. at pp. 1689-1690.) This is not to say that a 911 tip is per se reliable. But “a reasonable officer could conclude that a false tipster would think twice before using such a system.” (*Id.* at p. 1690.) The caller’s use of the 911 system is therefore one factor supporting a reasonable inference that criminal activity had occurred. (*Ibid.*)

Finally, the anonymous report concerned criminal activity. Penal Code section 417 makes it a crime to “draw[] or exhibit[] any loaded firearm in a rude, angry, or threatening manner.” (Pen. Code, § 417, subd. (b).) Here, the anonymous caller reported that Bird had “pulled a gun on someone,” which the dispatcher and police could reasonably construe as having been at least rude, if not threatening.

Under these circumstances, the anonymous 911 caller’s report supported a reasonable suspicion of criminal activity, justifying the detention and search of Bird and his vehicle.

Bird argues that no evidence here suggests the anonymous tipster reported threatening use of a weapon against her. The point is irrelevant, as Penal Code section 417 requires only the rude display of a weapon, not that the display be either threatening or directed against any particular individual.

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.