

**WHEN DOES AN ANONYMOUS TIP PROVIDE
REASONABLE SUSPICION FOR A STOP AND FRISK?**
An Analysis of Recent California Cases on Anonymous Tips

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Recent cases decided by the California Supreme Court and the Court of Appeal have narrowly interpreted the rule of *Florida v. J.L.* (2000) 529 U.S. 266, the United States Supreme Court's last significant decision on anonymous tips. The California cases have made it easier for police officers to detain and pat-search an individual based on an anonymous tip, particularly when that tip is conveyed through a 911 call and reports a dangerous crime.

I. *Florida v. J.L.* (2000) 529 U.S. 266

In 2000, the United States Supreme Court decided its first anonymous tip case in a decade. Ten years before, in *Alabama v. White* (1990) 496 U.S. 325, the Court had held that an anonymous tip supports a detention only when it is sufficiently detailed and predictive to provide the indicia of reliability necessary to support reasonable suspicion. (*White, supra*, 496 U.S. 325.)

In *Florida v. J.L.*, the Supreme Court was presented with an anonymous tip less detailed than the tip approved in *White*. Moreover, unlike the informant in *White*, the tipster in *J.L.* did not predict the subject's future actions, which would have indicated that he possessed inside information regarding the subject's criminal activities. (*White, supra.*, at 331-332; *Florida v. J.L., supra.*, at 270-271.)

In *Florida v. J.L.*, an anonymous phone caller told the Miami police that a young black male wearing a plaid shirt was standing at a particular bus stop and carrying a gun. The call was not recorded and nothing was known about the informant. Some time after receiving the tip, police officers were directed to respond. Six minutes later, the officers arrived at the scene, noticing three black males standing at the designated bus stop. The officers identified one of the black males (the defendant) as wearing a plaid shirt similar to that described in the anonymous tip. The officers did not see a firearm and the defendant

made no threatening or unusual movements. An officer frisked the defendant, uncovering a firearm. (*Florida v. J.L.*, *supra*, 529 U.S. at 268.)

The Supreme Court noted that in order to justify a detention, the officer must reasonably suspect that the individual is engaged in criminal activity. When the officer relies on an anonymous tip, this inquiry is more difficult because the anonymous informant's information, standing alone, "seldom demonstrates the informant's basis of knowledge or veracity." (*Florida v. J.L.*, *supra.*, at 270; quoting *White*, *supra*, 496 U.S. at 329.) Applying the reasonable suspicion standard, the Court, in *J.L.*, held that the anonymous tip regarding the defendant's gun possession lacked sufficient indicia of reliability to support reasonable suspicion. The allegation of criminality was neither substantially detailed nor adequately corroborated. Therefore, the officer's stop-and-frisk of the defendant was unreasonable. (*Id.* at 274.)

The Supreme Court focused its analysis on the anonymity of the informant. Because the informant had not revealed his or her identity, he or she could not be held accountable for a fabricated tip; thus, he or she could lie with impunity. The Court also noted the tip was devoid of details, including details predicting the subject's future actions; sufficient details could support an inference that the informant had an inside information about the subject's illegal activity. (*Id.* at 271.)

The Court distinguished between the accuracy and reliability of the tip in identifying the subject versus the reliability of the tipster's assertion of illegal activity: "The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." It is not sufficient that the officer, through observation, can corroborate the tipster's description of the subject, his apparel, and his location. The officer must corroborate the informant's allegation of criminal conduct. (*Id.* at 272.)

Finally, the Court dismissed the state's argument for a blanket "firearm exception" to the *Terry* reasonable suspicion requirement. Under such an exception, an undetailed and uncorroborated "tip alleging an illegal gun would justify a stop and frisk even if the accusation would fail standard pre-search reliability testing." (*Id.* at 272.) The Court reasoned that this would allow wrongdoers to engage in harassment of other individuals by falsely asserting that they were carrying firearms. (*Ibid.*) Moreover, there is no logical way to limit any such public policy exception merely to tips involving firearms; any exception would quickly be expanded to drug-related tips and beyond to any tip reporting dangerous or threatening criminal behavior. (*Id.* at 272-73.)

While dismissing the state's proffered firearm exception, the court suggested that

under some unique circumstances, serious public safety concerns might overtake the strict requirement of reasonable suspicion before conducting a stop-and-frisk: “The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability.” (*Id.* at 273-74.) As an example, the court cited a report identifying a person carrying a bomb. (*Ibid.*)

Justice Kennedy’s concurring opinion in *Florida v. J.L.* discusses other factors that might support the credibility of an “anonymous” informant, permitting officers to legitimately rely on the informant’s tip to initiate a detention. Justice Kennedy reasoned that the police might justifiably rely on a tip when the informant does not disclose his identity but, nevertheless, puts his anonymity at risk. This might happen, for example, if the tipster imparted his or information to the officer in person, or when the tipster’s phone call was recorded and traced to a particular phone, residence, or location. If the informant is not truly anonymous, he or she may be held accountable for the information, discouraging lies, hoaxes and false reports. (*Florida v. J.L., supra.*, at 275-76.)

II. *People v. Wells* (2006) 38 Cal.4th 1078

In 2006, the California Supreme Court had its first opportunity to interpret and apply the Supreme Court’s decision in *Florida v. J.L.* In *People v. Wells*, the California court decided to read the rule of *J.L.* quite narrowly. Justice Chin, writing for a majority of the court, upheld a traffic stop based on an anonymous tip reporting drunk driving despite the fact that the officer did not observe the allegedly intoxicated driver make any risky maneuvers or violate any traffic laws. (*Wells, supra.*, 38 Cal.4th at 1081.)

In *Wells*, a dispatch report was communicated to a California Highway Patrol officer in the early morning hours. (*Wells, supra.*, at 1081.) The tip – which had presumably been relayed in an anonymous phone call – stated that the subject vehicle was a 1980's model blue van headed north on a particular freeway only one exit away from the officer, and that the vehicle was “weaving all over the roadway.” (*Ibid.*)

Upon hearing this report, the officer waited on the shoulder of the freeway until he saw a vehicle matching the van’s description. The officer did not observe the driver of the blue van engage in any illegal or dangerous activity, including “weaving, speeding, or otherwise violating any traffic laws” (*Wells, supra.*, at 1081.) The officer immediately pulled the van over solely because the van matched the description of the subject vehicle. When speaking to the driver (the defendant), the officer noticed that she had a dry mouth and constricted pupils. Eventually the officer determined by field sobriety tests that the driver was under the influence of illegal drugs or alcohol, a finding

later confirmed by urine testing. (*Ibid.*)

The California Supreme Court held the stop was permissible “under the circumstances in this case [because] the grave risks posed by an intoxicated highway driver justified the minimal intrusion of a brief investigatory traffic stop.” (*Id.* at 1082.) It did not matter that the tipster had not predicted the driver’s future actions, and that the officer’s observations of the driver’s conduct had not corroborated the tipster’s criminal allegation – i.e. the officer had not seen any indication of drunk driving before the stop.

The California Supreme Court first distinguished *Florida v. J.L.* on the grounds that *J.L.* involved a possessory offense (handgun possession) rather than driving under the influence. (*Wells, supra.*, at 1084.) The offense of drunk driving is sufficiently distinct from a possessory offense so that the “lack of ‘predictive information’” provided by the tip is not fatal to the reasonableness of the stop. Furthermore, the court pointed to language from *J.L.* suggesting that exigent circumstances might allow a search even though the anonymous tip was insufficiently detailed and corroborated. (*Ibid.*) “An informant’s accurate description of a vehicle and its location provides the tip with greater reliability than in the situation of a concealed firearm, because the informant was presumably an eyewitnesses to the illegal activity and his tip can be sufficiently corroborated by the officer spotting the described vehicle in the expected time and place.” (*Id.* at p. 1086.)

The majority distinguished *Florida v. J.L.* for four main reasons: (1) there is a greater public safety risk created by drunk driving than by mere gun possession; (2) the tip here was more reliable than the tip in *J.L.* because it was presumably reported contemporaneously to witnessing the event; (3) a traffic stop is less intrusive than a stop-and-frisk on the street by a police officer (as in *J.L.*) because one has a lesser expectation of privacy in a vehicle; and (4) corroboration of innocent details added to the reliability of the tip. Based on these factors, the court found that the stop of the driver-defendant was legally justified. (*Id.* at 1087-88.)

Justice Werdegar wrote a strong dissent, joined by Justices Kennard and Moreno. First, she criticized the majority’s assertion that corroboration of an anonymous tip’s innocent details can provide reasonable suspicion. She quoted the language in *J.L.* stating that the tip must be “reliable in its assertion of illegality, not just in its tendency to identify a determinate person.” Justice Werdegar also disputed the majority’s reasoning that a drunk driving offense poses greater danger than gun possession by a young male (*Wells, supra.*, at 1091.) Even if drunk driving does create a greater public safety risk, Justice Werdegar argued that the majority misread *J.L.* in creating a system where “we are now to rank all crimes along a sliding scale, permitting investigatory detentions on lesser showings when the detainees are suspected of more serious crimes.” (*Ibid.*)

III. *People v. Dolly* (2007) 40 Cal.4th 458

Any hope that the California Supreme Court's ruling in *Wells* would be limited to its unique facts (allowing traffic stops based on anonymous tips of drunk driving) was dashed when the Court published its subsequent decision in *People v. Dolly*.

In *Dolly*, an anonymous caller to the 911 line reported that a "light-skinned African-American male" with a bandage on his left hand had "just pulled a gun" on the caller and was threatening him with the firearm. The caller believed the subject was located at Jefferson Blvd. and Ninth Ave., and stated that the subject was driving a gray Nissan Maxima. (*Dolly, supra.*, at 462.) Four minutes later, the tipster again called 911 to correct his description of the subject's vehicle—the Nissan was black, not gray. During the second call, the tipster identified himself as "Drew". (*Ibid.*)

A short time after receiving the 911 call, officers responded to the designated location. At the intersection of Jefferson and Ninth, the officers saw the defendant sitting in the driver's seat of a black Nissan Maxima. Matching the tipster's physical description, the defendant had a cast on his left arm. The officers asked the defendant to exit the car, as well as the two passengers. During a search of the passenger compartment of the defendant's car, the officers discovered a handgun underneath the front passenger seat. Defendant admitted possession and ownership of the firearm during post-arrest interrogation. (*Dolly, supra.*, at 462.)

A unanimous court found the stop and search reasonable. Justice Baxter wrote the majority opinion, joined by Chief Justice George, and Justices Chin and Corrigan. Justices Kennard and Werdegar wrote concurring opinions, the latter of which Justice Moreno joined.

The majority opinion distinguished *Florida v. J.L.* on a number of grounds. First, the public safety interest, "an important factor to consider in assessing the requisite level of reliability", was greater in the present case than in *J.L.* because the tip reported a current threat of gun violence and actual brandishing, as opposed to mere gun possession. (*Id.* at 465-466.) Second, as with drunk driving, anonymous tips of threatened or occurring gun violence are unlikely to be fabricated. Therefore, just as in *Wells*, the tip could be deemed more reliable than the tip of gun possession in *J.L.* (See *Wells, supra.*, 38 Cal.4th 1078.) "Indeed, the call here bore stronger indicia of reliability than did the call in *Wells*" as the 911 call was recorded. (*Dolly, supra.*, at 467.) Third, the police could infer that the tipster had personal knowledge of the defendant's criminal activity, enhancing the reliability of the tip. (*Id.* at 468.) Finally, the tipster put forth a plausible reason for desiring to remain anonymous—fear of gang retaliation. This "reduces the significance of his anonymity in

analyzing the reliability of his report.” (*Id.* at 469.)

Justice Kennard’s concurring opinion found the majority’s analysis unconvincing, although she agreed with the result. Justice Kennard focused her analysis on the tone of the voice of the tipster, the tipster’s second call to correct his earlier description of the subject’s car, and the tipster’s plausible reason for desired anonymity. Based on those factors, she reasoned the police officers had reasonable suspicion to detain the defendant based on the tip. (*Dolly, supra.*, at 473-74.)

Justice Kennard criticized the majority’s focus on the dangerousness of the reported crime that is the subject of the tip; “[t]he degree of danger posed by a suspect has no logical relationship to the reliability of the information provided.” While at some point exigent circumstances might justify detaining an individual without any reasonable suspicion, at all other times, a lesser amount of reasonable suspicion is not allowed merely because the level of danger may be higher than in *J.L.* “I see no basis for the majority’s assertion that here the reliability of an anonymous telephone call can be determined based on the *type of crime reported.*” (*Id.* at 476.)

Justice Werdegar also concurred, distinguishing between this case and *Wells* because the tipster here was personally threatened, thereby establishing that the tipster had personal knowledge of the illegal activity. This was consistent with her view of the requirements of *J.L.* as stated in her dissent in *Wells*. (*Id.* at p. 477.)

IV. *Analysis: The Implications of Wells and Dolly*

By narrowly interpreting the United States Supreme Court’s decision in *Florida v. J.L.*, a majority of the California Supreme Court have upheld detentions based on anonymous tips even though the tips seemingly suffered the same deficiencies as the tip held insufficient in *J.L.*. The tips at issue in *Wells* and *Dolly* were not particularly detailed, and the anonymous callers did not predict the subject’s future actions. Also, in both California cases, the police officers’ observations only corroborated innocent details of the tips (e.g. the subject’s location and physical description); the officers did not corroborate the tipsters’ allegations of criminal activity. In upholding stops and searches based on these seemingly insufficient anonymous tips, the California Supreme Court, in *Dolly* and *Wells*, focused on the language within *J.L.* noting the possible effect of public safety considerations on the anonymous tip analysis; the California court held that when public safety is threatened, an uncorroborated and less detailed tip may provided reasonable suspicion for a detention. (See *Wells, supra*, at 1084; *Dolly, supra*, at 464.)

Beyond that focus, a number of recurrent factors come up in the California

Supreme Court's analysis. First, the level of dangerousness of the reported crime seems to be a critical issue for the court in distinguishing *Florida v. J.L.*, and in allowing detentions based solely on anonymous tips. In *Wells* the court emphasized the public safety hazards of drunk driving (*Wells, supra*, at 1087), while in *Dolly*, the same court spoke of the dangerousness of threatened gun use as opposed to mere gun possession (*Dolly, supra*, at 465.). In practice, a majority of the California Supreme Court may have limited the reach of *J.L.* to tips reporting mere possessory offenses (see *Wells, supra*, at 1084.) It appears that the California court has adopted a "dangerous crime exception" to the *Florida v. J.L.* rule similar to the "firearm exception" rejected by the United States Supreme Court. And if that is the case, where will the California trial and appellate courts draw the line in determining whether the crime reported by the anonymous tipster is sufficiently dangerous to dispense with the reliability requirements of sufficient detail and adequate corroboration set forth in *Florida v. J.L.*?

Secondly, in reading *Wells* and *Dolly*, it is evident that individual members of the California Supreme Court disagree on at least one issue: Does *Florida v. J.L.* require police corroboration of the anonymous tipster's assertion of illegality, or can the officer rely on the tip, to initiate a detention, when he or she merely corroborates innocent details – the tipster's description of the subject's clothing or the make and color of the reported car? (See *Wells, supra*, at 1088; *Dolly, supra*, at 470-71.) The majority opinions in *Wells* and *Dolly* hold that corroboration of these innocent details establishes the tipster's reliability and supports reasonable suspicion. Other Justices, including Justice Werdegar, maintain that *J.L.* requires at least some corroboration of the alleged illegal activity to establish reasonable suspicion.

Finally, *Wells* and *Dolly* reveal an unresolved issue within anonymous tip jurisprudence. When is a tip truly anonymous? If the police have the technical ability to ascertain the anonymous caller's identity (e.g. by tracing the call to a particular phone number and address), is the tip truly anonymous? After all, if the police can trace the call and identify the caller, then he or she could conceivably be held accountable for a false tip. But does it matter if the caller knows his or her call can be traced? If the caller is unaware of this technology and believes he or she can remain anonymous, then there is no disincentive to fabrication.

V. *People v. Lindsey* (2007) 148 Cal. App. 4th 1390 [First District, Division Four]

The California Supreme Court filed its opinion in *Dolly* in February 2007. About eight weeks later, Division Four of the First District Court of Appeal published *People v. Lindsey*, the first case to apply the reasoning of *Wells* and *Dolly* to uphold a detention

based on an anonymous tip.

In *Lindsey*, the police received a 911 call from an anonymous female stating that a shot had been fired outside of her residence. The caller described the suspect as a Black male with small ponytails. However, she admitted that she had not actually seen the suspect fire or hold a gun. The police were able to trace the call to a particular residence, located in a high-crime area of Pittsburgh. An officer was dispatched to the caller's residence. As he neared the residence, about five minutes after receiving the dispatch call, the officer saw the defendant walking with two other Black men. The defendant was a Black male with small ponytails, matching the tipster's description. The officer observed that the defendant was wearing baggy clothing and holding up his pants at his waist, indicating to the officer that he was carrying something heavy in his pocket or waistline. (*Lindsey, supra.*, 148 Cal. App. 4th at 1393.)

The officer followed the defendant and his companions for one and a half blocks, without observing any "suspicious activity." The officer did note, however, that defendant's hand did not leave his waistline during this time period. The officer then stopped the defendant and initiated a pat search of his person, finding a sock containing a firearm tied to the defendant's waistband. (*Id.*, at 1393-1394.) Another police officer later visited the residence that the 911 call had been traced to, discovering that the tipster did not want to be involved. However, she confirmed the substance of her tip and her identity as the informant. (*Id.*, at 1394.)

Determining that the anonymous tip provided reasonable suspicion for the officer's stop and frisk of the defendant, the court concluded that the Supreme Court's decision in *Dolly* "dictates the result in this case." (*Lindsey, supra.*, at 1396.) The court, in *Lindsey*, distinguished *Florida v. J.L.* and analogized the factual situation in the present case to *Dolly's* facts on a number of grounds. First, as in *Dolly*, the defendant in the present case reportedly used a gun; there is a the greater public safety risk in *using* a gun rather than merely *carrying* a gun. Second, a 911 call reporting that shots were fired is less likely to be fabricated than a report of firearm possession. Third, in the present case, the 911 call was recorded and traced to a specific residence, whereas nothing was known or ascertainable about the informant in *J.L.*. Presuming that people know that their 911 calls can be traced by the police, tips conveyed through the 911 line are thus more reliable. Fourth, in the present case, the details provided by the tipster (e.g. "this is the 3rd time this has happened") showed that she was familiar with the defendant. Fifth, as in *Dolly*, the tipster in the present case provided a contemporaneous and firsthand description of the crime along with a description of the perpetrator. Sixth, the police corroborated the caller's tip because the defendant matched the tipster's physical description and was found at the designated location. Also, he was seen holding a heavy object in his waistband, which

permitted the officer to conclude that he was actually armed. Finally, the high-crime locale in which the incident occurred provided a plausible explanation for the tipster wanting to remain anonymous. (*Id.*, at 1397-1401.)

Lindsey illustrates that the California courts may interpret the holdings in *Wells* and *Dolly* to uphold detentions based solely on anonymous tips – even if those tips are undetailed and uncorroborated. Following the lead of the California Supreme Court, Division Four views the United States Supreme Court’s ruling in *Florida v. J.L.* as extremely narrow. In *J.L.*, the Court held that an anonymous tip could only be deemed reliable, and sufficient to establish reasonable suspicion for a detention, if the tipster provided specific and predictive details, and if the police – through their observations -- corroborated the allegations of criminal activity. Read together, *Wells*, *Dolly*, and *Lindsey*, strongly suggest that the *J.L.* requirements only apply to possessory offenses (e.g. drug or gun possession), and that the requirements do not apply when the anonymous caller reports a dangerous offense. And yet in *Lindsey* itself, the evidence of gun use, as opposed to mere possession, was very weak. The caller reported that a shot had been fired in her neighborhood, but she had not actually seen the described suspect hold or fire a gun.

Moreover, *Lindsey* also employed the argument – first suggested by Justice Kennedy in his concurring opinion in *J.L.* -- that because the police have the technological ability to trace 911 calls, the tipster is putting her anonymity at risk, therefore making the tip more reliable. Assuming that all 911 calls could be traced, this would seem to create a presumption of reliability for all anonymous 911 tips. But does it matter whether the anonymous caller knows that her 911 call can be traced by the police, so that they can determine her identity and location? If the tipster does not know this, then she believes she can lie without consequences, and there is still a risk of fabrication or false reports.

VI. Previous California Court of Appeal Cases (After *Florida v. J.L.*, but before *Wells* and *Dolly*)

In the six years between *Florida v. J.L.* (2000), and *Wells* (2006), there were four published California Court of Appeal decisions that applied the *J.L.* ruling and rationale to either uphold or invalidate detentions based on anonymous tips. In *People v. Coulombe* (2000) 86 Cal. App. 4th 52, and *People v. Butler* (2003) 111 Cal. App. 4th 151, the courts found that anonymous tips provided reasonable suspicion for police actions. In *People v. Saldana* (2002) 101 Cal. App. 4th 170, and *People v. Jordan* (2004) 121 Cal. App. 4th 544, the courts held that the officers did not have the right to stop and frisk the defendants based on anonymous phone calls.

A. Cases Upholding Police Conduct Based on Anonymous Tips

- 1. *People v. Coulombe* (2000) 86 Cal. App. 4th 52 [First District, Division Four]
Holding: Two anonymous in-person reports stating that a man was carrying a gun at a crowded celebration justified a stop and frisk**

In this case, two police officers were patrolling a well-attended New Years Eve celebration in downtown Santa Rosa. At 11:00 p.m. two separate citizens approached the officers approximately within five to ten seconds. Each informant pointed toward a restaurant about 75 feet away and indicated that a man wearing a white cap had a gun. Neither citizen provided identifying information so they qualified as anonymous informants.

Three police officers then approached the restaurant and saw the defendant who was wearing a white cap and seated in a wheelchair. The officers simultaneously approached the defendant from separate directions. They asked the defendant if he had a weapon and he said he did not. The defendant was pat-searched, and a small revolver was found in his pocket. According to one of the officers, the defendant clutched at his pocket when asked if he had a gun. That officer then put his hand over the defendant's and said he was going to pat search him. As he did this, the officer felt a hard object. This was prior to the pat search.

Relying on the recently decided Supreme Court opinion in *Florida v. J.L.*, *supra.*, 529 U.S. at 266, the trial court had found that the two anonymous tips alleging gun possession did not justify the stop and frisk. The trial court granted the motion to suppress, and the prosecution appealed. The Court of Appeal reversed the trial court's ruling.

The Court of Appeal distinguished *Florida v. J.L.*, and concluded that the two tips in this case provided the requisite reasonable suspicion. First, in the present case, there were two anonymous tips, not one, and they were made within five to ten seconds of each other. Second, the two individuals conveyed their information to the police in person rather than over the phone. Consequently, the officers could see the tipsters, observe their demeanor and evaluate their credibility. Also, by approaching the officers, they subjected themselves to scrutiny and risked losing their anonymity. Third, the danger posed by the suspect's gun possession was increased as it occurred at a crowded celebration rather than at a bus stop. Because of the first two factors, the officers could assume that the information conveyed by the two tipsters was sufficiently reliable, and less reliability was required because of the dangers inherent in the circumstances.

2. ***People v. Butler* (2003) 111 Cal. App. 4th 150 [Second District, Division Five]
Holding: An anonymous caller’s allegation that a man was selling drugs out of a car was corroborated when the responding officer observed a hand-to-hand transaction; thus, the detention was justified**

At 6:30 p.m., a police officer received an anonymous tip from an female caller. The incoming call was not tape-recorded. The woman refused to provide her telephone number or address. She told the officer that a man in a gray Ford Explorer was parked across from a specified address. It appeared to her that the man was selling drugs. The officer conveyed this message to “field units” over the computer. Another deputy received the computer transmission indicating that there was narcotics activity occurring in front of the specified address, and that a gray Ford Explorer was involved in the drug activity.

The deputy drove immediately to the designated address. When he arrived, he saw a gray Ford Explorer parked in the street, approximately two and one-half feet from the curb. (Parking more than 18 inches from the curb constitutes a Vehicle Code violation.) The deputy noticed that the Explorer’s engine was running and that a woman was standing outside the driver’s door. The deputy observed the woman and the car driver, the defendant, engage in a hand-to-hand transaction, exchanging items that he could not see. Based on his training and experience, the deputy believed he had witnessed a narcotics transaction. He then drove his marked patrol car behind the Explorer, turned on his flashing lights, and contacted the driver, initiating a detention.

The Court of Appeal affirmed the trial court’s ruling denying the motion to suppress evidence. The Court distinguished the facts of this case from those of *Florida v. J.L.*, *supra.*, 529 U.S. at 266. Most importantly, the deputy who responded to the dispatch did not merely corroborate the caller’s description of the suspect, the car and the location. The deputy also corroborated the allegation of drug dealing when he saw the defendant and the woman engage in a hand-to-hand transaction. Thus, the detention was justified.

B. Cases Invalidating Police Conduct Based on Anonymous Tips

1. ***People v. Saldana* (2002) 101 Cal. App. 4th 170 [Second District, Division Four]
Holding: An uncorroborated anonymous phone tip stating that the driver of a described vehicle was carrying a gun and cocaine did not provide reasonable suspicion for a stop and frisk.**

In this case, the anonymous informant called from a pay phone. At around 7:30 in the evening, Deputy Sheriff Larson received a phone call from an anonymous tipster stating the driver of a gray Ford Taurus station wagon, with a license plate number ending

in "319", was carrying a gun and a kilo of cocaine. The caller said that the vehicle was currently parked in the lot of a restaurant at the intersection of San Gabriel and Garvey in Rosemead. Thirty minutes earlier, the same report had been called in from the same pay phone to the San Gabriel Police Department.

Deputy Larson went to the described parking lot, arriving about ten minutes after the second call. When he arrived, he found the described car – a Ford Taurus station wagon with a plate number ending in "319". The deputy called in the entire license plate number on his mobile computer, and learned that the vehicle was registered to the defendant, Jose Saldana, at a particular address. He also received information that another person at that address, Bernardo Ruiz Moreno, was wanted on a misdemeanor warrant. That warrant had been issued almost four years earlier, but it was still outstanding.

Deputy Larson waited about an hour until he saw the defendant exit from the restaurant and enter the station wagon. Larson called for assistance and when the back-up units arrived, he executed a stop and a "felony extraction"; this involved stopping all other traffic, ordering the driver out of the vehicle at gunpoint, ordering him to throw his keys in the air, get down, and submit to handcuffs. Larson used this procedure because of the anonymous report that the driver of the station wagon had a gun. The defendant was immediately frisked for weapons and none were found. He gave his name as "Jose Saldana" and consented to a search of the station wagon. Inside that vehicle, officers found a trash bag containing marijuana and some methamphetamine.

The trial court found that the defendant was legally detained and denied the motion to suppress. The Court of Appeal disagreed. The Court concluded that "this case is like *Florida v. J.L.*". The police received an anonymous phone tip which contained "no internal indicia of the basis for or reliability of the informant's information". The tip did not include any predictive details that could be corroborated by police observation. Deputy Larson corroborated the description and location of the vehicle, but did not corroborate the criminal element of the tip that the station wagon contained a gun or cocaine.

Moreover, the Court held that the discovery of the outstanding misdemeanor warrant for Bernardo Ruiz Moreno did not corroborate the allegation that the driver of the station wagon possessed a gun or cocaine. The four-year old warrant was not for the registered owner of the car but for an individual with a different name who had happened to live at that same address four years before. Mr. Moreno was described as being 28 years old, six feet three inches tall and 170 pounds. The defendant, Jose Saldana, was in his mid-fifties and about nine inches shorter than Mr. Moreno. Even assuming that the discovery of the warrant provided an independent ground to stop the defendant's vehicle to determine if the driver could possibly be Mr. Moreno, there was no justification for the felony

extraction and immediate weapons frisk – both of which were based on the uncorroborated tip that the defendant had a gun.

2. ***People v. Jordan* (2004) 121 Cal. App. 4th 544 [Fifth District]**

Holding: An anonymous 911 tip reporting that a specifically described individual was carrying a gun did not provide reasonable suspicion for a stop and frisk even though the defendant matched the tipster’s description and was wearing concealing clothing.

In this case, the anonymous informant’s 911 call to the police was recorded, transcribed and admitted into evidence in the trial court. The male caller stated that he needed the police for an emergency. He stated that there was a man “up on Baker and Sumner” who had a gun. He described the man as “Black. Light skinned” with a bald head, in his late 30’s. The caller said he was wearing a black jacket, tan pants, a white shirt, and red boots. When asked the type of gun, he said “small, like a .22, .25” When asked where the man kept the gun, the caller responded: “uh, in his left-no-right pocket”. The caller refused to leave his name, and there was no indication that the call could be traced. Officers were dispatched “to respond to a subject carrying a concealed weapon, possible at Baker and Sumner”. They were given the subject’s physical description and told that he was possibly carrying a concealed handgun in his right front pocket.

Officer Gerrity responded to the dispatch and arrived at the designated location, a park, less than one minute after receiving the report. As he walked through the park, he saw the defendant sitting on a bench. The defendant’s appearance and clothing matched the anonymous caller’s description. There were six to ten other people in the park, and Officer Gerrity hid behind a tree and observed the defendant for 30 to 45 seconds. During this time, the defendant did not engage in any activity suggestive of gun possession or criminal activity. He merely sat on the bench with his hands in his lap. Officer Gerrity then made eye contact with the defendant and called him over, identifying himself as police and saying he needed to speak with the defendant. He directed the defendant to place his hands in the air and walk backward towards him. As the defendant approached, the officer noticed that he was wearing concealing clothing, although he did not see any bulges resembling a weapon. Officer Gerrity pat-searched the defendant, finding a small caliber pistol in his jacket pocket.

The Court of Appeal reversed the trial court’s finding denying the motion to suppress. After a lengthy discussion of *Alabama v. White, supra.*, 496 U.S. at 325; *Florida v. J.L., supra.*, 529 U.S. at 266, and the above-discussed California Court of Appeal cases (*Coulumbe, Butler and Saldana*), the Court held that but for one factor – i.e. that the anonymous phone tip was recorded and transcribed – the facts of the present case were

indistinguishable from those of *Florida v. J.L.*.

In the present case, as in *J.L.*, the anonymous phone caller reported that an individual possessed a gun. However, the caller did not provide any predictive details, and he did not explain how he knew the subject had a gun nor when he acquired this information. The caller in this case provided more details regarding the subject's appearance and clothing, and the police officer confirmed those details when he arrived at the designated location minutes after receiving the radio transmission. However, the officer did not observe anything about the subject's conduct or appearance that corroborated the allegation that he was armed with a concealed weapon – no threatening, aggressive or unusual movements, no visible bulges.

The fact that the 911 call was recorded detracted from “any possibility that the tip was the result of police fabrication”. However, the caller expressly declined to leave his name, and there was no evidence that the police could identify his voice or trace the call so that he might be held accountable for a false report. The caller did nothing to put his anonymity at risk and nothing in the record indicated that he knew he faced potential consequences for making a false report.

The Court of Appeal rejected the prosecution's argument that this case fell within a “public safety exception” which would allow the police to respond to an anonymous tip with less indicia of reliability. The Court noted that the United States Supreme Court, in *Florida v. J.L.*, *supra.*, at 272, had rejected a proposed “firearm exception” This case did not warrant different treatment just because there were six to ten people near the defendant in the park.

Are *Saldana* and *Jordan* still good law after *People v. Wells* and *People v. Dolly*? May they be cited and relied upon by defense advocates challenging detentions and pat-searches based on anonymous tips? We believe the answer is yes, with some qualifications.

That facts of *Saldana* and *Jordan* are distinguishable from *Dolly* and *Wells* in important respects. In both Court of Appeal cases, as in *J.L.*, the anonymous informant phoned in a tip reporting firearm possession, not shooting, brandishing or threatened use of a gun or other weapon. In both cases, the callers were strictly anonymous and there was no indication that the tipsters' phone calls were traceable, or that the police had any other means of discovering the callers' identity. Most importantly, in both *Saldana* and *Jordan*, the officers dispatched to the designated locations found individuals who matched the

anonymous callers' physical descriptions. However, nothing about the individuals' appearance or conduct corroborated the informants' allegations of gun or drug possession.

Indeed, the California Supreme Court, in *Dolly* and *Wells*, acknowledged and distinguished both *Jordan* and *Saldana*. The Court emphasized that in these Court of Appeal cases, the anonymous callers had alleged mere possession of concealed weapons. Mere weapons possession, without more, does not present an emergency situation involving an immediate danger to human life. (*Dolly, supra.*, 40 Cal. 4th at p.466; see also *Wells, supra.*, 38 Cal. 4th at p.1084.) Moreover, the Supreme Court additionally noted that in *Jordan*, the caller did not reveal how he knew that the subject was carrying a concealed weapon. The tipster did not say whether he had personally seen the gun or inferred its presence from other facts or from reputation. (*Dolly, supra.*, at p. 470, n. 4.)

In *Lindsey*, the Court of Appeal (First District, Division Four) concluded that *Jordan* was factually distinguishable. In *Jordan*, there was no indication that the police officers could trace the anonymous 911 call or otherwise identify the caller. In contrast, in *Lindsey*, the police were able to trace the call, ascertain the residence from which it had been made, and even talk to the individual who had placed the call. (*Lindsey, supra.*, 148 Cal. App. 4th, at pp. 1398-1399.) However, the Court also commented that "*Jordan* was decided before *Dolly*, and without the benefit of our Supreme Court's analysis there". (*Lindsey, supra.*, at 1398.)

VII. 2009 Update: Cases Decided between May 2007 and November 2009

In the two years and one-half years since these materials were written, there have been at least five cases, only one of which is published, upholding detentions and frisks based on anonymous tips, even though the officers corroborated only innocent details – i.e. the tipster's description of the suspect's appearance, his location or his vehicle. Generally, the California appellate courts have upheld detentions based on anonymous tips when one of more of the following factors are present:

- 1)The police have the means to trace the anonymous call or to identify the tipster.
- 2)The anonymous caller reports criminal activity threatening public safety.
- 3)The anonymous tipster states or implies that his/her information is based on first-hand observations made at the time of the alleged crime or immediately thereafter.
- 4)The tipster describes the suspect and/or criminal activity in considerable detail.
- 5)The tipster gives a reasonable explanation for remaining anonymous.

In this update, we discuss five California cases (one published and four unpublished) that have relied on *People v. Dolly* (2007) 40 Cal. 4th 458 and *People v. Wells* (2006) 38 Cal. 4th 1078 to validate police officers' actions based on anonymous tips. In the same time period, we found three opinions, all unpublished, which have invalidated police conduct based on uncorroborated anonymous tips.

A. *Unpublished California Cases Invalidating Police Conduct Based on Anonymous Tips after Dolly and Wells*

**1. *In re Douglas F.* (2007) 2007 WL 1830818 [Second District, Division Two]
Holding: An undetailed and uncorroborated anonymous tip did not provide reasonable suspicion for the minor's detention and pat search.**

In this case, there were actually two tips – one from an unknown source and the second from an anonymous informant. First, police officers responded to a dispatch call stating that “six Black males” had engaged in a physical fight in the Big Lots parking lot on Rosecrans Avenue. The dispatcher indicated that the suspects had left the parking lot and were running west on Rosecrans. No further details were provided. An unknown informant presumably provided this information, However, since neither the dispatcher nor the police official who had received the information testified at the suppression hearing, the court had no means of assessing the informant's credibility.

Officer Heitmeyer arrived at the scene and spoke with three Black males, “possible witnesses”, one of whom was the minor, Douglas F.. After speaking with them, Heitmeyer walked away; he did not detain them. Heitmeyer was then approached by an anonymous individual who provided the second tip; he stated that one of these three witnesses had a gun. No further description or details were provided, and the informant left without identifying himself as he did not want to get involved.

In the meantime, Officer Villanueva spotted the three Black males – the minor and the two other witnesses -- walking down Crenshaw Boulevard. He did not know that Officer Heitmeyer had talked to them. Because they matched the description of the individuals who had been fighting in the Big Lots parking lot, Villanueva detained them. Officer Heitmeyer then arrived at the location of the detention and told Villanueva that one of the subjects had a gun. Before commencing an intended pat search, Heitmeyer asked the minor if he had any weapons, and he admitted that he did. Heitmeyer removed an unloaded BB gun from the minor's waistband and BB pellets from his pocket.

The Court of Appeal reversed the trial court's denial of the motion to suppress evidence. The Court held that the circumstances known to Officer Villanueva, when he

stopped the minor on Crenshaw Boulevard, did support a reasonable suspicion that the minor was engaged in criminal activity. Dispatch had reported six Black males running west on Rosecrans Avenue; no further descriptive details were provided. Villanueva stopped three Black males, including the minor, who were walking down Crenshaw Boulevard. They were not doing anything suspicious. The Court concluded that the minor was stopped solely because of his race and gender, insufficient bases for doing so.

The Court next considered whether the addition of the anonymous tip that one of the three Black males had a gun established reasonable suspicion for a detention and frisk. The Court held that it did not. First, even though the individual conveyed the tip in-person (rather than on the phone), he qualified as an anonymous informant rather than a citizen informant. The police had not secured sufficient facts about the informant “to allow that person to be called to account for the information” if it turned out to be false. As in *Florida v. J.L.* (200) 529 U.S. 266, , the tipster did not explain how he knew that one of the men had a gun. There was even less reason for believing this tip than there was in *J.L.*, as the informant did not specify which of the three men was armed. Finally, the allegation of gun possession was not corroborated by the officers’ observations of the minor’s appearance or demeanor.

The Court analogized the facts of this case to those of *People v. Jordan, supra.*, 121 Cal. App. 4th at 544 (uncorroborated anonymous 911 tip of gun possession does not justify a stop and frisk), and distinguished the facts of *People v. Coulumbe, supra.*, 86 Cal. App. 4th at 52 (two independent tips of concealed gun possession were corroborated by the officer’s observation of the suspect clutching his pants). The Court distinguished *Dolly, supra.*, 40 Cal. 4th at 458, as the informant in the present case provided an insufficient description of the suspect and alleged mere gun possession, not gun use.

**2. *Fredrickson v. Superior Court* (2008) 2008 WL 589860 [Fifth District]
Holding: An uncorroborated anonymous tip did not justify entry into the home under the emergency aid exception.**

The police dispatcher testified that she received a call on a business line rather than on the 911 line; thus, there was no caller ID or indication where the call was coming from. The unidentified male caller suggested that a police officer be sent to 419 23rd Street because “I heard someone like they’re getting beat”. When the dispatcher tried to ask if the address was on East or West 23rd Street, the caller hung up. After ascertaining that the police had prior contacts at 419 West 23rd, and that there was no 419 East 23rd, the dispatcher directed officers to 419 West 23rd because of a reported “fight”.

Two officers arrived at this address less than two minutes after the dispatcher had

received the call. On arrival, the officers found the residence's front door open and a bicycle out in the front yard. One officer walked up to the front door and announced his presence. The female defendant came to the door of the only bedroom in the house. The officer told her that they were there to respond to a male caller's report of a possible assault at 419 23rd Street. He asked if he could enter the house to make sure everything was okay. The defendant refused consent, stating that she was the only person there. The officer said they were going to enter the home anyway to perform a protective sweep. As one officer swept the kitchen, the defendant went back into the bedroom. When the officer entered that bedroom, he saw the defendant grabbing items off a nearby table and trying to empty a plastic bin. He observed a suspected drug pipe on the table.

The trial court had denied the motion to suppress the drugs and paraphernalia subsequently seized from the home. The court found that the dispatcher acted reasonably when she sent the officers to 419 West 23rd Street. Based on the report of a possible fight and the defendant's refusal to consent to the officers' entry, the officers were justified in entering the home to search for possible victims under the "emergency aid" exception to the warrant requirement. (See *People v. Ray* (1999) 21 Cal. 4th 464)

The Court of Appeal disagreed. To enter a home without a warrant pursuant to the emergency aid exception, the officers must reasonably believe that there is a person inside who is in distress and needs assistance. They are looking for possible victims, not criminal suspects. The prosecution did not meet its burden of proving that the entry and ensuing search were reasonable under this exception.

Distinguishing *Dolly, supra.*, 40 Cal. 4th at 458, the Court stressed that the anonymous tip reporting a fight was not recorded and could not be traced. Once the officers arrived at the address, they heard and saw nothing to corroborate the caller's allegation – no moans, cries for help, blood, weapons, or evidence of a struggle. The defendant did not appear distraught, bruised or cut, and nothing contradicted her claim that she was the only person home and had not been assaulted.

Justice Levy filed a dissenting opinion in this unpublished case, stating his belief that the officers' entry into the home, pursuant to the emergency aid exception, was lawful. Analogizing to *Dolly, supra.*, Justice Levy noted that "the caller was reporting a situation [an assault] that required immediate police intervention".

3. ***People v. Smith* (2009) 2009 WL 2028384 [Third District]**
Holding: An uncorroborated anonymous tip that did not clearly allege criminal activity did not justify the detention

At around 12:50 a.m., an anonymous informant called 911 and reported that an individual was “acting suspiciously” around a Ford Mustang that was parked in the lot for an open nightclub and 24-hour fitness center. The caller said the individual was reaching around the wheel well, reaching into a side window, getting into the vehicle, and slumping down near the steering column. The tipster provided the Mustang’s license plate number and described the suspicious individual as an African-American male wearing a back cap and glasses. The dispatcher broadcast this information on the police radio, and Officers Terry and Jones responded to the designated location. Based on the report, the officers believed the described individual might be trying to steal the Mustang.

When the two officers arrived at the parking lot about four minutes after hearing the dispatch report, they noticed that the lot was populated by people and cars, but there were only a couple of cars parked in the same aisle as the Mustang. Mr. Choi was in the Mustang’s passenger seat and the defendant was in the driver’s seat. The officers pulled in behind the Mustang and activated the patrol car’s spotlights. Officers Terry and Jones exited and approached the Mustang from both sides. As Mr. Choi emerged from the passenger seat, the officers drew their guns and ordered Mr. Choi to put his hands up. He complied and was handcuffed and searched. After Mr. Choi got out of the car, Officer Terry smelled the odor of fresh green marijuana emanating from inside the vehicle.

Officer Terry focused on the defendant who was still sitting in the driver’s seat. He ordered the defendant to exit from the vehicle. The defendant complied and was handcuffed and pat-searched for weapons. The officer seized a small amount of marijuana from the defendant’s right front pocket. The defendant claimed that he was in the process of buying the Mustang and that the paperwork was inside the vehicle. Subsequently, the officers found some suspected cocaine near the Mustang’s wheel well, and a half tab of ecstasy inside the car. They also found paperwork indicating that the Mustang was indeed in the process of being sold.

The Court of Appeal reversed the trial court’s denial of the motion to suppress. The Court concluded that the defendant was detained at the moment when the two officers trained their weapons on the emerging passenger, Mr. Choi, and ordered him to put his hands up. This occurred before the officers smelled the odor of fresh marijuana, so the issue was whether the anonymous phone tip provided reasonable suspicion for the defendant’s detention.

Analogizing to *Florida v. J.L.*, *supra.*, 529 U.S. at 266, the Court held that the phone tip in the instant case provided no predictive information relating to the alleged criminal activities, and thus left the police without means to test the informant's credibility. Moreover, when the police arrived at the parking lot, within minutes after the call was received, they did not see the defendant engaging in any activity reasonably suggesting that he was involved in auto theft or any other crime. The police only corroborated the anonymous caller's description of the vehicle and its location.

The Court distinguished the facts of *Wells*, *supra.*, 38 Cal. 4th at 1078 and *Dolly*, *supra.*, 40 Cal. 4th at 458. The anonymous tipster did not provide a first-hand report of a crime posing a grave and immediate threat to public safety. Indeed, the caller did not even report a crime but merely described activity that may not have been criminal in nature.

Focusing on cases decided by the California Court of Appeal, the Court analogized this case to *People v. Jordan*, *supra.*, 121 Cal. App. 4th at 544, while distinguishing *People v. Butler* (2003) 111 Cal. App. 4th 150 and *People v. Lindsey* (2007) 148 Cal. App. 4th 1390, because the police did not observe any conduct corroborating the anonymous caller's assertion of illegality when they arrived at the parking lot.

B. Published California Court of Appeal Cases Upholding Detentions Based on Anonymous Tips after Dolly and Wells

1. In re Richard G. (2009) 173 Cal. App. 4th 1252 [Second District, Division Six] Holding: Anonymous telephone tip reporting a disturbance outside of a residence involving a firearm justifies a stop and frisk.

This case joins *People v. Lindsey*, *supra.*, 148 Cal. App. 4th at 1390 (discussed above), as the only two published California Court of Appeal cases relying on *People v. Dolly*, *supra.*, 40 Cal. 4th at 458, to uphold a detention based on an anonymous tip.

After receiving an anonymous phone call, the police dispatcher radioed officers at approximately midnight, stating that two males were "causing a disturbance" outside a residence at 133 North Juanita Street and that one of them was "possibly in possession of a handgun". One male was reportedly wearing a black t-shirt while the other was wearing a blue Pendleton-type jacket. They were walking towards Colonia Park, located across the street from the residence. The officers who responded, Mora and Alva, had prior knowledge of this residence which was located in known gang territory. Only days before, officers investigating a daytime shooting at the residence had seized two firearms. Moreover, the officers knew that Colonia Park was frequented by gang members..

Responding to the location, Officers Mora and Alva saw two males (one of which was the minor) and two females walking towards Colonia park. The males' clothing matched the anonymous caller's description. The officers ordered the two males to stop, but they refused to do so. The minor refused to obey the police commands, threatened Officer Mora, and resisted a control hold. Eventually, he was handcuffed and arrested. The minor sought to suppress the officer's observations of his resistance and his threatening statements, arguing that they occurred in the course of an unlawful detention.

Relying on *Dolly, supra.*, 40 Cal. 4th at 458, the Court of Appeal (in a very brief analysis) held that the anonymous call provided reasonable suspicion for the minor's detention. The informant in the present case, like the tipster in *Dolly*, gave a contemporaneous description of activity posing a grave and immediate risk not only to the caller but to anyone nearby. The Court found it significant that the asserted "late night disturbance involving a firearm" was occurring in front of a specific residence where a shooting had recently occurred in known gang territory. One could say that the officers' awareness that this area was known for gang activity and that a shooting had occurred at the same residence only days before corroborated the anonymous caller's assertion of illegal activity.

C. *Unpublished California Court of Appeal Cases Upholding Detentions Based on Anonymous Tips after Dolly and Wells*

1. *People v. Randle* (2007) 2007 WL 4442884 [Fifth District]

Holding: An anonymous informant's tip that a driver possibly had a gun justified ordering the driver out of the car at gunpoint after the officers made a traffic stop

In this case, the anonymous informant delivered the tip in-person, and the defendant challenged the officer's use of force during the detention as well as the detention itself. Two officers were flagged down by a citizen in a vehicle. The citizen informed them that a male, possibly with a handgun, was driving a white four-door car with the words "for sale" painted on the windows. The citizen did not provide her name. About five to seven minutes later, the officers saw a car matching the informant's description pull into a nearby gas station. The painted words, "for sale", as well as a crack in the windshield obstructed the driver's view and the car's registration tags were expired. Having observed these Vehicle Code violations, the officers executed a traffic stop. The defendant was the driver and lone occupant of the stopped car.

Because the informant had stated that the driver might have a weapon, the officers conducted a "high-risk" stop, drawing their weapons, removing the defendant from the car,

and immediately pat-searching him. They found a loaded handgun in one pocket and marijuana in another pocket. The defendant was arrested and transported to jail where cocaine was discovered during a more thorough search.

The defendant sought to suppress the firearm and drugs, asserting that the anonymous tip of possible weapons possession did not justify the traffic stop, and that the use of force during the stop converted the detention into a de facto arrest unsupported by probable cause.

The Court of Appeal upheld the trial court's denial of the motion to suppress. The Court found the traffic stop was justified because the officers had observed two Vehicle Code violations (the expired registration tags and the obstructed windshield). The anonymous tip had alerted the officers to "a potential threat to public safety, namely a man traveling in a vehicle with a loaded weapon". After the officers observed the described vehicle, they were justified in conducting the high risk stop and the immediate pat-search.

2. ***People v. Brewer (2007) 2007 WL 3054354 [Third District]***

Holding: An anonymous phone tip reporting a man brandishing a gun provided reasonable suspicion for a detention and pat search

The tip in this case was reported to the police by a caller who was relaying information told to him or her by a roommate's 15-year-old son, J.D., as J.D. was observing the suspect's actions. When J.D. arrived at his mother's house on Viking Drive around noon, he observed a Black male wearing a Raiders jersey standing in the street arguing with an Asian man and woman. At some point during the argument, the male waived a handgun in the air over his head. After he entered his mother's home, J.D. saw the male sitting in the driver's seat of a gray sedan talking to a woman. J.D. went back outside and obtained the sedan's license number. J.D. gave all this information to his mother's roommate who reported it to the police.

About forty-nine minutes later, an officer was dispatched to investigate the report of a man brandishing a firearm on Viking Drive. Minutes later, he arrived on the scene and saw a grey sedan stopped in the middle of the street with a license plate that "closely matched" the number reported. As the officer approached the car from the rear, it moved forward and turned right. The officer stopped the car, and the defendant emerged from the driver's seat. He was immediately pat-searched, and a handgun clip was found on his person. The defendant admitted there was a gun in the car and directed the officer to its location behind the front passenger seat.

The Court of Appeal upheld the trial court's denial of the defendant's motion to suppress. The Court found that the facts of the present matter were "more akin to *Dolly*, where the defendant pointed the handgun at his victim, than [to] *Florida v. J.L.*, where the defendant was merely in possession of a handgun." Moreover, the anonymous caller described the suspect's race, gender and clothing as well as the vehicle's color and license plate – details that were corroborated when the officer arrived on the scene. Moreover, as in *Dolly*, 40 Cal. 4th at 458, "the anonymous call at issue here was a report from someone who had witnessed the dangerous activity firsthand, was contemporaneous with the events, and required an immediate response to protect public safety". Finally, when the officer arrived on the scene, the defendant drove away, corroborating the allegation of criminal conduct.

3. ***In re Dennis W.* (2008) 2008 WL 526322 [First District, Division Four]
Holding: An anonymous caller's tip of a young male looking down the street, possibly scoping something out and getting ready to cause some trouble provided reasonable suspicion of auto burglary, justifying the minor's detention and frisk**

In this case, an anonymous individual called 911 at about 11:00 p.m. and reported that a young African American male was standing on a street corner "looking like he might be ready to cause some trouble". The caller reported that the young man was "looking down the street" as though he might be "scoping something out" and that windows might be "broken out of a car". He described the male as possibly "younger than 20", wearing a long red shirt, black pants and a black bandana. Based on this call, dispatch reported that someone was standing on the corner looking into or breaking into vehicles.

Minutes later, two officers arrived at the designated intersection and saw the 13-year-old minor standing on the corner. He met the anonymous caller's description except that he was wearing a black hat rather than a black bandana. The minor was "kind of peering around the corner", and in that direction, there was a parked vehicle and a large apartment complex. The two officers approached the minor from behind and said something to him. He turned around, appearing startled. The officers then directed the minor to lift his long T-shirt so that they could visually scan his pockets and waistband. They asked him what was in his pocket, and the minor admitted he had a BB-gun.

The Court of Appeal upheld the trial court's denial of the minor's motion to suppress the BB-gun. The Court rejected the minor's assertion that the anonymous tip did not support a reasonable suspicion that any criminal activity was occurring, let alone a reasonable belief that the minor was involved in that activity.

The Court concluded that the officers reasonably suspected that the minor was

preparing to break into a car. Thus, they had the right to detain and frisk him; auto burglars commonly carry screwdrivers, flashlights or crowbars and those items or weapons could have been concealed under the minor's long T-shirt. The officers could rely on the anonymous phone call for reasonable suspicion because: 1)the call was recorded; 2)the officers could infer that the caller was observing the suspect's movements while speaking; 3)the minor matched the caller's description and was found on the designated corner; and 4)the officers corroborated the allegations of possible criminal activity because they saw the minor peer around the corner and he seemed startled when the officers approached him.

4. ***People v. Ybarra* (2008) 2008 WL 2941935 [Fifth District]**

Holding: An anonymous phone tip of a specifically described man currently selling drugs in an alleyway justified a detention, even though the officers did not see any behavior suggested drug dealing when they arrived at the alley

An anonymous man called the Fresno police department at about 6:00 in the evening and reported that a man was selling drugs in the alleyway behind 3306 East Sierra Madre. Although it's not clear whether the tipster called 911, the call was recorded. The caller claimed to be watching the drug dealing from his window while washing dishes. He wanted to remain anonymous because "they'll shoot me". The caller described the drug seller as a Hispanic male, age 28 or 29, about 5', 11" tall, medium build, wearing a white shirt and blue shorts. He said the activity was currently going on in the alley, and that he had observed a drug sale to an older white man in a black car 20 minutes earlier. Four minutes after the call was received, two officers were dispatched to investigate a report of a person selling drugs in the alleyway. They were told that the suspect was still there and selling drugs. The caller's physical description of the suspect was conveyed, although the officers were not told that the source of the report was an anonymous call.

Five minutes after receiving the dispatch (nine minutes after the call), the two officers arrived at the alley being 3306 East Sierra Madre and observed the defendant. He was coming out of a garage on the alley, and he was about to enter the driver's side of a vehicle on Fisher Street, while a woman (later identified as the defendant's wife) got into the vehicle's passenger seat. The officers believed that the defendant matched the description they were given. He was a Hispanic man wearing a white shirt and denim shorts. However, he was ten years older and two inches shorter than the described drug dealer. Also, the defendant weighed 230 pounds whereas the described drug dealer had a medium build. The officers pulled up behind the defendant's car and told him to come out and approach them. He did so, provided his name and admitted that he was on parole. During ensuing parole searches of the defendant and the car, officers found a large amount of cash in the defendant's pocket and narcotics, a shotgun and ammunition in the vehicle.

The Court of Appeal concluded that the officers had reasonable suspicion to detain the defendant. The Court held that the facts of the present case were more like *Dolly, supra.*, 40 Cal. 4th at 458 than *Florida v. J.L., supra.*, 529 U.S. at 266. Thus, the officers had reason to believe that the tipster's information was reliable.: 1)the anonymous caller gave a very detailed description of the perpetrator, his location, and his drug activities; 2)the caller's information was based on first-hand contemporaneous observation; he was watching the drug dealing from his apartment window; 3)the caller expressed a reasonable basis for wanted to remain anonymous – i.e. fear of reprisals from his drug-dealing neighbor; and 4)the police arrived at the reported location within minutes and found a person matching the caller's description.

The Court of Appeal did not really address the discrepancies between the caller's description of the drug dealer and the defendant's appearance (height, weight and age). Nor did the court discuss the fact that the officers did not observe the defendant engaged in any activity which reasonably suggested he was dealing drugs.