

**Anonymous Tips:
What Are They Good For?
Legal Question of The Week
Vol. 2, Number 15
July 2, 2009**

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“[Thomas] Paine didn’t hide his identity to be cute or clever. He did it so he wouldn’t be thrown in jail or put to death. Anonymity is a key component to free speech and political discord.”

-- Adam Thierer¹

Another Independence Day is upon us already, which means that grills are firing up, fireworks are lighting up, and families are packing up to go on vacation. In honor of our nation’s birthday, I thought I might launch into an in depth discourse of our hard fought freedoms under the First Amendment, but when I mentioned it to the rest of the legal office, their response was thunderous. They said, “It’s unanimous² that all of us, even the hippopotamus and rhinoceros, believe it would be ominous and in fact dangerous for you to bore us with such a ponderous topic.” At that moment, the Chief knocked on my office door and I awoke with a start from my dream.

Shortly thereafter, I decided that anonymous tips and their value would make a much more practical update. Free of charge, I’ll also throw in some quotes I found about anonymity that you might enjoy.

“Never answer an anonymous letter.”

-- Yogi Berra

The leading case on the value of anonymous tips is a U.S. Supreme Court case from 2000, Florida v. J.L.³ In this case, an anonymous caller reported to the Miami-Dade

¹ Adam Thierer is a Senior Fellow and Director for the Center for Digital Media Freedom, a think tank whose mission statement is to “protect America’s sacred First Amendment heritage and promote enlightened public policy regarding all forms of communications.” They’re against governmental controls on media, especially the internet and new technological ways of communicating. I don’t know about all that stuff, but I like the quote – so there you are. If you don’t know who Thomas Paine is, shame on you! You obviously weren’t paying attention in American History 101.

² I know someone who has a lot of trouble saying “unanimous” and “anonymous” out loud right after each other. Can you do it? Now try “cinnamon” and “synonym.” Now realize how stupid you look to everyone around you.

³ 529 U.S. 266 (2000).

police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. Nothing was known about the informant, but when officers responded to the bus stop they saw three black males and one of them was wearing a plaid shirt.

Apart from the tip, the officers had no reason to suspect any of the three males of illegal conduct and they did not observe a firearm or any unusual activity from them. An officer approached J.L. (the man in plaid),⁴ told him to put his hands up on the bus stop, frisked him, and seized a gun from his pocket. The U.S. Supreme Court held that an anonymous tip that a person is carrying a gun, by itself, is insufficient to create reasonable suspicion and allow an officer to stop and frisk a person, so the gun seized from J.L. should have been suppressed.

The main problem in the Court's view with anonymous tips is that that we don't know who is making the claim, why they are making it, or what basis they have for allegedly knowing the information that they are providing to police. Most of you can probably think of someone in this big world who doesn't like you very much. A jilted lover, a defendant you sent up the river, your coworkers, and maybe countless others. Imagine if they could anonymously call in a tip and that tip would give an officer the right to stop you and frisk you. There is no way to tell whether the anonymous tipster is making a valid tip or just causing trouble for someone they don't like very much.

Does Florida v. J.L. mean that anonymous tips are useless? By no means! Hope is alive based on an older ruling by the U.S. Supreme Court in Alabama v. White.⁵

**“I belong to Bridegrooms Anonymous. Whenever I feel like getting married, they send over a lady in a housecoat and hair curlers to burn my toast for me.”
-- Dick Martin**

In Alabama v. White, there was an anonymous tip about something that was going to happen in the future. The tipster told police that White would be leaving a particular apartment at a particular time in a particular vehicle. Further, she would be going to a particular motel. Further still, she would be in possession of cocaine carried in a brown attaché case.

Based on the tip, officers went to that particular apartment⁶ before that particular time⁷ and saw that particular vehicle.⁸ They then observed that particular woman⁹ exit

⁴ The reason we only have initials for “J.L.” is that he was 10 days shy of his 16th birthday and was therefore a juvenile. As a result, initials were used to protect his anonymity. Sometimes life is eerily ironic.

⁵ 496 U.S. 325 (1990).

⁶ 235-C Lynwood Terrace

⁷ Around 1600 hours

⁸ A brown Plymouth station wagon with a broken right taillight. One mystery here is why the broken taillight didn't give a valid reason to stop the car. If I were a betting man, I would theorize that perhaps it was not against the law in Alabama in 1987 to drive with one taillight not working. But all I can tell you for sure is that the broken taillight is not mentioned again in the Court's opinion, so stay focused.

that particular building¹⁰ and enter that particular vehicle.¹¹ They followed her as she took the most direct route to that particular motel¹² and stopped the vehicle just before it entered the parking lot. They asked for consent to search which was given, and an attaché bag was found in the vehicle containing marijuana. The officers also found three milligrams of cocaine in the woman's purse.

The Supremes admitted in their written opinion that this was “a close case,” but upheld the stop based on the anonymous tip. What made the difference? The tipster's ability to predict the suspect's future behavior, according to the Court, “demonstrated inside information – a special familiarity with respondent's affairs.” This is where corroborating the information you get from an anonymous tipster comes in – future behavior is the key. As the Court pointed out, finding a car matching the anonymous caller's description in front of the building gets you nowhere, because “[a]nyone could have ‘predicted’ that fact, because it was a condition presumably existing at the time of the call.”

“People [complain] about losing their anonymity and then get insulted when someone doesn't recognize them from whatever success they've had.”

-- Casey Affleck

There are two Fourth Circuit cases that shine a little more light on the value of anonymous tips. In U.S. v. Elston,¹³ a Roanoke 911 operator received a report that a highly intoxicated driver was leaving the caller's home in a Roanoke housing project, “driving crazy” and headed towards either a Family Dollar store or his own home.¹⁴ She reported that the man's name was Jimmy and gave a detailed description of what he was wearing and the truck he was driving, down to the license plate number. She also told the 911 operator that Jimmy had in his truck a loaded 9mm handgun and three clips of ammunition, and that he had threatened to “let them off in somebody.”

Within minutes, the Roanoke police found the truck parked in a nearby parking lot and ordered the driver out at gunpoint. When officers opened the door to the truck they observed a handgun grip protruding from between the driver's seat and the center console. Not surprisingly, the handgun was a loaded 9mm. “Jimmy” Elston was a convicted felon and was subsequently convicted of unlawful possession of a firearm in Federal Court.

⁹ Vanessa White

¹⁰ I covered this in footnote 6. Pay attention!

¹¹ Supra, at 8.

¹² Dobey's Motel in Montgomery, Alabama.

¹³ 479 F.3d 314 (4th Circuit 2007).

¹⁴ I often face the same dilemma when I leave work – shall I go to the Family Dollar or home today?

The conviction was upheld by the Fourth Circuit. In examining this anonymous tip,¹⁵ the Court looked at several circumstances that made this tip much more reliable than the bare bones tip in Florida v. J.L.:

1. The substantial detail about the individual and criminal activity it described;
2. It disclosed the basis of the informant's knowledge and especially, it indicated that the information was based on her contemporaneous personal observation of the call's subject;
3. The disclosure of the information would enable authorities to identify her if they deemed it necessary to do so since she had told authorities that the suspect had just left her apartment. All the police would have to do is ask the suspect where he had just left to determine who the caller was;
4. The call dealt with an imminent threat to public safety – an individual who had expressly threatened to shoot someone in the very near future.

By contrast, in U.S. v. Reaves,¹⁶ an anonymous caller reported a drug transaction as she was watching it. She advised the 911 operator that she had seen the drug deal involving a sandwich bag and a gun. The caller described the dealer as a black male driving a plum-colored S430 Mercedes and stated he had a small gun with a black top. She did not know the driver of the Mercedes and twice repeated that she wanted to stay anonymous. The caller followed the suspect vehicle for several blocks, giving a contemporaneous “play-by-play” account of turns and direction of travel.

Officers located the vehicle and stopped it solely on the basis of the anonymous call relayed through the dispatcher. The driver, Reaves, immediately raised his hands in the air and said, “I have a gun, man. I have a gun right here in my pocket. Don't shoot me.” The officer ordered Reaves out of the vehicle and recovered the gun and \$2000 in U.S. currency. Reaves was also convicted in Federal Court of possession of a firearm by a convicted felon.

The Fourth Circuit overturned this conviction, however, ruling that the anonymous call did not provide reasonable suspicion for the traffic stop. They stated in part that “[a]lthough the caller's reports of her contemporaneous observations of Reaves' location were accurate and readily confirmable by police, they did not show that the caller had reliable information about any criminal activity on Reaves' part.” Two critical differences between the facts in Reaves and those in Elston were (1) the lack of an imminent threat to public safety, and (2) the lack of any way to identify the informant after the fact to possibly charge them with giving false information had the tip been inaccurate or fabricated.

¹⁵ The Court treated this as an anonymous tip even though the caller had given her name to dispatchers. Her name was Melba Taylor, but she asked dispatchers not to share her name with officers because she was worried that Jimmy would find out that she had reported him.

¹⁶ 512 F. 3d 123 (4th Circuit 2008).

**“The only truly anonymous donor is the guy who knocks up your daughter.”
-- Lenny Bruce¹⁷**

The final case to look at is a very recent North Carolina Court of Appeals case called State v. Hudgins.¹⁸ In Hudgins, a Greensboro officer received a call from dispatch informing him that a man (the caller) was driving his car and being followed by a man armed with a gun. The caller remained on the line with dispatch and described the vehicle in detail and gave contemporaneous updates on their location. The officer advised the dispatcher to have the caller drive to a nearby location so he could intercept them.

When the officer observed the vehicle, he activated his lights and siren and approached the suspect vehicle. When the officer arrived the caller exited his vehicle and identified the driver as the person who had been following him and then re-entered his vehicle and drove away. When the officer ordered the suspect out of his vehicle and frisked him, he soon determined that there was probable cause to arrest for driving while impaired. There was no weapon found in the vehicle or on the suspect.

The Court of Appeals upheld the stop of the vehicle and the Driving While Impaired conviction and pointed to six “indicia of reliability” that existed in this case:

1. The caller telephoned police and remained on the telephone for approximately eight minutes;
2. The caller provided specific information about the vehicle that was following him and their location;
3. The caller carefully followed the instructions of the dispatcher, which allowed the officer to intercept the vehicles;
4. The defendant followed the caller over a peculiar and circuitous route that doubled back on itself, going in and out of residential areas between 2 and 3 a.m.;
5. The caller remained on the scene long enough to identify the defendant to the officer;
6. And (most importantly in your legal adviser’s opinion), by calling on a cell phone and remaining at the scene, the caller placed his anonymity at risk.

**“The unquestioning regurgitation of administration spin through the use of anonymous sources is the fault line of modern American journalism.”
-- Arianna Huffington**

So, looking at these five cases together, what conclusions can we draw?

1. An anonymous tip is not enough by itself to give you reasonable suspicion of criminal activity. Check into it and try to develop reasonable suspicion by observing other suspicious circumstances and activities. Be patient when you

¹⁷ I want to make it clear that this joke has nothing to do with Sarah Palin or any of her children. Sincerely, David Letterman.

¹⁸ 672 S.E.2d 717 (2009).

can. Perhaps you can make a consensual field contact instead of an investigative stop.

2. An anonymous tip PLUS one of the following **IS** probably enough for reasonable suspicion – (A) something that would enable you to determine who the anonymous source is or otherwise puts the anonymity of the source at risk, (B) an imminent threat to public safety,¹⁹ or (C) successful and corroborated prediction by the anonymous source of the FUTURE actions of the suspect.
3. Some other factors to look for in anonymous tip cases (in addition to the ordinary reasonable suspicion cues)²⁰ are the amount of detail given in the tip and whether the basis for the informant's knowledge is given.

We'll close this week with a final word on anonymity from Ms. Manners herself...

“We already know that anonymous letters are despicable. In etiquette, as well as in law, hiring a hit man to do the job does not relieve you of responsibility.”

-- Judith Martin

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¹⁹ This is more than a tip that a person possesses a gun. It is at least an express threat to use the gun. Remember that in situations dealing with imminent serious threats, the balance of reasonableness shifts. See, for example, Mora v. Gaithersburg, MD, 519 F.3d 216 (4th Circuit 2008) and my update on this case last year.

²⁰ (1) LEO's observation of conduct that, in light of his or her training and experience, appears to be criminal, (2) Information the officer receives from other officers, citizens, and informants, (3) the time of day or night, (4) the suspect's proximity to a location, car, home or building where a crime was recently committed or where criminal activity may be taking place, (5) whether the area is a high drug area, (6) the suspect's reaction to the LEO's presence, including flight upon seeing the LEO, (7) the LEO's knowledge of the suspect's prior criminal record and activities if relevant to this stop, and (8) the suspect's flight from the scene of the crime. It takes about 2 or 3 of these to establish reasonable suspicion.