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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE

Respondent,

-against-

LEIGHTON R.,

NO. 87

Appellant.

20 Eagle Street
Albany, New York
October 14, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Leighton R.

3 MS. HAMMOND-OAKLEY: Clara Hammond-Oakley from
4 The Legal Aid Society on behalf of Leighton R.

5 Your Honors, I would request three minutes for
6 rebuttal.

7 CHIEF JUDGE WILSON: Yep.

8 MS. HAMMOND-OAKLEY: Thank you.

9 This case presents an opportunity to reaffirm
10 that in New York State we do not allow the seizure of a
11 person based on an uncorroborated accusation from an
12 anonymous informant.

13 The tipster here was a 911 caller who claimed
14 that my client had just shot at him. However, there were
15 numerous powerful indications that this tipster was
16 unreliable and that his information was not credible,
17 including that he refused to meet with police.

18 JUDGE RIVERA: Did - - - did the lower court
19 decide that there was a reasonable suspicion to stop the
20 defendant, not only based on the tip, but also on the tint?

21 MS. HAMMOND-OAKLEY: No, Your Honor. I don't
22 believe that the lower court did do that. And I believe
23 that the - - - this court's subsequent decision in People
24 v. Nektalov forecloses that particular avenue. The officer
25 at the hearing only testified that the windows were tinted.

1 I don't believe he even said they were excessively tinted.

2 JUDGE RIVERA: Well, I thought he - - - he issued
3 a violation. I can't remember now. I thought he did cite
4 him for the tint.

5 MS. HAMMOND-OAKLEY: He believed that he had
6 cited for - - - him for the tint. However, then he could
7 not find any summons that was actually connected to the
8 summons number that he had written down in his notebook.
9 He never testified to the degree of the tint. He never
10 testified that he was - - -

11 JUDGE RIVERA: But is it a credibility - - -
12 let's say you're wrong that - - - and the court did rely on
13 both the - - - the statement by the officer that they had
14 heard the radio run and they got this information on the
15 radio run, and they had an issue about the tint of the car,
16 is that - - - would that be enough in the record - - -

17 MS. HAMMOND-OAKLEY: I don't - - -

18 JUDGE RIVERA: - - - to support the stop?

19 MS. HAMMOND-OAKLEY: I don't believe that that
20 would be enough in the record under this court's recent
21 decision. Because the officer just stated his conclusion
22 that the windows were tinted and didn't support any
23 underlying facts supporting that conclusion.

24 JUDGE RIVERA: No, I - - - I understand your
25 point about that. But what if the judge thinks as a

1 credibility determination that that is indeed what the
2 officer subjectively believed, that the tint was excessive?

3 MS. HAMMOND-OAKLEY: I mean, I don't think at
4 that point that that's a credibility determination.
5 There's simply not enough information in the record for the
6 judge to make that conclusion. And I would also add that
7 that's a claim that the prosecution seems to have abandoned
8 at this point.

9 JUDGE RIVERA: So - - - I'm sorry?

10 MS. HAMMOND-OAKLEY: That the - - - the
11 respondent - - -

12 JUDGE CANNATARO: Are you saying the record - - -

13 MS. HAMMOND-OAKLEY: - - - seems to have
14 abandoned at this point in the appeal.

15 JUDGE RIVERA: Thank you.

16 JUDGE CANNATARO: Are you saying the record
17 reflects that, or is unclear as to whether or not the
18 defendant was actually issued a summons for excessively
19 tinted windows?

20 MS. HAMMOND-OAKLEY: Yes. Because I believe the
21 officer testified that he thought he had issued a summons.
22 But then when he went into their computer system to look up
23 that summons, there was no summons connected to the number
24 that he had written down in his notebook.

25 JUDGE CANNATARO: Okay.

1 MS. HAMMOND-OAKLEY: So he couldn't show that he
2 had actually issued that summons.

3 JUDGE RIVERA: Well, that means he might not have
4 found it, that doesn't mean he didn't issue it. I get your
5 point about the record.

6 MS. HAMMOND-OAKLEY: Yes.

7 JUDGE GARCIA: Am I - - -

8 JUDGE SINGAS: Have you ever found any cases, or
9 were you able to identify any cases where this court has
10 found that reasonable suspicion couldn't be maintained when
11 the caller was actually the victim of the crime? I know we
12 have cases where we say I've observed something and we've
13 said, look, we don't really know what the basis of
14 knowledge is because they haven't identified what the basis
15 of knowledge is. But in a case where the person calling is
16 actually the one injured, like, I've been shot, have we
17 ever said that that's not enough for reasonable suspicion?

18 MS. HAMMOND-OAKLEY: I - - - I don't think that
19 that exact fact pattern has come up before. I think that
20 this court has had several cases, like, in Moore where the
21 caller had said that there was a dispute involving men with
22 a gun, where basis of knowledge wasn't specifically
23 discussed. And it seems to me like the - - - the obvious
24 basis of knowledge with that would be somebody seeing the
25 dispute happening.

1 I think that the reason that there hasn't been a
2 case about somebody claiming to be a victim in particular
3 is because this is a very unusual situation. Usually,
4 anonymous callers are people who are observing a crime from
5 afar, who maybe are motivated to - - - to maintain their
6 anonymity because they don't want to be involved with the
7 case, maybe because they don't want a future defendant to
8 have their name, their contact information, you know, come
9 after them.

10 JUDGE SINGAS: Do you think that's different,
11 those - - -

12 MS. HAMMOND-OAKLEY: It doesn't - - - it doesn't
13 make any sense here because if - - -

14 JUDGE CANNATARO: It - - - it may be unusual, but
15 isn't it very different? It - - - it - - - to me there's a
16 - - - in terms of questioning the reliability of the - - -
17 of the information.

18 MS. HAMMOND-OAKLEY: Yes.

19 JUDGE CANNATARO: If a person calls and says, I
20 see something illegal happening. I'm standing here on the
21 corner, and I see something illegal happening across the
22 street, as opposed to someone calling and saying I just got
23 shot, and here's a description of the people who shot me,
24 and this is what they're driving, and this is the general
25 area where you can find them?

1 MS. HAMMOND-OAKLEY: Yes. It's very unusual
2 because in that circumstance the only person that that
3 caller is trying to hide their identity from is the police.
4 Right? Because if my client had, in fact, shot at someone
5 who he had beef with, who he had a grudge with, he would
6 know who that person was. And then if the police were
7 called and they said, we have a report that you shot - - -
8 you know, the person who you shot at called, my client
9 would know who that person was.

10 So under these circumstances, the only person
11 that this caller is trying, if - - - if his claim is true,
12 which I do not believe it is, but if it is true, the only
13 person he's trying to hide his identity from is the police.
14 And that is so that he can - - -

15 JUDGE RIVERA: Oh, so let - - - let - - - let's
16 let - - - let me just. So your position is they can't rely
17 on that anonymous tip. Okay. What, if anything, should
18 the officers have done? You get a call that there's
19 someone who says I have been shot, and you've heard the
20 rest of the details - - -

21 MS. HAMMOND-OAKLEY: Yes.

22 JUDGE RIVERA: - - - about their description and
23 so forth. What - - - what should the police do? Nothing?

24 MS. HAMMOND-OAKLEY: Oh, no.

25 JUDGE RIVERA: Okay.



1 MS. HAMMOND-OAKLEY: The police definitely should
2 have investigated this tip. They could have gone to the -
3 - -

4 JUDGE RIVERA: And how would they have done that?

5 MS. HAMMOND-OAKLEY: They could have gone to the
6 scene of this reported shooting, where, in fact, there was
7 an officer - - -

8 JUDGE RIVERA: And - - - and let potentially
9 someone escape who's got a gun and is shooting people?

10 MS. HAMMOND-OAKLEY: No. Because other - - -
11 another officer could find this car and follow it.

12 JUDGE RIVERA: Okay.

13 MS. HAMMOND-OAKLEY: And they could have followed
14 my client and seen if they made any observations that were
15 consistent with my client having just been involved in a
16 shooting.

17 JUDGE CANNATARO: What would - - - what would
18 that be?

19 JUDGE RIVERA: What - - - what if - - - what if
20 they - - - they get to a building, they park, and they go
21 in. Now what? What do you do?

22 MS. HAMMOND-OAKLEY: I think that you are
23 constantly getting information from the rest of the NYPD
24 about whether or not there was actually a shooting.

25 JUDGE RIVERA: And - - - and the victim doesn't

1 want to be found?

2 MS. HAMMOND-OAKLEY: The victim doesn't want to
3 be found. There's no other indication that there was a
4 shooting. You have an officer who's at this supposed
5 shooting location looking around, saying, there's nothing
6 going on here. There's no shots fired here. There's no
7 other witnesses coming up to me and saying, I heard shots.

8 JUDGE TROUTMAN: So you're saying after the crime
9 is over and the person calmly put their weapon in their
10 car, and they drive away. As long as they obey the traffic
11 laws and every other law, there's nothing the police can do
12 about it even if an anonymous person says they're driving a
13 green car, here's their license plate number, here's what
14 the person looks like? They just get to drive away?

15 MS. HAMMOND-OAKLEY: No. I think police can do
16 everything, but they just can't go and seize that person
17 who's being targeted by the anonymous tipster.

18 JUDGE TROUTMAN: What is everything?

19 MS. HAMMOND-OAKLEY: They can go to the scene,
20 they can do investigation, they can follow the car. And
21 then - - -

22 JUDGE GARCIA: What if it's a felony - - - what
23 if it's a felony drunk driving tip? They're going to
24 follow them, and they're driving okay when they're
25 following them. And they're investigating the bar they

1 were in and how much did they drink, and who is this person
2 that called? And then, suddenly they veer off and hit
3 somebody on the sidewalk? Then they can arrest them?

4 MS. HAMMOND-OAKLEY: I think that that example
5 gets into California v. Navarete, which was a case - - -

6 JUDGE CANNATARO: That is Navarete.

7 MS. HAMMOND-OAKLEY: Yes. Which was a case where
8 the court, the U.S. Supreme Court, discussed at length all
9 of the special dangers - - -

10 JUDGE RIVERA: Well, there again, it was a
11 victim. Right?

12 MS. HAMMOND-OAKLEY: That's true. It was a
13 victim. Somebody who said they were almost run off the
14 road. And the U.S. Supreme Court discussed at length all
15 of the special dangers of drunk driving.

16 JUDGE HALLIGAN: But why is that so different?

17 JUDGE GARCIA: Hot firing a car and sticking a
18 weapon in your glove compartment?

19 JUDGE HALLIGAN: Yeah.

20 MS. HAMMOND-OAKLEY: Because it's - - - it's a -
21 - - it's a - - - what is alleged just based on this
22 tipster's claim is a personal dispute between two people
23 that is over.

24 JUDGE GARCIA: Involving a public - - -

25 MS. HAMMOND-OAKLEY: And the tipster - - -

1 JUDGE GARCIA: - - - shooting.

2 MS. HAMMOND-OAKLEY: - - - and the tip - - - the
3 tipster does not allege that there's going to be any other
4 violence. The tipster doesn't even say, quick, go get him,
5 he's - - - went that direction, you know? He's one block
6 away.

7 JUDGE SINGAS: So now we're supposed to look at
8 the demeanor of the caller to make a determination if
9 there's reasonable suspicion?

10 MS. HAMMOND-OAKLEY: No, Your Honor, I do not
11 think that you should look at the demeanor. I think - - -

12 JUDGE CANNATARO: So are you saying that the
13 police need to follow the person and see if they make
14 another - - - do another shooting of someone else?

15 MS. HAMMOND-OAKLEY: No, Your Honor. Because the
16 - - - the information that can elevate something from a
17 level 2 to a level 3 - - -

18 JUDGE CANNATARO: Yeah.

19 MS. HAMMOND-OAKLEY: - - - is conduct that might
20 be innocent in other situations, but that when viewed in
21 conjunction with the tip, is suspicious.

22 JUDGE CANNATARO: Well, I mean - - - but that's -
23 - - that's sort of what I'm struggling with. There - - -
24 there's the tip that alleges a crime by - - - by the
25 alleged victim who may or may not actually be a victim.

1 And information that is moments later, thirty seconds to
2 one minute later, confirmed by the officer who observed
3 people matching that description in the vehicle, matching
4 that description at a location very close to - - - because
5 although the person was a little cagey about who they were
6 and where they were, they do know where the call came from.
7 And - - - and that car was very close to where the call
8 came from.

9 MS. HAMMOND-OAKLEY: Yes.

10 JUDGE CANNATARO: So why isn't that the necessary
11 confirmatory information that gives reliability and raises
12 it to - - - to bar 3 or reasonable suspicion?

13 MS. HAMMOND-OAKLEY: Because - - - because this
14 court has consistently said that there are two dangers to
15 hearsay informants, anonymous or nonanonymous. There's two
16 dangers.

17 There's the danger that you have an informant
18 who's well-meaning but who is passing along, not something
19 that's not first-hand knowledge, it's just suspicion, rumor
20 - - -

21 JUDGE SINGAS: That's not - - - that's not at
22 play here.

23 JUDGE CANNATARO: That's not this?

24 MS. HAMMOND-OAKLEY: That's not this case.

25 JUDGE CANNATARO: Right.

1 MS. HAMMOND-OAKLEY: And - - - and the way that
2 you deal with that fear, though, is that you require the
3 tipster to claim personal knowledge.

4 JUDGE HALLIGAN: Why isn't the claim that "I was
5 shot", personal knowledge?

6 MS. HAMMOND-OAKLEY: That is personal knowledge.

7 JUDGE HALLIGAN: Okay.

8 MS. HAMMOND-OAKLEY: And that's why that prong of
9 Aguilar-Spinelli - - -

10 JUDGE HALLIGAN: Yeah.

11 MS. HAMMOND-OAKLEY: - - - or that very important
12 factor in the totality of the circumstances - - -

13 JUDGE HALLIGAN: Yes.

14 MS. HAMMOND-OAKLEY: - - - is completely
15 satisfied in this case by all of that information. The
16 fact that the clip - - - the tipster claimed he was a
17 victim.

18 JUDGE HALLIGAN: And the other - - -

19 MS. HAMMOND-OAKLEY: The fact that the car was
20 right nearby, he had clearly probably seen my client.
21 Right? Seen what car he was in - - -

22 JUDGE TROUTMAN: So there are things - - -

23 JUDGE HALLIGAN: Then what's missing?

24 JUDGE TROUTMAN: - - - to corroborate?

25 MS. HAMMOND-OAKLEY: So the other issue is that

1 the other - - -

2 JUDGE TROUTMAN: So there's the ability to
3 corroborate?

4 MS. HAMMOND-OAKLEY: The other requirement is the
5 veracity requirement.

6 JUDGE TROUTMAN: Is there an ability to
7 corroborate the tipster, so it's not just an empty call?

8 MS. HAMMOND-OAKLEY: Sorry?

9 JUDGE TROUTMAN: If you can corroborate the
10 veracity - - -

11 MS. HAMMOND-OAKLEY: Yes.

12 JUDGE TROUTMAN: - - - of what the person has
13 said. He says I have personal knowledge - - -

14 MS. HAMMOND-OAKLEY: Yes.

15 JUDGE TROUTMAN: - - - describes the car, tells
16 you the location. So if you're - - - if you're able to
17 corroborate the call, then why isn't it okay?

18 MS. HAMMOND-OAKLEY: Because you're not
19 corroborating anything having to do with the accusation.

20 JUDGE TROUTMAN: So you have to have criminality?
21 You have to - - - you have to corroborate criminality?

22 MS. HAMMOND-OAKLEY: I think you do have to
23 corroborate the criminality, because otherwise you're
24 letting the malevolent tipster - - -

25 JUDGE HALLIGAN: But - - -



1 JUDGE SINGAS: What about the gun?

2 JUDGE CANNATARO: How does that - - - I'm sorry.
3 Go ahead.

4 JUDGE SINGAS: What about the gun? Does the gun
5 corroborate the criminality?

6 MS. HAMMOND-OAKLEY: If they had found the gun
7 before the stop, certainly. But they found the gun at the
8 very end.

9 JUDGE HALLIGAN: But if you have - - - if you
10 have a single criminal act that is completed. Okay?

11 MS. HAMMOND-OAKLEY: Yes.

12 JUDGE HALLIGAN: And you have a tipster who calls
13 in anonymously and says I was shot, here's the corner,
14 here's the car, here's what they look like. Then what
15 corroboration of criminality beyond that, do you need, in
16 your view? Is it that you need predictive criminality
17 going forward?

18 MS. HAMMOND-OAKLEY: No, I don't - - - I don't -
19 - - I think predictive criminality is one - - -

20 JUDGE HALLIGAN: Okay.

21 MS. HAMMOND-OAKLEY: - - - kind of indicia. I
22 think there are others.

23 JUDGE HALLIGAN: So - - -

24 MS. HAMMOND-OAKLEY: I think the other - - - yes.

25 JUDGE HALLIGAN: - - - what would they be?

1 MS. HAMMOND-OAKLEY: For example, in Moore, the -
2 - - the - - - the corroboration required in Moore, that was
3 absent in Moore, it was that police officers showed up at
4 the scene of this dispute involving two men with a gun just
5 minutes after the call and looked around and they saw a man
6 fitting the exact description that the caller had given,
7 but they did not see another man. They saw no dispute in
8 progress.

9 JUDGE HALLIGAN: Okay.

10 MS. HAMMOND-OAKLEY: And they - - - so they said
11 that the tip did not accurately portray the criminal - - -

12 JUDGE HALLIGAN: But - - - but here then, I - - -
13 I thought that they saw the car as described and the
14 individuals as described shortly thereafter. I appreciate
15 that they also - - - the officer on the scene didn't hear
16 the shots. But they did see that, right?

17 MS. HAMMOND-OAKLEY: Yes. And that's just like
18 how in Moore they arrived, and they saw the man with the
19 red hat and the gray jacket and fitting that complete - - -
20 more complete description even than it was provided in this
21 case.

22 JUDGE HALLIGAN: So - - - so what - - - what's
23 missing here? What additional information in the tip would
24 have been sufficient to satisfy the second prong in your
25 view?

1 MS. HAMMOND-OAKLEY: I think that what additional
2 information needed to be corroborated by officers was they
3 needed to corroborate, to some degree, that a shooting had
4 actually occurred or that my client was just involved in a
5 shooting.

6 JUDGE HALLIGAN: Let's - - -

7 JUDGE RIVERA: So if - - - if instead of another
8 officer who's on the scene, apparently right on the scene,
9 had said, yes, there were shots fired. I didn't - - - I
10 didn't see where they came from. But yes, shots were fired
11 in this vicinity. Would that have been enough?

12 MS. HAMMOND-OAKLEY: Yes, absolutely.

13 JUDGE SINGAS: Can I ask one more question,
14 Chief?

15 CHIEF JUDGE WILSON: Of course.

16 JUDGE SINGAS: I'm looking at Moore. And Moore
17 says that the anonymous tip was received of a dispute.
18 Involved a black male with a gun, described as
19 approximately eighteen years of age, wearing a gray jacket
20 and a red hat. To me, that's very different because that -
21 - - there's no information there concerning the basis of
22 knowledge of that person. They're just calling up, saying
23 dispute male, black, and a description.

24 That's very different than here, where they're
25 saying, I've been shot.

1 MS. HAMMOND-OAKLEY: I think it's different in -
2 - - in one aspect, which is that the court didn't discuss
3 the exact words used by the caller in reporting this
4 dispute. It's very possible, though, that the caller said,
5 I'm looking out my window, there's two guys out there
6 fighting. One of them just pulled out a gun.

7 JUDGE SINGAS: But we don't have that
8 information.

9 MS. HAMMOND-OAKLEY: And that that wasn't - - -
10 because the main issue in Moore was the anonymity. That we
11 had this anonymous tipster who could have been fabricating
12 a - - - an allegation of criminal activity out of whole
13 cloth while seeding it with easily observable details that
14 they could see.

15 JUDGE SINGAS: Right. And they're not giving a
16 basis of knowledge for that information. Where I find this
17 case very different.

18 MS. HAMMOND-OAKLEY: I think that the issue in
19 Moore was both potentially basis of knowledge, but
20 obviously veracity. And in my case, we also have veracity,
21 and we have simply nothing that demonstrates that this
22 tipster was telling the truth about the accusation of a
23 shooting.

24 JUDGE SINGAS: Well, I don't understand how - - -
25 what other information there would be. And predictive

1 information when a crime is over is nonsensical in my mind.

2 MS. HAMMOND-OAKLEY: I think that the other
3 information there would be would that - - - be that officer
4 who was posted at the exact intersection that the caller
5 gave, saying - - -

6 JUDGE CANNATARO: So if there's no officer on the
7 scene to say, I heard - - - yes, I heard a shot or no, I'm
8 not aware of a shot. That's it? The - - - you're never
9 going to get enough veracity, indicia of veracity to be
10 able to - - - to - - - to make that stop when you see the
11 people matching the description?

12 MS. HAMMOND-OAKLEY: No. Because the police can
13 do other things in the meantime to try to get from that - -
14 - from that level of I'm at the scene, I have this report,
15 I'm looking around - - -

16 JUDGE HALLIGAN: But meanwhile the car is driving
17 away, which might have folks in it who have just engaged in
18 a shooting, and we don't know what they're going to do
19 next?

20 MS. HAMMOND-OAKLEY: But police officers can
21 follow that car, and if they do anything illegal, then the
22 police officer will have personally observed that and can
23 pull them over and illegal down to the level of weaving in
24 and out of traffic.

25 JUDGE RIVERA: So the - - - so the police - - -

1 so the police follow?

2 MS. HAMMOND-OAKLEY: Yes.

3 JUDGE RIVERA: And they say, ah, I see they
4 didn't - - - they didn't put on their light to make that
5 right turn. I can stop them. Why is that more of a basis
6 than - - -

7 MS. HAMMOND-OAKLEY: I don't - - - I don't - - -

8 JUDGE RIVERA: - - - someone actually calling and
9 saying, I was shot, here's who shot me, here's the
10 direction they're going in, and they're in the following
11 type of vehicle?

12 MS. HAMMOND-OAKLEY: Because we've decided that
13 the police can pull people over for traffic infractions.

14 JUDGE RIVERA: Because they've observed it
15 themselves?

16 MS. HAMMOND-OAKLEY: Yeah. And that's a reliable
17 police officer who we trust saying, I just observed them
18 break the traffic law. Whereas in the other instance it's
19 a unaccountable, unidentified caller.

20 JUDGE RIVERA: But the - - - but - - - but the
21 officer's testimony about the tint? Not reliable?

22 MS. HAMMOND-OAKLEY: No. Because there wasn't -
23 - - he didn't provide any facts supporting that - - - his
24 conclusion that the windows were unlawfully tinted.

25 JUDGE GARCIA: In your view would the Navarette

1 facts which they analyzed under Gates, would they pass
2 Aguilar-Spinelli? Here's what they say - - -

3 MS. HAMMOND-OAKLEY: That's a good question.

4 JUDGE GARCIA: "Showing southbound highway 1 at
5 mile marker 88, silver Ford F-150 pickup, plate number, ran
6 the reporting party off the roadway and was last seen
7 approximately five minutes ago."

8 MS. HAMMOND-OAKLEY: I do not believe that those
9 facts would satisfy Aguilar-Spinelli.

10 JUDGE CANNATARO: It lacks the - - - the - - -
11 the veracity element, doesn't it?

12 MS. HAMMOND-OAKLEY: It lacks the veracity
13 element. Yes. And I think that that's part of why some
14 courts have interpreted Navarette as specifically applying
15 to drunk driving cases, because it is so hard to imagine
16 what - - - how to satisfy that veracity element.

17 JUDGE GARCIA: If we agree with you, Aguilar-
18 Spinelli applies and that it doesn't meet it, and we get
19 Navarette in New York, the officer would have to follow the
20 person who ran that person off the road, allegedly?

21 MS. HAMMOND-OAKLEY: I think that there - - - if
22 - - - if you agree with me and apply this rule, there might
23 be exceptions to the rule. I think that - - - you know,
24 even in J.L. the court described potential exceptions. In
25 LaPena this court described potential exceptions. However,

1 this - - -

2 JUDGE GARCIA: Exceptions based on public safety?

3 MS. HAMMOND-OAKLEY: I would - - - I would leave
4 that to future courts. But I think, you know, the example
5 given in J.L. was what if somebody, an anonymous caller,
6 calls and says that somebody has a bomb? You know? I - -
7 - I think that there could be a situation like that. I
8 think that is not this case.

9 JUDGE GARCIA: And we'd have to draw a line then
10 between somebody who has a loaded gun and just used it, and
11 somebody has a bomb?

12 MS. HAMMOND-OAKLEY: Yes. And I think that - - -

13 JUDGE RIVERA: Or - - - or someone has a loaded
14 gun, they just used it, and - - - and they're continuing to
15 shoot. They're driving down - - - I don't know, pick a
16 street - - - Broadway, and they're shooting up the street?

17 MS. HAMMOND-OAKLEY: Yes. Which I would add
18 would be very unusual to only get one single anonymous call
19 about. And so I think that that's why - - -

20 JUDGE RIVERA: Let's - - - let's go with this.
21 Say you do, but by the time the police officers get there,
22 there's not shooting up the street, right?

23 MS. HAMMOND-OAKLEY: Yes. However - - -

24 JUDGE RIVERA: Like, they don't observe them,
25 because if they observe them - - -

1 MS. HAMMOND-OAKLEY: If they observed them.

2 JUDGE RIVERA: - - - or heard them or some other
3 officer heard them, you're saying that would have been
4 enough?

5 MS. HAMMOND-OAKLEY: Yes, certainly.

6 CHIEF JUDGE WILSON: Thank you.

7 MS. HAMMOND-OAKLEY: Thank you.

8 MS. NECKLES: Good afternoon. ADA Nicole Neckles
9 for the Office of Darcel D. Clark. May it please the
10 court.

11 I believe counsel's argument today here, maybe I
12 misunderstood it, seems to be that she's accepting that the
13 personal observation that the person saying I called
14 satisfies the basis of knowledge prong. But she's now
15 saying that we need confirmation for the veracity that goes
16 to the criminality.

17 And this court has never held that.

18 JUDGE RIVERA: Well, that's - - - that's - - -
19 that's the two-prong test.

20 MS. NECKLES: Yes.

21 JUDGE RIVERA: That's her argument.

22 Your argument is that somehow, as I understood
23 your briefing, you'll correct me if I'm wrong, that somehow
24 those two prongs collapse when it's a - - - it's a victim.

25 But I have a question for you.

1 MS. NECKLES: Yes.

2 JUDGE RIVERA: Anybody can call and say I just
3 got shot.

4 MS. NECKLES: Yes.

5 JUDGE RIVERA: Anybody.

6 MS. NECKLES: Certainly, Your Honor. And we
7 accept - - - we acknowledge that that is a concern. What
8 we would say is that the answer to that concern is not
9 constraining the police officers from being able to conduct
10 timely investigations of credible claims.

11 JUDGE RIVERA: No, no. The question is not about
12 constraint or not constraint. It's about the rights of the
13 individual. That's - - - that's what we're talking about.

14 MS. NECKLES: No, Your - - - but the rights of
15 the individual - - -

16 JUDGE RIVERA: Not the - - - not the caller,
17 obviously.

18 MS. NECKLES: No, no, no.

19 JUDGE RIVERA: We're talking about the potential
20 defendant.

21 MS. NECKLES: But what we'd say is the rights of
22 the individual is balanced, right, against the law
23 enforcement's need to act.

24 JUDGE TROUTMAN: How so?

25 MS. NECKLES: I'm sorry?

1 JUDGE TROUTMAN: How do you balance those rights?

2 MS. NECKLES: Well, I think we look at here.
3 That what information did the officer have? Right? He has
4 a call saying there's been a shooting. Not just that
5 somebody has a gun, but somebody just shot. That there's
6 an injured citizen, and that they're fleeing in a car, a
7 white Mercedes with two individuals.

8 JUDGE HALLIGAN: If there had not been the
9 allegation that - - - that he had been shot, would it be
10 sufficient in your view?

11 MS. NECKLES: I - - - I mean, I think it would be
12 weaker because if - - - well - - -

13 JUDGE HALLIGAN: So what is it - - -

14 MS. NECKLES: - - - that he had been shot at? If
15 he had, I think it would be sufficient if he had been shot
16 at.

17 JUDGE HALLIGAN: No, no. If - - - if - - - yes.
18 I - - - they shot at me, and they barely missed me.

19 MS. NECKLES: Right.

20 JUDGE HALLIGAN: They shot at me, and they got
21 me.

22 MS. NECKLES: Right.

23 JUDGE HALLIGAN: Still, I think in both cases, a
24 claim of - - - of being a victim.

25 MS. NECKLES: Right.

1 JUDGE HALLIGAN: So what is it about that
2 particular claim that means that - - - that the police
3 don't - - - don't really have to look further?

4 MS. NECKLES: Well, we're not saying, Your Honor,
5 that it makes it per se. Right?

6 JUDGE HALLIGAN: No. But I do think you're
7 suggesting it weighs heavily.

8 MS. NECKLES: Yes.

9 JUDGE HALLIGAN: So why - - - why is that? I - -
10 - I mean, I suppose someone could just as - - - as, you
11 know, an anonymous tipster could make up any allegations,
12 and that's what drives the concern, right? An anonymous
13 tipster could do the same about a claim that they were shot
14 or shot at or something like that. So - - - so why - - -
15 why is it particularly credible in your view?

16 MS. NECKLES: Well, what we're saying, Your
17 Honor, in these situations, reasonable suspicion, probable
18 cause - - -

19 JUDGE HALLIGAN: Yeah.

20 MS. NECKLES: - - - it's not about a certainty.
21 It's about probabilities. Right? Is it more possible that
22 where you have an information of somebody saying, I have
23 been personally injured. I have - - - you know, I have - -
24 - that is more possible.

25 JUDGE HALLIGAN: But what - - - but I'm just

1 trying to grapple with why that is the case in your view.
2 Is it because we think that - - - that we - - - we can't
3 quite imagine somebody would make that up? Is there
4 something else about it? What - - - what gives it
5 resonance for you?

6 MS. NECKLES: I - - - I don't think - - - I think
7 the - - - the idea is the court looks at that basis of
8 knowledge prong. They say, can we - - - can we say - - -
9 without more, can we say where somebody is speaking on
10 personal knowledge, it's more likely that what they are
11 saying may be true?

12 JUDGE RIVERA: But if - - - but if - - -

13 MS. NECKLES: And if - - -

14 JUDGE RIVERA: - - - but if - - - but if the
15 assertion that they're making is that they have been shot -
16 - -

17 MS. NECKLES: Right.

18 JUDGE RIVERA: - - - it does seem to beg the
19 question of why are you unwilling to say who you are? Why
20 are you unwilling to assist the police in getting you
21 medical attention? Why are you not responding to the
22 police? It does put in question the veracity of the
23 assertion, no?

24 MS. NECKLES: It certainly does, Your Honor. But
25 here there are many reasons why somebody might not, even a

1 victim, may not want to come forward. We don't know if - -
2 -

3 JUDGE HALLIGAN: But there are other aspects of
4 the record regarding the exchange about being shot that
5 don't make a lot of sense. Right? He says he's going to
6 the hospital. Then he says that - - - you know, he - - -
7 he - - - there's no record that he actually goes to the
8 hospital. There's a lot of back and forth, which from the
9 record raises a lot more questions than it answers from - -
10 -

11 MS. NECKLES: Right.

12 JUDGE HALLIGAN: - - - one read.

13 MS. NECKLES: Well, we would say it's raises
14 questions - - -

15 JUDGE RIVERA: Because he seems to know - - -

16 MS. NECKLES: - - - after the fact.

17 JUDGE RIVERA: - - - he seems to know who the
18 person is but doesn't give the name.

19 MS. NECKLES: That is true. But he - - - he
20 doesn't give a name. The fact that he knows the exact
21 address - - -

22 JUDGE HALLIGAN: He says he doesn't know his
23 phone number.

24 MS. NECKLES: He doesn't know his own phone
25 number.



1 JUDGE HALLIGAN: Yeah. That's a - - - an unusual
2 response.

3 MS. NECKLES: But I think he - - - he's given,
4 Your Honor, that I've been shot. He's given his location
5 for where he's shot. His location is confirmed - - -

6 CHIEF JUDGE WILSON: He actually gave two
7 different - - -

8 MS. NECKLES: - - - it's corroborated.

9 CHIEF JUDGE WILSON: - - - didn't he give two two
10 different locations about where the shooting was? One in
11 the first call and one in the second?

12 MS. NECKLES: But I think for the stop, we have
13 to look at the first call, right?

14 JUDGE CANNATARO: Well, you know, to say he - - -

15 MS. NECKLES: That's subsequent information, Your
16 Honor.

17 JUDGE CANNATARO: To say he's giving his location
18 is a little bit misleading, I think, because what he's
19 really giving is the location of where the police can find
20 the people who he's fingering for the act.

21 MS. NECKLES: But he's there, Your Honor. The
22 911 call - - -

23 JUDGE CANNATARO: Well, he said he was there.

24 MS. NECKLES: - - - placed - - -

25 JUDGE CANNATARO: And it turns out that later on

1 that that was roughly confirmed that he was in the area.
2 But you know, I think it's very important, especially for
3 your - - - for your argument in this case that we only look
4 at what the police knew at the moment. Right? Not what
5 they learned after the fact.

6 MS. NECKLES: Right.

7 JUDGE CANNATARO: And in that regard, it seems to
8 me like the information that he was providing wasn't
9 necessarily to confirm his identity or to bolster his
10 veracity or anything like that. It was to let the police
11 know where they could find the people who he says committed
12 the crime.

13 MS. NECKLES: I think he - - - when he - - - the
14 first thing he said is I have been shot. And the - - - as
15 we look at the call, and we - - - we listen to the things
16 that he said, I - - - I think he wants to, A, he's
17 expressing the nature of the - - - the crime that has
18 occurred.

19 JUDGE CANNATARO: He wants to aid? I mean - - -

20 MS. NECKLES: Well, no, I said he's - - - no, no,
21 no. I misheard.

22 JUDGE CANNATARO: All right.

23 MS. NECKLES: I said he - - - expressing, telling
24 them what has occurred. What is the crime?

25 JUDGE CANNATARO: Yeah.

1 MS. NECKLES: It's, I've been shot at. And yes,
2 he's focused on making sure they - - - they catch the
3 person. But that's, I think, any victim might be, you
4 know, concerned about - - -

5 CHIEF JUDGE WILSON: Don't you think some of - -
6 -

7 MS. NECKLES: - - - making sure the person was
8 caught.

9 CHIEF JUDGE WILSON: Don't you think some of
10 these facts really cut against his credibility, that is, he
11 says - - -

12 MS. NECKLES: I'm sorry?

13 CHIEF JUDGE WILSON: Don't - - - don't many of
14 the things he says cut against his credibility? That is,
15 he says, I've been shot, but I don't want an ambulance.
16 I've been shot, but I don't want to go to the hospital.
17 I've been shot, well, now I'm getting into an Uber and
18 going to a hospital. I've been shot, I don't know my own
19 phone number, but I know the street address of the person
20 who shot me, but I'm not telling you the name of them.

21 All this makes it seem as if this is fabricated
22 for the purpose of getting the police to go stop that car
23 and get the gun.

24 JUDGE CANNATARO: Ending with I was shot in Mount
25 Vernon.

1 MS. NECKLES: Well, as you said, the Mount Vernon
2 comes afterwards. But Your Honor, the question is, should
3 the officers have investigated this car? Is there enough
4 here that a reasonable person - - -

5 JUDGE RIVERA: But yes - - -

6 MS. NECKLES: - - - getting that information - -
7 -

8 JUDGE RIVERA: Well, I don't - - -

9 MS. NECKLES: - - - have investigated.

10 JUDGE RIVERA: She's not even taking the position
11 that you don't investigate. That was one of the first
12 questions I asked.

13 MS. NECKLES: Yes.

14 JUDGE RIVERA: The question is whether or not the
15 investigation in this case, under these facts, given what
16 the officers knew and what the tipster said, can include -
17 - - lawfully can include a stop? That's the question.

18 MS. NECKLES: Right. And we - - - we believe it
19 can. That there's enough here that a reasonable officer,
20 getting such a call from a - - - a said person that's a
21 victim, and then he corroborates within thirty seconds,
22 Your Honor. Thirty seconds to a minute. He sees the car
23 leaving from the location that he believes the - - - the
24 shooting happened. And you know - - -

25 JUDGE TROUTMAN: So is the timing - - -

1 MS. NECKLES: - - - but for the stuff that
2 happened - - -

3 JUDGE TROUTMAN: - - - that the car is seen a
4 corroborating factor?

5 MS. NECKLES: We - - - we - - - yes. We believe
6 that the contemporaneous nature of - - - from the time of
7 the call to seeing the - - - the car, seeing that it has
8 the two occupants, that certainly aids in the veracity of
9 the officer being able to credit the call.

10 JUDGE RIVERA: But that is also true of an
11 anonymous tipster who is fabricating, right? Of course,
12 they're going to tell you where you're going to find them.

13 MS. NECKLES: Right.

14 JUDGE RIVERA: And they're going to do - - -
15 they're there right now. You can go there right now, and
16 you will find them.

17 MS. NECKLES: Yes. Again, Your Honor, as we
18 said, the answer to that fabricating or that person, is not
19 to constrain officers, to stop them from engaging in
20 necessary investigations of ongoing or emergent - - - a
21 recent criminality.

22 JUDGE RIVERA: But again, no one's saying they
23 can't investigate.

24 MS. NECKLES: A recent criminality.

25 JUDGE RIVERA: I think she's arguing, yes, do a

1 full investigation, please. But the question is whether or
2 not that can include, under these facts - - -

3 MS. NECKLES: Right. And I think - - -

4 JUDGE RIVERA: - - - stopping the driver,
5 stopping that car.

6 MS. NECKLES: - - - I think Your - - - Your Honor
7 asked her what should the police have done?

8 JUDGE RIVERA: Right.

9 MS. NECKLES: And our position is what they did
10 here is what they should have done.

11 JUDGE CANNATARO: Counsel - - -

12 MS. NECKLES: That the police to - - -

13 JUDGE CANNATARO: - - - to go back to your
14 opening statement. Let's assume your characterization of
15 your adversary's argument is correct and that she conceded
16 and - - - you know, she - - - she framed it in - - - in the
17 rubric of Aguilar-Spinelli. She conceded reliability, but
18 she said what the problem here is, it's the second prong
19 that's missing, the veracity. Do you agree?

20 I think I know where you stand on the
21 applicability of Aguilar-Spinelli. But if we - - - if
22 Aguilar-Spinelli was in play here, do you agree that
23 there's a problem with veracity? And if not, what is the
24 evidence that bolsters the veracity prong?

25 MS. NECKLES: No. We - - - I would say there's

1 no problem in the veracity. That we've never required
2 corroboration of the veracity of - - - from criminality.
3 My understanding is you either have personal observation,
4 or when there is no personal observation, then you may have
5 - - - you require corroboration of the criminality. But
6 that goes to the basis of knowledge prong. If - - -

7 CHIEF JUDGE WILSON: So I just want to be clear.
8 I go get a burner phone. I know what Judge Cannataro looks
9 like. I know what kind of car he drives. I know his
10 license plate number. And I know on Friday when he's going
11 to be leaving court. And two minutes after that, I call
12 and say, here's what you got to look for. I don't actually
13 know his home phone number, so maybe I don't provide that.
14 But I assume from your point of view that doesn't actually
15 make a difference.

16 MS. NECKLES: In terms of - - -

17 CHIEF JUDGE WILSON: The lack of the phone
18 number.

19 MS. NECKLES: Correct. I - - - I think - - -

20 CHIEF JUDGE WILSON: So what - - - is that what
21 we want the police to do? To stop Judge Cannataro because
22 I make a phone call - - - oh, and I say I've been shot.

23 MS. NECKLES: I think the - - - the reason - - -
24 the reasonableness of the officer's conduct - - -

25 CHIEF JUDGE WILSON: And he's got no gun in the

1 car, so he's just - - - his rights are violated, but that's
2 the end of it.

3 MS. NECKLES: No. But Your Honor, it would be a
4 brief investigatory stop. The officer here intended - - -
5 he believed there was a victim a block away. He intended
6 to just get him to come and do - - -

7 CHIEF JUDGE WILSON: It - - - presumably, the
8 Albany police officer would believe me, too?

9 MS. NECKLES: I would say that that - - - it's
10 reasonable for the officer to make that - - -

11 JUDGE CANNATARO: Well, this wasn't a brief
12 investigatory stop. This is a stop that culminated in an
13 arrest because of what happened. But the question we have
14 to decide is, was the intrusion ab initio justified?

15 MS. NECKLES: And we argue it was. That under
16 the totality of the circumstances test, it certainly was.
17 Under Aguilar-Spinelli it was. It may not have risen to
18 the level that - - - of a probable cause - - -

19 CHIEF JUDGE WILSON: Oh, I - - - I forgot to add
20 that also Judge Cannataro and I disagreed on some case on
21 Thursday, and so I said that I had a beef with him.

22 JUDGE CANNATARO: We have beef.

23 CHIEF JUDGE WILSON: We have beef.

24 MS. NECKLES: What I - - - I would just say, Your
25 Honor - - -

1 JUDGE RIVERA: We're old enough that it's a beef,
2 by the way.

3 MS. NECKLES: - - - we want - - - I'm old enough
4 to - - - to know beef.

5 We definitely want officers to have the
6 flexibility to engage in the type of investigation that
7 happened here. Under my - - - my colleague's theory, the
8 officers here should have let this car continue going - - -

9 JUDGE RIVERA: Do you - - - do you agree - - - do
10 you agree if the person had just - - - if the tipster had
11 just called and said there was a shooting, that that would
12 have provided the - - - the legal basis for the stop? Not
13 said I've been shot.

14 MS. NECKLES: Again, that - - - that would be - - -
15 - we would need some more facts I think to be - - - for me
16 to say that. If it just says there's a shooting and we
17 don't know the basis of that knowledge, there's nothing.
18 And that's where they would say, if you don't say, I
19 actually saw it?

20 JUDGE RIVERA: I just saw a shooting.

21 MS. NECKLES: Okay. And then - - -

22 JUDGE RIVERA: By - - - by someone, two men,
23 black men in a white Mercedes driving on whatever street.

24 MS. NECKLES: Then I will say it's enough. He
25 says I have just seen a shooting. We have that personal

1 observation that the - - - the officer can credit and act
2 appropriately on that. And so - - -

3 JUDGE RIVERA: Well, then it's quite the heyday
4 for anyone who wants to fabricate.

5 MS. NECKLES: Again, Your Honor, as I said, that
6 is a concern. Even under Aguilar-Spinelli there would be a
7 concern about a fraudulent tipster. But there's no way to
8 protect - - -

9 JUDGE RIVERA: Well, that's why the test exists,
10 right? It exists because of that concern.

11 MS. NECKLES: But it does not - - -

12 JUDGE RIVERA: Certainly, we've said these are
13 the most suspicious grounds are when you have an anonymous
14 tip. We're not talking about a tip from someone that's
15 known. Right?

16 MS. NECKLES: Right.

17 JUDGE RIVERA: It's the anonymity of it. And in
18 this case, I don't know how much more obvious it could be
19 that the gentleman wishes to remain anonymous.

20 MS. NECKLES: There were - - - there are reasons
21 for that, Your Honor. But I mean, here, we - - - we, of
22 course, argue on - - - on appeal that this caller is an
23 identifiable caller, that he's not really anonymous.

24 JUDGE RIVERA: He's identifiable? I thought they
25 tried to find him and couldn't.

1 MS. NECKLES: I think they - - - we would present
2 that if the police really wanted to, given the fact that
3 they had his phone number - - -

4 JUDGE RIVERA: Oh, he didn't really want to?

5 MS. NECKLES: I don't - - -

6 JUDGE RIVERA: Although the officer described
7 several attempts.

8 MS. NECKLES: I think after - - - in terms of for
9 the shooting, but after the fact that they realized they
10 had the gun possession and they - - - a decision probably
11 was made to just proceed on that prosecution and not the -
12 - -

13 JUDGE CANNATARO: But he - - - the caller is
14 unidentified in the record. Right?

15 MS. NECKLES: I'm sorry?

16 JUDGE CANNATARO: There's no indication in the
17 record that we know who the caller was?

18 MS. NECKLES: Well, we have a name, and we have a
19 phone number. And I think if truly we had wanted to, that
20 - - - that - - - that other investigative steps could have
21 been taken with that information that could have yield the
22 actual identity. But - - -

23 JUDGE RIVERA: You wouldn't - - - you wouldn't
24 want to find the victim to have them potentially testify?

25 MS. NECKLES: I mean, it's as you said, after the

1 fact. After the fact it became clear that this is an
2 individual that does not want to participate.

3 JUDGE RIVERA: Well, I mean, isn't this - - -
4 isn't this argument, of course, the dissenting of it, that
5 took to task the majority on this. Isn't this argument
6 that we don't have to worry about these anonymous tipsters
7 because you can actually find them?

8 MS. NECKLES: Right. And as I said, I - - - I
9 believe the record isn't clear - - -

10 JUDGE RIVERA: But isn't the opportunity to be
11 able to find them, is that you might actually go and try
12 and find them?

13 MS. NECKLES: No. I think that the record is
14 unclear as to at what point did we say, you know what,
15 we're going to abandon the shooting call because we found a
16 gun. We're just going to go forward on the gun possession,
17 and - - -

18 CHIEF JUDGE WILSON: Instead of an attempted
19 murder charge?

20 MS. NECKLES: Where you have a - - - a victim
21 that apparently is not - - - you know, is not willing to -
22 - - to come forward. And there may be various reasons for
23 that, valid, that has nothing to do - - -

24 JUDGE RIVERA: You mean like - - -

25 JUDGE CANNATARO: So they're honoring the

1 victim's wishes not to be involved when they could have an
2 - - - an attempted murder charge?

3 MS. NECKLES: Your Honor, I - - - I think the
4 question is whether the - - - the police had information
5 here about a shooting that has happened on the street at
6 the time of the stop, which was in close proximity. They
7 do not know - - -

8 JUDGE RIVERA: Your - - - you red light is on.

9 MS. NECKLES: What's happening?

10 JUDGE RIVERA: Could you just, maybe for one or
11 two sentences, address the search of the car?

12 MS. NECKLES: Oh, definitely, Your Honor.

13 JUDGE RIVERA: And the search of the glove
14 compartment?

15 MS. NECKLES: So we would say the search of the
16 car was permissible. There was consent to search - - - for
17 the search. The - - - the defendant told - - - without
18 being asked, the defendant told the officer you can check
19 the car. Check in the car - - -

20 JUDGE TROUTMAN: What about the locked box?

21 MS. NECKLES: Well, the - - - we would - - - it's
22 twofold. We say the consent would include the glove
23 compartment. At the time the officer goes to check, he
24 doesn't know that this is locked. Right? And we would say
25 he can certainly pull on it and look to see if it's open.

1 Once he pulls on it, he says it creates a gap. And through
2 that he both saw a gun and smelled the distinctive odor of
3 gunpowder. At that point, we say the officer had given and
4 - - -

5 JUDGE RIVERA: So it's - - - it's not consent to
6 go into the locked glove compartment. It's - - - it's
7 because within that scope of consent, he can try and open
8 it - - -

9 MS. NECKLES: Yes.

10 JUDGE RIVERA: - - - and if it's open, go in.
11 And when he does that, it's locked, but he then says, well,
12 I could - - - there was a gap. I could see and I could
13 smell the gunpowder.

14 MS. NECKLES: Exactly.

15 JUDGE RIVERA: I saw the gun. I could smell the
16 gunpowder.

17 MS. NECKLES: Right.

18 JUDGE RIVERA: And it's that - - - it's that
19 observation that then allows him to take the key and open
20 it?

21 MS. NECKLES: I - - -

22 JUDGE RIVERA: And take possession of the gun?

23 MS. NECKLES: With - - - yes. And those were
24 affirmed findings, Your Honor, that the - - - the
25 suppression court credited the officer's testimony and

1 credited the fact that when he attempted to open the glove
2 compartment, that the crack - - -

3 JUDGE RIVERA: Created a gap?

4 JUDGE CANNATARO: So that's beyond our review, is
5 what you're saying?

6 MS. NECKLES: Yes. And we would say that - - -
7 that - - - that those things could - - - gave us probable
8 cause for the search. And we would ask this court to
9 affirm.

10 CHIEF JUDGE WILSON: Thank you.

11 MS. NECKLES: Thank you.

12 MS. HAMMOND-OAKLEY: So Your Honor, if I could
13 begin?

14 Respondent says that the answer to the fear of
15 fabrication is not to constrain the police. That's the
16 only response to the fear fabrication. That's what this
17 court did in DiFalco when it set out very strict rules for
18 relying on even a known informant's information. And
19 that's what you need to do if you want to prevent reliance
20 on anonymous informants or otherwise potentially
21 malevolent, dishonest informants at the reasonable cause
22 standard too. You need to say that even when the police
23 have certain information, that that is not necessarily
24 enough for them to go and do an intrusive stop as a result
25 of it.

1 I would also like to briefly address the
2 identifiable issue. I think that the respondent is giving
3 very short shrift to the NYPD in this case, which is not
4 something I'm usually arguing for. This officer testified
5 that he called this phone number for days, multiple times a
6 day. He testified that he called hospitals in all of New
7 York City, all the boroughs, I believe, maybe not Staten
8 Island. But he said all of New York City and also Yonkers
9 to look for this person. They were trying to find this
10 person. They wanted to speak with them to see if they
11 could make out more than just mere weapon possession,
12 especially because they actually had two people in that car
13 and the gun was found in a locked glove compartment. This
14 was not my client's car. And so they had a strong
15 motivation to find this person who could corroborate
16 further a allegation of gun possession.

17 I would also like to talk about the search, but
18 if I could just briefly discuss the importance of personal
19 observations here. I have certainly conceded that this
20 tipster said that he had a personal basis for his
21 knowledge, his personal observation. The issue is that
22 under respondent's sort of quasi Aguilar-Spinelli test or
23 the totality of the circumstances test, they're saying that
24 that's all that matters. But that's not all that matters.

25 This court has said repeatedly that we also have



1 to have something to show that the accusation is truthful,
2 and we have nothing to show that that claim of a crime is a
3 truthful claim.

4 As to the search, Your Honor, at the time that
5 this police officer was in the car in front of the glove
6 compartment, the reliability of this tip had had the rug
7 pulled out from underneath it. At this point, what the
8 officer had a report of was a shooting. He didn't have any
9 location for it other than that it was somewhere in Mount
10 Vernon. He didn't have any time for it other than that it
11 was at some point prior to the call. And the caller also
12 at that point had refused to give his name, refused to give
13 his current location - - -

14 JUDGE SINGAS: And do you think that's unusual?
15 That somebody that's shot, let's say, in a drug deal gone
16 bad or in a gang war, do you think it's unusual that they
17 call the police and say, look, I've been shot. I'm not
18 giving you my name. I'm not telling you where I live. I'm
19 not telling you anything. This is who did it.

20 Like, what's your basis of knowledge for saying
21 that that's unusual?

22 MS. HAMMOND-OAKLEY: If it's not unusual, then I
23 think that it would certainly be unusual for the police to
24 then go and take the kind of intrusive seizure action that
25 they did in this case. Instead, that kind of tip should be

1 treated like what it is, which is a lead for police to
2 investigate further. And they can then go look and try to
3 see, you know, did the shooting happen? Are there other
4 witnesses? Are there videos? Like, what else can we bring
5 into this to prove this case?

6 Because even if they go and find the subject of
7 the tip, even if they go and arrest the subject of the tip,
8 they don't have a case at that point.

9 JUDGE CANNATARO: But it's not a lead. It's - -
10 - it's not suspicion of criminal activity. It's a report
11 of a criminal act that has taken place. It has to be
12 something more than a lead. And I get, we're struggling to
13 figure out exactly where it fits on the spectrum. But it's
14 - - - it's - - - it's a report of a crime that we all agree
15 that the police have to act on.

16 MS. HAMMOND-OAKLEY: Yes. And I would direct
17 Your - - - Your Honor's attention to People v. Benjamin,
18 which discusses this. Which is that when the police get a
19 tip, they are dutybound to investigate it. They can go to
20 the scene and at that point they look around and see, is
21 there anything here that lines up with that report of
22 criminality. In People v. Benjamin, it was seeing somebody
23 in a crowd of people that they had gotten a call that
24 people had guns reaching behind his waistband, which the
25 court said was a telltale sign of gun possession.

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These kinds of tips can bring the officers to the scene. They could have gone to my client's house. The - - - the address that the tipster gave. They could have gone to the scene of the reported shooting. They could have followed the car. It just limits that - - - them from taking that additional intrusive step of stopping my client's car.

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Leighton, R. v. People, No. 87 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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