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IN THE SUPREME COURT OF THE UNITED STATES

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LORENZO PRADO NAVARETTE :

AND JOSE PRADO NAVARETTE, :

Petitioners : No. 12-9490

v. :

CALIFORNIA :

- - - - - x

Washington, D.C.

Tuesday, January 21, 2014

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

APPEARANCES:

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

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

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

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P R O C E E D I N G S

(1:00 p.m.)

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

Mr. Kleven.

ORAL ARGUMENT OF PAUL R. KLEVEN

ON BEHALF OF THE PETITIONERS

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

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

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

CHIEF JUSTICE ROBERTS: So if the tip -- if the tip is, is this car is driving by and throwing bombs out the window, okay, every, you know, whatever, 500

1 yards, the police find the car, they have to wait until
2 they see the person actually throw a bomb out the window
3 themselves before pulling them over?

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

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

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

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

22 MR. KLEVEN: Well, there is that exception,
23 Your Honor. And in Florida-J.L. it said that it was
24 not, the Court said that it was not required on the
25 facts of that case to speculate about a situation where

1 such a serious danger --

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

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

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

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

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

24 MR. KLEVEN: Again, if all they have is an
25 assertion by the -- by the tipster that this is the name

1 and the address, if the officers can somehow, again, by
2 caller identification or some other method verify that
3 in fact that is the person so that somewhere down the
4 line that person will be held accountable for a false
5 tip, then it can be treated differently.

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

12 MR. KLEVEN: No, Your Honor. If all they
13 have is a number, then they are not going to be able to
14 use that as a basis for --

15 CHIEF JUSTICE ROBERTS: Isn't that all
16 caller ID gives you?

17 MR. KLEVEN: Well, with caller ID, if they
18 are somehow able to verify, not just that this is coming
19 from this phone, but that in fact there's a particular
20 person there, if they can identify the location, that
21 sort of thing. As the -- as the tip gets more and more
22 like the known informant in the Adams case, then the
23 officers can take more solace in the fact that that
24 person is going to be able to be held responsible. In
25 Adams, of course, there's a situation where there is a

1 known informant who can be arrested immediately if, in
2 fact, the tip turns out to be false. The problem with
3 so many of these cases, with the 911 tape -- 911 caller,
4 is that even if -- is that there's not going to be any
5 sort of accountability even if they do manage to
6 identify the person in terms of showing the tip is false
7 where the allegation, for example, is weaving. There's
8 no way to prove --

9 JUSTICE ALITO: If we transport the standard
10 that applies outside of the vehicle context to this
11 context, what would happen in this situation? A person
12 calls up and says, This is my name, this is my address
13 and it's, it's not blocked by caller ID, so the 911
14 operator can see that that's the name, that's the
15 address. The person says: This guy ran me off the
16 road. The police find the vehicle. They drive behind
17 the vehicle for a while. They don't -- they don't see
18 any -- they don't see any violation. So then they
19 think, well, this guy must have lied. So are they are
20 going to prosecute the guy for calling that in?

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

25 JUSTICE ALITO: I mean, your argument goes

1 well beyond. You're saying this has to do with
2 anonymous tips, but it really goes well beyond anonymous
3 tips. It covers tips where you know exactly who called
4 in, and what you're saying is they really can never stop
5 a vehicle no matter what kind of a tip they get, unless
6 they see the vehicle committing an illegal act. That's
7 the argument.

8 MR. KLEVEN: No, Your Honor. I'm sorry.
9 No, I don't think it goes that far, Your Honor. I think
10 as the tip becomes -- as the tip contains more detail
11 and as the tipster becomes more accountable for a false
12 tip, again getting more over toward the Adams v.
13 Kennedy, then at some point the anonymous tip would be
14 or --

15 JUSTICE ALITO: Give me an example of a
16 situation in which the police can pull somebody over
17 after receiving a tip without actually seeing the
18 vehicle commit an illegal act?

19 MR. KLEVEN: I think, Your Honor, in a
20 situation where the caller calls in, says I'm, I've
21 been -- this car is driving erratically. The caller
22 then says, I'm following the car. Now, we're at such
23 and such a location. The vehicle has just done
24 something else that's wrong and they continue to follow
25 up to the point where, okay, I can now see the patrol

1 car coming up, again, where the tipster is putting his
2 or her credibility on the line and becomes more and more
3 accountable towards the Adams v. Kennedy known
4 informant, then if you add that together under the
5 totality of the circumstances, then you will have a
6 situation probably to do it.

7 I think it's going to be rare, and I think
8 it should be rare because it is so easy. As the Court
9 has indicated, the Court has shown skepticism for
10 anonymous tips because the tipsters are able to harass
11 other people without running any risk of being held
12 accountable and it should be particularly skeptical in
13 the case of anonymous tips about erratic driving,
14 because with the ubiquitous cell phones, it's so easy
15 for somebody who's on the road, who's been annoyed by
16 somebody else to just pull out the cell phone and call
17 in a false tip.

18 CHIEF JUSTICE ROBERTS: Do we have any
19 indication that this is a serious problem? The false
20 tips?

21 MR. KLEVEN: Well, there's no empirical
22 evidence in the record. However, it was the same
23 concern that led the Court in J.L. to refuse to adopt
24 the firearm exception, the concern that making it so
25 easy for people to subject others to the harassment of

1 a -- of a stop and -- and potential -- potential search
2 concerned the Court enough that it denied -- it refused
3 to adopt the firearm exception.

4 And in this case, we have a firearm
5 exception -- we have an exception that's being requested
6 that's doctrinally the same as a firearm exception.
7 There -- there is no indication in the record that drunk
8 driving on its own in totality presents a more serious
9 threat to public safety than -- than firearms do. In
10 fact, it --

11 CHIEF JUSTICE ROBERTS: Well, is that -- is
12 that true? I mean, how many people die from drunk
13 driving versus how many people die from firearms?

14 MR. KLEVEN: The most recent -- the most
15 recent statistics show a little more, about 11,000
16 people die from homicides by firearms, and it's usually
17 under 10,000 now that are driving -- dying by drunk
18 driving. And in terms of public safety, approximately
19 two-thirds of the people who die as a result of drunk
20 driving are the drunk drivers themselves. So, in fact,
21 the overall threat to public safety is not as great when
22 you're talking about drunk driving as -- as with
23 firearms.

24 And the Court indicated in J.L. that it was
25 specifically concerned about the serious threat that

1 armed criminals pose to public safety and, despite that
2 serious threat, they denied -- the Court denied the
3 firearms exception. Now, what the -- excuse me.

4 CHIEF JUSTICE ROBERTS: I was just going to
5 say, we have held that the -- the standards are loosened
6 in the vehicle context because your expectation of
7 privacy is diminished when you're out on the road
8 driving along in -- in a vehicle. Does that have any
9 pertinence?

10 MR. KLEVEN: I don't think so in this case,
11 Your Honor, because even though it's diminished as
12 opposed to, for example, in the home, it's -- in J.L.,
13 of course, the person was on a public sidewalk; the
14 person was not in the home. And in Prouse, the Court
15 talked about the fact that in modern day times,
16 people -- a lot of people will feel more of a sense of
17 security, they'll feel more privacy in a vehicle than
18 they would out on the street.

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

22 MR. KLEVEN: Well, Your Honor, in the
23 sobriety checkpoint case, the Court has looked at the
24 intrusion and found that to be at the very rock bottom
25 in terms of intrusion, the fact that somebody is --

1 along with a number of other people, that they have to
2 submit to a brief stop, it has put that on the lowest --
3 on the lowest level. And so it's a -- the Court has not
4 approved any situation where individual vehicles, as in
5 this case, are pulled over without reasonable suspicion
6 that, in fact, somebody in that vehicle is engaged in --
7 in criminal activity.

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

11 MR. KLEVEN: Well, because the -- the
12 intrusion is greater, Your Honor. And the
13 Martinez-Fuentes case and the Brignoni-Ponce case, the
14 Court talked about the very minimal intrusion of the
15 checkpoints as opposed to -- and Prouse talks about this
16 also, that there is a serious intrusion when somebody is
17 pulled over. You have the activation of the emergency
18 lights, you have a siren, you're pulled over possibly in
19 a neighborhood where -- where you're known and people
20 see it, possibly out in the middle of a road in the
21 middle of the night as in the -- the Wells case. And in
22 either circumstance, it is a serious intrusion and one
23 that people are not going to take that lightly. So
24 it's -- it's a different situation.

25 And the Court, again, if they're going to be

1 pulling over individual cars, signaling them out for --
2 for stops which could, under the Court's rules, again,
3 the driver, all the passengers can be ordered out of the
4 car if -- if the Terry standards are met. They can --

5 JUSTICE SOTOMAYOR: White suggested that we
6 don't have an absolute rule with respect to requiring
7 independent corroboration of the actual illegal conduct.
8 In White, the -- the tipster gave future predictive
9 information, but all of it was innocent, somebody
10 driving a car and going to a particular place.

11 Now you're asking us to import that
12 wholesale. Why don't we just stick to our general
13 standard, which is the totality of the circumstances,
14 and look at what failure there is in the logic of the
15 California court below. It -- it looked at the quality
16 of the information regarding the vehicle, which is -- a
17 legitimate tipster will tell you what the vehicle looks
18 like and its license plate or enough information so it
19 can be identified. It looked at the caller actually
20 witnessing the event and giving you enough detail to
21 know that it's not a legal conclusion, but an actual
22 event that suggests recklessness. And corroboration of
23 the -- of the details given by the tipster. Isn't that
24 the application of our traditional test?

25 MR. KLEVEN: No, Your Honor. And that's

1 exactly what the court was looking at in Florida v. J.L.

2 JUSTICE SOTOMAYOR: Well, that's just not
3 true in Florida v. J.L. because the individual didn't
4 match the description completely and there were two or
5 three individuals there, not just one. And so -- and
6 there was no predictive or no other detail other than
7 someone in this general area.

8 MR. KLEVEN: Well, there was no predictive
9 detail, but in J.L., the tip was a young black male in a
10 plaid shirt at a bus stop. Those details were
11 confirmed.

12 JUSTICE KENNEDY: Correct me if -- if I'm
13 wrong. I might be missing something. The tip in J.L.
14 was not a -- did not assert that a crime was being
15 committed, so there was something suspicious. There was
16 no crime in possession of the gun. Or correct if I'm
17 wrong.

18 MR. KLEVEN: Well, it was -- it was
19 possession --

20 JUSTICE KENNEDY: But -- but here -- here,
21 there was -- the report was a crime. Or is that not a
22 correct distinction?

23 MR. KLEVEN: Well, in -- in J.L., they
24 didn't say illegal gun possession, but presumably, the
25 tipster thought it was an illegal gun possession and the

1 officer must have thought it was illegal gun possession.

2 JUSTICE KENNEDY: Well --

3 JUSTICE SCALIA: And it was illegal.

4 MR. KLEVEN: What?

5 JUSTICE SCALIA: It was illegal.

6 MR. KLEVEN: Oh, it was, because he turned
7 out to be under 21.

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

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

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

15 MR. KLEVEN: Well -- but unless -- unless
16 the -- the implication is that the gun possession is
17 illegal, then there's no reason for the officer to --

18 JUSTICE KENNEDY: No, a Terry stop.

19 MR. KLEVEN: Hmm?

20 JUSTICE KENNEDY: You might have had grounds
21 for a Terry stop.

22 MR. KLEVEN: But if -- if the tip calls --
23 if the tips says I'm looking at a case of gun possession
24 that, as far as I know, is perfectly legal, it's like in
25 this case if the tip came in and said: I've just been

1 passed by a car whose -- which was driven very
2 skillfully, there's no point in -- in pursuing the tip
3 in J.L. unless there's some -- some element of
4 illegality.

5 JUSTICE KENNEDY: Well, I -- I think there's
6 a difference, but I think for our purposes we can assume
7 that the cases are comparable in that respect --

8 MR. KLEVEN: Okay.

9 JUSTICE KENNEDY: -- but not comparable,
10 perhaps, in others.

11 MR. KLEVEN: Okay.

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

21 JUSTICE SOTOMAYOR: No reason to believe the
22 caller had personal knowledge.

23 MR. KLEVEN: Pardon me?

24 JUSTICE SOTOMAYOR: No reason to believe the
25 person had personal knowledge.

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

2 JUSTICE SOTOMAYOR: He didn't say that the
3 gun was pulled on him or that -- or how he saw it or how
4 he knew.

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

7 JUSTICE SOTOMAYOR: So you don't think
8 there's something significant about calling up and
9 saying someone forced me off the road?

10 MR. KLEVEN: Well, there is something
11 significant, Your Honor. But, by itself, that just
12 gives the officers some reason to go check and see
13 whether, in fact, there's a chance to corroborate. In
14 the case of an inebriated driver, the fact that the
15 driver is inebriated is concealed in the same way that
16 J.L.'s gun was unless there's some sort of erratic
17 driving going on.

18 CHIEF JUSTICE ROBERTS: What if there's no
19 way for the officer to corroborate the allegation? You
20 know, you see -- see somebody on the street grab a young
21 child, throw her in the trunk of the car, and then take
22 off. And somebody calls with an anonymous tip saying
23 this fellow, you know, in this car has got a child in
24 the trunk. The police can follow the person, you know,
25 for hours and they're not going to see any corroborating

1 evidence. Can they pull that car over?

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

5 CHIEF JUSTICE ROBERTS: So just -- your
6 answer in that case is that the police cannot pull that
7 car over?

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

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

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

25 CHIEF JUSTICE ROBERTS: Well, just in terms

1 of your position, do you think they could pull the car
2 over?

3 MR. KLEVEN: No, Your Honor. I don't think
4 it would change because, again, it's just the -- the
5 seriousness of the claim should not affect whether there
6 is, in fact, reasonable suspicion.

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

9 (Laughter.)

10 JUSTICE SCALIA: I'm -- I'm not sure he gets
11 an A for consistency. I thought -- I thought you said
12 you acknowledged or didn't repudiate the statement in --
13 in our opinion in J.L. that if there was a bomb in the
14 car, that would be something else. What -- what if
15 there's in the car -- the tip is this person has an
16 atomic bomb given him by Al Qaeda; he is driving it into
17 the center of Los Angeles to -- to eradicate the entire
18 city, okay. Let it go?

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

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

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

1 JUSTICE SCALIA: So you see, he's not
2 consistent.

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

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

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

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

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

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

1 MR. KLEVEN: Well, let me start off by
2 saying, if I could, that I don't think the Court needs
3 to reach that question in this case, just as it did not
4 need to reach that question in J.L.

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

7 MR. KLEVEN: Right. Your Honor, I believe
8 that, again, I don't know what particular doctrine the
9 Court would -- would choose, but I think that probably
10 the Court could find some -- some doctrine that would
11 allow it in that circumstance to find it. But it
12 shouldn't be -- it shouldn't be moving toward the
13 sliding scale element in -- that -- that we're talking
14 about.

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

22 MR. KLEVEN: That's right.

23 JUSTICE BREYER: All right. Not concealed
24 here. So that's an obvious difference. I mean, one
25 case it was concealed; this case it isn't concealed.

1 What do you say?

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

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

10 MR. KLEVEN: Right. But the question is,
11 Your Honor, is the person inebriated or not, to take
12 the -- the State's best example. And that -- that
13 issue, that is a concealed element of criminal behavior
14 unless the person is actually driving erratically. If
15 the person is driving erratically when the officers
16 appear, then there's no Fourth Amendment issue and it's
17 clear that they have either reasonable suspicion or
18 probable cause to pull over the vehicle.

19 JUSTICE SCALIA: It seems to me you're
20 willing to accept our allowing -- or allowing the police
21 to stop the car with the atom bomb and even allowing the
22 police to stop the car with the kidnapped girl in the
23 trunk. Once -- you know, once you give away those,
24 we're just arguing about details, where you draw the
25 line. Does -- does drunken driving fall on one side or

1 the other of the line, and some of us may think drunken
2 driving is -- is pretty serious and probably, you know,
3 as serious as having a kidnapped girl in the trunk.

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

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

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

13 (Laughter.)

14 MR. KLEVEN: Excuse me?

15 JUSTICE KENNEDY: Your grade for consistency
16 depends on this answer.

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

23 JUSTICE BREYER: But -- that's why I asked
24 you, and I pressed the point a little bit, because in
25 the beginning of your brief, it says that the anonymous

1 tip, what you say, indicated that a Ford F-150 pickup
2 truck had run someone off the road.

3 MR. KLEVEN: That's right.

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

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

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

14 MR. KLEVEN: I'm not disagreeing with Your
15 Honor.

16 JUSTICE BREYER: No.

17 MR. KLEVEN: What I'm saying is that unless
18 the person is still driving erratically by the time that
19 the officers arrive, then that activity is concealed in
20 the same way that the question of whether J.L. had a gun
21 or not was concealed. You can't -- the officers can't
22 see it and, therefore, there's no reason to treat this
23 case any differently than the case in J.L. They have to
24 be able to see something like erratic driving or
25 something else in order to be able to corroborate that.

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

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

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

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

18 JUSTICE SCALIA: Following the car is going
19 to do them no good as to whether he drove -- drove
20 somebody off the road. They're not looking for a drunk.
21 They're looking for somebody who drove somebody off the
22 road, right?

23 MR. KLEVEN: Right. If they can't see any
24 erratic driving still going on, then where is it going
25 to go? They're not going to prosecute for the reckless

1 driving that allegedly took place 19 miles away and they
2 have followed that car for an additional --

3 JUSTICE SCALIA: They could if the guy
4 admitted it, you know.

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

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

8 MR. KLEVEN: But, Your Honor, the -- the
9 person who's making the claim is -- is nowhere to be
10 found. She's gone. There's -- there's nowhere there.
11 So there's no additional investigation --

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

20 MR. KLEVEN: Well, what I'm saying is, yes,
21 they have to verify in some way so that they have some
22 reason to believe that, in fact, the person that's
23 telling them this is actually the person that is
24 being -- so I'd like to reserve the remainder of my
25 time.

1 CHIEF JUSTICE ROBERTS: Thank you, counsel.
2 Mr. Laurence.

3 ORAL ARGUMENT OF JEFFREY M.K. LAURENCE
4 ON BEHALF OF THE RESPONDENTS

5 MR. LAURENCE: Mr. Chief Justice, and may it
6 please the Court:

7 A police officer may act on an anonymous tip
8 that reports reckless or drunk driving by immediately
9 stopping the vehicle, without waiting to personally
10 observe dangerous driving that could threaten others.
11 An officer can reasonably rely on such a tip because the
12 importance of the governmental interest in protecting
13 the public from the ongoing and immediate threat of
14 drunk driving outweighs the minimal intrusion of a
15 traffic stop.

16 Now, Petitioners argue that -- -

17 JUSTICE SOTOMAYOR: Is every reckless
18 driving drunk driving?

19 MR. LAURENCE: I'm sorry?

20 JUSTICE SOTOMAYOR: Is every reckless
21 driving drunk driving?

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

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

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

13 JUSTICE SCALIA: But not necessarily
14 drunkenness. I think there -- there are a lot of people
15 that get tickets for reckless driving who have not
16 served jail terms for driving drunk. The two are far
17 from synonymous.

18 MR. LAURENCE: Well, I wouldn't say they're
19 synonymous, but I would say that one is the indicator of
20 the other, because while you can --

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

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

25 JUSTICE SOTOMAYOR: Isn't that reckless

1 behavior? So how do you know someone who calls -- my
2 mother, who can't drive above 50, thinks that when I go
3 51 that I'm speeding and reckless. I'm speeding and
4 reckless.

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

12 And I think while the statistics are sparse
13 on this, the Footnote 2 in the government's brief is
14 particularly helpful in this regard in that they note
15 that for calls that are made to 911 centers for -- that
16 are tracked by the States, between 25 and 50 percent of
17 those calls result in arrests. And what that shows is
18 that the public knows what they see when they make these
19 calls. This is a far --

20 JUSTICE SCALIA: And -- and between the,
21 what, 50 and 75 percent they've stopped people without
22 just cause.

23 MR. LAURENCE: Yes, but we are talking about
24 reasonable suspicion. So it doesn't require certainty
25 or probability.

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

3 MR. LAURENCE: That is correct. And that is
4 always a possibility in the reasonable suspicion
5 context.

6 CHIEF JUSTICE ROBERTS: What -- what if the
7 call is, you know, I'm driving. This guy just drove by
8 me. I looked over. He didn't have his seat belt on. I
9 mean, can the police pull that guy over?

10 MR. LAURENCE: No, I don't believe that
11 would be sufficient to pull him over because you don't
12 have any governmental -- you don't have a threat to
13 public safety in that context.

14 CHIEF JUSTICE ROBERTS: Well, there are laws
15 against driving without a seat belt because that
16 protects people's lives.

17 MR. LAURENCE: Certainly, there are laws,
18 and the officer, I guess, would have reasonable
19 suspicion that there is a traffic violation, but I don't
20 know that it would rise to the level of implicating
21 public safety in this context.

22 JUSTICE SCALIA: Well, reckless driving
23 always does, whether it -- whether it's the consequence
24 of inebriation or not.

25 MR. LAURENCE: Yes.

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

4 MR. LAURENCE: Yes.

5 JUSTICE SCALIA: -- that -- that enables the
6 policeman, without observing any of that reckless
7 driving, to stop the car further down the road.

8 MR. LAURENCE: Yes. And provided, of
9 course, that you have the additional details of the
10 description of the car, the location, that you can --

11 CHIEF JUSTICE ROBERTS: I've never
12 understood. What good do those -- you know, let's say
13 that I'm at a party, I don't like somebody there. I see
14 they have a couple of drinks. I know what kind of car
15 he drives. I know the -- I can look at the license
16 plate. I call, you know, ten minutes later. I know
17 where he goes driving home. There's this car. It's a
18 white whatever. It's got this license plate. It's
19 swerving all over the road.

20 MR. LAURENCE: Well --

21 CHIEF JUSTICE ROBERTS: Whether he is or
22 not, the police go up, they pull him over and find out,
23 yes, yes. You know, he fails the breathalyzer and I get
24 my revenge.

25 MR. LAURENCE: The importance of those

1 details is that they allow the officers to confirm that
2 this is a personal observation, which is an important
3 fact that's noted in Gates, that when you have a report
4 of personal observation of illegal conduct, we can take
5 that report more seriously. It's entitled to more
6 credibility than just a bare --

7 JUSTICE BREYER: My question --

8 CHIEF JUSTICE ROBERTS: I was just going to
9 say my point is it need not necessarily be a personal
10 observation of the person operating the car. It may be
11 prior knowledge. And I gather one of the issues we're
12 concerned about is people using this to, you know, exact
13 revenge or -- or do something else having nothing to do
14 with whether or not the person is violating the law on
15 the highway.

16 MR. LAURENCE: Yes, that is true. But if
17 the personal knowledge -- if the officer can use that
18 personal knowledge to confirm, okay, he was correct
19 about the report of the car, report of the location,
20 report of the direction where it's supposed to be going,
21 then you have some indication that the personal
22 knowledge is accurate. As opposed to a bare tip when
23 you're talking about hidden conduct, then you have to
24 look to predicted details. And that takes us into the
25 J.L. context or the --

1 JUSTICE KAGAN: But if I understand you
2 correctly, as long as you can identify the car, you need
3 no specificity as to what the car has actually done. In
4 other words, you know, just saying the driver was
5 reckless is enough. Is that -- is that correct?

6 MR. LAURENCE: Well, I would say that
7 recklessness carries information that is -- has some
8 specificity.

9 JUSTICE KAGAN: What would fail your test?

10 MR. LAURENCE: Well, if a caller calls in
11 and says, I saw him in a bar. He had one drink. He
12 came out and got on the road and ran away. One drink is
13 not going to rise to the level --

14 JUSTICE BREYER: Yes. But you're just
15 saying -- I mean, but his basic point is, on the other
16 side, is these are all variations of the famous white
17 horse defense. You don't know the -- the white horse
18 defense? Your Honor, my client was innocent because at
19 the time of the crime he was in Yugoslavia wearing a
20 white horse -- riding a white horse. And to prove it, I
21 have the horse here in court. You see? I mean, you
22 can't -- it's bootstrapping to put it more succinctly.

23 All you know is that somebody came in and
24 quoted -- and said there was a crime. And that's all
25 you know. And now -- now when -- when are instances

1 where no more than the report that it's a crime, that's
2 reasonable suspicion. That's -- give me some other
3 instances where the courts have upheld well, that's
4 enough.

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

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

8 MR. LAURENCE: Where the courts have upheld
9 based on just a bare tip?

10 JUSTICE BREYER: Not a bare tip. A
11 description that a crime is occurring where has --
12 that's all. I mean, and -- and then we have a question
13 of well, is it in the one category or the other?
14 Because what we have here, someone phones in and says a
15 crime is occurring. And -- and we know, we've
16 corroborated the following. If a crime is occurring, he
17 was in a position to know because he can define -- he
18 can talk about the white horse or he can talk about the
19 car.

20 MR. LAURENCE: The closest case I can think
21 of is Hensley where an officer was relying on an arrest
22 bulletin from another jurisdiction. And in that case,
23 United States v. Hensley, in that case the court did
24 consider, for purposes of whether a prior crime had been
25 committed, whether the officer had reasonable suspicion

1 to stop that individual, it took into account the nature
2 of the offense and there's a --

3 JUSTICE KENNEDY: Well, correct me if I'm
4 wrong, but my recollection of Hensley is, you're right,
5 the police department 1 notifies police department 2.
6 But a premise of the case, I had thought, was that
7 police department 1 had reasonable suspicion.

8 MR. LAURENCE: Well, there were two parts to
9 the -- to the case. The second -- the first part was
10 whether you could make a detention based on a prior
11 crime as opposed to current -- an immediate occurring
12 crime.

13 JUSTICE KENNEDY: I understand that.

14 MR. LAURENCE: And so it looked to the
15 nature of the crime, and whether there was threat to
16 public safety is a validation consideration in
17 authorizing a stop for a prior offense.

18 The second part of that was the -- allowing
19 the officer to rely on another jurisdiction
20 is reasonable --

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

23 MR. LAURENCE: No, it was from another
24 police jurisdiction.

25 JUSTICE SOTOMAYOR: Yes, that's what I'm

1 saying. So it wasn't an anonymous tip?

2 MR. LAURENCE: No, it was not an anonymous
3 tip.

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

6 MR. LAURENCE: Yes, it was. And in that
7 case, the Court said that you could arrest for prior --
8 for a prior offense if it was a felony. It reserved the
9 question of whether you could do so for a misdemeanor.
10 So it's already looking at the nature of the offense and
11 the threat to public safety.

12 JUSTICE KAGAN: And, Mr. Laurence, do I
13 understand what you're saying? You're saying that in
14 every case when we have to decide whether the threshold
15 level of reasonable suspicion has been met or whether
16 the level of probable cause has been met, that courts
17 can take into account the seriousness of the offense,
18 and what would not count as probable cause for one crime
19 will count as probable cause for another? Is that what
20 you're saying?

21 MR. LAURENCE: What I'm saying is that in
22 terms of when we can deem a tip reliable, White
23 identified two components to the inquiry. One is the
24 indicia of reliability and the other was the content of
25 the tip. And so we have to take the seriousness of the

1 offense and the threat to public safety into account in
2 determining when the officer can rely on that
3 information.

4 JUSTICE KAGAN: Well, I don't understand how
5 what you're saying is different from what I just said,
6 and that would seem to me to work quite a substantial
7 change in -- in Fourth Amendment law. That when we
8 decide whether reasonable suspicion exists, when --
9 whether probable cause exists, that we get to take into
10 account how serious the offense is.

11 MR. LAURENCE: Well, I think since the
12 inception of the doctrine, this Court identified in
13 Terry that reasonable suspicion results from a balancing
14 of the governmental interest.

15 JUSTICE KAGAN: The balancing occurs
16 categorically. We decide that there's a reasonable
17 suspicion standard by balancing interests. What we
18 don't do is say, you know, depending on how serious we
19 think this crime is, more or less will meet that
20 reasonable suspicion standard. That would be a very
21 substantial reworking of Fourth Amendment law or so it
22 seems to me. Maybe I'm wrong.

23 MR. LAURENCE: Well, I believe that was
24 something that was indicated in Hensley, that this Court
25 looked to the nature of the offense in deciding whether

1 or not the officer had reasonable suspicion at the
2 inception in making that stop for a crime that had
3 occurred two weeks earlier. And it didn't -- it
4 declined to consider whether or not that would be
5 sufficient for a misdemeanor. But in taking the
6 seriousness of the crime into account in determining
7 whether or not they could make that stop, that's a
8 recognition that balancing does play some role.

9 And in White, this Court recognized that the
10 reliability component is variable. There's a difference
11 between probable cause and reasonable suspicion. And in
12 J.L., this Court left open the question of at what point
13 do we need no reliability because of the seriousness of
14 the governmental --

15 JUSTICE KENNEDY: Could you explain to me
16 one more time why it's relevant that there were these
17 details that it was a particular kind of crime, that it
18 was silver, the license plate. That's this case.
19 Suppose in another case, a car just ran me off the road
20 and it's the only -- the only car that's on Highway 1
21 between Fort Bragg and the state park.

22 MR. LAURENCE: Well, I think it helps
23 twofold. There's particularity, so you know who you're
24 stopping. And it goes to the totality of the
25 circumstances in helping confirm that the person

1 actually observed what they're saying. So that you
2 have -- it goes to the reliability of the personal
3 observation. So it builds -- it adds an additional
4 layer of -- of the indices reliability so the officer
5 can rely on it sooner.

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

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

10 JUSTICE KENNEDY: That's what I thought.

11 MR. LAURENCE: Two-lane coastal highway,
12 which obviously, when someone runs somebody off the
13 road, poses a grave threat to public safety in that
14 context.

15 JUSTICE GINSBURG: There's a tip that
16 someone is carrying a concealed weapon, and we have held
17 that that has to be corroborated -- corroborated. You
18 can take out a concealed weapon in an instant and fire
19 it and kill lots of people. In fact, it was pointed out
20 that there are more deaths caused by guns than there are
21 from drunk driving.

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

25 MR. LAURENCE: Well, I think there's a

1 significant difference between having a gun in your
2 pocket and actually brandishing it or firing it. I
3 think if the J.L. case involved somebody threatening
4 other people with a gun or firing the gun, it would have
5 involved a different calculus. And so --

6 JUSTICE GINSBURG: But if you -- once --
7 once you brandish it, it's too late. The damage will be
8 caused.

9 MR. LAURENCE: That is -- that is correct.
10 But once you're driving drunk down the road, it's -- you
11 have -- the threat is now posed to everybody on the
12 highway because of the potential for that person to lose
13 control because --

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

17 MR. LAURENCE: Yes.

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

22 MR. LAURENCE: Well, I would say that in
23 this case, it is enough. But I would say it's more than
24 just driving irresponsibly. Running somebody off the
25 road reflects that they're incapable of driving their

1 car in a way that's -- without posing a safety threat to
2 other people. And when you're dealing with reasonable
3 suspicion --

4 JUSTICE SCALIA: Okay. Really
5 irresponsibly, okay?

6 MR. LAURENCE: Okay.

7 JUSTICE SCALIA: Really irresponsibly.

8 MR. LAURENCE: Very irresponsibly.

9 JUSTICE KAGAN: So do you think,
10 Mr. Laurence, if the police had followed this man for
11 half an hour and seen no other signs of erratic
12 driving and nobody can drunk drive -- can drive drunk
13 for half an hour without swerving, without doing
14 something else. So they could still have stopped the
15 car?

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

20 JUSTICE KAGAN: Well, I thought you were
21 saying as long as somebody had -- had given an account
22 that sometime ago he had driven another driver off -- he
23 had run another driver off the road, doesn't matter
24 whether you're drunk, doesn't matter anything, there was
25 an account of an illegal act taking place, and that was

1 enough to stop him. Doesn't matter what he's doing now.

2 MR. LAURENCE: Well, I believe that the
3 threat to public safety plays a role in the balance.
4 And so if that's dissipated, then at that point you
5 have -- the -- the reliability of the tip that you're
6 relying on is not as significant. Put it this way.
7 When you have the threat to public safety balanced in
8 the totality for purposes of reliability, if that
9 dissipates, then you have to go back to the tip itself,
10 whether it is internally reliable or whether it has
11 enough to satisfy J.L.

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

16 JUSTICE SCALIA: It wasn't a report of drunk
17 driving.

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

20 JUSTICE SCALIA: Somebody ran me off the
21 road. Somebody was driving really irresponsibly.

22 MR. LAURENCE: Yes. Yes.

23 JUSTICE SCALIA: That's enough to stop him
24 down the road.

25 MR. LAURENCE: It is. It is. Because this

1 is how drunk drivers display their actions. And when
2 you're dealing with reasonable suspicion --

3 JUSTICE SCALIA: What about cutting me off
4 too quickly, you know?

5 MR. LAURENCE: I think that --

6 JUSTICE SCALIA: Cuts right in front of me.
7 Really ticks me off.

8 MR. LAURENCE: That would present a
9 different set of circumstances. If you have an
10 instant -- a recognizable instant of bad driving as
11 opposed to something that reflects recklessness or
12 drunkenness, then you analyze the tip differently. And
13 I think that --

14 JUSTICE ALITO: Well, how would somebody --
15 how would somebody ever be able -- who observes another
16 car driving ever be able to say that person was drunk?
17 All they could -- all they could observe is what they
18 see. They don't know whether the person -- what is
19 causing that kind of behavior.

20 MR. LAURENCE: I agree. And that's because
21 what we do, we look to the nature of their driving, draw
22 reasonable inferences from that. And that's all
23 officers can ever do. When they observe something, they
24 draw reasonable inferences and determine whether it
25 gives them suspicion.

1 One thing I would point out, that the CHP
2 dispatchers, the testimony in this case reflects that
3 they asked. They asked the driver, well, what did you
4 see? So that they can get that information and pass it
5 along to give the officers as much --

6 JUSTICE SCALIA: I think it's an entirely
7 different case if the tip -- if the tip here was, you
8 know, I was at a party. This guy got in his car. He
9 should not have turned the key on in that car. This guy
10 is really drunk. You should stop that car on the road.

11 I think that's totally different from
12 somebody just saying this guy swerved or this guy drove
13 me off the road. You're -- you're just making the
14 assumption that -- that every -- every one of those
15 incidents demonstrates a drunk behind the wheel, and I
16 just don't think that's true.

17 MR. LAURENCE: Well, again, I would say it's
18 not about demonstrating. It's not about certainty or
19 probabilities. It's suspicion. And that behavior
20 allows the officer to suspect drunk driving.

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

1 Now, if the police catch up with that
2 person, of course, the person's going to slow down while
3 the police follow the person. And then when the police
4 decide to stop, they're going to go back to engaging in
5 this intentional, extremely dangerous conduct. So I
6 don't understand why there's a distinction between
7 reporting that somebody necessarily is driving
8 erratically, so the person may be impaired, and somebody
9 who is -- where you have extremely reckless driving
10 that's intentional.

11 MR. LAURENCE: Well, I wouldn't draw that
12 distinction. I think reckless driving, in and of
13 itself, can pose a threat to public safety that also
14 mandates an immediate stop. If someone's playing
15 chicken with another car on the road, if someone is, you
16 know, testing out their new Ferrari, is going a hundred
17 miles an hour weaving in and out of lanes, those all
18 represent threats to public safety. All those
19 circumstances --

20 JUSTICE KAGAN: But all crime represents a
21 threat to public safety, and yet we have these
22 standards.

23 MR. LAURENCE: Yes, we do have standards.
24 But that -- the threat to public safety is part of the
25 totality of circumstances. It's not something you

1 invoke that wipes away all other inquiries. What we
2 have here is we have a tip that, if it was given by a
3 known person, I think would undoubtedly allow the
4 officer to pull that car over immediately. The question
5 is because it was anonymous.

6 JUSTICE GINSBURG: Why? Why -- the -- we
7 have the case of the trusted informer. The informer
8 several times has given the police tips and it turned
9 out to be right. And then we have another side, the
10 anonymous person. Then there's somebody who calls,
11 gives a correct name and address, but no record at all
12 of reliability. Why should the fact that the name is
13 known -- the name of the informer is known if the police
14 have no reason to believe one way or another that this
15 informer is reliable?

16 MR. LAURENCE: Well, I believe that when
17 you're looking at, at what point it's reasonable for the
18 officer to rely on the content of that tip or to rely
19 on -- on that tip coming in and act on it, that when
20 somebody gives their name, that adds a layer of
21 reliability to it, even without verification.

22 And I think one thing that Gates says in the
23 context of somebody who reports a -- a personal
24 observation of a crime is that even if we doubt their
25 veracity, even if we have some question as to their

1 motives, the fact that they are giving a personal
2 observation, they note that it's a personal observation,
3 and giving a detailed account of what occurs, that
4 report is entitled to a greater degree of reliability
5 than --

6 JUSTICE SCALIA: You don't think a teenager
7 standing on a street corner with a couple of other
8 teenagers with a gun in his belt represents a threat to
9 public safety?

10 MR. LAURENCE: Not the same threat as in
11 this case, Your Honor.

12 JUSTICE SCALIA: No? All right.

13 CHIEF JUSTICE ROBERTS: Thank you, counsel.

14 We're going to hear from Ms. Kovner first.

15 Ms. Kovner?

16 ORAL ARGUMENT OF RACHEL P. KOVNER

17 FOR UNITED STATES, AS AMICUS CURIAE,

18 SUPPORTING THE RESPONDENTS

19 MS. KOVNER: Mr. Chief Justice, and may it
20 please the Court:

21 Brief car stops based on anonymous tips of
22 reckless or drunken driving are reasonable under the
23 Fourth Amendment because they serve a critical
24 government interest in removing drunk drivers from the
25 road --

1 JUSTICE SOTOMAYOR: All right. Please
2 define for me what behavior would give police officers
3 or what descriptors would be adequate for the police to
4 think someone's drunk. Swerving, I know, has been
5 mentioned. But reckless driving, there's been a lot of
6 discussion that there could be a wide variety of
7 reckless driving.

8 MS. KOVNER: So --

9 JUSTICE SOTOMAYOR: What -- what other
10 things would a -- would a caller have to say?

11 MS. KOVNER: So, Your Honor, I think I agree
12 with the observation that there are some behaviors that
13 pose an ongoing threat to others on the roadway, and
14 some driving violations that don't. NHTSA, the National
15 Highway and Traffic Safety Administration and other
16 organizations do keep track of what kinds of behavior
17 are associated with drunkenness. And the Court in this
18 case, of course, looked at the particular behavior and
19 said is this really a reckless driving behavior, the
20 kind of behavior that poses this imminent danger?

21 So there is a line that courts would need to
22 draw, but the courts that are engaging in this kind of
23 analysis do draw that. And of course --

24 JUSTICE KAGAN: Well, what -- what goes on
25 the other side of the line? I mean, why -- why is this

1 on one side and then tell me what's on the other.

2 MS. KOVNER: Sure. So examples of behavior
3 on the other might be a seat belt violation, and they
4 also might be behaviors that it's a real judgment call
5 whether a violation occurred or not. So for instance,
6 that person didn't fully stop at a stop sign. We might
7 have doubts about whether an informant who we don't know
8 anything about can accurately perceive that. But when
9 we're talking about behavior like --

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

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

20 JUSTICE KAGAN: How about somebody cutting
21 someone off in their lane?

22 MS. KOVNER: I think that's close to the
23 line, Your Honor. I'm not sure that it's always illegal
24 and it's something where we may have doubts about
25 whether the informant can accurately separate this

1 person was breaking the law from this person wasn't. I
2 think the courts are going to have to answer the
3 question of whether this is the kind of behavior that
4 poses --

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

9 MS. KOVNER: So --

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

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

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

1 drivers. So I think the court has indicated there are
2 certain driving behaviors that are so dangerous we'll
3 allow even suspicionless stops.

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

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

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

1 CHIEF JUSTICE ROBERTS: No, I'm talking
2 about the concern that you want to have the police pull
3 over people that you don't like, where you know
4 somebody's got something bad in the car and you don't
5 like it, and so you're going to take advantage of the
6 fact that the police don't have to observe anything and
7 yet you can still get them to pull over this person.

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

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

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

1 contrast, the person is telling you "I'm an eyewitness.
2 This person just ran me off the road."

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

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

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

25 I don't think you have to automatically

1 allow a stop in order to prevent all of the horribles
2 that are going to arise from drunk driving. Follow the
3 car. If he's behaving like a drunk driver then stop
4 him.

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

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

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

25 JUSTICE GINSBURG: But here we have the

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

9 MS. KOVNER: Your Honor, I agree that police
10 might follow a car for such a long period of time that
11 the reasonable suspicion would dissipate. On the facts
12 of this case, Your Honor, the record indicates there
13 were five minutes between when the officers first saw
14 the car and when they pulled it over. They weren't five
15 minutes of uninterrupted observation. They were five
16 minutes in which the officers were turning their cars
17 around because they were headed in the opposite
18 direction, were catching up to a car along the freeway.
19 So the California Supreme Court analyzed that delay and
20 found the fact that they didn't observe additional --

21 JUSTICE BREYER: I don't know if we have to
22 get into the drunk driving. It's 3 miles south of the
23 Humboldt County border on -- do you know the answer to
24 this? Is it in the record? I mean, on many sections of
25 that road in Mendocino County you drive someone off the

1 road, they are dead. I mean, there are sheer drops, and
2 so I just wonder, if I look that up here, what's the
3 situation where this supposedly took place?

4 MS. KOVNER: The only thing I can point to
5 about that, Your Honor, is the way that the California
6 Supreme Court treated this, which is that. Because they
7 pointed to the fact that this is a two-lane highway and
8 that it's particularly dangerous on this particular road
9 to engage in this behavior. But I don't know about, you
10 know, whether there are pits on the side of the road.

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

18 MS. KOVNER: Your Honor --

19 CHIEF JUSTICE ROBERTS: What protection is
20 there against that.

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

1 what they saw.

2 Thank you.

3 CHIEF JUSTICE ROBERTS: Thank you, counsel.

4 Mr. Kleven, you have 3 minutes remaining.

5 REBUTTAL ARGUMENT OF PAUL R. KLEVEN

6 ON BEHALF OF THE PETITIONERS

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

15 There's no reason to believe that the driver
16 of this truck presented any kind of danger about being
17 about to lose control, which is the argument that the
18 State is relying on, and the Federal Government, and
19 neither one of them came up with any anecdote even where
20 that actually occurred, much less any statistics that
21 show that that is a serious problem of people losing
22 control while they're being under surveillance by the
23 police officers. This case is even farther away from
24 the bomb situation than J.L. was.

25 In J.L., you had a person who was armed, who

1 could have pulled out a gun and started firing at any
2 moment. Here, you have something where there's no
3 indication of any ongoing risk to the public. I don't
4 think -- I don't know that there's a good answer to the
5 bomb question.

6 I read through the transcript from the oral
7 argument in J.L. I didn't see any -- you know, there
8 didn't seem to be any good arguments -- any good
9 discussions there either, as to which way the court
10 could go.

11 But this case -- in J.L., the Court said
12 there's no reason for us to resolve that. We don't have
13 to speculate about a situation where that would happen.
14 In this case, I submit, there's even less reason for the
15 Court to speculate about the bomb situation or even the
16 kidnapping situation.

17 JUSTICE ALITO: Well, I find that
18 unsatisfactory because if you -- unless you're willing
19 to say it doesn't matter whether it's a bomb, an atomic
20 bomb, a little bomb, then there -- there must be -- if
21 you're going to draw the line someplace, then you're
22 going to have to distinguish between those reports of
23 crimes that are serious enough to be on one side of the
24 line and those reports of a crime that are not serious
25 enough to be on that side of the line. You either have

1 to go all the way, or you have to draw a line, and if
2 you're going to draw a line, I would like to know where
3 the line is.

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

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

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

11 JUSTICE ALITO: You can say it can never
12 done, even if it's an atomic bomb, even if it's some
13 other type of bomb. You can say that. Or you can say,
14 no, there's a line someplace. If you're going to say
15 there's a line someplace, then, really, I think you need
16 to tell us where the line is.

17 MR. KLEVEN: Your Honor, I think the line is
18 certainly, when we get into the bomb situation, but not
19 in terms of reasonable suspicion. The severity of the
20 crime does not affect it, but the Court could fashion a
21 rule that would say there's an exception in this case
22 that would apply.

23 JUSTICE ALITO: For a bomb. For any kind of
24 a bomb?

25 MR. KLEVEN: Well, I don't think -- I think

1 if -- if there's a call in that --

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

3 MR. KLEVEN: -- that says a white -- a white
4 Prius has a bomb, you know, that doesn't seem to be the
5 sort of case under the -- under the circumstances where
6 this Court would find a reasonable suspicion.

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

10 MR. KLEVEN: Well --

11 JUSTICE SCALIA: Or maybe intentionally
12 doing action that is going to harm more than one person,
13 as opposed to, hmm, maybe this person might
14 accidentally, because he's inebriated, hurt somebody?
15 It seems to me there's a clear line between somebody
16 who's -- who's bent on an intentional crime and somebody
17 who might harm somebody because of his conduct. You
18 like that one?

19 CHIEF JUSTICE ROBERTS: I have another one,
20 too.

21 MR. KLEVEN: Yes, Your Honor, I think
22 those -- those are two significant distinctions,
23 certainly, between the -- the bomb analogy and the
24 situation, even in the drunken driving situation, where
25 you don't have anybody who is intentionally trying to

1 harm anyone and the magnitude of the risk is -- is much
2 greater. The --

3 CHIEF JUSTICE ROBERTS: So somebody has five
4 drinks and goes and gets in the car, that's not
5 intentionally trying to harm someone? Or recklessly
6 trying to harm --

7 MR. KLEVEN: Well, in terms of their --
8 their decision to get drunk, there's intent there. In
9 terms of, by the time the officer becomes aware of it,
10 there's no indication that that drunk driver is going
11 down the road trying to harm somebody. There is an
12 indication that they may be too -- too inebriated to be
13 driving properly, and police officers are pulling people
14 over for that situation since the car was invented, and
15 they're really good at it.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.
17 Counsel.

18 The case is submitted.

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

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