

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

PETITIONER,

v.

GREGORY MAYNARD,

RESPONDENT.

FSC. NO. 95,782

DISCRETIONARY REVIEW OF A DECISION OF  
THE DISTRICT COURT OF APPEAL, SECOND DISTRICT

AMENDED REPLY BRIEF OF PETITIONER

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**STATEMENT REGARDING TYPE**

The size and style of type used in this brief is 12-point Courier New, a font that is not proportionately spaced.

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### SUMMARY OF THE ARGUMENT

The trial court correctly determined that the Respondent's mother's call to the police, identifying herself, giving her address, a complete physical description of Respondent, informing the police that Respondent was carrying a Mac-10 Uzi in his green backpack, and his route of travel, and advising them that she had observed his placing the gun in his backpack before leaving the home, constituted a citizen informant tip which was properly relied upon by the police to stop, detain and pat down the Respondent, revealing a Mac-10 Uzi in his backpack. The Second District Court of Appeal erroneously re-categorized the mother's call as an anonymous tip requiring independent corroboration of illegal activity before the officer had sufficient cause to stop and frisk the Respondent, which decision expressly and directly conflicts with both Foy v. State, 717 So. 2d 184 (Fla. 5th DCA 1998) and J.L. v. State, 727 So. 2d 204 (Fla. 1999).

## ARGUMENT

### ISSUE

WHETHER A CALL, RECEIVED BY THE POLICE IN WHICH THE CALLER IDENTIFIES HERSELF AS A SUSPECT'S MOTHER, GIVES DETAILED AND SPECIFIC INFORMATION UNIQUE TO THE SUSPECT AND THE CRIMINAL ACTIVITY, CONSTITUTES A CITIZEN INFORMANT TIP WHICH IS TREATED AS BEING AT THE HIGH END OF THE SCALE OF RELIABILITY NEEDING NO INDEPENDENT CORROBORATION OF CRIMINAL ACTIVITY BY POLICE BEFORE STOPPING AND FRISKING A SUSPECT?

In direct response to Respondent's assertion that "the police officer who stopped and searched the Respondent had not had any prior contact with his mother, and did not make any attempt to contact her. . .to verify the source of the tip," Petitioner argues that such measures are not required of a citizen-informant tip, nor upon information received by a field officer from his official police dispatcher.

"The fellow officer rule allows an arresting officer to assume probable cause to arrest a suspect from information supplied by other officers." Voorhees v. State, 699 So.2d 602 (Fla. 1997). This same rule applies to conducting a reasonable stop. "In broad terms, the collective knowledge of police investigating a crime is imputed to each member under a rule of law often called the 'fellow officer rule' or 'collective knowledge doctrine.'" *Id.* at 609. Consequently, Respondent's reliance upon a distinction being made that the officer that detained Respondent did not have the informant's telephone number or had not tried to contact her, is

misplaced. (See Respondent's Brief, Page 4-5)

The Fourth District Court of Appeals in State v. Evans, 692 So.2d 216, 218-219 (Fla. 4th DCA 1997), analyzing a tip received from a citizen reporting a crime in progress, found:

In this case, it is difficult to see how Ms. Steele can be deemed an 'anonymous' caller: she provided her name, location, and occupation to the police. **The ample information in the hands of the dispatcher regarding Ms. Steele's identity is constructively imputed to Officer Hall because Florida courts apply the 'fellow officer rule,' which operates to impute the knowledge of one officer in the chain of investigation to another.** [Citations omitted]

The second reason why Ms. Steele was not 'anonymous' was that, even considering only the facts known to Officer Hall himself, her identity was **readily ascertainable**. Officer Hall knew that the informant was a McDonald's employee, and they acknowledged each other when he arrived at the scene, with Ms. Steele pointing to Defendant's vehicle. **The cases support the proposition that an informant's actual name need not be known so long as her identity is readily discoverable.** See *Lachs v. State*, 366 So.2d 1223 (Fla. 4th DCA 1979)(holding that a tipster, 'fully identified by occupation and address,' was 'entitled to as much credibility as . . . a paid informer or the victims themselves'). [Emphasis added]

See also United States v. Hensley, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985)(holding that when a police communique has been issued on the basis of articulated facts supporting a reasonable suspicion, any authorized officer may make an

investigatory stop on the basis of that bulletin, even though the officer making the stop is not aware of the underlying facts).

It is also important to note that the standard to raise a tip to that of a citizen-informant from an anonymous tipster is the *identifiability* of the person providing the tip and not that the identity has been established prior to police action based upon the tip. Evans, supra. As Respondent concedes, his mother was "potentially identifiable." See Respondent's Brief, Page 6. Respondent's premise that law enforcement must meet with an informant before they can be considered a citizen-informant is erroneous.

Petitioner acknowledges that the Second District Court of Appeal, when distinguishing the facts of the case below and those present in J.L. v. State, 727 So.2d 204 (Fla. 1999), found that the details provided by Respondent's mother were innocent details and not sufficient to establish reasonable suspicion because they re-classified her as an anonymous informant. In point of fact, that is the crux of this appeal. Respectfully, the court below erred in making that finding. Respondent's mother gave detailed information to the police that her son was committing a crime. This information established more than mere suspicious details of a suspect's activities -- it provided direct information that a crime was being committed. This information was given from personal knowledge and observation. The basis for this information was made clear to the police when Respondent's mother

advised them of her identity, her location and her unique perspective regarding the criminal activity. Although the Second District may have given some thought to law enforcement's failure to confirm the caller's identity this was not the proper standard of review to determine if the caller qualified as a citizen-informant. It is not the **established identity** of the caller that determines their status as a citizen-information; rather, it is the fact that they are identifiable. This language: **identifiable**, which consistently is used in cases discussing this area of law, denotes future verification. Not only does this address the legal status of this type of inquiry, it also must include examination of the common sense and practicality of applying the law to serve the very real needs of the public.

Respondent contends that Evans is distinguishable from the facts of the case below because the officer made distant eye-contact with the caller before pursuing the suspect. Logic dictates that this can not be a serious factor in finding that the informant was identifiable. Although it may have been established after the fact that the woman at the window of the McDonald's restaurant was the informant, that was not known by the officer when he pursued the suspect. It could just have easily been another employee altogether that had called the police. The same could be said in the case below, if a woman had been standing on the lawn of Respondent's home, the foregoing argument would stand for the proposition that, even without speaking to the woman --



the mere sight of her alone -- without further confirmation of identity -- would act to enhance the caller's reliability and establish her as a citizen-informant. This additional form of 'identification' adds nothing to the basis upon which the officer is relying. Petitioner submits that it is also not necessary. The information given to the police by Respondent's mother was sufficient to establish her as a citizen-informant when coupled with the independent corroboration by the officer of significant aspects of the informer's predictions as to the future actions of the Respondent. Respondent's mother was able to relate the whereabouts of the Respondent as well as his course of travel, this information was specific enough to allow the police officer to intercept Respondent some distance from his home. As this Court found in J.L. when examining a basis for a simple anonymous tip:

. . . innocent detail tips can still prove to be reliable and be the foundation for reasonable suspicion. For instance, a tip can predict particular actions which will occur in the future. Future predictions can establish that the tip is reliable if the tip 'contain[s] a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted.' '[I]ndependent corroboration by the police of significant aspects of the informer's predictions [can] impart[] some degree of reliability to the other allegations made by the caller.' If the actions do occur as the informant predicted, and

the actions involve matters to which a normal person would not be privy, this demonstrates that the informant has a 'special familiarity with the [suspect's] affairs,' beyond the knowledge that a normal person would possess. [Citations omitted] 727 So.2d at 206-207.

In J.L. this Court further recognized that tips from "an ***identifiable*** citizen who observes criminal conduct and reports it, along with his own identity to the police, will almost invariably be found sufficient to justify police action." 727 So.2d at 206. This is exactly what occurred below.

Respondent's arguments are all based upon a determination that his mother was not a citizen-informant. Respondent's arguments may be valid for a mere anonymous tip; however, the facts of the case below support the trial court's classification of the Respondent's mother as a citizen-informant whose information is at the high end of the tip-reliability scale. Consequently, arguments regarding standards for review of anonymous tips are irrelevant given the facts in the case below.

Lastly, it is important to note that when the exclusionary rule is applied to suppress evidence obtained in a specific case, the purpose is to deter police from engaging in illegal police activity. The exclusionary rule should only be applied when police conduct is illegal as the result of a "law enforcement officer [having] knowledge, or [being] properly charged with knowledge, that the search was unconstitutional under the Fourth

Amendment." United States v. Leon, 468 U.S. 897, 82 L.Ed.2d 677, 696, 104 S.Ct. 3405 (1984). A review of the circumstances of the case below reveals that this particular officer acted properly upon the information he was given, no illegal police conduct was present and applying the exclusionary rule in this case will not serve to preserve the purpose for the rule or protect the rights of citizens of the State.

**CONCLUSION**

Appellee respectfully requests that the ruling of the district court be reversed, and that trial court's ruling determining that the tip was from a citizen informant and denying Respondent's motion to suppress be reinstated, upholding the conviction and sentence of Respondent.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Charles H. Holloway, Esq., 611 Druid Road, Suite 512, Clearwater, Florida 33756, this \_\_\_\_ day of September, 1999.

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