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## **In the Wake of Florida v. J.L. - When Anonymous Tips Give Police Reasonable Suspicion**

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## In the Wake of Florida v. J.L. - When Anonymous Tips Give Police Reasonable Suspicion

Cover Page Footnote

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# IN THE WAKE OF FLORIDA v. J.L. - WHEN ANONYMOUS TIPS GIVE POLICE REASONABLE SUSPICION

*Robyn Silvermintz*<sup>1</sup>

## I. INTRODUCTION

In *Florida v. J.L.*,<sup>2</sup> the United States Supreme Court held that in cases in which a police officer's authority to make an initial stop is at issue, "an anonymous tip lacking indicia of reliability . . . does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm."<sup>3</sup> The Supreme Court has addressed the issue of police officers forming reasonable suspicion based on anonymous tips over the course of numerous years. By providing guidance regarding how to conduct stops on the basis of anonymous tips, *J.L.*'s holding has had a vast impact on the lower courts. This article explores the *J.L.* decision and its interpretation by the lower courts. The focus is on recognizing when anonymous tips provide reasonable suspicion to conduct police stops

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<sup>1</sup> J.D. Candidate, May 2004, Touro Law Center; B.S., Rutgers University, 2000.

<sup>2</sup> 529 U.S. 266 (2000).

<sup>3</sup> *Id.* at 274.

subsequent to this decision and in light of the Fourth Amendment. Part II discusses the Fourth Amendment and case law addressing investigatory stops first discussed in *Terry v. Ohio*.<sup>4</sup> Part III examines *J.L.* and the Supreme Court's modification of the conditions under which an anonymous tip provides the reasonable suspicion necessary to conduct a *Terry* stop. Finally, it explores the effect *J.L.* has had on the circuit courts.

## II. EVOLUTION OF THE "STOP AND FRISK"

### A. *The Fourth Amendment and "Stop and Frisk"*

The Fourth Amendment<sup>5</sup> governs the procedure by which police may constitutionally stop an individual on the street, in his or her home, or in any public place to conduct a search and seizure. It protects citizens from being subjected to "unreasonable searches

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<sup>4</sup> 392 U.S. 1 (1968) (holding probable cause is not necessary when the police conduct a "pat down" of a suspicious individual's outer clothing).

<sup>5</sup> U.S. CONST. amend. IV states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*Id.*

and seizures by requiring the government to show probable cause in order to obtain a warrant for a search and seizure.”<sup>6</sup> Without this protection, individuals would be denied the right to feel that they will not be stopped by police at any given time to be subjected to a search or seizure.

Courts must consider under what circumstances a search or seizure is reasonable. In *Katz v. United States*,<sup>7</sup> the Supreme Court noted that the Fourth Amendment protects individuals, not localities. Therefore, a Fourth Amendment inquiry does not involve the question of whether there has been a physical intrusion into a specific place.<sup>8</sup> The focus in any Fourth Amendment case is the circumstances surrounding how the individual was searched, not where they were searched.

In 1968, the United States Supreme Court, in *Terry v. Ohio*, concluded that an objective standard must be used in determining

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<sup>6</sup> Edward W. Krippendorf, *Florida v. J.L.: To Frisk or Not to Frisk; The Supreme Court Sheds Light on the Use of Anonymous Tipsters as a Predicate for Reasonable Suspicion*, 28 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 161, 161 (2002).

<sup>7</sup> 389 U.S. 347 (1967). This case involved an arrest for placing bets over the telephone in a pay phone booth. At issue was evidence that the FBI had obtained by wiretapping the phone. Katz argued that this violated the Fourth Amendment. *Id.* at 348-49.

<sup>8</sup> *Id.* at 353.

whether there was probable cause to conduct a search or seizure.<sup>9</sup> To determine whether the objective standard was satisfied, a court must ask whether “the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate”<sup>10</sup> The facts surrounding this case were that an officer noticed Terry based on no suspicious circumstances. The officer maintained that he learned to identify criminal activity due to nearly forty years of experience as a police officer and a detective.<sup>11</sup> After observing Terry for some time, the officer suspected he and a companion were planning a robbery. Eventually, he approached the suspects, and when one of them mumbled something, the officer grabbed Terry and patted him down, discovering a pistol.<sup>12</sup> Terry’s motion to suppress the gun was denied and he was convicted.

*Terry v. Ohio* set the constitutional standard used to determine when an officer can “stop and frisk” for weapons.<sup>13</sup> This

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<sup>9</sup> 392 U.S. at 21-22.

<sup>10</sup> *Id.* (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> *Id.* at 27.

is in contrast to the idea of “stopping” and “arresting” an individual.<sup>14</sup> The prior standard requiring probable cause has been relaxed by the Court’s holding in *Terry*. In essence, this case has carved out an exception to the probable cause requirement. The Supreme Court held that:

Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.<sup>15</sup>

The type of search that took place in *Terry* was deemed reasonable under the Fourth Amendment.<sup>16</sup> This standard solves the dilemma that results when an officer “who lacks the precise level of information necessary for probable cause to arrest . . .

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<sup>14</sup> *Terry*, 392 U.S. at 10 (noting that a stop and frisk is only a minor inconvenience to be used when the police suspect an individual to be armed).

<sup>15</sup> *Id.* at 30.

<sup>16</sup> *Id.* at 31.

simply shrug[s] his shoulders and allow[s] a crime to occur or a criminal to escape.”<sup>17</sup> *Terry* has given officers the right to use their own instincts to fight crime by eliminating the probable cause standard in instances involving a stop and frisk.

*B. Tips From Known Informants*

What happens when a known informant (one who has supplied the police with information in the past regarding criminal activity) approaches an officer on the street and provides information about another who is about to commit a crime? This problem was confronted by the Supreme Court in the 1972 case, *Adams v. Williams*.<sup>18</sup> In *Adams*, the Court considered whether a tip from a known informant that the defendant was carrying a gun was enough to justify a *Terry* stop.<sup>19</sup> Following a face-to-face tip from a known informant, the officer approached the defendant’s vehicle to investigate. When the defendant rolled down his window, the officer reached into the car and recovered a revolver from the

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<sup>17</sup> David S. Rudstein, *White on White: Anonymous Tips, Reasonable Suspicion, and the Constitution*, 79 KY. L.J. 661, 662 (1991).

<sup>18</sup> 407 U.S. 143 (1972).

<sup>19</sup> *Id.* at 144.



defendant's waistband, which was precisely where the informant indicated the revolver would be located.<sup>20</sup>

Looking to *Terry*, the Court explained that “[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.”<sup>21</sup> The Court then addressed how to determine whether conducting a *Terry* stop is proper when the information leading to the stop was from a known informant. Such scenarios require case-by-case analysis taking into account the indicia of reliability of the information.<sup>22</sup> Examples of when a tip has the requisite indicia of reliability are “when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime.”<sup>23</sup> Under *Adams*, tips from known informants carry the requisite indicia of reliability to provide reasonable suspicion to conduct a *Terry* stop.

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<sup>20</sup> *Id.* at 145.

<sup>21</sup> *Id.* at 146. *See also supra* text accompanying notes 9-10.

<sup>22</sup> *Id.* at 147.

<sup>23</sup> *Adams*, 407 U.S. at 147.

*C. Reasonable Suspicion Based on Anonymous Tips*

Although the Fourth Amendment requires probable cause to conduct a search or seizure, there are exceptions to this rule. “Included in these exceptions is the warrantless ‘stop and frisk’ of a citizen based on a mere ‘reasonable suspicion.’”<sup>24</sup> This exception is invoked when the police receive tips that individuals are carrying weapons or other contraband. What if the police receive an anonymous phone call indicating that an individual at a specific location wearing specific clothing is armed? Does this anonymous tip give police reasonable suspicion to conduct a *Terry* search of an individual matching that description? Complications arise when the reasonable suspicion for a search comes from an anonymous tip. These situations are problematic due to the competing issues of the danger to police in dealing with potentially armed individuals and the concern regarding false information, such as when an anonymous tipster misinforms the police that a suspect is armed.<sup>25</sup>

Numerous cases have addressed the constitutionality of

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<sup>24</sup> Krippendorf, *supra* note 6, at 161.

<sup>25</sup> *J.L.*, 529 U.S. at 272.

conducting investigatory stops with reasonable suspicion based on anonymous tips. One such case is *Alabama v. White*.<sup>26</sup> In *White*, an anonymous tipster called the police and provided a detailed description of the defendant's actions, including the location she was leaving from, her destination, and that she would be in possession of cocaine. The police responded to the tip by conducting a search of White's car which revealed drugs.<sup>27</sup> The issue addressed by the Supreme Court was whether an anonymous tip corroborated by police exhibited adequate indicia of reliability to warrant reasonable suspicion to bring about a police investigation.<sup>28</sup> In deciding that such tips provide reasonable suspicion, the Supreme Court stated:

Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.<sup>29</sup>

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<sup>26</sup> 496 U.S. 325 (1990).

<sup>27</sup> *Id.* at 327.

<sup>28</sup> *Id.* at 328.

<sup>29</sup> *Id.* at 330.

The Court found that the caller was honest, well informed and the caller's predictions were verified by police corroboration.<sup>30</sup> Therefore, the stop was justified and satisfied the Fourth Amendment's requirements.

Critics have asserted that the *White* decision failed to formulate a "bright-line test to determine what establishes adequate corroborative information."<sup>31</sup> This defect has proved to be a problem when lower courts have attempted to apply the *White* holding. Consequently, dramatic inconsistencies have emerged in lower court decisional law regarding the issue of when anonymous tips provide reasonable suspicion to conduct a search.<sup>32</sup> The Second, Seventh, and Eleventh United States Circuit Courts of Appeals have followed the *White* decision.<sup>33</sup> Thus, these courts allow anonymous tips to provide reasonable suspicion. Contrary to the holding in *White*, the Third and Tenth United States Circuit Courts of Appeals, as well as the highest courts in various states,

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<sup>30</sup> *Id.* at 332.

<sup>31</sup> Krippendorf, *supra* note 6, at 178.

<sup>32</sup> Krippendorf, *supra* note 6, at 178.

<sup>33</sup> *See, e.g.*, *United States v. DeBerry*, 76 F.3d 884 (7th Cir. 1996); *United States v. Gibson*, 64 F.3d 617 (11th Cir. 1995); *United States v. Bold*, 19 F.3d 99 (2d Cir. 1994).

have found anonymous tips do not provide a basis for reasonable suspicion.<sup>34</sup>

### III. CRITICAL CHANGE

#### A. *The Case That Made the Change*

Following the emergence of this split, the Supreme Court decided *Florida v. J.L.*,<sup>35</sup> which led to more uniformity among the circuits when deciding whether anonymous tips give reasonable suspicion to conduct a *Terry* stop. *J.L.* involved an anonymous call “that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun.”<sup>36</sup> Shortly after the call, the police arrived at the bus stop and found three black males, one of whom was the defendant, J.L., who was wearing a shirt that matched the caller’s description. One of the officers responding to the tip approached J.L., conducted a *Terry* “stop and frisk,” and

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<sup>34</sup> See, e.g., *United States v. Soto-Cervantes*, 138 F.3d 1319 (10th Cir. 1998); *United States v. Roberson*, 90 F.3d 75 (3d Cir. 1996); *Commonwealth v. Lyons*, 564 N.E.2d 390 (Mass. 1990); *Commonwealth v. Hawkins*, 692 A.2d 1068 (Pa. 1997).

<sup>35</sup> 529 U.S. at 266.

<sup>36</sup> *Id.* at 268.

seized a weapon from J.L.'s pocket.<sup>37</sup> This search and seizure led to a charge of "possession of a concealed, unlicensed firearm."<sup>38</sup>

J.L. moved to suppress the gun because the police had discovered it during an alleged unlawful search in violation of the Fourth Amendment. He claimed the search was unlawful because it was based on an anonymous tip.<sup>39</sup> His motion to suppress the gun was granted by the trial court, but reversed by the intermediate appellate court.<sup>40</sup> However, the Supreme Court of Florida agreed with the trial court and held that the search violated the Fourth Amendment.<sup>41</sup> The Supreme Court of Florida reasoned that anonymous tips are "less reliable than tips from known informants and can form the basis for reasonable suspicion only if accompanied by specific indicia of reliability. . . ."<sup>42</sup> The United States Supreme Court granted certiorari to decide whether the search and seizure based on an anonymous tip was constitutional.<sup>43</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 269 (noting that J.L. was also charged with "possessing a firearm while under the age of 18" in violation of state law).

<sup>39</sup> *Id.*

<sup>40</sup> *State v. J.L.*, 689 So. 2d 1116, 1118 (Fla. Dist. Ct. App. 1997).

<sup>41</sup> *J.L. v. State*, 727 So. 2d 204, 209 (Fla. 1998).

<sup>42</sup> *J.L.*, 529 U.S. at 269 (citing *J.L.*, 727 So. 2d at 207).

<sup>43</sup> *Id.*

This decision further clarified the holding in *White* by shedding light on what the corroboration requirement is.

*Terry v. Ohio* set the standard for “stop and frisk” cases. In *Terry*, the reasonable suspicion of the police officer came from the officer’s own observation of the suspect. *Florida v. J.L.* is distinguishable from *Terry* because the officers’ suspicion was solely based on a call from an anonymous tipster.<sup>44</sup> *J.L.* recognized the need to set a standard for when an anonymous tip will warrant a *Terry* “stop and frisk.” Although anonymous tip cases do not usually meet the indicia of reliability necessary to conduct a stop, there are cases in which they do. Turning to precedent, the Court considered the facts of *Alabama v. White* to decide whether this was one of those cases. In *White*, the tip alone was insufficient to give the police probable cause for a *Terry* stop. The question was whether the police corroboration supported the reliability of the anonymous tip such that it met the constitutional standard of reasonable suspicion.<sup>45</sup> The Court found that the officers’ own

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<sup>44</sup> *Id.* at 270.

<sup>45</sup> *White*, 496 U.S. at 326-27.

observations after receiving the tip justified the search. Nevertheless, the Supreme Court labeled it a “close” case because most people are not privy to an individual’s itinerary. Thus, it is reasonable for police to believe that an individual with access to a person’s itinerary is likely to know about that individual’s illegal activity.<sup>46</sup> However, just being aware of an individual’s movements does not necessarily indicate whether the individual is taking part in criminal activity.

Because the anonymous tip in *J.L.* gave no “predictive information and therefore left the police without means to test the informant’s knowledge or credibility,”<sup>47</sup> the Court distinguished *J.L.* from *White*. *J.L.* held that in cases where “the officer’s authority to make the initial stop is at issue . . . an anonymous tip lacking indicia of reliability of the kind contemplated in *Adams*<sup>48</sup> and *White* does not justify a stop and frisk whenever and however [the tip] alleges the illegal possession of a firearm.”<sup>49</sup> Therefore,

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<sup>46</sup> *Id.* at 332.

<sup>47</sup> *J.L.*, 529 U.S. at 271.

<sup>48</sup> 407 U.S. at 146 (distinguishing “a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated”).

<sup>49</sup> *J.L.*, 529 U.S. at 274.



the police must corroborate anonymous tips prior to conducting a stop and frisk. Thus, the decision to stop an individual cannot be based on an unknown informant's description of an individual's clothes, appearance, or location. The Court also declined to adopt a "firearm exception" because anyone could harass another by subjecting that individual to an intrusive police search simply by placing an anonymous call and falsely reporting that an individual is carrying a gun.<sup>50</sup>

The Supreme Court's holding in *J.L.* has formed a framework for lower courts to utilize when determining how to proceed with cases in which reasonable suspicion to stop is based on an anonymous tip. An anonymous tip alone that someone is about to commit a crime will never establish the reasonable suspicion needed to justify a search of that person. "Anonymous caller's tips only justify an investigatory stop once they are sufficiently corroborated by the police."<sup>51</sup> All tips must be investigated prior to conducting a stop. "A tip that includes specific information regarding criminal activity, and that provides

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<sup>50</sup> *Id.* at 272.

<sup>51</sup> 14A FLA. JUR. 2D *Criminal Law* § 22 (2001).

a specific description of the suspect, will justify a stop when the officers act promptly and corroborate the information contained in the tip.”<sup>52</sup> Because there was no corroboration of the anonymous tip in *J.L.*, the evidence was excluded as having been seized during an unlawful search in violation of the Fourth Amendment.<sup>53</sup>

*B. The Effect of Florida v. J.L.*

Following *J.L.*, there have been many cases decided in the circuit courts involving when anonymous tips give reasonable suspicion to search. In *United States v. Jones*,<sup>54</sup> the Fourth Circuit considered whether an anonymous 911 call made to the police reporting that several African American males were causing a disturbance was sufficient to justify a stop of the defendant’s vehicle. There was no other physical description given. The responding officers did not find any disturbance in the area described by the caller. After departing the scene, one of the officers passed a vehicle occupied by four African American

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<sup>52</sup> *Id.*

<sup>53</sup> *J.L.*, 529 U.S. at 274.

<sup>54</sup> 242 F.3d 215 (4th Cir. 2001).

males. Solely based on the race of the occupants, the officers stopped the vehicle.<sup>55</sup> When the officer pulled the car over, he noticed open bottles of alcohol. An open bottle of alcohol in a vehicle violated a South Carolina statute. Consequently, Jones was arrested. As the arrest took place, the officer patted down Jones and recovered a plastic bag containing crack cocaine.<sup>56</sup>

The Fourth Circuit considered whether an anonymous 911 call, along with the officers' observations of a vehicle occupied by members of the same race as the caller described, provided reasonable suspicion to justify a stop.<sup>57</sup> Looking to *J.L.* for guidance, the court held that the anonymous tip lacked sufficient indicia of reliability. The court found that the tip in this case was even less reliable than that given in *J.L.*. There was no description of the culprits other than that they were black males. The car that was pulled over was not even in the vicinity of the location which the caller had specified. When the police searched the area and found no one, the anonymous tip was totally uncorroborated.<sup>58</sup>

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<sup>55</sup> *Id.* at 216.

<sup>56</sup> *Id.* at 216-17.

<sup>57</sup> *Id.* at 217.

<sup>58</sup> *Id.* at 218.

Therefore, the officers had no right to stop the car merely because it was occupied by four African American males. The court followed the reasoning in *J.L.* and found the anonymous tip led to an unconstitutional search and seizure. This case indicates that the Fourth Circuit holds that a vague description of a suspected perpetrator from an anonymous tipster will not satisfy the corroboration requirement of *J.L.*

In *United States v. Colon*,<sup>59</sup> the Second Circuit considered whether information given to a civilian 911 operator may be imputed to the dispatching or arresting officers when the civilian operator has not made an assessment of reasonable suspicion.<sup>60</sup> *Colon* involved the following facts. A woman placed a 911 call to inform the police of an armed man inside a club she had just left. She declined to identify herself when asked by the dispatcher. The caller also indicated that the armed man had hit her over the head with the gun and gave a physical description of him.<sup>61</sup> During the course of the call, she explained that the man in question was the same individual who had also assaulted her during a previous

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<sup>59</sup> 250 F.3d 130 (2d Cir. 2001).

<sup>60</sup> *Id.* at 134.

<sup>61</sup> *Id.* at 132.

incident of which the police were aware.<sup>62</sup> The dispatcher then transmitted the information to the New York Police Department via computer.<sup>63</sup> The police responded to the call; found Colon, who matched the suspect's description; conducted a stop and frisk; found a gun on him; and then arrested him.<sup>64</sup>

The prosecution and defense agreed that without the specific information describing the incident given to the 911 operator, the stop and frisk would not have met the standards set forth in *J.L.*. They also agreed that if the information given to the operator had been given to an officer instead, a stop and frisk of Colon would have been permissible.<sup>65</sup> The court held that the *Terry* stop of the defendant violated the Fourth Amendment. The holding was based on the fact that "the 911 operator's knowledge could not be imputed to the dispatcher because the operator lacked the training to assess the information in terms of reasonable

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<sup>62</sup> *Id.* (noting that she did not want the armed man to find out that she informed police).

<sup>63</sup> *Id.* The computer entry "included the location, a description of the suspect as a male Hispanic wearing a red hat and red leather jacket with the nickname 'white boy,' and the fact that the suspect has a firearm." *Id.*

<sup>64</sup> *Colon*, 250 F.3d at 132.

<sup>65</sup> *Id.* at 134.

suspicion.”<sup>66</sup> The Court did not say that New York City should abandon the 911 system in effect at that time, but rather that civilian 911 operators should be trained to obtain the proper information necessary to satisfy the reasonable suspicion requirement.<sup>67</sup>

Prior to *J.L.*, courts had allowed the admission of contraband into evidence following what would now be an unlawful search and seizure based solely on an unreliable anonymous tip. The district court decided *Kerman v. City of New York*<sup>68</sup> prior to the Supreme Court’s ruling in *J.L.* Therefore, the Second Circuit reviewed the case based on the law as it was preceding *J.L.*<sup>69</sup> In *Kerman*, the appellant’s girlfriend made an anonymous 911 call in which she provided the dispatcher with the plaintiff’s address and phone number and informed the operator

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<sup>66</sup> *Id.* at 138. (noting that the operator also left out information which could have led the officers to conclude that a stop and frisk could be conducted).

<sup>67</sup> *Id.* (indicating that the officers could have gone to the scene and observed the subject, which could have given them a reason to search).

<sup>68</sup> No. 96 Civ. 7865, 1999 U.S. Dist. LEXIS 10870 (S.D.N.Y. July 17, 1999).

<sup>69</sup> *Kerman v. City of New York*, 261 F.3d 229, 237 (2d Cir. 2001). The court affirmed the lower court’s grant of summary judgment for all of the police officers regarding the entry into Kerman’s home. However, the court established precedent that this behavior would not be tolerated in future cases based on *J.L.* *Id.*

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that he was mentally ill, not medicated, and possibly armed.<sup>70</sup> The police responded to this call by forcibly entering the plaintiff's home, handcuffing him, searching his home, placing him in a restraint bag, and taking him to a hospital.<sup>71</sup> The plaintiff asserted that the police performed these acts with excessive force.

The Second Circuit reviewed the plaintiff's contention that the "police officers violated his rights under the Fourth Amendment by forcibly entering his apartment without a warrant and by handcuffing, detaining and hospitalizing him without probable cause."<sup>72</sup> In deciding the issue, the court looked to *J.L.* to determine whether exigent circumstances existed to justify a forcible entry into the plaintiff's home. It was not disputed by the defendants that the sole reason they forcibly entered Kerman's apartment was due to the anonymous 911 call.<sup>73</sup> The officers failed to investigate the reliability of the anonymous source prior to

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<sup>70</sup> *Id.* at 232. These events occurred following the plaintiff's calling his girlfriend and telling her that "he was drunk and intended to buy a gun and kill himself or his psychiatrist." *Id.*

<sup>71</sup> *Id.* at 233-34. The plaintiff's girlfriend called during this episode and explained to police that she was the one who made the initial anonymous call. The police did not try to verify any information regarding the original call. *Id.*

<sup>72</sup> *Id.* at 234.

<sup>73</sup> *Id.* at 235.

entering the apartment. This could have been done by using a surveillance system to watch the appellant's apartment for any suspicious circumstances. The police could have also contacted Kerman's family and friends to inquire as to his whereabouts.

The Second Circuit found "that the Court's reasoning in *J.L.* controls the issue here: whether an uncorroborated and anonymous 911 call is sufficient to establish probable cause for a warrantless entry into a dwelling."<sup>74</sup> Even though the anonymous call in *Kerman* may have presented a more imminent threat of harm, there was a greater interest in privacy involved. The officers did not conduct a *Terry* stop on the street; they forcibly entered the plaintiff's home and subjected him to an extremely invasive search and seizure.<sup>75</sup> The court extended the corroboration requirement necessary to conduct a stop and frisk to a warrantless search of an individual's home. As a result of these findings, the court held that due to the officers' failure to corroborate the 911 call and the protection the Fourth Amendment provides when searching private dwellings, the officers' warrantless entry into Kerman's apartment

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<sup>74</sup> *Kerman*, 261 F.3d at 236.

<sup>75</sup> *Id.*



violated the Fourth Amendment.<sup>76</sup> The reasonableness of an officer's belief that a warrantless search of one's home is necessary must be decided on a case-by-case basis, assessing the circumstances present at the time of the search.<sup>77</sup>

*Kerman* gives a broad interpretation of *J.L.*. The facts in the two cases are considerably different. However, they both involve anonymous tips given to law enforcement officials. In *J.L.*, a *Terry* search was conducted, while in *Kerman* a warrantless search of the home was performed. Therefore, the *Kerman* decision mandates corroboration of anonymous tips to satisfy the "indicia of reliability" prerequisite to conduct warrantless searches of homes. *J.L.*'s holding, requiring corroboration of anonymous tips to conduct a *Terry* stop, will be applied to cases where the threat may be more imminent but the search involves a lesser invasion of privacy.

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<sup>76</sup> *Id.* at 237. At the time the entry into the plaintiff's apartment occurred, *J.L.* had not yet been decided. The law at that time did not prohibit "a warrantless entry into an apartment on the ground of exigent circumstances based solely on an anonymous 911 call." This is why the court could not base this decision on *J.L.*, but in future cases it would follow *J.L.*. Therefore, summary judgment for the defendants was affirmed. *Id.*

<sup>77</sup> *Id.*

The First Circuit distinguished the facts of *United States v. Link*<sup>78</sup> from *J.L.*. The informant in *Link*, “unlike the tipper in *J.L.* . . . was not only known to the police, but had also provided reliable information in previous investigations.”<sup>79</sup> The informant gave the police step-by-step information about what the defendant was going to do. The police were able to corroborate every tip that the informant provided.<sup>80</sup> “The risk, therefore, ‘of a lying or inaccurate informer [had] been sufficiently reduced by corroborative facts and observations.’”<sup>81</sup> It is also important to note that because the information given by the known informant was enough to provide probable cause which led to Link’s arrest, the seizure did not constitute a *Terry* stop requiring reasonable suspicion.<sup>82</sup> Because every piece of the known informant’s story turned out to provide accurate information, information that the defendant was going to commit a crime was more likely to be true than not. Thus, when dealing with known informants, the

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<sup>78</sup> 238 F.3d 106 (1st Cir. 2001).

<sup>79</sup> *Id.* at 110.

<sup>80</sup> *Id.* at 108-09.

<sup>81</sup> *Id.* at 110 (quoting *United States v. Khounsavanh*, 113 F.3d 279, 284 (1st Cir. 1997)).

<sup>82</sup> *Id.* at 109. The court still addressed the case of *Florida v. J.L.* because the defendant used it to argue his case. *Id.*

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reliability problem discussed in *J.L.* is lessened because of the officer's ability to verify the source.<sup>83</sup> Therefore, verified information from known informants provides police with probable cause to arrest, contrasted with an anonymous tip that, once corroborated, allows police to conduct a *Terry* stop, as was held in *J.L.*<sup>84</sup>

Do the courts regard tips from-face-to face encounters with confidential informants the same as a tip from an anonymous informant? The concurring opinion in *Florida v. J.L.* noted that an anonymous tip given to police by an unnamed informant who approaches an officer face-to-face to report that criminal activity is taking place can be considered reliable.<sup>85</sup> The Fourth Circuit determined this issue in the 2000 case of *United States v. Christmas*.<sup>86</sup> In *Christmas*, an individual approached two officers and said to one of them, "You need to come and deal with the drugs and the guns that these guys have on the porch two doors

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<sup>83</sup> *Link*, 238 F.3d at 110-11.

<sup>84</sup> *Id.* at 112.

<sup>85</sup> *J.L.*, 529 U.S. at 276 (Kennedy, J., concurring).

<sup>86</sup> 222 F.3d 141 (4th Cir. 2000).

down from me.”<sup>87</sup> In response to that information, the officers approached the specified location, and one of the officers advised those present, including the defendant, that they were investigating a tip regarding contraband on the property. One of the officers then conducted a pat-down of the defendant which revealed a loaded weapon. This prompted the officer to conduct “a more thorough search [which] yielded a plastic bag containing a large amount of crack cocaine and marijuana.”<sup>88</sup>

Christmas argued that “in light of *Florida v. J.L.*, a tip from a woman living two doors away from the porch where he had gathered did not provide reasonable suspicion for the protective pat-down of his person.”<sup>89</sup> The Fourth Circuit disagreed with this argument. The court interpreted *J.L.* narrowly as applying to anonymous tipsters who contact police via telephone.<sup>90</sup> By contrast, the tipster in *Christmas* approached the police face to face; the officer, therefore, could assess the tipster’s demeanor. “Unlike an anonymous tipster, a witness who directly approaches a

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<sup>87</sup> *Id.* at 143 (noting that the informant gave the specific address of where the complaint came from, but did not provide the officer with her name).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Christmas*, 222 F.3d at 143-44.

police officer can also be held accountable for false statements.”<sup>91</sup>

The court also stated that “a community might quickly succumb to a sense of helplessness if police were constitutionally prevented from responding to the face-to-face pleas of neighborhood residents for assistance.”<sup>92</sup>

*Christmas* made a clear distinction between cases where reasonable suspicion was based on anonymous tips and those based on face-to-face tips by informants. This distinction depicts the importance of police response to concerns of individuals who feel they may be in danger. “When a victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime - the subtleties of the hearsay rule should not thwart an appropriate police response.”<sup>93</sup> *Christmas* appears to have placed greater importance on the safety of informants and the rest of the community than the Fourth Amendment protection of individuals.

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<sup>91</sup> *Id.* at 144 (indicating that here the informant provided her address, which could be used to locate her if it was discovered she had given false information to the police).

<sup>92</sup> *Id.* at 145.

<sup>93</sup> Rudstein, *supra* note 17, at 666.

In 2000, the Third Circuit, in *United States v. Valentine*,<sup>94</sup> also made a distinction between anonymous tips and those based on face-to-face encounters. In *Valentine*, two officers patrolling a high crime area were stopped by a male who informed them that he had just seen an armed man.<sup>95</sup> After receiving a description of the gunman, the police set out to look for him. Not far away, the officers found three men, one of whom matched the description given by the informant.<sup>96</sup> The officers approached the men and told them to put their hands up, but the suspect tried to run away. One of the officers managed to grab him and forced him to the ground. During the attempt to restrain the defendant, his gun fell to the ground. This was the first time either officer had seen the gun.<sup>97</sup>

The court was called upon to determine whether there was reasonable suspicion to conduct a stop of the defendant.<sup>98</sup> In deciding whether reasonable suspicion existed in this case, the

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<sup>94</sup> 232 F.3d 350 (3d Cir. 2000), *cert. denied*, 532 U.S. 1014 (2001).

<sup>95</sup> *Id.* at 352. When the male was asked to identify himself, he refused, which was common due to fear of “retribution from the armed man or entanglement with the police.” *Id.*

<sup>96</sup> *Id.* at 353.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* (indicating that the District Court found that there was no reasonable suspicion to stop and frisk).

court noted that it “must consider ‘the totality of the circumstances—the whole picture.’”<sup>99</sup> The court also looked to *Florida v. J.L.* for guidance in conducting its analysis and distinguished this case from *J.L.*<sup>100</sup> “The informant’s tip in our case is different from the telephone call in *J.L.* First, unlike *J.L.*, the officers in our case knew that the informant was reporting what he had observed moments ago, not what he learned from stale or second-hand sources.”<sup>101</sup> The court also noted that “[t]he Supreme Court has recognized the greater weight carried by a witness’s recent report.”<sup>102</sup> The court further explained that a face-to-face informant is more credible than an anonymous caller. In relying on other circuits, the court found that the “Fourth Circuit recently explained, when an informant relates information to the police face to face, the officer has an opportunity to assess the informant’s credibility and demeanor.”<sup>103</sup> Through this reasoning, the court

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<sup>99</sup> *Valentine*, 232 F.3d at 353 (citing *United States v. Sokolow*, 490 U.S. 1, 8 (1989)).

<sup>100</sup> *Id.* at 353-54.

<sup>101</sup> *Id.* at 354. The informant told the officers that he saw the defendant carrying a gun just prior to giving the police the information. This led the officers to believe that the informant had a reasonable basis for his information.

*Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* (citing *Christmas*, 22 F.3d at 144).

concluded the tip was reliable.<sup>104</sup> The reasonable suspicion requirement was satisfied when the defendant attempted to leave the scene after the police arrived.<sup>105</sup>

On these facts, the Third Circuit reversed the lower court's ruling and held that the search did not violate the Fourth Amendment.<sup>106</sup> In cases dealing with tips from anonymous face-to-face informants, the circuits are likely to find reasonable suspicion to conduct a search. Thus, the reasoning of *J.L.* will not be followed in determining if a search was constitutional in cases where the tip comes from a face-to-face informant, due to the fact that the Supreme Court did not address that issue in *J.L.*.

“The United States Supreme Court in *J.L.* refused to draw a bright line rule for or against anonymous tips.”<sup>107</sup> Therefore, courts decide this issue on a case-by-case basis. “The key [is] ‘indicia of reliability.’”<sup>108</sup> After reviewing how the circuit courts have

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<sup>104</sup> *Valentine*, 232 F.3d at 355. “[T]he informant was exposed to retaliation from Valentine and knew that the officers could quickly confirm or disconfirm the tip; and the officers could assess the informant’s credibility as he spoke, knew what the informant looked like, and had some opportunity to find the informant if the tip did not pan out.” *Id.*

<sup>105</sup> *Id.* at 357 (indicating that his act of walking away alone does not supply reasonable suspicion, but it arises when put in context along with the tip).

<sup>106</sup> *Id.* at 352.

<sup>107</sup> Krippendorf, *supra* note 6, at 191.

<sup>108</sup> Krippendorf, *supra* note 6, at 191.



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interpreted the decision in *Florida v. J.L.*, it can be deduced that there is now more uniformity among the circuits when faced with the issue of anonymous tips and reasonable suspicion. Although there are different fact patterns in each case, the courts' analyses of *J.L.* are rather consistent. The major focus is on the reliability of the tip at hand and corroboration of the tip prior to conducting a search.

#### IV. CONCLUSION

*Florida v. J.L.* has had a great impact on the issue of when reasonable suspicion based on an anonymous tip will allow a constitutional stop and frisk. There are many variations to this fact pattern. Even though there is no bright line test set forth in *J.L.*, there has been more uniformity among the circuit courts when deciding cases dealing with reasonable suspicion based on anonymous tips. Not only have the courts applied *J.L.* to cases dealing with anonymous callers, but also to those involving known informants and face-to-face encounters with tipsters. The theme throughout all of these decisions is the reliability of the source of the tip and how the police corroborate tips in formulating the

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reasonable suspicion necessary to conduct a stop. These steps are taken to balance the need to shield the public from crime with the Fourth Amendment protection “against unreasonable searches and seizures.”<sup>109</sup>

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<sup>109</sup> U.S. Const. amend. IV.