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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. LORENZO PRADO NAVARETTE et al., Defendants and Appellants.	A132353 (Mendocino County Super. Ct. Nos. SCUK-CRCR-08-86137-02, SCUK-CRCR-08-86137-03)

Appellants Lorenzo Prado Navarette and Jose Prado Navarette (collectively, Appellants)[1] were detained by officers of the California Highway Patrol (CHP) and subsequently arrested for transportation of marijuana and possession of marijuana for sale (Health & Saf. Code, §§ 11359, 11360). The marijuana was discovered in Appellants' pickup truck during a traffic detention after the officers received a report from an unidentified citizen that the vehicle had been observed driving recklessly. Appellants' motion to suppress the evidence seized from their truck was denied, and they pled guilty to transportation of marijuana (Health & Saf. Code, § 11360).

Citing *People v. Wells* (2006) 38 Cal.4th 1078 (*Wells*), Appellants contend that the evidence against them should have been suppressed because the anonymous tip received by police was insufficient to provide reasonable suspicion of criminal activity justifying an investigative stop of the vehicle, where the officers directly confirmed only significant

[1] Because Appellants share the same last name, references to each as an individual is by first name only for purposes of clarity. We intend no disrespect.

innocent details of the tip but did not directly observe any illegal activity. We conclude that the totality of the circumstances in this case justified the traffic stop. We also reject an argument that the *Harvey-Madden* rule[2] required the police dispatcher who originally received the call to personally testify at the suppression hearing. Because the detention was supported by reasonable suspicion, Appellants' suppression motion was properly denied and the judgments are affirmed.

I. BACKGROUND

On August 20, 2009, the Mendocino County District Attorney charged Appellants with transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)) and possession of marijuana for sale (Health & Saf. Code, § 11359). At the preliminary hearing, Appellants each made a motion to suppress evidence (Pen. Code, § 1538.5, subd. (f)). The following facts are taken from the preliminary hearing testimony.

On the afternoon of August 23, 2008, Matia Moore and Sharon Odbert were working as a dispatch team at a CHP 911 call center in Mendocino County. Moore was the receiver who took incoming calls, and Odbert was the dispatcher who broadcast messages to CHP officers over the radio. Moore and Odbert communicated with each other via computer, with those communications recorded in what are called CAD logs.

At about 3:47 p.m., Moore received a call over an allied agency line, which is a dedicated phone line for calls from other dispatch offices. The caller identified herself as a Humboldt County CHP dispatcher. Moore generated a CAD log from the information she received and at the hearing she authenticated a printed record of that log. In the log, she recorded that a silver Ford F150 pickup truck with license plate number 8D94925 had run an unidentified reporting party off the roadway and was last seen five minutes earlier (i.e., five minutes before Moore wrote the log) at mile marker 88 on Highway 1, heading southbound. Moore did not hear the original 911 report to the Humboldt CHP. She also

[2] *People v. Harvey* (1958) 156 Cal.App.2d 516, 522–524 (conc. opn. of Dooling, J., Draper, J.); *People v. Madden* (1970) 2 Cal.3d 1017.

did not know whether the Humboldt dispatcher who spoke to her was the person who took the original 911 call.

Odbert testified that she saw the following information generated on her screen: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five minutes ago." She broadcasted the information to officers at 3:47 p.m. Two CHP units responded to the broadcast and reported they were en route from Fort Bragg, heading north. At 4:00 p.m., Sergeant Francis reported that he had passed the vehicle near mile marker 69. Officer Thaddeus Williams testified that he spotted the vehicle near mile marker 66 and saw Francis following behind it. Williams let them pass, made a U-turn, and then followed them heading south. At about 4:05 p.m., Francis pulled the vehicle over by MacKerricher State Park and soon thereafter Williams pulled up behind them.

The officers approached the car on the passenger side and asked both occupants (Appellants) for identification, then returned to Francis's patrol car to run identification checks. The driver, Lorenzo, initially provided only a photocopy of identification, and the officers returned to the driver's side of the vehicle to request additional identification. From this location, they smelled marijuana and ordered Appellants to exit the vehicle. A search of the vehicle disclosed four large bags of marijuana in the truck bed, along with fertilizer, hand clippers, and oven bags. Appellants were arrested. An expert testified that in his opinion the marijuana was possessed for sale.

Appellants argued that the evidence did not establish reasonable suspicion of criminal activity justifying the traffic stop. Specifically, they asserted that the tipster's report was too vague to support the stop without further inquiry by the officers, and the officers who pulled over the vehicle did not directly observe any erratic driving that might have established reasonable suspicion of unlawful activity. They also argued that the prosecutor failed to provide sufficient evidence that the reported tip was actually received by the Humboldt County CHP, in violation of the *Harvey-Madden* rule. The prosecutor responded that, under *Wells, supra,* 38 Cal.4th 1078, the information provided

in the anonymous tip coupled with the officers' observations confirming significant innocent details of the tip established reasonable suspicion for the stop given the alleged dangerous conduct of the driver. Moreover, the officers' corroboration of much of the detailed information provided in the report sufficiently established the veracity of the tip as required by *Harvey-Madden*.

The magistrate denied the motion to suppress and held Appellants to answer. He found no *Harvey-Madden* violation, commenting, "I think there's a fairly reliable chain from Humboldt County to the officer." He further ruled that reasonable suspicion was established under the standards announced in *Wells, supra,* 38 Cal.4th 1078: the anonymous tipster's report of reckless driving[3] here was comparable to the report of a vehicle weaving all over the road in *Wells*, and the officers confirmed innocent details of the anonymous tip just as the officers did in *Wells*.

Appellants moved to set aside the charges under Penal Code section 995 on the ground that the magistrate erred in denying the motion to suppress per *Wells, supra,* 38 Cal.4th 1078. In a written order, Superior Court Judge Clayton Brennan denied the motion.

Appellants petitioned for writ review of the trial court's order, which this court denied for untimeliness, an insufficient showing of entitlement to pretrial review, and an inadequate record. (*Navarette v. Superior Court* (Feb. 11, 2010, A127541) [nonpub. order].) Appellants petitioned for review by the Supreme Court which, after requesting and receiving an answer, denied the petition. (*Navarette v. Superior Court* (Apr. 28, 2010, S180366).)

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[3] Jose twice draws this court's attention to the fact that the magistrate erroneously stated during argument that there was evidence the driver crossed "a double-yellow line to the extent it forced someone off the road." He correctly notes there was no evidence presented at the preliminary hearing that the vehicle had crossed a double yellow line. As the trial court ruled, the statement was clearly a result of the "magistrate's faulty recollection." We agree with the People that the magistrate's misstatement is immaterial because the record strongly suggests the magistrate did not ultimately make such a finding. Defense counsel promptly corrected the misstatement, and the magistrate did not reiterate it when he made his final ruling.

Appellants subsequently pled guilty to transportation of marijuana and the possession for sale charge was dismissed. The court suspended imposition of sentence and placed Appellants on three years' probation on the condition they serve 90 days in county jail.

II. DISCUSSION

"When, as here, a magistrate rules on a motion to suppress under Penal Code section 1538.5 raised at the preliminary examination, he or she sits as the finder of fact with the power to judge credibility, resolve conflicts, weigh evidence, and draw inferences. In reviewing the magistrate's ruling on a subsequent motion . . . the superior court sits as a reviewing court—it must draw every legitimate inference in favor of the information, and cannot substitute its judgment for that of the magistrate on issues of credibility or weight of the evidence. On review of the superior court ruling by appeal or writ, we in effect disregard the ruling of the superior court and directly review the determination of the magistrate. . . . [Citation.] [¶] . . . [W]e defer to the magistrate's factual determinations when supported by substantial evidence, but exercise our independent judgment in determining whether, on such facts, the challenged search was reasonable under the Fourth Amendment. [Citation.]" (*People v. Shafrir* (2010) 183 Cal.App.4th 1238, 1244–1245, fn. omitted.)

We first consider the *Harvey-Madden* issue—whether there was sufficient evidence before the magistrate to establish that an anonymous tip was in fact received by the police department and was not fabricated.

A. *The* Harvey-Madden *Rule*

" 'It is well settled that while it may be perfectly reasonable for officers in the field to make arrests on the basis of information furnished to them by other officers, "when it comes to justifying the total police activity in a court, the People must prove that the source of the information is something other than the imagination of an officer who does not become a witness." [Citations.] To hold otherwise would permit the manufacture of reasonable grounds for arrest within a police department by one officer transmitting information purportedly known by him to another officer who did not know such

information, without establishing under oath how the information had in fact been obtained by the former officer. [Citations.]' " (*People v. Madden, supra,* 2 Cal.3d at p. 1021, quoting *People v. Remers* (1970) 2 Cal.3d 659, 666–667 (*Remers*); see also *Whiteley v. Warden* (1971) 401 U.S. 560, 568, disapproved on other grounds by *Arizona v. Evans* (1995) 514 U.S. 1, 13.) "The absence of such a requirement would allow a police officer to manufacture reasonable grounds to arrest while circumventing the necessity of pointing to 'specific and articulable facts' [citation] justifying his suspicions." (*Remers,* at p. 667.) This rule applies to the requirement of reasonable suspicion for investigatory stops. (*In re Richard G.* (2009) 173 Cal.App.4th 1252, 1259 (*Richard G.*).)

In informant cases, "[t]he best way of negating 'do it yourself probable cause' is to have the officer who received the information from outside the police department testify, but that is not the only way." (*People v. Orozco* (1981) 114 Cal.App.3d 435, 444 (*Orozco*).) Evidence that corroborates information in the tip may also satisfy the *Harvey-Madden* rule. (*Orozco,* at pp. 444–445.) In *Orozco*, for example, an "anonymous caller supposedly said that people were shooting out of [a] car. The [P]eople never proved that such a call was made but they did prove that there were cartridges within four to five feet of the passenger door of the car when the police looked for them. . . . The presence of the cartridges certainly supports a very strong inference that the police did not make up the information from the informant. Thus, the veracity of the dispatcher's statement that he received a call was circumstantially proved." (*Ibid.*; see also *People v. Johnson* (1987) 189 Cal.App.3d 1315, 1317–1318, 1320 (*Johnson*); *Richard G., supra,* 173 Cal.App.4th at p. 1256; cf. *In re Eskiel S.* (1993) 15 Cal.App.4th 1638, 1644 (*Eskiel S.*).)[4]

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[4] In *Johnson*, the court found sufficient corroboration where an anonymous tipster had reported that two Black males—between 25 and 30 years old; one with a moustache and wearing a red jacket and black pants and the other wearing a black jacket and jeans—were climbing a fence into the backyard of a specific residence, and upon arrival police observed two Black males—in their 20's; each with a moustache and a beard or goatee; one wearing a red and black top with jeans and the other wearing a dark long-sleeved

Jose argues the *Harvey-Madden* rule was violated here because the prosecution did not present the testimony of the Humboldt County dispatcher who actually received the original report. We disagree. The testimony was unnecessary because there was sufficient corroborating evidence to establish that the tip was not manufactured by the police department. First, the Mendocino County dispatchers established—by testifying based on their personal knowledge and by authenticating a business record—that a tip was received from the Humboldt County dispatch office shortly before the dispatch was broadcast and that the tip contained the information received by Williams. Second, several significant facts in the tip were corroborated by Williams's personal observations shortly after receiving the tip: the description, license plate number, location and

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shirt and jean overalls—10 yards from the address. (*Johnson, supra,* 189 Cal.App.3d at pp. 1317–1318, 1320.)

In *Richard G.*, a dispatch reported that two males—one wearing a black t-shirt and the other a blue Pendleton-type jacket—were creating a disturbance at a particular address and walking in the direction of a nearby park, and one was possibly armed. (*Richard G., supra,* 173 Cal.App.4th at p. 1256.) Within minutes of receiving the dispatch, two patrol officers observed two men matching the description walking near the park with two women, and ordered the men to stop. (*Ibid.*) The court held the *Harvey-Madden* rule was satisfied based solely on the detaining officers' testimony because there clearly "was no 'manufacture' of information. . . . [T]here is no way that the dispatcher could have manufactured these detailed descriptions at or near the place and time the officers saw appellant and his companion matching the detailed descriptions." (*Id.* at pp. 1256, 1259.)

In *Eskiel S.*, in contrast, the court found insufficient corroboration to satisfy the *Harvey-Madden* rule. (*Eskiel S., supra,* 15 Cal.App.4th at p. 1644.) The only evidence presented was a radio broadcast reporting a possible gang fight involving 10 to 12 Black persons, including one possibly armed with a rifle, in the area of a certain intersection. The defendant and others were detained in a nearby park. (*Id.* at p. 1641.) While recognizing that "[w]here *significant* portions of the broadcast can be verified, it is reasonable to conclude that the source of the information 'is probably right about other facts . . . including the claim that the object of the tip is engaged in criminal activity,' " the court held that "[b]ecause of the general nature of the information contained in the radio broadcast . . . , no amount of corroboration could have justified a detention based on the broadcast. . . . The individuals allegedly involved in the 'possible' criminal activity were not described other than by race and only a general 'area' was given as their location." (*Id.* at p. 1644, fn. omitted.)

direction of the vehicle. These corroborated details serve the purpose of the *Harvey-Madden* rule: they provide persuasive evidence that the reported tip was genuine and not a fabrication of a " 'phantom informer' " by a law enforcement official.[5] (See *People v. Poehner* (1971) 16 Cal.App.3d 481, 487.)

Jose argues there is a split in the case law between strict (*Eskiel S., supra,* 15 Cal.App.4th 1638) and relaxed (*Orozco, supra,* 114 Cal.App.3d 435, *Richard G., supra,* 173 Cal.App.4th 1252) adherence to the *Harvey-Madden* rule and urge us to follow *Eskiel S.* He further argues that *Eskiel S.* permits reliance on corroboration only where alleged illegal activity is corroborated, not where innocent details are corroborated. We disagree with both arguments. First, we see no real divergence in the case law. It is true that *Richard G.* criticizes *Eskiel S.* for "requir[ing] strict adherence to the '*Harvey-Madden*' rule without addressing the crucial role of independent corroboration," and states, "We think a plausible argument could be made that the crime report at issue in *Eskiel S.* was sufficiently corroborated . . . ." (*Richard G.*, at p. 1260.) However, *Eskiel S.* expressly acknowledges that sufficient corroboration can satisfy the *Harvey-Madden* rule and simply holds that insufficient corroboration was present in that case. (*Eskiel S.*, at p. 1644.) We view *Eskiel S.* as consistent with the approach taken in *Orozco*, *Richard G.*, and *Johnson, supra,* 189 Cal.App.3d 1315, and see no reason to argue with the court's application of the law to the facts before it. Second, we disagree that *Eskiel S.* draws a distinction between corroboration of innocent details versus alleged illegal activity. *Eskiel S.* makes no such distinction. Rather, it refers to "significant" details in the tip, which may include innocent or incriminating details. (*Eskiel S.*, at p. 1644.) Moreover, *Eskiel S.* specifically distinguished *Johnson*, which was decided by the same appellate district, because the corroborating facts there were significant, even though those facts simply included detailed descriptions of the suspects and their location and did not involve criminal activity. (*Eskiel S.*, at p. 1644; *Johnson*, at pp. 1317–1320.)

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[5] We also note that, although not offered in evidence at the evidentiary hearing, Jose's counsel acknowledged on the record receipt of a recording of the original citizen call to the CHP dispatcher.

In *People v. Ramirez* (1997) 59 Cal.App.4th 1548 (*Ramirez*), the court held that probable cause or reasonable suspicion can be established by the collective knowledge of officers involved in an arrest or detention even if not all of that information is conveyed to the specific officer or officers who carry out the arrest or detention. (*Ramirez*, at p. 1555 ["when police officers work together to build 'collective knowledge' of probable cause, the important question is not what each officer knew about probable cause, but how valid and reasonable the probable cause was that developed in the officers' collective knowledge"]. Neither party disputes that the rule applies to reasonable suspicion as well.

Jose argues *Ramirez, supra*, 59 Cal.App.4th at page 1556, is distinguishable because the arrest in that case was "based on a fellow officer's determination of probable cause, which in turn was based on the officer's direct observation that the vehicle was speeding." Here, on the other hand, he argues, "the dispatcher is not trained to make reasonable suspicion determinations, and the information was not based on her observations, but was supplied by an anonymous tipster."

The assertion that dispatchers are not trained in determining probable cause suggests an argument that the collective knowledge rule should not apply when an officer relies on a *dispatcher's* express or implied statement of reasonable suspicion. While perhaps an interesting argument, it is not relevant on the facts of this case. Here, the question is not whether the officers properly relied on the dispatcher's *determination* of reasonable suspicion, but whether they properly relied on *information* relayed to them by the dispatchers. As we explain *post*, that information and the officers' corroboration of significant parts of that information justified the stop here in light of the public danger posed by reported reckless driving. The dispatchers were merely the conduits of the relevant information.

We find no *Harvey-Madden* violation.

B. *Reasonable Suspicion for the Traffic Stop*

1. *The* Wells *Legal Standard*

In *Wells*, the Supreme Court reiterated the well-established reasonable suspicion standard for investigative stops by law enforcement officers: "[A]n officer may stop and detain a motorist on reasonable suspicion that the driver has violated the law. [Citations.] The guiding principle in determining the propriety of an investigatory detention is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' [Citations.] . . . [¶] Reasonable suspicion is a lesser standard than probable cause, and can arise from less reliable information than required for probable cause, including an anonymous tip. [Citation.] But to be reasonable, the officer's suspicion must be supported by some specific, articulable facts that are 'reasonably "consistent with criminal activity." ' [Citation.]" (*Wells, supra,* 38 Cal.4th at pp. 1082–1083.)

The Court explained that citizen tips by victims or eyewitnesses generally are sufficient alone to supply reasonable suspicion, "especially if the circumstances are deemed exigent by reason of possible reckless driving or similar threats to public safety. (*Lowry v. Gutierrez* (2005) 129 Cal.App.4th 926 [phoned-in tip of erratic driving]; *People v. Rios* (1983) 140 Cal.App.3d 616 [car illegally parked and traffic hazard]; *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579 [reckless driving, driver pointing gun]." (*Wells, supra,* 38 Cal.4th at p. 1083, parallel citations omitted; see also *People v. Smith* (1976) 17 Cal.3d 845, 850–851 [it is reasonable for police to rely on tips of citizen-informants].) Nevertheless, special concerns arise when such a tip comes from an anonymous source. As explained by the United States Supreme Court, "Unlike 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 [citation], 'an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity,' [citation]." (*Florida v. J.L.* (2000) 529 U.S. 266, 270 (*J.L.*).) To establish reasonable suspicion in an anonymous victim or eyewitness tip case, the tip must exhibit sufficient indicia of reliability, be "suitably corroborated," and be "reliable in its assertion of illegality, not

just in its tendency to identify a determinate person." (*Id.* at pp. 270, 272.) However, the court held open the possibility that there may be "circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability," such as a report of a person carrying a bomb. (*Id.* at pp. 273–274.)

In *Wells*, the California Supreme Court held that the danger exception postulated in *J.L.*, *supra*, 529 U.S. at pp. 273–274, applies when an anonymous tipster contemporaneously reports drunken or erratic driving on a public roadway and officers are able to corroborate significant innocent details of the tip, such as detailed descriptions of the vehicle and its location. (*Wells, supra,* 38 Cal.4th at pp. 1080–1081, 1087–1088; *People v. Dolly* (2007) 40 Cal.4th 458, 464 (*Dolly*).) In *Wells*, a CHP officer received a dispatch report of a possibly intoxicated driver " 'weaving all over the roadway' " in "a 1980's model blue van traveling north on Highway 99 at Airport Drive." (*Wells*, at p. 1081.) The officer was about three to four miles north of Airport Drive and saw a blue van driving north on the highway about two to three minutes after receiving the dispatch. Without observing any erratic driving or other illegal activity, the officer pulled the car over for an investigative stop. (*Ibid.*) The Supreme Court held the stop was supported by reasonable suspicion. (*Id.* at p. 1082.) First, circumstantial evidence supported the inference that the tipster was an eyewitness (*id.* at p. 1088), a fact that itself enhanced the reliability of the tip: "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned-in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare. [Citations.]" (*Id.* at p. 1087) Second, officers confirmed detailed identifying information in the tip before pulling the vehicle over, thus further enhancing the reliability of the tip. (*Id*. at p. 1088.) Finally, the report of a reckless driver poses a "grave and immediate risk to the public." (*Id.* at p. 1087.)

Wells found an opinion of the Eighth Circuit in *United States v. Wheat* (2001) 278 F.3d 722 (*Wheat*) particularly persuasive (*Wells, supra,* 38 Cal.4th at pp. 1084–1088), so we take guidance from that case as well. The *Wheat* court held that reasonable

suspicion was established in the totality of the following circumstances: "An anonymous caller provided an extensive description of a vehicle that, based on his contemporaneous eyewitness observations, he believed was being operated dangerously, and cited specific examples of moving violations. When Officer Samuelson caught up with the vehicle minutes later while it was stopped at an intersection, he corroborated all its innocent details, confirming that it was the one identified by the tipster. Within seconds after the vehicle resumed motion, Officer Samuelson effected an immediate investigatory stop, rather than allow it to proceed and potentially endanger other vehicles." (*Wheat*, at p. 737.) The tipster had reported that the vehicle was "passing on the wrong side of the road, cutting off other cars, and otherwise being driven as if by a 'complete maniac.' " (*Id.* at p. 724.)

2. *Application of* Wells *in this Case*

Under the *Wells* standard, the officers here had reasonable suspicion to conduct an investigative stop of Appellants' vehicle. The contents of the tip supported an inference that it came from the victim of the reported reckless driving. The officers' prompt corroboration of significant innocent details of the tip—the detailed description of the vehicle including its license plate number and the accurate description of its location and traveling direction—sufficiently established the reliability of the tip to support reasonable suspicion. Finally, the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists to justify the stop without direct corroboration of the vehicle's illegal activity.

Appellants argue the tipster here did not provide enough information about the alleged illegal driving to render the tip reliable without corroboration of illegal activity by the officers.[6] They argue a report that the vehicle ran the reporting party off the roadway

[6] In support of this argument, Lorenzo criticizes the *Wells* majority's reasoning and extensively cites the *Wells* dissent as well as the concurring opinion in *Dolly* (authored by the *Wells* dissenters, expanding on views expressed in *Wells*). He also argues that the *Wells* majority erred by stating that harassment was unlikely in the context of phone-in tips of erratic driving by vehicles that can quickly be located and stopped. The *Wells* dissent and *Dolly* concurrence are irrelevant to our analysis of the issues, as is

was not an unambiguous report of unlawful activity or of an ongoing public danger because the vehicle might have simply swerved to avoid an obstacle in the road. In contrast, they argue, the report in *Wells* of a car " 'weaving all over the roadway' " strongly indicated unlawful activity and an ongoing danger to the public. (See *Wells, supra,* 38 Cal.4th at p. 1087.) They note that both *Wells* and *Wheat* emphasized the importance of receiving detailed information about the alleged dangerous driving and warned that a stop might not be justified on limited or vague information about the suspect vehicle's alleged erratic driving. (See *Wells,* at p. 1088; *Wheat, supra,* 278 F.3d at p. 731–732 & fn. 8.) Lorenzo specifically argues there was no evidence that the informant characterized the driving as "reckless"; instead, the record only shows that the Humboldt County dispatcher told Moore the driving was "reckless," a characterization that might have been nothing more than the Humboldt dispatcher's personal speculation.

In our view, it is immaterial whether the caller or the Humboldt dispatcher characterized the driving as "reckless" because the phrase "ran the reporting party off the roadway" itself strongly implies reckless if not deliberately aggressive driving. While it is *possible* the driver's actions were misinterpreted by the caller, or by the dispatcher, this possibility does not undermine the lawfulness of the stop. Officers only need reasonable suspicion to detain people for investigative purposes, not proof of illegal activity or even probable cause to believe they engaged in or were about to engage in criminal activity. " 'The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.' " (*People v. Souza* (1995) 9 Cal.4th 224, 233.)

Jose argues that the officers lacked reasonable suspicion because the dispatcher's radio broadcast about the tip may have referred only to "reckless driving" rather than a

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Lorenzo's criticism of the *Wells* majority's reasoning, because we are bound to follow the majority opinions in the *Wells* and *Dolly* cases, which clearly hold that confirmation of innocent details alone is sufficient to establish reasonable cause. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; *Wells, supra,* 38 Cal.4th at pp. 1086, 1088; *Dolly, supra,* 40 Cal.4th at p. 465.)

report that the vehicle "ran the reporting party off the roadway." As we read the record, the magistrate found that the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway.[7] Because this finding was supported by substantial evidence in the record,[8] we must accept it as true. We thus need not decide whether a

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[7] In posthearing argument, Jose's counsel told the magistrate, "The issue is whether the information to communicated [*sic*] the officer was enough for him to detain the car." Immediately thereafter, the magistrate said, "[I]n *Wells* the only conduct that was reported to the officer was that the car was weaving. [¶] . . . [S]o what the officer had there was testimony that there was some kind of erratic driving that could be consistent with drunk driving. [¶] And I think this is conduct similar to that where someone forced another person off the road . . . ." This statement implies that the magistrate found the officers were told that the vehicle reportedly ran another vehicle off the road. Supporting this conclusion is the fact that Jose's counsel had previously conceded in argument that the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway. For example, he said, "I don't think the officer testified . . . [he heard about] crossing the double-yellow line . . . . [¶] The information conveyed to them was 'ran this person off the road,' " and, "Based on my own memory . . . about what the detaining officer testified he heard[was] . . . the Ford pickup . . . almost or did run the reporting party off the road. [¶] I don't think we're disputing that."

[8] Odbert testified that she saw the following information on her screen: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five minutes ago." She broadcast "that information" to officers in the field at 3:47 p.m. When she was further questioned about that broadcast, she testified, "I would say, Attention, coastal units. BOL for . . . a reckless driver, 23103. And then [I would] give the information, the silver, the F150 pickup, etc." She was then specifically asked whether she broadcast the license plate number and location and traveling direction of the vehicle and she confirmed that she had. She was not specifically asked whether she broadcast the information that the vehicle ran the reporting party off the road.

Moore testified that the dispatcher reads from the computer screen when she makes her broadcast, although she does not necessarily read exactly what is written there. She further testified that the dispatchers are required to ask callers who report reckless driving what specific conduct is involved and they are required to convey that information to the officers: "The highway patrol is not okay with us broadcasting just a vehicle description with no reason why it would be reported as a reckless or possible drunk driver. They have to have a reason for what they believe is reckless."

When Williams was asked what he heard on the dispatch, he testified, "I remember hearing dispatch of a reckless driver southbound on Highway 1. I don't recall the exact location. . . . [¶] . . . [¶] . . . The description was a silver pickup truck with a

report of "reckless driving" alone would have been too vague to support reasonable suspicion for the traffic stop.

Finally, Appellants place great emphasis on the fact that the officers here did not pull the car over immediately, but only after they had followed it for five minutes without observing any erratic driving. They imply that this period of observation belied any genuine apprehension of public danger in the officers, which was necessary to justify the stop without corroboration of the driver's illegal activity. Jose argues alternatively that, even if the officers initially perceived a public danger, the extended period of observation without incident *dispelled* that concern and *negated* any reasonable suspicion they might have initially had. Appellants note that *Wheat* emphasized that the public danger of a possibly drunk driver justified quick police action without direct corroboration of illegal activity. The court commented that a stop might not be justified if officers follow the vehicle for a substantial period of time without observing illegal activity. (*Wheat, supra,* 278 F.3d at pp. 736–737 & fn. 13.) Along the same lines, *Wells* twice notes that the officers' stop of the vehicle was immediate, thus explaining why direct corroboration of illegal activity was not possible. (*Wells, supra,* 38 Cal.4th at pp. 1081, 1088.)

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specific license plate number." He was not specifically asked whether he was paraphrasing or whether he specifically recalled hearing the words "reckless driving" without further description.

On this record, the magistrate could find that the dispatch to the officers stated that the caller reported the vehicle ran the reporting party off the road. " '[W]e must uphold the magistrate's express or implied findings if they are supported by substantial evidence. [Citations.]' [Citation.]" (*People v. Magee* (2011) 194 Cal.App.4th 178, 183.)

Jose acknowledges on appeal that Odbert's testimony "implied that she provided additional information" to the officers beyond the report of "reckless driving" and the vehicle description and location. However, he notes that the "audio tapes of the actual dispatch [broadcast] were no longer available at the time of the Preliminary Hearing [citations], despite defense counsel's repeated requests. [Citations]." In the trial court, Appellants based their motion to dismiss in part on this alleged discovery violation. The trial court denied the motion because the officers' "subjective belief" in the existence of reasonable suspicion was immaterial. Appellants do not renew their discovery argument on appeal. Therefore, the alleged discovery violation plays no role in our analysis of whether substantial evidence supports the magistrate's implied finding.

In the circumstances presented here, we cannot agree the officers' brief observation of the vehicle without incident belied or dispelled any reasonable concern about public safety. The five-minute delay in pulling over Appellants' vehicle resulted from the fact that both Francis and Williams were driving north on Highway 1 when they first observed Appellants' vehicle traveling south and thus needed to make U-turns and catch up to the vehicle before they could pull it over. The reported illegal driving—running another car off the roadway—was a serious traffic violation that carried an unusually high risk of collision and injury. Further, the vehicle was traveling on Highway 1, which (as the magistrate noted) was an undivided two-lane road, thus raising the risk of a collision with oncoming traffic, which poses a particular risk to human life and limb. Finally, the anonymous tip itself had several indicia of reliability—the content of the tip strongly suggested it came from the victim and the tipster accurately described the appearance, location and direction of the vehicle. In these circumstances, the officers could reasonably conclude there was a risk to public safety that necessitated a prompt investigative stop despite their brief observation of the vehicle without incident.[9]

In sum, the People established that the officers had reasonable suspicion of unlawful activity justifying their investigative stop of Appellants' vehicle. The court properly denied Appellants' motion to suppress the fruits of that stop.

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[9] In a footnote, *Wheat* cites three cases that purportedly illustrate that "when the officer does not effect an immediate stop of a potentially drunk driver, the force of this justification [i.e., the need to stop a suspected drunk driver quickly] rapidly diminishes." (See *Wheat, supra,* 278 F.3d at p. 737, fn. 13.) In each of the three cited cases, however, the courts held—inconsistent with *Wells, supra,* 38 Cal.4th 1078—that an anonymous citizen's tip about erratic or drunk driving does not establish reasonable suspicion for an investigatory stop even if its innocent details are confirmed. The officers' failure to directly observe erratic driving in those cases, therefore, left the officers without any reasonable suspicion to pull over the drivers. In other words, the period of observation without incident did not *dispel* reasonable suspicion raised by the anonymous tip; it failed to provide reasonable suspicion in the first place. (See *McChesney v. State* (Wyo. 1999) 988 P.2d 1071, 1076–1077; *State v. Boyle* (La.Ct.App. 2001) 793 So.2d 1281, 1283–1285; *Washington v. State* (Ind.Ct.App. 2000) 740 N.E.2d 1241, 1246.)

III. DISPOSITION

The judgments are affirmed.

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Bruiniers, J.

We concur:

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Jones, P. J.

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Simons, J.