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2016

## The Big Picture View of Anonymous Tips from Ordinary People

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### Recommended Citation

Dadiego, Amanda M. (2016) "The Big Picture View of Anonymous Tips from Ordinary People," *Touro Law Review*. Vol. 32 : No. 4 , Article 8.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol32/iss4/8>

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## THE BIG PICTURE VIEW OF ANONYMOUS TIPS FROM ORDINARY PEOPLE

### COURT OF APPEALS OF NEW YORK

People v. Argyris<sup>1</sup>  
(decided November 25, 2014)

#### I. INTRODUCTION

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.”<sup>2</sup> The purpose is to protect individuals from being searched or arrested based upon mere suspicion or a rumor.<sup>3</sup> A search or seizure is reasonable, and therefore constitutional, when law enforcement has reasonable suspicion or probable cause. Courts throughout the country have been faced with the issue of whether anonymous tips that lead police to conduct a “stop and frisk” could be deemed constitutional.<sup>4</sup> Anonymous tips can create a cause for concern when the informant uses law enforcement in an attempt to harass, blackmail, or embarrass a potential defendant.

This Case Note will discuss the issue presented to the New York State Court of Appeals in *People v. Argyris*—whether there was reasonable suspicion, to justify the search and seizure of the defendant’s vehicle and firearm on the basis of an anonymous 911 phone call. This Note will recommend that New York adopt a practical, totality of the circumstances approach used by a majority of the states.<sup>5</sup> Section II will discuss the facts and procedural background of *Ag-*

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<sup>1</sup> 27 N.E.3d 425 (N.Y. 2014).

<sup>2</sup> U.S. CONST. amend. IV.

<sup>3</sup> *People v. Elwell*, 406 N.E.2d 471, 480 (N.Y. 1980) (Jasen, J., dissenting).

<sup>4</sup> *Illinois v. Gates*, 462 U.S. 213 (1983); *Alabama v. White*, 496 U.S. 325, 330 (1990); *Florida v. J.L.*, 529 U.S. 266 (2000); *People v. Moore*, 847 N.E.2d 1141 (N.Y. 2006); *People v. Rios*, 898 N.Y.S.2d 797 (Sup. Ct. Kings Cty. 2010).

<sup>5</sup> See *infra* note 244 (stating that only six states, including New York, apply the *Aguilar-Spinelli* test).

*ryris*. Section III will provide an overview and brief history of the doctrine of reasonable suspicion. Section IV will address when an anonymous tip may serve as a basis for reasonable suspicion or probable cause to justify a reasonable search or seizure. Section V will address the background of New York law in relation to anonymous tips. Finally, Section VI will apply the relevant law to the facts of *Agryris*.

## II. PEOPLE V. ARGYRIS

### A. Factual and Procedural Background

On July 19, 2007, the police received a 911 phone call from an unidentified man.<sup>6</sup> The caller explained to the operator that after exiting a building on New Town Avenue and 31<sup>st</sup> Street in Astoria, New York he witnessed four “big bully white guys” enter a new black Mustang.<sup>7</sup> The caller provided the operator with the license plate number of the Mustang.<sup>8</sup> He added that one of the men put a gun into the back of the vehicle and observed a gray van accompany the Mustang as it drove away.<sup>9</sup> Next, the caller stated that the vehicle and the van went down the block and turned right.<sup>10</sup> Although the caller described the gunman’s appearance as a “tall big bully white guy[,]” the caller was unable to identify the defendant’s clothing or any other distinctive traits.<sup>11</sup> The caller declined to reveal his identity to the operator.<sup>12</sup> The 911 operator attempted to send police to meet the caller, but he left before the police arrived at the scene.<sup>13</sup>

Approximately fifteen minutes after the call was made, Officer Castelli, a New York City police officer, located a black Mustang with a matching license plate number.<sup>14</sup> Castelli followed the Mustang and reported via radio to inform other officers.<sup>15</sup> After re-

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<sup>6</sup> *Argyris*, 27 N.E.3d at 429 (Abdus-Salaam, J., concurring).

<sup>7</sup> *Id.*

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Argyris*, 27 N.E.3d at 429 (Abdus-Salaam, J., concurring).

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

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

ceiving the radio report, Sergeant Bauso spotted the Mustang at a traffic light and left his vehicle to get a better look at the license plate number.<sup>16</sup> Once he confirmed the license plate number, he pointed to the vehicle and instructed the driver to pull over.<sup>17</sup> However, the driver failed to comply and Bauso returned to his vehicle to follow the Mustang.<sup>18</sup> The Mustang continued to drive and parted ways with the van.<sup>19</sup> Officer Valles spotted the Mustang, followed it, and called for backup.<sup>20</sup> Valles exited his vehicle, pointed his gun at the Mustang, and ordered the occupants to exit the vehicle.<sup>21</sup> Sergeant Bauso and six other officers arrived on the scene and aimed their guns at the Mustang.<sup>22</sup>

Officer Valles ordered the occupants to exit the vehicle one by one.<sup>23</sup> The defendant, Costandino Argyris, an occupant in the Mustang, wore a bulletproof vest that was visible when he exited the vehicle.<sup>24</sup> Officer Valles searched Argyris and discovered a metal and leather club along with a switchblade when he searched Argyris.<sup>25</sup> Officer Valles searched the vehicle and discovered a loaded .38 caliber handgun under the driver's seat, as well as a box of 9 millimeter ammunition on the back seat.<sup>26</sup>

Before the commencement of trial, the defendant moved to suppress the physical evidence recovered by police.<sup>27</sup> The New York State Supreme Court Queens County ultimately denied the defendant's motion to reargue and the defendant entered a plea of guilty.<sup>28</sup> Next, the defendant appealed from the judgment of conviction.<sup>29</sup> The New York State Supreme Court Appellate Division, Second Department, emphasized that these circumstances did not require the application of the *Aguilar-Spinelli* test because the standard of review is

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<sup>16</sup> *Argyris*, 27 N.E.3d at 429 (Abdus-Salaam, J., concurring).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

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

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

<sup>21</sup> *Argyris*, 27 N.E.3d at 429 (Abdus-Salaam, J., concurring).

<sup>22</sup> *Id.* at 429-30.

<sup>23</sup> *Id.* at 430.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Argyris*, 27 N.E.3d at 430 (Abdus-Salaam, J., concurring).

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

<sup>28</sup> *Id.* at 431.

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

merely reasonable suspicion.<sup>30</sup> The court determined that Officer Valles had a basis to suspect that the defendant may be in criminal possession of a weapon.<sup>31</sup> The court found that reasonable suspicion was established from the anonymous informant accurately providing the police with (i) a description of the vehicle, (ii) license plate number, and (iii) the location of the vehicle in relation to where it was first spotted by the informant.<sup>32</sup> The informant's information was reliable, because it was a contemporaneous observation.<sup>33</sup> The court stated that the police officers were justified in drawing their guns to ensure their safety when ordering the defendant to exit the vehicle.<sup>34</sup> Accordingly, the court held that the trial court properly denied the defendant's motion to suppress the physical evidence seized from the defendant's person and vehicle.<sup>35</sup>

### B. The New York Court of Appeals Decision

The New York Court of Appeals held that the police stop was lawful whether the court applied either the totality of the circumstances test or the *Aguilar-Spinelli* test.<sup>36</sup> However, the *Aguilar-Spinelli* test does not typically apply to situations regarding reasonable suspicion.<sup>37</sup> The court determined through a combination of the contents of the anonymous 911 call and the confirmatory observations from the police that reasonable suspicion was successfully established.<sup>38</sup> Reasonable suspicion was established because the anon-

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

<sup>31</sup> *Argyris*, 27 N.E.3d at 431 (Abdus-Salaam, J., concurring).

<sup>32</sup> *Id.*; Reasonable suspicion is defined as "a particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity. *Reasonable Suspicion*, BLACK'S LAW DICTIONARY (10th ed. 2014) defines "A police officer must have a reasonable suspicion to stop a person in a public place." In *White*, the Court stated

[r]easonable 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.

*White*, 496 U.S. at 330; see *supra* Part I.B for a discussion of the *Aguilar-Spinelli* test.

<sup>33</sup> *Argyris*, 27 N.E.3d at 431 (Abdus-Salaam, J., concurring).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 426.

<sup>37</sup> *Id.* at 427.

<sup>38</sup> *Argyris*, 27 N.E.3d at 426.

ymous 911 call contained sufficient information about the unlawful possession of a weapon.<sup>39</sup>

Judge Smith's concurring opinion considered whether *Aguilar-Spinelli* should be applied to stops that merely require reasonable suspicion.<sup>40</sup> Before this case, *Aguilar-Spinelli* was traditionally applied to New York cases that faced the issue of probable cause, not reasonable suspicion.<sup>41</sup> Smith noted, if *Aguilar-Spinelli* should be used to establish reasonable suspicion, the court would be obligated to establish that a reasonable person could suspect the informant had an adequate basis of knowledge and that knowledge stemmed from a credible or reliable source.<sup>42</sup> Therefore, Judge Smith, along with four other judges, rejected the idea that *Aguilar-Spinelli* should be applied in circumstances that solely require reasonable suspicion because it would unnecessarily complicate reasonable suspicion issues.<sup>43</sup>

### III. REASONABLE SUSPICION

#### A. Terry v. Ohio

The leading case for law enforcement's ability to "stop and frisk" suspicious individuals is *Terry v. Ohio*.<sup>44</sup> In 1968, the United States Supreme Court was asked to examine a street confrontation between an individual and the police on the basis of suspicious circumstances.<sup>45</sup> In *Terry*, an experienced detective stopped two men who were acting suspiciously in an area known for shoplifting and pickpocketing.<sup>46</sup> The detective, Officer McFadden, patrolled the same vicinity for 30 years.<sup>47</sup> During his patrol, he observed three men acting suspiciously and started to follow them because he suspected that

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

<sup>40</sup> *Id.* at 427 (Smith, J., concurring).

<sup>41</sup> *Id.* The court explained two New York Court of Appeals cases that mentioned *Aguilar-Spinelli* to determine lack of probable cause. *People v. Landy*, 452 N.E.2d 1185 (N.Y. 1983) (holding *Aguilar-Spinelli* rule established no probable cause); *People v. Chase*, 650 N.E.2d 379 (N.Y. 1995) (holding lack of probable cause based on *Aguilar-Spinelli*).

<sup>42</sup> *Argyris*, 27 N.E.3d at 427 (Smith, J., concurring).

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

<sup>44</sup> 392 U.S. 1 (1968).

<sup>45</sup> *Id.* at 4.

<sup>46</sup> *Id.* at 5.

<sup>47</sup> *Id.*

they were planning a robbery.<sup>48</sup> He eventually approached the men and asked for their names and the men mumbled something in return.<sup>49</sup> Officer McFadden then grabbed Terry, spun him around, patted him down outside of his clothes, and felt a pistol.<sup>50</sup> After his arrest for criminal possession of a firearm, Terry's motion to suppress the pistol was denied.<sup>51</sup>

The Supreme Court held that an objective standard must be used to decide whether there was probable cause to conduct a search.<sup>52</sup> An objective standard is met when the facts presented to the officer at the time of the search created a belief that further investigation is necessary to address the potential criminal activity afoot.<sup>53</sup> The Court opted for a fact sensitive approach rather than creating a bright line rule. The Court also explained that the officer did not need to be certain that the individual was armed.<sup>54</sup> It was further noted that a reasonably prudent person standard was appropriate when an officer believes his safety or that of the police is at jeopardy.<sup>55</sup> Accordingly, an officer may not act based on a suspicion, but rather on specific reasonable inferences derived from his experiences.<sup>56</sup> Ultimately, the Court decided that the search in this situation was reasonable under the Fourth Amendment.<sup>57</sup>

### B. Aguilar-Spinelli Test

The Supreme Court developed the *Aguilar-Spinelli* test—a two-pronged test used to determine whether an informant's tip provides probable cause.<sup>58</sup> This test safeguards an individual's Fourth

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<sup>48</sup> *Id.* at 5-6. In New York, under the *De Bour* test this would be considered Level 2 Reasonable Suspicion. *People v. De Bour*, 352 N.E.2d 562 (N.Y. 1976).

<sup>49</sup> *Terry*, 392 U.S. at 6-7.

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

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 21-22.

<sup>53</sup> *Id.*

<sup>54</sup> *Terry*, 392 U.S. at 27.

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

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 31.

<sup>58</sup> *Aguilar v. Texas*, 378 U.S. 108 (1964); *Spinelli v. United States*, 393 U.S. 410 (1969). Probable cause is defined as:

A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause—which amounts to more than a bare suspicion but less than evidence that would justify a

Amendment rights, and allows the police to utilize informant-based tips in certain situations.<sup>59</sup> Under this test, a police officer must offer facts to verify the informant's basis of knowledge and reliability for a search or seizure to be deemed constitutionally proper.<sup>60</sup> The Supreme Court in *Aguilar v. Texas* created the two-pronged test to determine when a "substantial basis" is present to obtain a warrant or conduct a warrantless search based upon an anonymous tip from an informant.<sup>61</sup> The first prong, "basis of knowledge," is satisfied when an informant obtains his knowledge through personal observation or in a reliable manner.<sup>62</sup> The second prong, known as the veracity prong, requires an officer to provide facts necessary to establish that the informant possesses credibility or his information is reliable.<sup>63</sup> This can be simply satisfied with a showing that the informant has provided the police with accurate information in the past.<sup>64</sup>

Five years after the *Aguilar* test was established, the Supreme Court refined and clarified the test in *Spinelli v. United States*.<sup>65</sup> In *Spinelli*, the Court noted that a tip is based on an informant's personal knowledge when he is able to give an accurate and detailed description of how the information was established or became known to him.<sup>66</sup> If a tip fails to satisfy one or both of the prongs—probable cause may be established by a police investigation that relies the tip—to support an inference that the informant was a trustworthy source and that he obtained the information in a reliable way.<sup>67</sup> If an officer wishes to rely on corroboration, the next step is whether the

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conviction—must be shown before an arrest warrant or search warrant may be issued.

*Probable Cause*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>59</sup> *Aguilar*, 378 U.S. at 112.

<sup>60</sup> *Id.* at 114.

Magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, . . . was 'credible' or his information 'reliable.'

*Id.*

<sup>61</sup> *Id.* at 111.

<sup>62</sup> *Id.* at 114.

<sup>63</sup> *Aguilar*, 378 U.S. at 114.

<sup>64</sup> *Id.*

<sup>65</sup> *Spinelli*, 393 U.S. at 410.

<sup>66</sup> *Id.* at 416.

<sup>67</sup> *Id.* at 418.



corroborative tip can pass the two-prong *Aguilar* test without independent corroboration.<sup>68</sup>

### C. Totality of the Circumstances—*Illinois v. Gates*

The United States Supreme Court abandoned the *Aguilar-Spinelli* test fourteen years later in its ruling in *Illinois v. Gates*.<sup>69</sup> In May of 1978, the Bloomingdale Police Department received an anonymous handwritten letter informing them that Lance and Susan Gates made their living by selling drugs.<sup>70</sup> The letter revealed the location of their condominium along with their method of obtaining drugs from Florida.<sup>71</sup> The letter provided a detailed account of future conduct relating to the Gates' involvement with drug trafficking.<sup>72</sup>

Detective Mader investigated the tip and discovered that Lance's license was registered to the same address provided in the letter.<sup>73</sup> Further investigation revealed that Lance had an airline reservation to Florida from Chicago.<sup>74</sup> An agent with the Drug Enforcement Administration reported to Mader that Lance was in Florida and was in a hotel room registered to Susan.<sup>75</sup> The next day Lance and an unidentified woman left the hotel in a vehicle registered to Gates in route to Chicago.<sup>76</sup> Mader then submitted the anonymous letter to a judge to obtain a warrant to search the Gates' vehicle and home.<sup>77</sup> The actions that Gates took were the same as specified in the letter with the exception of an unidentified woman driving back to Illinois with him.<sup>78</sup> The police were waiting at the Gates' home and subsequently searched the vehicle's trunk to discover 350 pounds of marijuana.<sup>79</sup>

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<sup>68</sup> *Id.* at 416.

<sup>69</sup> *Gates*, 462 U.S. at 238.

<sup>70</sup> *Id.* at 225.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* The anonymous informant stated on May 3rd Susan would be driving their vehicle from Chicago to Florida and fly back home. *Id.* The letter also stated that Lance would then pick up the vehicle and drive it from Florida back to Chicago with \$100,000 worth of drugs in the trunk. *Gates*, 462 U.S. at 225.

<sup>73</sup> *Id.* at 225-26.

<sup>74</sup> *Id.* at 226.

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

<sup>76</sup> *Id.*

<sup>77</sup> *Gates*, 462 U.S. at 226.

<sup>78</sup> *Id.* at 226-27.

<sup>79</sup> *Id.* at 227.

The Court abandoned the *Aguilar-Spinelli* test and adopted a “totality of the circumstances” test to establish whether the informant’s tip was sufficient to establish probable cause.<sup>80</sup> Probable cause is more demanding than reasonable suspicion for two reasons.<sup>81</sup> First, reasonable suspicion is determined with a different quantity or content of information than is required for probable cause.<sup>82</sup> Second, probable cause requires a higher degree of reliability.<sup>83</sup> In order to establish reasonable suspicion, quantity and quality are considered when evaluating “totality of the circumstances.”<sup>84</sup> For example, if a tip lacks reliability then more information is required to establish reasonable suspicion.<sup>85</sup> The Court found that the *Aguilar-Spinelli* test was too demanding for a probable cause standard to be satisfied by law enforcement, and was also detrimental to the government’s legitimate interest in preventing crime.<sup>86</sup> Importantly, the *Aguilar-Spinelli* test could rarely be satisfied when judges were tasked with issuing search warrants—most likely because anonymous tips are usually submitted by the general public, that lack necessary information to satisfy the basis of the knowledge prong—namely, the demand for predictability.<sup>87</sup> This is because individuals are sometimes unable to provide the extensive information necessary to satisfy the “basis of knowledge” and “reliability” prongs of the *Aguilar-Spinelli* test.<sup>88</sup>

As previously stated, *Terry* laid the foundation for “stop and frisks” and provided that a police officer might establish reasonable suspicion from his own observations.<sup>89</sup> However, this rule does not consider what happens when tips come from anonymous sources. An anonymous tip can support reasonable suspicion when the tip contains predictive information.<sup>90</sup> In order for a tip to give rise to reasonable suspicion, it must be reliable in its assertion of illegality.<sup>91</sup>

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<sup>80</sup> *Id.* at 238.

<sup>81</sup> *White*, 496 U.S. at 330.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *United States v. Cortez*, 449 U.S. 411, 417 (1981).

<sup>85</sup> *White*, 496 U.S. at 330.

<sup>86</sup> *Gates*, 482 U.S. at 237-38.

<sup>87</sup> *Id.* at 230.

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

<sup>89</sup> *Terry*, 392 U.S. at 30-31.

<sup>90</sup> *See J.L.*, 529 U.S. at 269.

<sup>91</sup> *Id.* at 272.

The totality of the circumstances must be taken into account to determine whether reasonable suspicion exists.<sup>92</sup> For years, courts were asked to determine the issue of whether anonymous tips provided police officers with reasonable suspicion to conduct a lawful stop.

#### IV. THE RULE OF REASONABLE SUSPICION IN ANONYMOUS TIPS

##### A. *Alabama v. White*

The United States Supreme Court was faced with the issue of whether an anonymous tip, together with independent police work, presented sufficient indicia of reliability to provide the reasonable suspicion necessary to conduct an investigatory stop in the 1990 case, *Alabama v. White*.<sup>93</sup> In *White*, the police received an anonymous telephone call that stated White would be leaving an apartment complex at a certain time and enter a particular vehicle.<sup>94</sup> The call further stated that White would be going to a motel with an ounce of cocaine in a brown case.<sup>95</sup> The police went to the apartment complex and witnessed White enter a vehicle that matched the description from the anonymous tip and proceeded to travel to the motel.<sup>96</sup> Shortly before arriving at the motel, police stopped the vehicle that was suspected of carrying cocaine.<sup>97</sup> White consented to the search and the police found a brown case in the vehicle, which contained marijuana.<sup>98</sup> After arresting White, police found cocaine in her purse.<sup>99</sup> White later challenged the search on the ground that the police lacked reasonable suspicion when they initially stopped and detained her.

The Court applied the “totality of circumstances” approach and analyzed both what the police learned through personal observations along with the weight of the anonymous tip.<sup>100</sup> To apply the totality of the circumstances analysis, a court uses the same concept as

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<sup>92</sup> *White*, 496 U.S. at 328-29.

<sup>93</sup> *Id.* at 326-27.

<sup>94</sup> *Id.* at 327.

<sup>95</sup> *Id.*

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

<sup>97</sup> *White*, 496 U.S. at 327.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 328.

used to determine the level of reasonable suspicion.<sup>101</sup> The Court noted that every tip from an anonymous source does not need to be verified.<sup>102</sup> The woman's name did not require verification because the location of the apartment complex and the vehicle were the same as described in the tip—thus, rendering the anonymous tip reliable.<sup>103</sup> The Court's emphasized the importance of the source's familiarity with the particulars of the defendant's actions, because a member of the general public would not have been able to produce the detail that was provided in the tip.<sup>104</sup> Here, the future behavior of the defendant was considered such as leaving the building, entering a particular vehicle, and taking a direct route to the motel.<sup>105</sup> This information could have only come from an individual who was familiar with the defendant's routine and, therefore, had a sufficient basis of knowledge of the facts.<sup>106</sup> The Court, in a 5-4 decision, held that when the officers stopped the defendant, the anonymous tip provided reasonable suspicion to believe that the defendant was involved in criminal activity.<sup>107</sup> Accordingly, the Fourth Amendment was not violated.<sup>108</sup>

### B. Florida v. J.L.

In *Florida v. J.L.*, the United States Supreme Court was asked to determine whether an anonymous tip that an individual was carrying a gun, without more information, was adequate to justify a police officer's stop and frisk.<sup>109</sup> In *J.L.*, the police received an anonymous telephone call that reported a young black male, wearing a plaid shirt and carrying a gun, was at a particular bus stop.<sup>110</sup> However, there was no information about the individual providing the tip and no audio recording of the tip.<sup>111</sup> The police went to the location and saw three young black males, one of whom was wearing the plaid shirt

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<sup>101</sup> *Id.* at 328-29.

<sup>102</sup> *White*, 496 U.S. at 328.

<sup>103</sup> *Id.* at 331.

<sup>104</sup> *Id.* at 331-32.

<sup>105</sup> *Id.* at 331.

<sup>106</sup> *Id.* at 331-32.

<sup>107</sup> *White*, 496 U.S. at 332.

<sup>108</sup> *Id.*

<sup>109</sup> *J.L.*, 529 U.S. at 268.

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

<sup>111</sup> *Id.*

that was described.<sup>112</sup> But, the officers did not suspect the three males of any illegal conduct.<sup>113</sup> Furthermore, a firearm was not in sight and there were no threatening movements.<sup>114</sup> One of the officers approached J.L. and ordered him to put his hands up, frisked him, and discovered a gun.<sup>115</sup> J.L. was charged with carrying a concealed firearm without a license and possessing a firearm under the age of 18.<sup>116</sup> The defendant then moved to suppress the gun on the ground that the search was unlawful under the Fourth Amendment.<sup>117</sup> The Florida Supreme Court held that the search was invalid under the Fourth Amendment, because anonymous tips are less reliable than tips from a known informant and can only result in reasonable suspicion when accompanied by specific indicia of reliability.<sup>118</sup> In this case, the officer only had a common law right to question the individual, not to search him. Thus, the Florida Supreme Court found that the tip at issue provided no predictive information or any form of reliability.<sup>119</sup>

On appeal, the United States Supreme Court held that the officer's sole basis for suspicion was grounded on the information provided from the anonymous caller.<sup>120</sup> This is different from a known informant because the known informant has a reputation and is responsible if the allegations are not correct.<sup>121</sup> However, an anonymous tip that is sufficiently corroborated and shows reliability to prove reasonable suspicion is enough for a lawful search.<sup>122</sup> The

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

<sup>113</sup> *Id.*

<sup>114</sup> *J.L.*, 529 U.S. at 268.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *J.L.*, 529 U.S. at 269.

<sup>120</sup> *Id.* at 270.

<sup>121</sup> *Id.* If the tip is from an unknown informant and is inaccurate then the police are unable to take action and issue punishment. However, when the tip is from someone who the police is familiar with and he passes on wrong information then the police can give the necessary punishment. *Id.*

<sup>122</sup> *Id.* In analyzing the tip at issue, the Court in *J.L.* found:

The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct. The reasonableness of official suspicion must be measured by what the offic-

Court stated that the tip lacked reliability and the phone call did not provide information to predict J.L.'s next step.<sup>123</sup> The fact that J.L. possessed a firearm was not enough to provide the police with a reasonable basis to stop and frisk.<sup>124</sup> The informant failed to provide how he knew about the gun or how and why he knew J.L. was in possession of this information.<sup>125</sup> Therefore, the Court held that the search violated J.L.'s Fourth Amendment right because the anonymous tip lacked reliability.<sup>126</sup>

### C. Navarette v. California

In *Navarette v. California*,<sup>127</sup> the United States Supreme Court decided the issue of whether the defendant's Fourth Amendment rights were violated when an officer had reasonable suspicion, through a tip, to believe the driver was intoxicated but did not observe the action himself.<sup>128</sup> In *Navarette*, the Mendocino County 911 dispatcher received a phone call from an eyewitness in the neighboring town that stated a Silver Ford license plate 8D94925 was southbound on Highway 1 at mile marker 88 and ran someone off the road five minutes prior to the call.<sup>129</sup> A member of the California Highway Patrol then spotted the vehicle at mile marker 69 and pulled the vehicle over.<sup>130</sup> A scent of marijuana was present and upon investigation, thirty pounds of marijuana were discovered in the truck.<sup>131</sup> The petitioners sought to establish that the evidence should be suppressed because the search violated the Fourth Amendment due to lack of reasonable suspicion of criminal activity.<sup>132</sup>

When evaluating if the officer had reasonable suspicion to

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ers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L.

*Id.* at 271.

<sup>123</sup> *J.L.*, 529 U.S. at 271.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> 134 S. Ct. 1683 (2014).

<sup>128</sup> *Id.* at 1686.

<sup>129</sup> *Id.* at 1686-87.

<sup>130</sup> *Id.* at 1687.

<sup>131</sup> *Id.*

<sup>132</sup> *Navarette*, 134 S. Ct. at 1687.

conduct a stop, the Court examined how the tip was established.<sup>133</sup> The Court determined that the content of the tip came from the eyewitness victim of the reckless driving.<sup>134</sup> In addition, the officer was able to corroborate the truck's location, direction, time, and description.<sup>135</sup> This corroboration provided the police with a reasonable belief that the 911 caller was telling the truth.<sup>136</sup> The Court found that a contemporaneous report is typically treated as reliable because it refutes the chances of a deliberate misrepresentation.<sup>137</sup> Furthermore, the phone call was enough to justify a stop without the officer observing additional reckless driving due to the nature of the alleged criminal conduct of running someone off the road.<sup>138</sup> When applying the totality of the circumstances, the Court found that since the tipster stated another vehicle ran her off the road, there was an implication that the informant knew the driver was acting in a reckless manner.<sup>139</sup> The police were able to successfully confirm the truck's location at mile marker 69, which was just 19 miles away from the initial sight.<sup>140</sup> This distance correctly followed the timeline of events from when the informant called 911.<sup>141</sup>

The *Navarette* Court found that a reliable tip alone is not enough to justify an investigative stop.<sup>142</sup> The tip must be enough to create reasonable suspicion that the crime is ongoing as opposed to one isolated incident that is completed.<sup>143</sup> Reasonable suspicion is measured on both the factual and practical considerations used by a reasonable prudent person.<sup>144</sup> Under these circumstances, the Court examined various driving behaviors that are related to drunk driving.<sup>145</sup> Furthermore, in the recent years, 911 systems have been advanced to include features that make it possible to identify and trace callers to prevent the risk of false reports.<sup>146</sup> An individual may face

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<sup>133</sup> *Id.*

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

<sup>135</sup> *Id.* at 1689.

<sup>136</sup> *Id.*

<sup>137</sup> *Navarette*, 134 S. Ct. at 1689.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Navarette*, 134 S. Ct. at 1690.

<sup>143</sup> *Id.*

<sup>144</sup> *Ornelas v. United States*, 517 U.S. 690, 695 (1996).

<sup>145</sup> *Navarette*, 134 S. Ct. at 1690-91.

<sup>146</sup> *Id.* at 1689.

prosecution if it was established that a false report was made.<sup>147</sup> Regulatory and technological developments, have clearly aided law enforcement in evaluating the genuineness of an anonymous tip.<sup>148</sup>

The Court distinguished this case from *J.L.*<sup>149</sup> Here, the 911 caller provided the police with sufficient indicia of reliability that she was run off the road by providing accurate details such as the driver's location.<sup>150</sup> In *J.L.*, however, the anonymous caller merely provided police with information that a male wearing a plaid shirt was in possession of a gun, which was not enough to establish reasonable suspicion because of lack of a prediction for future behavior.<sup>151</sup> In *Navarette*, it was reasonable to believe that the informant knew that the driver was acting recklessly when she was driven off the road.<sup>152</sup> Therefore, the Court held that the stop was justifiable because the contents of the phone call gave reason to believe the informant was credible, when she provided the license plate number, make of the vehicle, and location.<sup>153</sup>

*Navarette* was a 5-4 decision, and Justice Scalia authored the dissenting opinion.<sup>154</sup> Scalia's concern was that law enforcement officials follow the decisions of the Supreme Court, especially when it involves traffic stops.<sup>155</sup> The new rule that states "[s]o long as the caller identifies where the car is, anonymous claims of a single instance of possible careless or reckless driving, called in to 911, will support a traffic stop."<sup>156</sup> Justice Scalia believed that this rule departs from the view of the Framers of The Constitution.<sup>157</sup> The dissenting opinion noted that the information from the anonymous tip should be with such particularity that it would not be known to an ordinary person.<sup>158</sup> For example, any individual witnessing a vehicle traveling on a highway in a certain direction may be certain that the vehicle will

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<sup>147</sup> *Id.* at 1690.

<sup>148</sup> *Id.*

<sup>149</sup> See *supra* Section IV.B for a discussion of *J.L.*

<sup>150</sup> *Navarette*, 134 S. Ct. at 1688-89.

<sup>151</sup> *J.L.*, 529 U.S. at 268.

<sup>152</sup> *Navarette*, 134 S. Ct. at 1689.

<sup>153</sup> *Id.* at 1692.

<sup>154</sup> *Id.* at 1692 (Scalia, J., dissenting).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Navarette*, 134 S. Ct. at 1692 (Scalia, J., dissenting). This is likely because anonymous, unsubstantiated tips cast a wide net that in turn creates the intended protection of the Fourth Amendment.

<sup>158</sup> *Id.* at 1693.



reach another point by a particular time.<sup>159</sup> The dissent feared that this rule would open the door to other new rules that would slip further away from the original intent of the Fourth Amendment.

#### D. *United States v. Simmons*

In *United States v. Simmons*,<sup>160</sup> the Second Circuit Court of Appeals discussed whether police had reasonable suspicion, based on a 911 call, to stop and search the defendant.<sup>161</sup> In *Simmons*, the police received a call that stated an assault was in progress and a black male with a gray sweatshirt and black jacket may be in possession of a weapon.<sup>162</sup> When the officers arrived, they discovered a group of people that denied that anyone was injured.<sup>163</sup> In addition, there was no evidence that an assault took place.<sup>164</sup> Upon entering the building, a man who matched the description, approached the officers with his hands in his pockets and would not remove them when asked.<sup>165</sup> One of the officers grabbed the man's pocket and felt a gun.<sup>166</sup> Next, the officers searched the defendant and discovered two loaded guns; he was placed under arrest.<sup>167</sup>

The court determined that reasonable suspicion was established because the anonymous tip reported an assault and the police, upon arrival at the scene, spotted a group of individuals present at the time and location described by the informant.<sup>168</sup> The court found that when the defendant failed to remove his hands from his pocket, the officer had reasonable cause to grab Simmons's pockets to ensure his safety.<sup>169</sup> The court applied the standard set forth in *Terry*, in which the Supreme Court held that when a police officer observes unusual conduct, which leads him to believe criminal activity is present or the person may be armed, he is permitted to make reasonable inquires.<sup>170</sup>

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<sup>159</sup> *Id.*

<sup>160</sup> 560 F.3d 98 (2d Cir. 2009).

<sup>161</sup> *Id.* at 101.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Simmons*, 560 F.3d at 101.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 103.

<sup>169</sup> *Id.* at 102.

<sup>170</sup> *Simmons*, 560 F.3d at 103; *Terry*, 392 U.S. at 30-31.

When applying *Terry*, the court examined whether a particularized and objective basis for suspicion of legal wrongdoing under the totality of the circumstances existed.<sup>171</sup>

The defendant unsuccessfully relied on the Supreme Court's holding in *J.L.*<sup>172</sup> The court reasoned that this case is significantly different from *J.L.* because here, the anonymous informant reported an assault with a weapon that was in progress, while *J.L.* merely involved a tip that an individual was in possession of a gun.<sup>173</sup> The court noted that an anonymous 911 call made with the purpose of reporting an ongoing emergency demonstrates a higher degree of reliability and therefore a reduced amount of corroboration is required.<sup>174</sup>

### E. Significance of the Federal Approach in relation to *People v. Argyris*

The totality of the circumstances standard applied by the federal courts differs from the *Aguilar-Spinelli* standard that is used by New York courts. In applying the totality of the circumstances standard, federal courts give deference to law enforcement and their efforts. However, an individual's right against an unreasonable search is eroded because law enforcement may be able to conjure up various "conceivable reasons" to justify a search that may be deemed unreasonable.

The *Aguilar-Spinelli* standard, commonly utilized by New York courts, expands on the protections initially provided by the Fourth Amendment of the United States Constitution. This standard places a demand on law enforcement, with regard to anonymous tips. At the very least, police officers have to establish that their tip was reliable enough to justify a stop and possible search.

The two standards utilized by the federal and New York courts are at far opposite ends of the spectrum. Should courts afford deference to law enforcement, or chip away at the Fourth Amendment rights of an individual? New York courts have insisted that an individual's right against unreasonable search and seizure can trump law enforcement's duty to combat crime and promote public safety.

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<sup>171</sup> *Simmons*, 560 F.3d at 103; *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *Cortez*, 449 U.S. at 417-18 (1981)).

<sup>172</sup> See *supra* Part IV.B for a discussion of *J.L.*

<sup>173</sup> *Simmons*, 560 F.3d at 104.

<sup>174</sup> *Id.*

There may be no middle ground between the two standards.

## V. NEW YORK STATE APPROACH

This Section will discuss New York State's approach to anonymous tips. The New York State Constitution provides that "[t]he right of the people to be secure in their persons . . . 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 . . . ."<sup>175</sup> In other words, a warrantless search is not permitted solely on the basis of information provided by an informant where there is no indication of how that information was obtained even if the police had been able to confirm the tip through their own knowledge. In order for police to conduct a warrantless search, there must be confirmation of sufficient details suggestive of, or directly related to, the criminal activity to reach the conclusion that the informer did not simply pass along a rumor or attempt to frame the individual. The following cases demonstrate how New York courts approach situations where anonymous tips were provided and the standard used to determine whether a stop is reasonable within the Fourth Amendment while applying the *Aguilar-Spinelli* test.

In *People v. Johnson*,<sup>176</sup> the New York Court of Appeals was asked to determine the minimum factual showing required to support probable cause in New York.<sup>177</sup> In *Johnson*, Joseph Di Prospro informed police officers that Bolivar Abreu was responsible for the death of Raymundo Alcantara.<sup>178</sup> When questioned by police, Abreu denied having any information regarding the homicide.<sup>179</sup> However, Abreu ultimately connected Di Prospro and the defendant by disclosing a conversation about the crime.<sup>180</sup> The defendant was then arrested and sought to establish that his arrest was unlawful because the police relied upon hearsay from an individual who did not meet the requirement of the *Aguilar-Spinelli* test.<sup>181</sup> The court stated that

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<sup>175</sup> N.Y. CONST. art 1, § 12.

<sup>176</sup> 488 N.E.2d 439 (N.Y. 1985).

<sup>177</sup> *Id.* at 442.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Johnson*, 488 N.E.2d at 442.

probable cause may be established through hearsay information as long as it meets the requirements of *Aguilar-Spinelli*.<sup>182</sup> In other words, the informant must be reliable and have a basis of knowledge for hearsay information to support a probable cause determination.<sup>183</sup>

Here, the Court of Appeals found that Abreu, the informant, had a sufficient basis of knowledge because he was able to provide information to the police based upon his own personal observation by stating that “during the robbery Di Prospero had pulled out of gun . . . and that during the struggle Di Prospero fired the gun at the proprietor.”<sup>184</sup> Defense counsel argued that notwithstanding this statement, probable cause was not established because the State failed to show that Abreu was a reliable informant – the other prong in the *Aguilar-Spinelli* test.<sup>185</sup> The court stated that an informant can be considered reliable based on the informant’s past performance, a verification under oath, or an admission against penal interest.<sup>186</sup> In *Johnson*, the record failed to establish Abreu as a reliable informant due to lack of previous performances.<sup>187</sup> In addition, the statement was not given under oath.<sup>188</sup> The court determined that the *Aguilar-Spinelli* test was not satisfied and the only way probable cause could be established in this case was to apply the totality of the circumstances standard from *Gates*.<sup>189</sup> However, New York declined to adopt this standard.<sup>190</sup> The court reasoned that the New York State Constitution was in conformity with the Fourth Amendment.<sup>191</sup> Thus, the New York Court of Appeals determined when hearsay information is provided in a warrantless search, the *Aguilar-Spinelli* test must be satisfied.<sup>192</sup> In this case, the prosecution wanted to apply the totality of the circumstances approach because ultimately, the tip was reliable. However, outcome determinative tips should not be considered solely for their result.

In *People v. Elwell*, the New York Court of Appeals deter-

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<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Johnson*, 488 N.E.2d at 442.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at 443.

<sup>189</sup> *Id.* at 444.

<sup>190</sup> *Id.* at 445.

<sup>191</sup> *Johnson*, 488 N.E.2d at 445.

<sup>192</sup> *Id.*

mined whether a warrantless search is permitted when the informant failed to disclose how the information, which was personal in nature and not suggestive of criminal activity, was acquired.<sup>193</sup> However, the police were able to confirm the information through their own observations.<sup>194</sup> In *Elwell*, Charles Hancock, an investigator, received a phone call from a reliable informant whom he had interacted with on prior occasions.<sup>195</sup> The informant stated the two defendants were in possession of a .25 caliber automatic pistol, operating a particular vehicle, and would be departing from a specific area.<sup>196</sup> However, the informant failed to reveal how he obtained that specific information.<sup>197</sup> Hancock, along with a police investigator, decided to pursue this lead and located the two defendants in a vehicle.<sup>198</sup> They stopped the vehicle and stated they had information that a loaded firearm was in their possession.<sup>199</sup> Upon investigation, the police discovered the firearm under the front seat, out of plain sight.<sup>200</sup>

The court determined that in order for police observation to establish probable cause, which permits a warrantless search based on an informer's failing to disclose the source of knowledge, it is insufficient to merely supply a large amount of information about non-criminal activity.<sup>201</sup> The court reasoned that probable cause is established when details suggest or directly relate to criminal activity.<sup>202</sup> This is simply to prevent an informant from passing along a rumor or attempting to frame someone.<sup>203</sup> An informant is considered to be reliable when the officer can confirm prior situations of reliability or through personal observation that the tip corroborates the informant's information to prove he was telling the truth.<sup>204</sup> It follows that when the basis of the informant's knowledge is not given, personal police observation corroborative of data received from the informant should be regarded as sufficient only when the police observe facts sugges-

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<sup>193</sup> *Elwell*, 406 N.E.2d at 473.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Elwell*, 406 N.E.2d at 473.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 473.

<sup>201</sup> *Id.* at 474.

<sup>202</sup> *Id.*

<sup>203</sup> *Elwell*, 406 N.E.2d at 473.

<sup>204</sup> *Id.* at 474.

tive of criminal activity.<sup>205</sup> The court held that since the police failed to observe criminal activity, they had no authority to stop or search the defendant.<sup>206</sup>

Judge Jasen's dissenting opinion suggests that the information provided by the informant was sufficient because it was confirmed by the officer's own observations.<sup>207</sup> Additionally, he noted the police officers acted reasonably to stop the vehicle because they possessed the necessary information and were able to verify its veracity.<sup>208</sup> Furthermore, he criticized the majority for striking down reasonable and prudent law enforcement efforts that were used to protect members of society.<sup>209</sup>

In *People v. Moore*, the New York Court of Appeals reasserted the principle established by the United States Supreme Court in *Florida v. J.L.* that “[a]n anonymous tip cannot provide reasonable suspicion to justify a seizure, except where the tip contains predictive information—such as information suggestive of criminal behavior—so that the police can test the reliability of the tip.”<sup>210</sup> In *Moore*, two police officers received an anonymous telephone tip advising them that an 18-year-old black male was carrying a gun and wearing a gray jacket and red hat was involved in a dispute.<sup>211</sup> The officers arrived at the scene a minute later and spotted the male but failed to observe the dispute described in the tip.<sup>212</sup> Next, the officers exited the vehicle and approached the defendant who walked away.<sup>213</sup> They immediately drew their guns and yelled to the defendant not to move.<sup>214</sup> The defendant kept walking but eventually put his hands up.<sup>215</sup> While he was putting his hands up, he made a movement towards his waistband.<sup>216</sup> The officers searched him and discovered a gun in his jacket.<sup>217</sup> The defendant moved to suppress the gun.<sup>218</sup>

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<sup>205</sup> *Id.* at 475.

<sup>206</sup> *Id.* at 478.

<sup>207</sup> *Id.* at 480 (Jasen, J., dissenting).

<sup>208</sup> *Elwell*, 406 N.E.2d at 480 (Jason, J., dissenting).

<sup>209</sup> *Id.*

<sup>210</sup> *Moore*, 847 N.E.2d at 1143.

<sup>211</sup> *Id.* at 1141-42.

<sup>212</sup> *Id.* at 1142.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Moore*, 847 N.E.2d at 1142.

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

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

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

The court found the police officer ultimately failed to exercise the common law duty to inquire.<sup>219</sup> They did not develop reasonable suspicion until the moment the defendant made a movement towards his waist.<sup>220</sup> Therefore, when the police first ordered the defendant to raise his hands, they did not have reasonable suspicion. The court noted that an anonymous tip only allows reasonable suspicion when the tip provides information that suggests predictive information concerning criminal behavior.<sup>221</sup> Here, the anonymous tip failed to provide an accurate display of alleged criminal activity and failed to provide predictive information.<sup>222</sup> In addition, the defendant's walking away from the police failed to establish cause for the police to stop the defendant at gunpoint because the anonymous tip only prompted a common law right of inquiry.<sup>223</sup> Police may not detain individuals to question them without reasonable suspicion of criminal activity.<sup>224</sup> The court, relying on the United States Supreme Court's holding in *J.L.*, found that the tip must be reliable in asserting an illegality instead of just a tendency used to identify a person.<sup>225</sup> The tip at issue however failed to provide predictive information or indicate criminal activity because the tip involved a man with a gun, and when the police arrived at the scene one minute after the call, neither a man with a gun was present nor was there an ongoing dispute.<sup>226</sup> The anonymous tip did not provide the proper corroboration for the search and seizure to be valid.<sup>227</sup> Thus, it is evident that the court is protecting individuals from false accusations for merely being in a certain place without any indication of criminal activity.

In *People v. Rios*, a detective received a document with an anonymous tip about an individual who possessed a gun.<sup>228</sup> The police received this tip through a program that was designed for individuals to anonymously report the locations of illegal guns.<sup>229</sup> The

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<sup>219</sup> *Id.*

<sup>220</sup> *Moore*, 847 N.E.2d at 1142.

<sup>221</sup> *Id.* at 1143; *see J.L.*, 529 U.S. at 271 (holding that an anonymous tip that a black male was standing on a corner wearing a plaid shirt and carrying a gun was insufficient to prove reasonable suspicion to allow police to conduct a legal stop and frisk).

<sup>222</sup> *Moore*, 847 N.E.2d at 1143.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Moore*, 847 N.E.2d at 1141.

<sup>228</sup> *Rios*, 898 N.Y.S.2d at 799.

<sup>229</sup> *Id.*

tip provided that a black male, 23 years of age, and 150 pounds in weight was in possession of an automobile that contained a gun under the driver's seat.<sup>230</sup> The anonymous report stated that the automobile was a gray four-door Pontiac and provided the license plate as well as an address as to where the automobile would be located.<sup>231</sup> The detective was unaware who provided the tip or how that individual obtained the information.<sup>232</sup> Upon investigation, the detective discovered that the vehicle was registered to the address provided in the tip.<sup>233</sup> Next, the detectives went to the location and saw a vehicle which matched the description as well as the person from the description.<sup>234</sup> The two detectives approached the vehicle and observed the defendant was acting nervous and fidgeting.<sup>235</sup> They asked the defendant to step out of the vehicle and at this point they did not observe anything that would be considered criminal activity.<sup>236</sup> Eventually, the defendant admitted he had a gun in the vehicle.<sup>237</sup>

The court relied on *J.L.* to determine whether the search was proper.<sup>238</sup> As stated above, an anonymous tip alone is not sufficient to justify a seizure.<sup>239</sup> The court reasoned that because the identity of the person and the basis of the tip were unknown, anyone could have reported the tip for any reason such as receiving an award.<sup>240</sup> This tip was not considered to be any more reliable than other anonymous tips.<sup>241</sup> Therefore, the seizure was improper because the anonymous tip did not corroborate criminal activity.<sup>242</sup>

## VI. RECOMMENDATION FOR CHANGE IN NEW YORK LAW

Anonymous tips provide police with information they may not ordinarily be able to obtain on their own. However, use of anonymous tips raises possible Fourth Amendment violations. Currently,

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<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Rios*, 898 N.Y.S.2d at 799.

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

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

<sup>236</sup> *Id.* at 800.

<sup>237</sup> *Id.*

<sup>238</sup> *Rios*, 898 N.Y.S.2d at 803.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at 804.

<sup>242</sup> *Id.* at 805.



the Federal and New York State courts have different approaches to determine when it is reasonable for law enforcement to stop an individual after receiving an anonymous tip. The Federal approach applies a “totality of the circumstances” test, which examines all the facts of each individual situation.<sup>243</sup> On the other hand, the heightened standard in New York State requires the two prong *Aguilar-Spinelli* criteria to be satisfied in order for police to rely on an anonymous source before it is reasonable to stop an individual.

Since *Aguilar-Spinelli* requires facts to specify the informant’s basis of knowledge and credibility, it is nearly impossible for an anonymous tip to appropriately meet the requirements. Accordingly, only a handful of states still adhere to *Aguilar-Spinelli*.<sup>244</sup> Practically, the only way for an anonymous tip to be sufficient to provide the police with reasonable suspicion to “stop and frisk” in New York is if the Court of Appeals abandoned the *Aguilar-Spinelli* test and adopted the “totality of the circumstances” approach. *Gates* provides the totality of the circumstances to allow an anonymous tip to successfully establish probable cause if the police are able to corroborate some of the informant’s information.<sup>245</sup> Information used to corroborate an informant’s tip includes a license plate number, a description of events or individuals, and an accurate description of future events. Under the totality of the circumstances test, the police would be able to legally stop and search more individuals based on an anonymous tip.

*Argyris* opened the door to the possibility of New York’s adoption of the totality of the circumstances approach in stating that police can conduct lawful stops under either the totality of the circumstances test or the *Aguilar-Spinelli* test. However, the court in

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<sup>243</sup> *Gates*, 482 U.S. at 230-31.

<sup>244</sup> Besides New York, the states that still apply *Aguilar-Spinelli* include: Alaska, Massachusetts, Tennessee, Vermont, and Washington. *State v. Jones*, 706 P.2d 317, 322 (Alaska 1985) (holding the court is not persuaded to follow the Federal precedent and abandon *Aguilar-Spinelli*); *Commonwealth v. Banville*, 931 N.E.2d 457, 464 (Mass. 2010) (holding that “Massachusetts has retained the two-prong reliability-basis of knowledge *Aguilar-Spinelli* test”); *State v. Jacumin*, 778 S.W.2d 430, 436 (Tenn. 1989) (stating that “we adopt the two-pronged standard voiced in *Aguilar* and *Spinelli* as the standard by which probable cause will be measured to see if the issuance of a search warrant is proper . . . .”); *State v. Goldberg*, 872 A.2d 378, 381-82 (Vt. 2005) (holding “[t]he *Aguilar-Spinelli* standard strikes an appropriate balance between individual Vermonters’ right to privacy and the police’s important interest in preventing crime”); *State v. Jackson*, 688 P.2d 136, 141 (Wash. 1984) (stating that “[w]e are not persuaded by the United States Supreme Court’s rationale for departing from the *Aguilar-Spinelli* standard.”).

<sup>245</sup> *Gates*, 482 U.S. at 230-31.

*Argyris* failed to take the additional step of replacing *Aguilar-Spinelli* with the totality of the circumstances approach. *Argyris* had the potential to be a ground-breaking case that aligned New York's Fourth Amendment jurisprudence with the majority of the states in applying the totality of the circumstances analysis. Without this change, New York is imprudently providing individuals with too much leniency from governmental searches to the detriment of the general public. *Aguilar-Spinelli* makes law enforcement's job more difficult, but confers additional Fourth Amendment protections that the United States Constitution does not provide. On the other hand, the totality of the circumstances makes law enforcement's job easier and provides an individual with fewer Fourth Amendment protections. Adopting a totality of the circumstances approach would still provide individuals with Fourth Amendment protections. At the same time, it would allow law enforcement to use anonymous tips, provided all the circumstances in the situation are able to establish probable cause—or maybe even reasonable suspicion.<sup>246</sup>

## VII. CONCLUSION

The Fourth Amendment provides individuals with privacy rights against unreasonable searches and seizures. Law enforcement officials may, however, reasonably detain and search an individual by successfully establishing the existence of probable cause to believe that there is criminal wrongdoing. The Supreme Court initially established the *Aguilar-Spinelli* test to determine when an anonymous tip allows law enforcement to conduct a warrantless stop. The United States Supreme Court ultimately found that this standard focused heavily on the constitutional rights of individuals and prevented law enforcement from adequately performing their duties in preventing crime. Eventually, the Court replaced *Aguilar-Spinelli* with the totality of the circumstances approach, which provides law enforcement with greater flexibility to conduct a warrantless search from an anonymous tip.

New York is only one of six states that has yet to adopt the more practical totality of the circumstances standard. The New York Court of Appeals in *Argyris* may not have made the leap to implement the totality of the circumstances approach, but it took the step to

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<sup>246</sup> *Argyris*, 27 N.E.3d at 438 (Abdus-Salaam, J., concurring).

open the door to adopt it in the future. If an anonymous tip provides police with reliable information such as a license plate number, the type of vehicle, a description of the individual, or the next steps of the possible defendant, such as it did in *Argyris*, the totality of the circumstances should apply and allow police to conduct a lawful search. Perhaps a case in the near future will provide the New York courts with the necessary facts to adopt the totality of the circumstances standard.

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