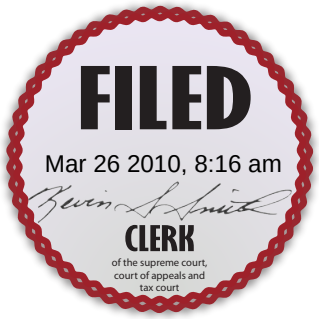

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IN THE
COURT OF APPEALS OF INDIANA

SCHANESE JONES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0908-CR-454
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel N. Cruz, Master Commissioner
Cause No. 49F18-0805-FD-108233

March 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Schanese Jones appeals her conviction for Resisting Law Enforcement, as a Class D felony, following a bench trial. She presents a single issue for our review, namely, whether her Fourth Amendment right against unreasonable seizure was violated during the course of an investigatory stop by a police officer.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 9, 2008, Jones was walking in the Roxbury neighborhood south of 56th Street in Indianapolis. Christina Cooper, a nearby resident, was driving by when she observed Jones, who was wearing a heavy winter coat and scarf, looking in a mailbox that did not belong to Jones. Cooper soon came upon Indianapolis Metropolitan Police Department Officer Robert McCauley, who was wearing his uniform and sitting in a marked car, and Cooper told Officer McCauley that she had seen a black woman wearing a heavy winter coat and scarf looking in someone else's mailbox. Cooper reported that the incident occurred approximately 150 or 200 feet away from where the officer was parked.

Accordingly, Officer McCauley drove the short distance and found Jones walking down the street. Officer McCauley observed that Jones was "dressed kind of strangely for the weather" and fit the description of the woman that Cooper had given him. Transcript at 6. Officer McCauley pulled up next to Jones and asked her whether she was "okay." Id. Officer McCauley heard Jones say something inaudible, and she began marching in place. Jones then began to walk backwards, without turning around. Officer

McCauley drove his car in reverse and again asked her whether she was okay. Because Jones' scarf was covering her face, Officer McCauley could not make out anything Jones was trying to say. Jones then walked behind Officer McCauley's car in an attempt to cross the street, but Officer McCauley "used the car to stop her forward progress." Id. Jones then ran into a nearby yard, and Officer McCauley exited his vehicle and pursued her on foot.

Jones ignored Officer McCauley's orders that she stop running. When Officer McCauley caught up to Jones, he grabbed her arm, and she struggled with him. Jones was pulling away from Officer McCauley and "swinging her arms wildly." Id. at 20. As Officer McCauley forced Jones to the ground, she scratched him on his wrist. Officer McCauley finally placed handcuffs around Jones' wrists.

The State charged Jones with resisting law enforcement, as a Class D felony, and battery, as a Class A misdemeanor. Following a bench trial, the trial court found Jones guilty of resisting law enforcement, but not guilty of battery. The trial court entered judgment and sentence accordingly. This appeal ensued.

DISCUSSION AND DECISION

Jones contends that Officer McCauley did not have reasonable suspicion to support an investigatory stop and that his seizure of her violated the Fourth Amendment.[1] The Fourth Amendment prohibits unreasonable searches and seizures by the government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short

[1] On appeal, Jones makes a separate argument under Article I, Section 11 of the Indiana Constitution. But Jones did not make any such argument to the trial court. Accordingly, that issue is waived. See N.W. v. State, 834 N.E.2d 159, 162 n.2 (Ind. Ct. App. 2005), trans. denied. And we reject Jones' assertion of fundamental error, made for the first time in her reply brief. See Wise v. State, 719 N.E.2d 1192, 1197 n.1 (Ind. 1999).

of traditional arrest. Moultry v. State, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004). However, a police officer may briefly detain a person for investigatory purposes without a warrant or probable cause if, based upon specific and articulable facts together with rational inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity "may be afoot." Id. at 170-71 (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)).

Reasonable suspicion is a "'somewhat abstract'" concept, not readily reduced to "'a neat set of legal rules.'" Id. at 171 (quoting United States v. Arvizu, 534 U.S. 266, 274 (2002)). "When making a reasonable suspicion determination, reviewing courts examine the 'totality of the circumstances' of the case to see whether the detaining officer had a 'particularized and objective basis' for suspecting legal wrongdoing." Id. (quoting Arvizu, 534 U.S. at 273). The reasonable suspicion requirement is met where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur. Id. It is well settled that reasonable suspicion must be comprised of more than an officer's general "'hunches'" or unparticularized suspicions. Webb v. State, 714 N.E.2d 787, 788 (Ind. Ct. App. 1999) (quoting Terry, 392 U.S. at 27).

Here, the question is whether the tip provided to Officer McCauley by Cooper was sufficient to support a determination of reasonable suspicion to perform an investigatory stop of Jones. Again, Cooper personally reported the possible crime to Officer McCauley. Thus, this case does not involve an anonymous tipster or a confidential informant. Our supreme court has held that the report of a "concerned citizen" has

greater indicia of reliability in support of reasonable suspicion than that of a "professional informant." Kellems v. State, 842 N.E.2d 352, 356 (Ind. 2006), remanded on other grounds on reh'g.

The evidence shows that Cooper spoke to Officer McCauley in person and described Jones as a black woman wearing a heavy winter coat and scarf and walking down the street approximately 150 or 200 feet from Officer McCauley's location. Because it was May, both Cooper and Officer McCauley thought it odd that someone would be wearing a heavy winter coat and scarf. Also, because of Jones' proximity to him, Officer McCauley found her only moments after Cooper made her report. We hold that under the totality of the circumstances, the evidence supports a determination that Officer McCauley had reasonable suspicion to conduct an investigatory stop of Jones. See id. at 356-57.

We note that contrary to Jones' assertion on appeal, there is nothing in the record indicating that the State stipulated to the fact that Jones was seized at the time that Officer McCauley stopped her forward progress with his car. Jones mischaracterizes the transcript on this point. Regardless, the fact that Jones ran from Officer McCauley after that alleged initial seizure means that no seizure had yet occurred for purposes of a Fourth Amendment analysis. See Baker v. State, 573 N.E.2d 475, 477 (Ind. Ct. App. 1991) (citing California v. Hodari D., 499 U.S. 621 (1991) (holding that "a seizure does not occur if the subject does not yield to a show of authority or an application of physical force")). And, once Jones ran from Officer McCauley despite his orders that she stop, he had an independent basis for reasonable suspicion to seize her. See Platt v. State, 589

N.E.2d 222, 226 (Ind. 1992) (holding flight from a clearly identified law enforcement officer may furnish sufficient ground for a limited investigative stop). Jones has not demonstrated any Fourth Amendment violation under the totality of the circumstances.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.