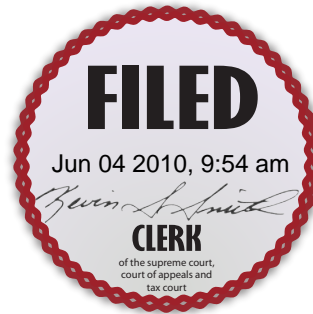


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL MOBLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A02-0910-CR-996
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE GRANT SUPERIOR COURT  
The Honorable Warren Haas, Judge  
Cause No. 27D03-0902-FD-90

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**June 4, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Michael Mobley appeals his conviction for operating a vehicle while intoxicated as a class D felony. The sole issue presented for our review is whether police had reasonable suspicion to conduct an investigatory stop of Mobley's vehicle under the Fourth Amendment to the United States Constitution. We affirm.

## **Facts and Procedural History**

On February 1, 2009, Mobley was driving a white Ford Explorer through a Steak 'n Shake drive-thru in Marion. Amanda Wilcox was in a vehicle a few cars behind Mobley in the drive-thru line. Wilcox called 911 on her cell phone and informed the dispatcher that she wished to report a possible intoxicated driver. Wilcox gave the dispatcher her location and stated that she observed that occupants of Mobley's car were throwing beer bottles out the windows, yelling, and swearing. Wilcox gave the location, make, model, color, and license plate number of Mobley's vehicle. Wilcox gave the dispatcher her name and cell phone number. Wilcox stayed on the line with the dispatcher until her cell service was eventually dropped.

Marion Police Officer John Govin responded immediately to the dispatch. When Officer Govin approached Steak 'n Shake he noticed a vehicle matching the exact description given by Wilcox cutting through the parking lot of an abandoned business next to Steak 'n Shake. As Officer Govin drove into the parking lot, he saw the vehicle drive behind the abandoned building. Officer Govin drove to the opposite side of the building to intercept the vehicle. Officer Govin activated his lights and initiated a traffic stop of the vehicle. When

Officer Govin approached the driver, Mobley, he observed that Mobley's eyes were blood shot and that he smelled of alcohol. After Mobley failed field sobriety tests, Officer Govin arrested Mobley and transported him to jail. A subsequent BAC breath test revealed that Mobley's blood alcohol content was .17.

The State charged Mobley with operating a vehicle while intoxicated as a class A misdemeanor, enhanced to a class D felony based upon a prior conviction for operating a vehicle while intoxicated.<sup>1</sup> On March 26, 2009, Mobley filed a motion to suppress evidence obtained as a result of the traffic stop. The trial court denied Mobley's motion to suppress following a hearing, and a bench trial ensued on August 18, 2009. The trial court found Mobley guilty as charged.

### **Discussion and Decision**

Mobley contends that Officer Govin did not have reasonable suspicion to support an investigatory stop of his vehicle and, thus, evidence of his intoxication was inadmissible and his conviction must be reversed. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures by the government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of a traditional arrest. *Moultry v. State*, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004). An investigatory stop of a citizen by a police officer does not violate that citizen's constitutional rights where the officer has a reasonably articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1 (1968). Reasonable suspicion exists if the facts known to the officer and the reasonable inferences

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<sup>1</sup> See Ind. Code §§ 9-30-5-1(b) and 9-30-5-3.

therefrom would cause a reasonably prudent person to believe that criminal activity has occurred or is about to occur. *State v. Lefevers*, 844 N.E.2d 508, 513 (Ind. Ct. App. 2006), *trans. denied*. “Although reasonable suspicion requires more than inchoate and unparticularized hunches, it is a less demanding standard than probable cause and requires considerably less proof than that required to establish wrongdoing by a preponderance of the evidence.” *Id.* The determination of whether reasonable suspicion existed to justify an investigatory stop is reviewed de novo on appeal. *Sellmer v. State*, 842 N.E.2d 358, 361 (Ind. 2006). Reasonable suspicion must be considered on a case-by-case basis after a consideration of the totality of the circumstances presented. *Lampkins v. State*, 682 N.E.2d 1268, 1271 (Ind. 1997).

We agree with Mobley that an anonymous tip, standing alone, is rarely sufficient to establish reasonable suspicion. *Hardister v. State*, 849 N.E.2d 563, 570 (Ind. 2006). Information received from an anonymous informant may be sufficient where: (1) significant aspects of the tip can be corroborated by police regarding facts not easily obtainable by the general public to verify its credibility; and (2) the tip must demonstrate an intimate familiarity with the suspect’s affairs and be able to predict future behavior. *Sellmer*, 842 N.E.2d at 361.

However, when the tipster identifies herself, as is the case here, she is not considered anonymous but may instead be characterized as one of two major types of informants, professional informant or cooperative (or concerned) citizen. *See Kellems v. State*, 842 N.E.2d 352, 356 (Ind. 2006), *rev’d on reh’g on other grounds*, 849 N.E.2d 1110 (Ind. 2006).

Our supreme court has held that reports from cooperative or concerned citizens bear more

indicia of reliability than those made by professional informants, and concerned citizen informants are to be considered reliable unless incriminating circumstances exist which cast suspicion upon the informant's reliability. *Id.* Still, the totality of the circumstances test applies to determine whether reasonable suspicion exists to justify a *Terry* investigatory stop. *Id.*

Under the totality of the circumstances, the tip here provided the Marion Police with reasonable suspicion to conduct an investigatory stop of Mobley's car. Wilcox called 911 and identified herself by name to the dispatcher. She gave her cell phone number several times to the dispatcher. Wilcox informed the dispatcher that she suspected that the driver of Mobley's vehicle may be intoxicated because occupants in the vehicle were throwing beer bottles out the windows, yelling, and swearing. In addition to providing police with the actual location of the vehicle, she also provided the make, model, color, and license plate number of Mobley's vehicle. Officer Govin responded to the call so quickly that he was able to verify the reliability of some of the information Wilcox had provided when he observed a vehicle matching the exact description given by Wilcox driving through a nearby parking lot.

We conclude that Wilcox's tip sufficiently satisfied requirements for classifying her as a concerned or cooperative citizen. *See Kellems*, 842 N.E.2d at 357. The record does not suggest that Wilcox "had any intention other than her desire to assist police in their law enforcement duties," and there were no "incriminating circumstances" that would call Wilcox's motives in reporting into question. *See id.* Because Wilcox identified herself to the 911 dispatcher she opened herself up to legal responsibility if Officer Govin's investigation

indicated that Wilcox filed a false report. *See* Ind. Code § 35-44-2-2. Although Wilcox may not have personally observed erratic driving, the behavior she did witness and describe as a concerned citizen was definitely behavior consistent with an impaired driver, not to mention a clear violation of the open container law. *See* Ind. Code § 9-3-15-3. Under the circumstances, Officer Govin did not need to wait for independent visual confirmation of Mobley's behavior to justify his investigatory stop. *See State v. Eichholtz*, 752 N.E.2d 163, 167 (Ind. Ct. App. 2001) (when citizen tipster identifies himself and police can confirm some information of tip, no need to wait for independent confirmation of criminal activity before initiating investigatory stop). There were sufficient indicia of reliability of Wilcox's tip to justify Officer Govin's stop of Mobley's vehicle to briefly investigate further.

Moreover, we must remain cognizant of law enforcement's need to respond immediately to criminal reports such as the one at issue here where there is an immediate threat to public safety: a suspected intoxicated driver. *Kellems*, 842 N.E.2d at 347. Under the totality of the circumstances, we conclude that there was reasonable suspicion to support an investigatory stop where a citizen, concerned solely with public safety, identified herself and provided the police with specific information regarding a vehicle that was involved in possible criminal activity, which was then verified by police. The stop of Mobley's vehicle did not violate the Fourth Amendment to the United States Constitution.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.