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IN THE
COURT OF APPEALS OF INDIANA

JOHN A. ASHBY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 87A04-1103-CR-113
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WARRICK SUPERIOR COURT
The Honorable Robert R. Aylsworth, Judge
Cause No. 87D02-0911-FD-101

November 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

John A. Ashby ("Ashby") presents this discretionary interlocutory appeal from the trial court's denial of his motion to suppress evidence obtained when his vehicle was stopped by the Warrick County Sheriff, Marvin Heilman ("Sheriff Heilman"), who was responding to an emergency call of a domestic dispute. Ashby presents one issue for our review, whether the trial court's denial of his motion to suppress evidence was improper because Sheriff Heilman stopped Ashby's vehicle without the reasonable suspicion required under the Fourth Amendment to the United States Constitution.

We affirm.

Facts and Procedural History

We derive our facts from Sheriff Heilman's testimony at the hearing on Ashby's motion to suppress. On September 3, 2009, at around 5:30 p.m., Sheriff Heilman was driving to the Warrick County Courthouse in Boonville for a county council meeting when he heard a dispatch call regarding a domestic violence incident. Because he was closer to the location of the call than officers for the Boonville Police Department, Sheriff Heilman responded. Upon approaching the location of the call, a residence, Sheriff Heilman saw two women in the front yard. One of the women called out to Sheriff Heilman that "he had just left in that blue Neon and he had been drinking." (Tr. 5-6.) Sheriff Heilman understood "he" to be the individual concerning whose actions the call to police was made; Sheriff Heilman would later identify this individual as Ashby.

Based on this information, and without getting out of his car, Sheriff Heilman decided

to follow the blue Neon in order to stop its driver and inquire about events at the residence. By the time Sheriff Heilman began to follow him, Ashby was a block away and had begun to turn a corner, but was still in Sheriff Heilman's sight. Sheriff Heilman pulled up behind Ashby at a stop sign and followed Ashby for a little over a half-mile before turning on the police car's emergency lights and initiating a traffic stop.

Sheriff Heilman did not observe Ashby engaging in any improper driving. Instead, he stopped the vehicle because Ashby "had left the scene of the domestic violence call and I didn't know what his role was or if he was the suspect or victim or really what had happened back at the house … again, the only information I had was there was a crime that had occurred." (Tr. 7.)

After stopping the car, Sheriff Heilman approached Ashby and spoke with him about the domestic violence call. During the conversation, Sheriff Heilman indicated that based upon his general appearance and the smell of his breath, Ashby appeared to have reached "some level of intoxication." (Tr. 7.) Sheriff Heilman also observed a six-pack of beer in Ashby's back seat; three bottles were missing from the pack.

At some point during the stop, Officer Whitney from the Boonville Police Department arrived at the scene, and Sheriff Heilman handed off continued investigation of the incident. Before Sheriff Heilman left, however, Officer Whitney administered a portable breath test, the results of which led Officer Whitney to bring Ashby to the sheriff's office for additional testing. Subsequent testing determined that Ashby's blood alcohol concentration was 0.11. Ashby was placed under arrest.

On November 23, 2009, Ashby was charged with Operating a Vehicle While Intoxicated Endangering a Person, as a Class A misdemeanor[1]; Operating a Vehicle with a Blood Alcohol Concentration Between .08 and .15, as a Class C misdemeanor[2]; Operating a Vehicle While Intoxicated, as a Class C misdemeanor[3]; Operating While Intoxicated With Prior Conviction, as a Class D felony[4]; and Battery, as a Class A misdemeanor.[5]

On October 7, 2010, Ashby filed a motion to suppress evidence, arguing that Sheriff Heilman's stop was illegal and that all evidence obtained after the stop, including breath analysis tests and all observations made of Ashby, should be suppressed from evidence at trial. A hearing was conducted on Ashby's motion on October 19, 2010, at the conclusion of which the trial court took the motion under advisement. On November 22, 2010, the trial court found Sheriff Heilman's stop to be reasonable and therefore denied Ashby's motion to suppress evidence.

On December 21, 2010, Ashby moved the trial court to certify its order for interlocutory appeal; the trial court granted the motion on February 10, 2011. We accepted jurisdiction, and this appeal followed.

Discussion and Decision

Ashby brings this interlocutory appeal from the denial of a motion to suppress evidence, contending that Sheriff Heilman's stop violated the Fourth Amendment to the

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[1] Ind. Code § 9-30-5-2(b).
[2] I.C. § 9-30-5-1(a).
[3] I.C. § 9-30-5-2(a).
[4] I.C. § 9-30-5-3(1).
[5] I.C. § 35-42-2-1.

United States Constitution.[6]

The Fourth Amendment states, in relevant part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures … shall not be violated." U.S. Const. amend. IV. The Fourth Amendment's protections "extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." United States v. Arvizu, 534 U.S. 266, 273 (2002) (citing Terry v. Ohio, 392 U.S. 1, 9 (1968), and United States v. Cortez, 449 U.S. 411, 417 (1981)). Because the balance between public interest and an individual's right to personal security tilts in favor of a lower standard than probable cause, reasonable suspicion that criminal activity "may be afoot" is sufficient to justify such investigatory stops. Id. Reasonable suspicion requires that there be "some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." Cortez, 449 U.S. at 417. While there is no set of hard-and-fast rules to determine what constitutes reasonable suspicion, Arvizu, 534 U.S. at 274, a mere "hunch" is insufficient. Terry, 392 U.S. at 27.

Thus, when reviewing investigatory stops for reasonable suspicion, we "look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." Arvizu, 534 U.S. at 273 (citing Cortez, 449 U.S. at 417-418). The State must bear the burden of proving that reasonable suspicion existed, and we review a trial court's determination of reasonable

[6] Ashby does not raise an argument with respect to the Indiana Constitution, and we therefore do not reach that question today.

suspicion de novo, giving due weight to the inferences drawn from the facts presented to the trial court. Bannister v. State, 904 N.E.2d 1254, 1255-56 (Ind. 2009). When reviewing motions to suppress evidence, "[w]e do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling, but we also consider the uncontested evidence favorable to the defendant." Shell v. State, 927 N.E.2d 413, 418 (Ind. Ct. App. 2010) (citations omitted).

Ashby directs us to cases related to anonymous telephone informants, likening the information provided to Sheriff Heilman to an anonymous telephone tip. He draws our attention in particular to Washington v. State, 740 N.E.2d 1241 (Ind. Ct. App. 2000), trans. denied. In Washington, an anonymous informant contacted the Indiana State Police by telephone and "advised that the driver, driving a black Cadillac with a white top, was southbound on Interstate 65," and provided the license plate number of the vehicle. Id. at 1243. The identity and reliability of the informant were unknown at the time of the call and were never determined. Id. A police officer, responding to this information, began to follow the vehicle and eventually initiated a traffic stop. Marijuana was found in the car, and Washington, its driver, was arrested. Id.

Upon review of the trial court's denial of Washington's motion to suppress evidence, we reversed and held that "an anonymous telephone tip, absent any independent indicia of reliability or any officer-observed confirmation of the caller's prediction of the defendant's future behavior, is not enough to permit police to detain a citizen and subject him or her to a Terry stop." Id. at 1246. Our holding in Washington was consistent with other cases from

this court and the federal courts. See, e.g., Florida v. J.L., 529 U.S. 266 (2000) (reversing a trial court's conclusion that reasonable suspicion to conduct a Terry stop upon three black males existed where an anonymous caller indicated that a young black male standing at a bus stop and wearing a plaid shirt was in possession of a gun).

Here, while the woman who provided information to Sheriff Heilman was unknown to him and was therefore in some sense anonymous, we cannot conclude that Sheriff Heilman's stop of Ashby was unreasonable under the totality of the circumstances. Unlike in Washington where the police lacked any ability to hold the anonymous informant accountable or otherwise verify the caller's report, here, Sheriff Heilman was responding to an existing emergency call and personally encountered the informant at a known location, where the informant exhibited personal knowledge of the defendant. The specific information provided—that a specific person, later identified as Ashby, was driving a specific blue Neon—was readily confirmed, as Sheriff Heilman could still see the specific vehicle, which was only a block away from the scene of the incident. Further, the woman's statement that Ashby had been drinking did not point to potential future criminal activity but rather was indicative of present, ongoing criminal activity, that is, driving while intoxicated. Under these circumstances, we cannot agree with Ashby that Sheriff Heilman lacked a "particularized and objective basis," Arvizu, 534 U.S. at 273, that criminal activity was afoot sufficient to permit him to conduct an investigative stop of Ashby's vehicle.

Affirmed.

MATHIAS, J., and CRONE, J., concur.