



# POLICE / PROSECUTOR UPDATE

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Once again the Court of Appeals has addressed the legality of a traffic stop based upon a citizen's tip of possible drunk driving. As you will recall, issue # 110 of the ppu dealt with this issue in the context of a completely anonymous tip. In such cases, where the identity or the reliability of the informant is not known or subsequently determined, what is important is the informant's ability to predict a defendant's future behavior. Then when significant aspects of the predictions are verified by police, a stop would be justified.

In this month's case, a citizen observed the defendant driving her car in a very erratic manner. The citizen followed the defendant and while doing so called 9-1-1 to report the erratic driving. He reported the description of the car, its license plate number, and its location, along with a description of his own car and his name. The dispatcher relayed this information to a police officer, who headed in the direction where the vehicles had been reported. There he observed the citizen's car following a vehicle matching the description of the defendant's car which bore the license plate number the citizen reported. Although the officer did not personally observe any erratic driving or traffic violations, he pulled the defendant's vehicle over. The defendant was determined to be intoxicated. Obviously, the issue was whether the initial stop of the defendant's vehicle was lawful. The Court of Appeals determined it was.

The citizen here called 9-1-1 to give information to the police regarding his car, the defendant's car, and their location, all of which the officer was able to confirm when he arrived at the scene. In addition, the tip was not anonymous. The citizen identified himself to the 9-1-1 dispatcher in such a manner that he could be held criminally responsible if the police officer's investigation indicated that the citizen had committed false informing. While this information would not have been sufficient to arrest the defendant for driving while intoxicated, it was sufficient to justify the officer's stop of the defendant to investigate the situation further. Under these circumstances, the officer was not required to wait for independent visual confirmation of erratic driving, which could have resulted in injuries to the defendant or an innocent passerby.

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Another recent case discussed the propriety of police conducting random computer checks of license plate numbers. The facts reveal that a police officer observed the defendant's truck pull into a convenience store parking lot. The officer testified that he had an in-car computer that could run checks of license plate numbers, driver's license numbers, vehicle identification numbers, and other information. The officer typically ran license plate numbers at random throughout his shift. Although he had no particular reason to do so, he ran a check of the defendant's license plate. The check revealed the truck was registered to the defendant and that the defendant was an habitual traffic violator. It also provided a physical description of the defendant. The defendant left the store, entered the truck, and drove away. The officer, after noting that the driver closely fit the defendant's description, stopped the defendant and arrested him. The officer did not see the defendant commit a traffic violation.

The Court of Appeals was obviously uneasy with the officer's actions. It stated, "We share the defendant's concern that this procedure could lead to pretextual stops, and we question whether random checks of license plates represent an efficient use of the limited resources of law enforcement agencies." Nevertheless, the court declined to hold that a random license plate check is a "search." A search envisions prying into hidden places to observe items which are concealed. There is no search in viewing an object that is open to view. Here, all the officer did was view the defendant's truck license plate, which was in plain sight.

State v. Eichholtz, 752 N.E.2d 163 (Ind. App. 2001).

Wilkinson v. State, 743 N.E.2d 1267 (Ind. App. 2001).

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