

COA Opinion: An in-person anonymous tip about potentially dangerous driving was sufficient to justify an investigative stop of a moving vehicle

2. February 2011 By Aaron Lindstrom

In *People v. Barbarich*, No. 290772, the Court of Appeals held that an anonymous tip about potentially dangerous driving provided by an in-person, unnamed citizen informant was sufficient to justify an investigative stop of a moving vehicle.

In *Barbarich*, a police officer on a regular patrol stopped the defendant's vehicle and issued the defendant a citation for operating a motor vehicle while intoxicated. The officer stopped the vehicle based solely on the fact that a woman driving another vehicle pointed to the defendant's vehicle and mouthed the words "Almost hit me" while the officer, the defendant, and the second driver were all driving on the same stretch of road; the officer did not personally observe any erratic driving or other behavior that would have independently served as a reasonable basis for the stop.

Writing for herself and then Judge (now Justice) Zahra, Judge Kirsten F. Kelly concluded that the officer's stop was lawful. Relying on the Michigan Supreme Court's decision in *People v. Toops*, 403 Mich. 568, 577 (1978), the Court held that the second driver's pointing at the defendant and mouthing of the words "Almost hit me" to the officer were sufficiently accurate and reliable to justify the officer's stop. The Court further held that fewer foundational facts are required to justify a stop of a moving vehicle than would be required to justify the search of a home or even stopping someone to search for contraband or a concealed weapon, because "the public's interest in safety of the roadways is high compared to the minimally invasive nature of the investigation."

The tipster's statement and pointing were enough to create an inference that the defendant had been driving erratically, and although the officer may not have known what crime was committed by the defendant, the Court concluded that the circumstances nevertheless justified the stop.

In *dissent*, Judge Gleicher would have held that the informant's actions could only be reasonably construed to indicate that Defendant committed an ordinary civil traffic violation, not a criminal offense, and that the officer's stopping of the vehicle therefore violated the defendant's Fourth Amendment rights.