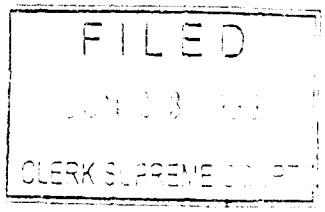
IN THE COURT OF APPEALS OF IOWA

No. 1999-126 (9-342) / 98-1361
Filed June 23, 1999

STATE OF IOWA,

Plaintiff-Appellee,



vs.

LARRY E. TUTTLE,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan, Douglas F. Staskal, and A. Patricia Houlihan, District Associate Judges.

Defendant appeals from his conviction for operating while intoxicated. **AFFIRMED.**

Mark S. Pennington of Kutmus & Pennington, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth and Kimberly Birch, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Larry Tuttle appeals his conviction for operating while intoxicated. He contends the district court erred in denying his motion to suppress evidence obtained as a result of the stop of his vehicle. We affirm.

A citizen approached Officer Eric Moorman in the parking lot of the City Lights Bar. The citizen informed Officer Moorman that a black Chevrolet Impala SS, driven by a white male with grayish hair in his late forties or early fifties, had just peeled out of the parking lot. He further stated the vehicle was headed westbound on Indianola Road and he believed the driver was drunk. He then gave Officer Moorman the Impala's license plate number. Officer Moorman radioed a description of the vehicle and the driver and the license plate number to police dispatch.

Dispatch relayed the message about the alleged drunk driver. Officer Steven Woody received a description of an older white male with gray hair driving a black Impala SS. Within two minutes, Officer Woody observed a vehicle on S.W. Ninth Street at Porter, approximately thirty to forty blocks from the City Lights Bar. He testified "it was a car that matched the description. Impala SS's are fairly rare and distinctive. It was driven by a white male. I met it in the intersection so I could see the driver with the street lights, and the guy had gray hair." Officer Woody then turned his car around and began following the Impala.

Officer Woody followed the Impala onto westbound Army Post Road. He observed the driver-side wheels cross over the white line dividing the two westbound

lanes. The wheels remained approximately one foot over the white dividing line the entire time he followed the Impala. The driver signaled to turn, then took approximately one block to slowly change lanes. Officer Woody stopped the Impala for improper use of lanes after he had followed the vehicle for five blocks. This stop led to Tuttle's arrest for operating while intoxicated.

Tuttle entered a plea of not guilty to the charge of operating a motor vehicle while intoxicated. Subsequently, he filed a motion to suppress evidence obtained as a result of the stop of his vehicle. The district court found as follows:

> First, the anonymous tip. The color, make, and model of the vehicle described matched [Tuttle's] vehicle. In addition, the description of the driver matched [Tuttle's] description. Although the vehicle was located 30-40 blocks from the scene, it was only 2-3 minutes after the descriptions were sent out over dispatch. The proximity in time between the complaint and the location of the vehicle lends support for a finding of reasonable cause for an investigatory stop. Second, Officer Woody's independent observations of [Tuttle's] driving. Woody observed [Tuttle] essentially straddle the white dividing lane for several blocks.

Tuttle's motion to suppress was denied and he was found guilty as charged following trial to the bench on the minutes of testimony. Tuttle appeals.

I. STANDARD OF REVIEW. A challenge to a trial court's ruling on a motion to suppress, based upon a claim that the search and seizure was unreasonable, implicates the Fourth and Fourteenth Amendments of the United States Constitution. *State v. Wiese*, 525 N.W.2d 412, 414 (Iowa 1994); *State v. Anderson*, 479 N.W.2d 330, 331 (Iowa App. 1991). Therefore our review is de novo. *State v. Lamp*, 322 N.W.2d 48, 50 (Iowa 1982); *State v. Waters*, 538 N.W.2d 862, 862 (Iowa App. 1995).

The Fourth Amendment requires a police officer must have reasonable cause to stop an individual for investigatory purposes. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); *Waters*, 538 N.W.2d at 862-63. We consider "the totality of the circumstances -- the whole picture" when evaluating whether a police officer had reasonable cause to make a stop. *State v. Richardson*, 501 N.W.2d 495, 496 (Iowa 1993) (citation omitted).

II. MOTION TO SUPPRESS. Tuttle contends the district court erred in denying his motion to suppress evidence obtained as a result of the stop of his vehicle. Specifically, he argues the State failed to establish the reliability of the anonymous tipster's information and Officer Woody did not possess independent evidence of criminal activity prior to the stop. We disagree.

Police may stop and briefly detain a person for investigative purposes if the officer has "reasonable cause to believe a crime may have occurred." *Richardson*, 501 N.W.2d at 496. When a stop is challenged on the basis that reasonable cause did not exist, the State must show the stopping officer had "specific and articulable cause to support a reasonable belief that criminal activity may have occurred." *Lamp*, 322 N.W.2d at 51 (quoting *State v. Aschenbrenner*, 289 N.W.2d 618, 619 (Iowa 1980)). While an unparticularized suspicion will not do, an officer may make an investigatory stop with "considerably less than proof of wrongdoing by a preponderance of the evidence." *Richardson*, 501 N.W.2d at 496-97 (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 628 (1981)).

An anonymous tip, standing alone, seldom provides the reasonable suspicion necessary for a *Terry* stop. *See Alabama v. White*, 496 U.S. 325, 329, 110 S. Ct. 2412, 2415, 110 L. Ed. 2d 301, 308 (1990). However, an anonymous tip plus something more can provide reasonable suspicion. *See id.* For example, officers' observations may corroborate anonymous tips, thus providing a sufficient indicia of reliability. *See Waters*, 538 N.W.2d at 863-64 (reasonable cause arose from two citizen complaints and deputy sheriff's observation of described vehicle driving erratically); *State v. Farmer*, 482 N.W.2d 682, 683-84 (Iowa App. 1992) (reasonable cause arose from citizen complaint and officers' observation of described vehicle in reported location and stopped within two minutes of the receipt of the information); *State v. Markus*, 478 N.W.2d 405, 408 (Iowa App. 1991) (reasonable cause arose from citizen complaint and officers' observation of described vehicle traveling in the direction and on the highway reported); *State v. Sampson*, 669 A.2d 1326, 1328 (Me. 1996) (reasonable cause arose from citizen complaint and officer's observation of described vehicle in close proximity of the area where it was reported and within two minutes of receipt of information).

In the case at bar, we find there was reasonable cause for Officer Woody to stop Tuttle's vehicle. The tipster in this case is more reliable because he stopped Officer Moorman and spoke to him face to face rather than providing the information by telephone. *See United States v. Salazar*, 945 F.2d 47, 50 (2d Cir. 1991). The tip was corroborated by Officer Woody's observation of the described vehicle and driver

traveling in the direction and in the general location reported within minutes after Officer Woody received the information. *Waters*, 538 N.W.2d at 863-64; *Markus*, 478 N.W.2d at 408; *Sampson*, 669 A.2d at 1328. Because the tipster was right about these things, he was probably right about the alleged drunk driving. *See White*, 496 U.S. at 331, 110 S. Ct. at 2417, 110 L. Ed. 2d at 310. The tip was further corroborated by Officer Woody's observation of the Impala straddling the white dividing line for approximately five blocks and making a slow lane change. *See Waters*, 538 N.W.2d at 864. This constitutes improper use of lanes which, as a violation of Iowa Code section 321.306, provided at least reasonable, if not probable, cause for the stop of Tuttle's vehicle. *See State v. Otto*, 566 N.W.2d 509, 511 (Iowa 1997) (car swerving within its own lane and following another vehicle closely gave reasonable cause to stop); *State v. Predka*, 555 N.W.2d 202, 206 (Iowa 1996) (speeding and not wearing seat belt gave probable cause to stop); *State v. Tompkins*, 507 N.W.2d 736, 740 (Iowa App. 1993) (car weaving within its own lane gave reasonable cause to stop).

The anonymous tip in this case was quite specific. Officer Woody corroborated the information provided by the tipster establishing a sufficient indicia of reliability. In addition, Officer Woody made his own independent observations of Tuttle's driving. We find Officer Woody had reasonable cause to stop Tuttle's vehicle and conclude the district court did not err in denying his motion to suppress evidence obtained as a result of the stop. For these reasons, we affirm.

AFFIRMED.

No. 98-1361. [1999-126 (9-342)] STATE v. TUTTLE

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan, Douglas F. Staskal, and A. Patricia Houlihan, District Associate Judges. **AFFIRMED.** Considered by Sackett, C.J., and Mahan and Zimmer, JJ. Opinion by Mahan, J.

(6 pages $2.40)

A citizen approached an officer in a bar parking lot and informed him that a black Chevrolet Impala SS, driven by a white male with grayish hair in his late forties or early fifties, had just peeled out of the parking lot. He further stated the vehicle was headed westbound on Indianola Road, he believed the driver was drunk, and gave the officer the Impala's license plate number. The officer radioed the information to police dispatch. Another officer received the description of the vehicle and the driver. Within two minutes, that officer observed a vehicle and driver matching the descriptions. He followed the Impala onto westbound Army Post Road. He observed the driver-side wheels cross over the white line dividing the two westbound lanes. The wheels remained approximately one foot over the white dividing line the entire time he followed the Impala. The driver signaled to turn, then took approximately one block to slowly change lanes. The officer stopped the Impala for improper use of lanes after the officer had followed the vehicle for five blocks. This stop led to Tuttle's arrest for operating while intoxicated. Tuttle filed a motion to suppress evidence obtained as a result of the stop of his vehicle which was denied. He was found guilty as charged following a bench trial on the minutes of testimony. **OPINION HOLDS:** The anonymous tip in this case was quite specific. The officer corroborated the information provided by the tipster establishing a sufficient indicia of reliability. In addition, the officer made his own independent observations of Tuttle's driving. We find the officer had reasonable cause to stop Tuttle's vehicle and conclude the district court did not err in denying his motion to suppress evidence obtained as a result of the stop.