IN THE COURT OF APPEALS OF IOWA
No. 1999-129 (9-345) / 98-1407
Filed September 29, 1999

STATE OF IOWA,
Plaintiff-Appellee,

FILED
SEP 29 1999
CLERK SUPREME COURT

vs.

DEBRA JEAN REISTROFFER,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Nancy A. Baumgartner, District Associate Judge.

Defendant appeals from the judgment and sentence entered upon her conviction of operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (1997). Defendant contends the district court erred by overruling her motion to suppress evidence. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, David Arthur Adams, Assistant State Appellate Defender, and James Canaday and Lori E. Loftsgard, Student Legal Interns, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Denver D. Dillard, County Attorney, and William Croghan, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

On April 2, 1999, defendant came in a Handimart convenience store where Sara Collins was working. Collins observed that defendant was loud, had trouble walking and smelled like alcohol. She also noted that while purchasing cigarettes, defendant forgot what brand of cigarettes she smoked. Based on these observations, Collins believed that defendant was drunk. Collins then saw defendant leave the store and get into the driver's side of her car. Right after defendant left the Handimart, a Cedar Rapids police officer, Chris Usher, entered the store. Collins pointed to defendant's car and indicated to Officer Usher she believed that the driver was too drunk to drive.

Officer Usher followed defendant's car but did not observe any traffic violations or other indications of drunk driving before he stopped her vehicle. In doing so, he relied solely on the information which had been given to him by Collins, although he also was unsure at the time whether she was wearing her seatbelt. After stopping defendant, the officer formed the opinion that she was intoxicated and arrested her.

Defendant was subsequently charged with operating while intoxicated, second offense. She filed a motion to suppress, in which she claimed that her vehicle had been stopped without reasonable articulable suspicion in violation of her constitutional right to be free from unreasonable searches and seizures and requested that the court suppress evidence obtained in violation of her constitutional rights. The district court had found, in overruling her motion, that under the circumstances, the

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police officer who stopped defendant's vehicle was within his rights to immediately pursue and stop the vehicle to investigate whether this person was, in fact, operating while intoxicated. Defendant contends the trial court erred in overruling defendant's motion to suppress evidence obtained following the stop of her automobile.

The standard of review, when constitutional rights are at issue is de novo, *State v. Lamp*, 322 N.W.2d 48,50 (Iowa 1982). The review will include evidence adduced at trial as well as any evidence produced during a hearing on a motion to suppress, *State v. Brown*, 253 N.W.2d 601,603 (Iowa 1982).

The 4th Amendment requires a police officer to have reasonable cause to stop a vehicle, *State v. Markus*, 478 N.W.2d 405,407 (Iowa App. 1991), *Terry v. Ohio*, 392 U.S. 21, 88 S.Ct. 1868,1880, 20 L.Ed 889, 906. If the defendant challenges the stop, alleging that reasonable cause did not exist, the State must show that the stopping officer had "specific and articulable cause to support a reasonable belief that criminal activity may have occurred," *Markus*, 478 N.W.2d at 407, *State v. Aschenbrenner*, 289 N.W.2d 618,619 (Iowa 1980). If the State fails to meet its burden, evidence taken as a result of the stop must be suppressed, *Id.*

Reasonableness is measured by an objective standard. It must be considered, in light of the particular circumstances, whether "the facts available to the officer at the moment of the stop warrant a person of reasonable caution in the belief that the action taken was appropriate.", *State v. Weise*, 525 N.W.2d 412, 414 (Iowa 1994) citing *Terry v. Ohio*, *supra*, 20 L.Ed. at 906. The police must be able to point to

specific and articulable facts, which, taken together with rational inferences, reasonably warrant that intrusion, *Id.*

The focal issue is whether the officer's sole reliance on the informant's report in making an investigatory stop of the defendant's vehicle was sufficient to meet the reasonable cause requirement of the 4th Amendment.

Defendant argues that Officer Usher did not have reasonable cause to stop her vehicle because he did not further investigate the basis upon which Collins formed her opinion the defendant was too drunk to drive either by asking her questions or by corroborating Collins' report by personal observation of drunk driving. Defendant relies on *Campbell v. State of Washington Department of Licensing*, 644 P.2d 1219 (Wash. Ct. App. 1982) in support of her position. In this case, the Washington Court of Appeals held that, absent corroborative information or observation, a police officer is not authorized to stop a vehicle on the sole basis that a passing motorist points to a vehicle and announces that it is being driven by a drunken driver. In addition, defendant relies on *Beckner v. Commonwealth*, 425 S.E.2d 530 (Va. Ct. App. 1993), where an unidentified motorist reported to police that a white female who did not have a driver's license was at a nearby gas station pumping gas into a 1966 Chevrolet. The court held in this case that the basis for the informant's knowledge was insufficient to establish reasonable suspicion.

Defendant also cites *State v. Markus*, 478 N.W.2d 405 in support of her argument that more detail needs to be given to an officer as to the basis for the informant's report of drunk driving than what was given in the present case. The

Markus case involved an anonymous caller who told police that he was following a pickup truck that was "all over the roadway". A description of the truck, including its license number and an indication of the truck's location and direction were also given. The officer made no independent observations of how the truck was being driven and formed the belief that improper driving had occurred solely in reliance on the caller's report. It was held that the anonymous caller's tip was sufficiently corroborated by the identification of the vehicle and its location to furnish reasonable suspicion that the defendant was engaged in criminal activity, *Id.*

The defendant distinguishes *Markus* case from the present one by contrasting the caller's description to the police in *Markus* of the irregular movement of the defendant's car with Collins' statement that the driver of the car was too drunk to drive. Defendant claims that unlike that of the caller in *Markus*, Collins' statement was conclusory, and as such, should not have been relied upon by Officer Usher without further corroboration.

The State contends that Office Usher should have been entitled to rely on the observations of Collins, a citizen informant, for the purposes of establishing reasonable cause to stop Defendant's vehicle for operating while intoxicated, given the circumstances under which this information was given.

The factual basis for stopping a vehicle does not need to arise from the officer's personal observation, but may be supplied by information acquired from another person, *Adams v. Williams*, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d. 612 (1972).

The "totality of the circumstances" approach is used to determine whether an informant's tip has established reasonable suspicion, *Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412, 10L.Ed. 2d. 301,309. Reasonable suspicion is dependent on both the information possessed by the police and its degree of reliability . If a tip has a relatively low degree of reliability, more information will be required to establish reasonable suspicion than if the tip were nonreliable, *Id.*

The nature of the totality of the circumstances test has been discussed in reference to the sufficiency of probable cause in warrant cases. In *State v. Neihaus*, 452 N.W.2d 184,190 (Iowa 1990), the Iowa Supreme Court stated that the totality of circumstances approach is applicable under most circumstances since probable cause is a fluid concept turning on the assessment of probabilities in particular factual contexts which are not readily or even usefully reduced to a neat set of legal rules. Although factors such as the informant's veracity, knowledge and reliability are highly relevant in determining the value of an informant's report, these elements are not entirely separate and independent requirements to be rigidly exacted in every case. Rather, they should be understood simply as intertwined issues that may usefully illuminate the common sense, practical question to believe that evidence is located at a particular place, *Munz v. State*, 382 N.W.2d. 693, 699 (Iowa App. 1985), *Illinois v. Gates*, 462 U.S. 213,230, 103 S. Ct. 2317, 2318, 76 L. Ed. 2d. 527,543 (1983).

The State argues that Collins is a citizen informant, and that therefore, her report to the officer ought to be presumed reliable and as such, no further investigation need be made by the officer regarding its accuracy.

The defendant argues that even if Collins was a citizen informant and, as such, was a reliable source of information, Officer Usher still had to inquire about specific facts which formed the basis of her opinion that defendant was too drunk to drive. In support of her position, she cites the *Beckner* case in which the court stated that even in a face-to-face confrontation between an officer and an informant, the officer must still have "some objective reliability of the informant's knowledge of the information contained in the report to establish a reasonable and articulable suspicion to stop the suspect", *Beckner*, 425 S.E.2d at 532.

A citizen informant is ordinarily defined as a person who is a victim or witness to a crime, *Neihaus*, 452 N.W.2d at 189, *State v. Peck*, 517 N.W.2d 230,232 (Iowa App. 1944). Information imparted by a citizen informant is generally reliable, *Id.* However, reliability still must be shown, but it may appear from the very nature of the circumstances under which the incriminating information became known, *Munz v. State*, *supra*, at 700, *State v. Post*, 286 N.W.2d 195, 200 (Iowa 1979).

Collins meets the criteria for a citizen informant described above, since she was a witness. She was also known by the officer and gave the information to him in person. Thus, she could be held accountable if her report had turned out to be false.

This distinguishes the present case from the cases cited by the defendant. The *Campbell* and *Beckner* cases involved reports from unidentified motorists, while the tip in the *Markus* case came from an anonymous caller. The tips in these cases were from persons whose identities were unknown, and thus, the informants could not have

been held accountable for giving any false reports. The information upon which the traffic stops were based in these cases thus have a significantly lower level of reliability than that given by the unidentified citizen informant in the present case.

In addition, other facts increase the reliability of the citizen informant Collins. She was an employee of a convenience store and gave her report about what she saw during her work hours. These circumstances lessens the likelihood that she had any motivation to fabricate the information that she gave to the officer.

The circumstances of the present case have several other factors which point to the reliability of the information that was given by Collins to Officer Usher. First, the belief that defendant was drunk was based on Collins' personal observations. That Collins had observed defendant in the store was also apparent to Officer Usher, since Collins gave him the information right after defendant left.

The situation in which there was reliance on an opinion based on a personal observation made by the store clerk of the drunk condition of defendant is unlike that in the *Beckner* case, where it was impossible to tell from the information given how the motorist knew that the defendant did not have a driver's license.

That the officer did not need in this case to get specific facts which formed the basis for Collins's conclusion that defendant was too drunk to drive is supported by *Grismore v. Consolidated Products Co.*, 232 Iowa 328, 5 N.W.2d 662,662 (Iowa 1842). There the court said a lay witness may express an opinion as to the intoxication of a person when the defendant is being tried for operating while intoxicated and that further, no fact basis need be given for such an opinion.

Accordingly, it is reasonable for an officer to rely on a citizen informant's opinion as to whether the defendant is drunk for the purpose of establishing reasonable cause to stop a vehicle for operating while intoxicated.

Close proximity in time between the receipt of the information and the observation has been held to support probable cause, *State v. Waters*, 538 N.W.2d 862 (Iowa 1995). Here, the observations of Collins were made immediately before they were relayed to the officer, thus eliminating the concern that the accuracy of the report was diminished with the passage of time.

The defendant claims that Officer Usher's reliance on Collins' statement that defendant was too drunk to drive was insufficient to give him a reasonable suspicion of criminal activity because the officer failed to observe any traffic violations or indications of drunk driving.

However, independent corroboration of the inculpatory details of an informant's tip is not mandatory, *State v. Markus*, *supra*, at 408. In this case, the court reasoned that since the officer had found the informant to be accurate as to the descriptions of the vehicle and its location, they also had reason to believe that he was accurate as to the alleged criminal activity. The court further stated that "Because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity, *Id.*, quoting *Illinois v. Gates*, *supra*.

Here, although Officer Usher did not observe any indications of drunk driving, there was no question that the car he stopped was the one pointed out to him by

Collins as it was leaving the Handimart parking lot. A description of the vehicle under these circumstances was not necessary. As in the *Markus* case, the identification of the vehicle supplied sufficient corroboration for the purpose of reasonable cause.

Finally, although the officer testified that he could not tell whether or not defendant was wearing her seatbelt, he admitted that that was not the reason for the stop. Thus, the issue of whether this was an additional reason for the stop needs not be discussed.

We conclude that it was reasonable under the circumstances for Officer Usher to rely on the statement of Collins, a citizen informant, that defendant was too drunk to drive in his decision to make an investigatory stop of defendant's vehicle. He was entitled to rely on her opinion without further inquiry of Collins regarding the specific facts which formed the basis for her opinion that defendant was too drunk to drive. Corroboration by personal observation of indications of drunk driving was not necessary; it was enough that the car which was pointed out by Collins was the same vehicle that was stopped. Therefore, there was reasonable cause for Officer Usher to stop defendant's vehicle so that the stop was not made in violation of defendant's constitutional rights.

AFFIRMED.