IN THE COURT OF APPEALS OF IOWA

No. 5-694 / 94-0839

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

ANTONIO CARDENAS,

Appellant.

Appeal from the Iowa District Court for Scott County, David H. Sivright, Jr., Judge.

Defendant appeals judgment and sentences, following a bench trial, entered upon his convictions of possession of a controlled substance with intent to deliver and failure to affix a drug tax stamp. **AFFIRMED.**

Randy J. Hohenadel, Davenport, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, William E. Davis, County Attorney, and Realff H. Ottesen, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Habhab and Cady, JJ.

HAYDEN, P.J.

A cocaine trafficking investigation led to the arrest of Daniel Vollmer. Vollmer named Maria Juarez as his source. On April 24, 1993, police officers executed a search warrant of Juarez's home which led to the seizure of five ounces of cocaine and $8000 cash. Juarez named "Tony" as her source. Juarez's live-in boyfriend, Manuel Lopez, identified Tony as Antonio Cardenas. Juarez told officers Cardenas delivered drugs to her home and he went to a Mexican-American dance on Saturday nights with cocaine to sell. Juarez and Lopez accompanied officers and pointed out Cardenas' residence at 3015½ West 67th Street. They told officers Cardenas drove the white Blazer which was parked in the driveway of the residence. Juarez also told officers she was expected to meet Cardenas at the dance on Saturday night to pay him for the drugs he had supplied her. In addition to the information supplied by Juarez and Lopez, law enforcement received other information in the past naming Antonio Cardenas as a major cocaine supplier in the Quad Cities.

On April 24, 1993, surveillance of the 3015½ West 67th Street residence was set up. A vehicle check run on the white Blazer resulted in a report of "no record on file." A Hispanic man was observed leaving the residence at about 8 p.m., entering the white Blazer, and driving in the direction of downtown Davenport where the dance was located. An officer pulled the Blazer over and observed the driver throw something out the passenger window. The object was later retrieved and contained individual packets

of what was later determined to be cocaine. The driver, later identified as Antonio Cardenas, gave a fictitious address. He was arrested, and a search of his person recovered more cocaine.

Law enforcement thereafter applied for a search warrant for 3015½ West 67th Street. The application for a warrant included the above information relating to Vollmer, Juarez, and the vehicle-stop of Cardenas. The warrant application also included the affiant's statements including the following information: officers received information Cardenas had been involved in a large-scale cocaine trafficking organization; officers seized over $90,000 from Enrique Salas who flew from Davenport to Denver en route to California; Salas stated the money belonged to Antonio Cardenas; and, it was the affiant's experience "that person(s) who are involved in the sale of controlled substances frequently maintain the controlled substances in their residences." The warrant was issued, and upon its execution cocaine was seized from the residence.

Cardenas was charged with possession with intent to deliver a controlled substance in violation of section 124.401(b) (a class "B" felony) and failure to affix a drug stamp. Cardenas moved to suppress items seized during the warrantless search of the Blazer and during the search of the residence. The district court denied the motions to suppress and convicted Cardenas of possession with intent to deliver pursuant to section 124.401(2) (a class "C" felony) and failure to affix a drug tax stamp.

Although the court found Cardenas possessed cocaine with the intent to deliver on the night in question, it found the State failed to prove Cardenas possessed the drugs found during the search of the residence.

Cardenas appeals.

I. Standard of Review.

Cardenas claims his Fourth Amendment rights were violated because the police officers lacked reasonable cause to conduct an investigatory stop of his vehicle. He further claims the search of his residence was illegal because the search warrant was issued without probable cause. Cardenas also attacks the statutory sufficiency of the search warrant.

When confronted with an alleged constitutional violation, we resolve the issue by making our own independent evaluation of the totality of the circumstances. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995); *State v. Mills*, 458 N.W.2d 395, 396 (Iowa App. 1990). Our review is de novo. *Id.* To the extent Cardenas challenges the statutory sufficiency of the warrant, review is for errors at law. *State v. Beckett*, 532 N.W.2d 751, 753 (Iowa 1995).

II. Reasonable Cause to Stop Cardenas' Vehicle.

Cardenas claims the trial court erred in denying his motion to suppress the evidence seized during the investigatory stop of his vehicle. Cardenas argues the evidence was illegally seized because officers did not have reasonable cause to stop his

vehicle. In particular, Cardenas argues the information the officers had at the time of the stop was primarily from two informants who were not credible. Cardenas states, because the informants were not citizen informants and received a leniency for helping police officers, a higher standard of proof is required when weighing their reliability. He states none of the information given to the officers by the informants was corroborated by other independent information. Additionally, he states the police officers did not have reasonable cause to believe the man entering the white Blazer was Cardenas because the informants did not give a physical description of Cardenas.

The Fourth Amendment requires reasonable cause to stop a vehicle for investigatory purposes. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 899, 906 (1968). The police may stop and briefly detain a person for investigative purposes if the officer has reasonable cause to believe a crime has occurred. *Haviland*, 532 N.W.2d at 768. When a stop is challenged on the basis reasonable cause did not exist, the State must show that the stopping officer had "'specific and articulable cause to support a reasonable belief criminal activity may have occurred.'" *Mills*, 458 N.W.2d at 397 (quoting *State v. Aschenbrenner*, 289 N.W.2d 618, 619 (Iowa 1980)). The officer must be able to articulate something more than an inchoate and unparticularized suspicion or hunch, *Haviland*, 532 N.W.2d at 768, and the circumstances giving rise to mere suspicion or curiosity will not suffice. *Mills*, 458 N.W.2d at 397. A reviewing

court evaluates the stop's validity based on the totality of the circumstances. *State v. Rosenstiel*, 473 N.W.2d 59, 61 (Iowa 1991).

The factual basis for stopping a vehicle need not arise from the officer's personal observation, but may be supplied by information acquired from another person. *State v. Markus*, 478 N.W.2d 405, 407 (Iowa App. 1991). The totality of the circumstances is used to determine whether an informant's tip established reasonable suspicion. *Id.* at 408. The same factors for assessing the reliability of an informant in the "probable cause" context apply in the "reasonable suspicion" context. *Alabama v. White*, 496 U.S. 325, 328-29, 110 S. Ct. 2412, 2415, 110 L. Ed. 2d 301, 307-08 (1990). The factors enumerated by our supreme court for assessing the reliability of an informant in the probable cause context include: (1) whether the informant was named; (2) the specificity of facts provided; (3) whether the information was against the informant's penal interest; (4) whether the information was public knowledge; (5) whether the informant directly witnessed the criminal activity; (6) whether the informant was trusted by the accused; and (7) whether the information was corroborated, *State v. Niehaus*, 452 N.W.2d 184, 190-91 (Iowa 1990). It is important to note, because reasonable suspicion is a lesser standard than probable cause, it may be based on information which is less reliable than would be required to establish probable cause. *White*, 496 U.S. at 330, 110 S. Ct. at 2416, 110 L. Ed. 2d at 309; *See*

also State v. McGee, 381 N.W.2d 630, 632 (Iowa 1986) (lesser reliability required for tip supporting a *Terry* stop than a tip supporting a probable cause search).

We determine the informants' tips contained sufficient indicia of reliability to provide reasonable suspicion to make the stop. First, it is important to note, Juarez and Lopez were not anonymous tipsters who are presumptively unreliable. *Markus*, 478 N.W.2d at 409. Because these two informants, as well as Salas, were named informants, they are considered more reliable according to the *Niehause* factors.

Additionally, the information provided to officers was very specific. Prior to April 24, 1993, officers had received information Antonio Cardenas was trafficking drugs in the Quad Cities area. Officers had seized $90,000 from a suspected drug courier, Salas, who told police the money belonged to Antonio Cardenas. Although officers were unable to locate Cardenas at the time, on April 24, Juarez and Lopez told officers they received cocaine from Cardenas. Lopez and Juarez showed officers where Cardenas lived, identified him as a hispanic male, and identified the vehicle Cardenas would be driving. Juarez also told officers she was expected to meet Cardenas at a Mexican dance in downtown Davenport to give him money. She stated Cardenas always had cocaine to sell at the dances.

The third, fourth, fifth, and sixth factors also indicate the informants were reliable. The informants were clearly making statements against their own penal interest and the information they provided contained facts which were not public

knowledge. The informants directly witnessed the criminal activity and appeared to be trusted by the accused as they had purchased drugs from Cardenas in the past. All these factors indicate the informants were reliable. Although the informants may have expected or been granted leniency in return for their cooperation, we do not believe the possibility of leniency alone makes their information unreliable.

With respect to the last factor, we find the information from Juarez and Lopez was corroborated by the information officers previously received concerning Cardenas' drug trafficking and by the information provided by Salas, a suspected drug courier. The officers' prior familiarity with the name Antonio Cardenas gave them reason to believe Lopez and Juarez when they identified Cardenas as their supplier. The information from Juarez and Lopez was further corroborated when officers observed Cardenas carrying out the acts predicted by the informants. As informants predicted, a Hispanic male left the residence at 3015½ West 67th Street around 8 p.m., entered a white Blazer, and drove in the direction of downtown Davenport where a dance was taking place. Predicting future behavior demonstrates inside information and a special familiarity. *White*, 496 U.S. at 332, 110 S. Ct. at 2417, 110 L. Ed. at 310. "[I]t is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about the individual's illegal activities." *Id.*

After a full analysis of the facts in this case and the factors enumerated in *Niehaus*, we find the officers did have reasonable cause to stop Cardenas' vehicle. The

information the officers received from informants and the activities officers witnessed during the evening in question constitute more than an inchoate and unparticularized suspicion. *See Haviland*, 532 N.W.2d at 768. The officers had reasonable suspicion criminal activity was afoot and, therefore, were justified in stopping Cardenas' vehicle.

III. Validity of Search Warrant.

Cardenas makes several arguments with respect to the validity of the search warrant. First, Cardenas asserts the evidence derived from the investigatory stop should have been stricken from the warrant because the stop was unconstitutional. Second, Cardenas asserts the warrant is invalid because the issuing judge made no findings of credibility as to the confidential informants. The Cardenas argues the warrant is invalid because the issuing judge failed to make specific findings as to the credibility of Juarez and Lopez. Lastly, Cardenas asserts the warrant is invalid because there is no nexus between the criminal activity, the items to be seized, and the place to be searched.

We find it unnecessary to reach Cardenas' claims regarding the search warrant because Cardenas was not found guilty of posessing the cocaine found during the search of his residence. Count I of the Trial Information dealt only with possession of the cocaine on the night of Cardenas' arrest while Count II dealt with possession of the cocaine at Cardenas' residence. The district court found Cardenas guilty of Count I, but not guilty of Count II. It is important to note, the evidence seized from Cardenas' residence had no effect on the conviction of Count I and was not used to convict

Cardenas of Count I. As the district court noted, "Defendant's conviction under Count I of the Trial Information is based solely on his possession of cocaine at the time of the investigatory stop and defendant's subsequent arrest, on April 24, 1993." Because Cardenas was acquitted of all charges relating to possession of the cocaine at his residence (Count II), the admission of items seized during a search of his residence is no longer an issue.

AFFIRMED.