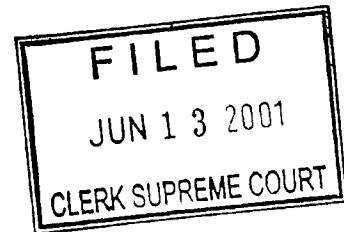


IN THE COURT OF APPEALS OF IOWA

No. 1-138 / 00-1174

Filed June 13, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY CHRISTIN BARBER,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge.

Troy Barber seeks discretionary review of the district court's denial of his motion to suppress. **REVERSED AND REMANDED.**

Patrick A. Sondag of Root, Tinley & Sondag, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Richard Crowl, County Attorney, and Jeffrey R. Tekippe, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

The defendant-appellant, Troy Barber, seeks discretionary review of the district court's denial of his motion to suppress. He claims the court erred in ruling reasonable particularized suspicion existed that criminal activity was taking place, thus justifying stopping his vehicle. We reverse the denial of Barber's motion to suppress and remand to the district court.

Factual background. On March 23, 2000, at about 7 a.m., an anonymous caller reported a suspicious vehicle in a rural area near Crescent, Iowa. The caller described the vehicle and identified the license plate number. The caller indicated there were two males in the vehicle but did not report any crime. Valley Lane is a dead-end road about three-tenths of a mile long and is not known as a "crime area." Valley Lane is very narrow and if two vehicles meet, one must back up or move off the roadway. Sergeant Allen went to the area to investigate. At about 7:25, while proceeding south on Valley Lane, Allen observed a northbound vehicle matching the description given by the caller. Allen did not observe the vehicle's occupants violating any traffic or other law or making furtive gestures. Using the road's narrowness, Sergeant Allen blocked the vehicle from further forward movement. A check on the vehicle's license plate revealed it was registered at an address in nearby Council Bluffs. Troy Barber, the driver of the vehicle, got out of his vehicle and approached Allen's marked patrol car. Barber informed Allen that he had been at his recently deceased grandfather's residence located in the neighborhood. Allen sent a deputy to check the house, but did not allow Barber's vehicle to pass. When the deputy returned, in about twenty minutes, he reported the garage door was open

and there was a strong odor of anhydrous ammonia in the garage. When Allen approached Barber's vehicle, he noticed a smell of ammonia coming from the vehicle. Two deputies opened the rear of Barber's vehicle and removed a cooler. When they opened the cooler, the ammonia smell became stronger. Barber admitted making methamphetamine. Tests at the scene on some of the contents of the cooler revealed the presence of methamphetamine.

Trial court proceeding. Barber was charged by trial information with conspiracy to manufacture a controlled substance, possession of a controlled substance, and possession of a precursor in violation of Iowa Code sections 124.401(1)(c)(6) (1999), 124.401(5), and 124.401(4). Barber's motion to suppress was denied. In ruling on the motion to suppress, the court found "the deputy conducted additional investigation which corroborated the information received from the dispatcher, and which gave reasonable particularized suspicion that criminal activity was taking place. The supreme court granted Barber's request for discretionary review.

Appellate claim. Barber claims the State did not meet its burden of proving reasonable cause to stop his vehicle, so the district court erred in denying his motion to suppress. The State contends Barber was not "seized" as described in the Fourth Amendment, because he voluntarily initiated contact with Sergeant Allen, so reasonable cause is not an issue. In the alternative, the State argues Allen did have reasonable cause to stop Barber's vehicle.

Analysis. When reviewing an alleged violation of a constitutional right, we review de novo the totality of the circumstances set forth in the entire record. *State v. Grant*, 614 N.W.2d 848, 852 (Iowa Ct. App. 2000).

Much of the questioning in the hearing on Barber's motion to suppress addressed the precise order of events that morning and exactly what information Sergeant Allen had at each point leading up to the "stop" of Barber's vehicle. The State claims the anonymous caller was a "citizen informant" and presumptively reliable. The State claims the officer, therefore, did not need a factual basis to stop Barber's vehicle based on his own observations and did not need to corroborate the information from the call. *See State v. Markus*, 478 N.W.2d 405, 408 (Iowa Ct. App. 1991). The caller was not a witness to or victim of a crime, so does not meet the qualifications of a citizen informant set forth in *State v. Peck*, 517 N.W.2d 230, 232 (Iowa Ct. App. 1994). The caller "provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility." *Florida v. J.L.*, 529 U.S. 266, 271, 120 S. Ct. 1375, 1379, 146 L. Ed. 2d 254, 260 (2000). Sergeant Allen needed, but lacked, a specific and articulable reason to stop Barber's vehicle.

The State's claim there was no "seizure" triggering Fourth Amendment protections is without merit. The officer testified he did not intend to let Barber's vehicle pass. Barber was detained for at least twenty minutes while deputies went to his grandfather's residence. The anonymous caller did not report any crime, just a "suspicious" vehicle. The ammonia odor near the vehicle was not detected until after the challenged stop.

The district court's ruling on the motion to suppress contains a finding "it was unusual for that area to have non-local traffic." The findings underlying a district court's ruling on a motion to suppress are binding on us if supported by substantial evidence." *State v. Cadotte*, 542 N.W.2d 834, 836 (Iowa 1996). The

court's finding is not supported by the evidence because the State's attempts to elicit that testimony were prevented by defense counsel's two sustained objections on foundational grounds.

The circumstances of this case do not indicate the officer had reasonable cause to stop Barber's vehicle. Sergeant Allen had no "specific and articulable cause to support a reasonable belief that criminal activity may have occurred" at the time he blocked Barber's vehicle from leaving the neighborhood. See *State v. Aschenbrenner*, 289 N.W.2d 618, 619 (Iowa 1980). The supreme court recently discussed Fourth Amendment protections in stops such as this one in *State v. Cline*, 617 N.W.2d 277, 281-83 (Iowa 2000). The stop here does not contain any of the circumstances which gave rise to reasonable cause to stop and search a vehicle in the cases cited in *Cline*. *Id.* at 283. Barber was not in a high-drug-traffic area, he did not attempt to flee, he made no furtive gestures, and nothing in his actions implicated illegal drugs. We conclude the district court erred in denying Barber's motion to suppress.

REVERSED AND REMANDED.

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