

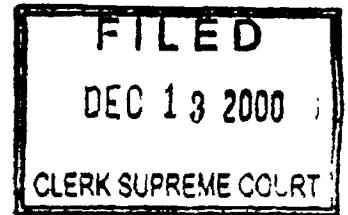
**IN THE COURT OF APPEALS OF IOWA**

No. 0-485 / 99-1512  
Filed December 13, 2000

**STATE OF IOWA,**  
**Plaintiff-Appellee,**

**vs.**

**ROBBI DEAN REINIER,**  
**Defendant-Appellant.**



---

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

Defendant appeals from the judgment and sentence entered upon a district court ruling finding him guilty of possession of a controlled substance with intent to deliver. **REVERSED AND REMANDED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, John P. Sarcone, County Attorney, and John Courter, Assistant County Attorney, for appellee.

Heard by Streit, P.J., and Vogel and Zimmer, JJ.

**ZIMMER, J.**

Robbi Reinier appeals from the judgment and sentence entered upon a district court ruling finding him guilty of possession of a controlled substance with intent to deliver. He contends the district court erred in denying his motion to suppress and his trial counsel was ineffective. We conclude the motion to suppress should have been granted. We reverse.

On March 14, 1999, around 5:25 p.m., Des Moines Police Officers Clark and Hardy received a report from dispatch that a Crime Alert caller had overheard a cellular phone conversation on his scanner arranging a narcotics transaction at the Osco Drug parking lot on East Fourteenth Street. The officers were nearby so they pulled into the lot to investigate.

Upon arriving in the lot, officers observed a van, which later turned out to belong to Robbi Reinier, parked approximately three spaces away from the store entrance. There were other vehicles in the lot, but only one other was occupied. The occupants of that vehicle were two Hispanic males. The officers contacted dispatch to try to obtain additional information as to the race of the individuals overheard by the caller. Dispatch informed the officers that the Crime Alert caller believed the individuals were white.

Reinier, who was outside his vehicle, spotted the marked police car and began to walk toward the store entrance. At that time, officers told Reinier to stop and talk to them. Reinier stopped, but his breathing became irregular, shallow, and rapid. He had trouble speaking. Officer Clark ordered Reinier to put his hands on his head. Clark conducted a patdown search and felt a large, rectangular object in Reinier's pants. Clark asked the defendant what the item

was and Reinier responded that it was two ounces of marijuana. Reinier was arrested at the scene.

On April 16, 1999, the State filed a trial information charging Reinier with possession of a controlled substance with intent to deliver, in violation of Iowa Code section 124.401(1)(d) (1997) (count I), and failure to affix drug tax stamp in violation of Iowa Code sections 453B.3 and 453B.12 (count II). On May 21, 1999, Reinier filed a motion to suppress, which the district court overruled. On July 21, 1999, Reinier stipulated to trial by the court on the minutes of testimony as to count I. He was found guilty and count II was dismissed.

Reinier now appeals. He contends the motion to suppress should have been granted because the police lacked reasonable suspicion to seize him and conduct a patdown search. Reinier also maintains that if we conclude the aforementioned issues have not been preserved, we should find his trial counsel ineffective for failing to preserve them.

**I. Scope of Review.** We review rulings on motions to suppress de novo in light of the totality of the circumstances. *State v. Heminover*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2000).

**II. Error Preservation.** The State contends Reinier failed to preserve error. At the suppression hearing, there was a factual dispute about the number of patdown searches actually conducted. Reinier claimed there had been two and only the second uncovered the marijuana. Officer Clark testified there was only one patdown. The State claims the motion to suppress only challenged the legality of the alleged second patdown. The State also argues in ruling on the motion to suppress, the district court failed to address whether the 'stop' of

Reinier was illegal. Since Reinier never sought a specific ruling on the issue, the State contends he also failed to preserve his challenge to the alleged stop.

It appears the trial court resolved the factual dispute regarding the number of patdowns in favor of Officer Clark's testimony. In its oral ruling after the hearing, the district court described the events exactly as Officer Clark had testified and mentioned only one patdown. We address the issue regarding the patdown under these factual findings. See *Heminover*, \_\_\_ N.W.2d at \_\_\_ (citing *State v. Cline*, 617 N.W.2d 277, 280 (Iowa 2000) (factual findings underlying ruling on motion to suppress are binding on appeal if supported by substantial evidence)). We conclude error was preserved and we reach the merits of the patdown issue. We do agree with the State, however, that the district court did not rule on whether there was a 'stop' or whether that stop was justified. Therefore, we do not address those issues.

**III. Reasonable Suspicion to Conduct Patdown.** The officer relied on only two factors before patting Reinier down: vague information received from the anonymous Crime Alert caller and Reinier's nervous demeanor. Reinier contends this information did not amount to reasonable suspicion sufficient to justify the patdown of his person. We agree.

Although a stop of an individual may be justified, it does not follow automatically that a patdown search may be conducted. See *Ybarra v. Illinois*, 444 U.S. 85, 93-94, 100 S. Ct. 338, 343, 62 L. Ed. 2d 238, 246-47 (1979). Limited 'patdown' searches for weapons are permitted for the protection of the police only where they have reason to believe an individual is armed and dangerous. *State v. Scott*, 405 N.W.2d 829, 832 (Iowa 1987). An officer need

not be absolutely certain that the individual is armed. *Id.* We look at the facts known to police and consider whether a reasonable officer in the circumstances would be warranted in the belief that his or her safety or that of others was in danger. See *id.*; see also *Heminover*, \_\_\_ N.W.2d at \_\_\_. We conclude a reasonable person in these circumstances would not be warranted in believing Reinier was armed and dangerous.

Here, Officer Clark relied in part on a vague, anonymous tip that a drug transaction was going to take place in the parking lot of Osco Drug on East Fourteenth Street. The caller thought the parties were Caucasian. Such anonymous tips are presumptively unreliable. See *State v. Markus*, 478 N.W.2d 405, 409 (Iowa App. 1991). The likely reason for the presumption is that an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity. See *Florida v. J.L.*, 529 U.S. \_\_\_, \_\_\_, 120 S. Ct. 1375, 1378, 146 L. Ed. 2d 254, 260 (2000) (citation omitted). This presumption may be overcome by external considerations which increase the tip's reliability, such as the specificity, underlying circumstances or corroboration of the tip. See *Markus*, 478 N.W.2d at 409; see also *J.L.*, 529 U.S. at \_\_\_, 120 S. Ct. at 1378, 146 L. Ed. 2d at 260.

For example, police surveillance of the reported subject may provide corroboration of the tip—that is, the tip proves to accurately predict the subject's future behavior. See *J.L.*, 529 U.S. at \_\_\_, 120 S. Ct. at 1378, 146 L. Ed. 2d at 260 (citing *Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990)); see also *United States v. Wells*, 223 F.3d 835, 839 (8th Cir. 2000) (when suspicions arise solely from anonymous call, police must engage in "suitable corroboration of the alleged criminal activity."). In *White*, police received an

anonymous tip asserting that a woman was carrying cocaine and predicting that she would leave a particular apartment building at a specified time, get into a car matching a particular description, and drive to a named motel. The U.S. Supreme Court pointed out that standing alone, the tip would not have justified a stop. *White*, 496 U.S. at 329, 110 S. Ct. at 2415, 110 L. Ed. 2d at 308 (citations omitted). Only after police observation of the woman showed that the informant had accurately predicted the woman's movements did it become reasonable to think the tipster had inside knowledge about the suspect and, therefore, to credit his assertion about the cocaine. *Id.* at 332, 110 S. Ct. at 2417, 110 L. Ed. 2d at 310. Even under these circumstances, the Supreme Court classified *White* as a "close case." *Id.*

The tip in Reinier's case lacked even the moderate indicia of reliability present in *White* and essential to the Supreme Court's decision in that case. Here, the tip contained few specifics. It did not reveal that the tipster had any sort of inside information about the subjects involved in the phone conversation, such that a reasonable person could credit the information. Perhaps if police had surveilled the parking lot, they would have observed a drug deal and confirmed the tip, as police did in *White*. Any practical joker could call police and state a drug transaction was going to occur in a particular parking lot. However, that does not give police cause to conduct a patdown search of everyone in that parking lot.

The tip in this case is even less reliable than the anonymous tip in *Florida v. J.L.*, which did not provide sufficient justification for a patdown. 529 U.S. \_\_\_, 120 S. Ct. 1375, 146 L. Ed. 2d 254. In that case, police received an anonymous

tip stating that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. The Supreme Court concluded the tip provided no predictive information that would provide police with the means to test the informant's knowledge or credibility. *Id.* at \_\_\_, 120 S. Ct. at 1379, 146 L. Ed. 2d at 260-61. The informant did not explain how he knew about the gun and did not supply any basis for believing he had inside information about the suspect. *Id.* The Supreme Court pointed out that although the tip contained an accurate description of a subject's readily observable location and appearance, it did not show that the tipster had knowledge of concealed criminal activity. *Id.* at \_\_\_, 120 S. Ct. at 1379, 146 L. Ed. 2d at 261. The Court also noted that although the allegation about the gun turned out to be correct, this does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct. *Id.* at \_\_\_, 120 S. Ct. at 1379, 146 L. Ed. 2d at 260. The reasonableness of official suspicion must be measured by what the officers knew *before* they conducted their search. *Id.*

There was even less to go on in this case. The tipster only stated that the parties to the cellular phone conversation planned the transaction to take place in the Osco Drug parking lot on East Fourteenth Street. However, the tip in this case does not specifically identify the person or persons involved. The tipster speculated about race based only on how the callers sounded on the scanner. This lack of specificity leaves police to guess who might be involved in the alleged criminal conduct. Nothing police observed corroborated an allegation of criminal conduct at the location or indicated Reinier was armed. If we permitted the tip about a drug deal alone to provide justification for the patdown, we would

essentially be permitting frisks based on all “bare-boned tips” about drugs, when a similar categorical analysis was rejected in *J.L.* with respect to tips about firearms. See *J.L.*, 529 U.S. at \_\_\_, 120 S. Ct. at 1380, 146 L. Ed. 2d at 261-62. The tip lends little, if anything, toward providing a basis for the patdown.<sup>1</sup>

The remaining facts fail to rise to the level of suspicion required to justify a patdown. The only other information the officer had was Reinier’s apparent nervousness in the presence of police—he walked toward the store when they pulled into the lot and, when they sought to speak with him, his breathing became rapid and shallow. Police may approach individuals in public to try to ask them questions. *Florida v. Royer*, 460 U.S. 491, 497, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229, 236 (1983). However, when they do so without reasonable suspicion for a stop or probable cause to arrest, as was the case here, the individual has the right to ignore the police and continue with his or her business. See *id.* Furthermore, nervousness alone does not justify a patdown search. Cf. 4 W. LaFare, *Search and Seizure* § 9.4(f), pp. 180-81 (3d ed. 1996) (noting that appearing nervous or quickening one’s pace upon seeing police does not provide sufficient basis for a stop). The State does not cite any cases in which mere nervousness alone justified a patdown in a situation where a citizen was approached by police who had no information that the particular citizen was involved in criminal activity.<sup>2</sup> We determine police did not have an objectively

---

<sup>1</sup> Furthermore, the tipster may have obtained the information from the cellular phone call illegally. See Iowa Code § 808B.2 (criminalizing unauthorized interception of wire, oral and electronic communications) and § 808B.7 (prohibiting use of such intercepted communications as evidence in any court proceedings). We do not address this issue because it was not raised below or on appeal.

<sup>2</sup> The State does cite *Wardlow v. Illinois*, \_\_\_ U.S. \_\_\_, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000) in an attempt to characterize Reinier’s behavior in heading toward the store as flight. The flight in *Wardlow* was headlong, rapid flight away from police. The U.S. Supreme Court held that

reasonable basis for concluding Reinier was armed and dangerous. Therefore, all evidence derived from the patdown should have been suppressed. We reverse his conviction and remand for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**

---

this behavior in an area known for drug trafficking constituted reasonable suspicion. See *Wardlow*, \_\_\_ U.S. \_\_\_, 120 S. Ct. 673, 145 L. Ed. 2d 570. There were no such circumstances here. Police only stated that Reinier walked toward the store at the sight of police. There was no indication that his walk was rapid or that he attempted to flee at any other time during contact with police.