

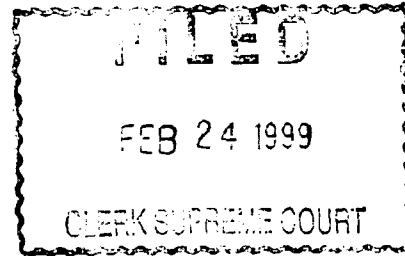
IN THE COURT OF APPEALS OF IOWA

No. 8-690 / 97-1421
Filed February 24, 1999

STATE OF IOWA,
Appellee,

vs.

CURTIS GENE GRAVEMAN,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, George L. Stigler
and K.D. Briner, Judges.

Curtis Graveman appeals from his convictions, following a bench trial, on the
minutes of testimony, of possession of a controlled substance with intent to deliver,
delivery of a controlled substance, and failure to affix tax stamp. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, John P. Messina, Assistant
Appellate Defender, and Ursula A. Koenig, Student Legal Intern, Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Vogel, JJ.

STREIT, ~~Is~~

Curtis Graveman appeals his conviction and sentence for possession of methamphetamine with intent to deliver, delivery of methamphetamine, and failure to affix a drug-tax stamp. He argues the trial court erred in refusing to suppress evidence supporting his conviction which, he argues, was the fruit of an illegal stop. Because we find the officers had reasonable suspicion to stop Graveman's vehicle, we affirm the trial court's denial of Graveman's motion to suppress and affirm his convictions.

I. Procedural Background & Facts.

A police officer in Waterloo received a phone call from a confidential informant who said Tina Randall's drug supplier was at her house and would be leaving "shortly." The informant provided no information about the dealer's sex, clothing, or other identifying details. The officer had known the informant for over one and one-half years and received information from him on ten to twenty occasions, leading to the arrest and prosecution of four individuals.

In response to the informant's call, officers began surveilling Randall's residence. Approximately twenty five minutes passed between receiving the informant's call and the establishment of the surveillance. Shortly after surveillance began, a vehicle left Randall's residence.

The officers followed the vehicle which was driven by Graveman. The vehicle had out-of-county license plates and followed a winding path through the streets of Waterloo, traveling "south, west, south, west." The officers stopped the vehicle.

After the stop, Graveman was read his Miranda rights and asked if he had knowledge of methamphetamine at Randall's house. Graveman denied any knowledge. Police then acquired the defendant's consent to search his car and his person, where they located a syringe with residue, \$100, and two unidentifiable white pills. Graveman later consented to a search of his home and gave incriminating statements about methamphetamine use at both his and Randall's house.

Graveman was charged with possession of a controlled substance with intent to deliver in violation of Iowa Code section 124.401(1)(b) (1995), delivery of a controlled substance in violation of Iowa Code section 124.401(1)(b) (1995), and failure to affix a drug tax stamp in violation of Iowa Code section 453B.12 (1995). He moved to suppress the evidence seized as a result of the stop of his vehicle arguing there was no reasonable suspicion to stop his car and the evidence was the result of an illegal stop and search. The motion was denied. Graveman was found guilty on all charges and sentenced to two concurrent indeterminate terms not to exceed twenty five years and a \$10,000 fine. Graveman appeals.

II. *Standard of Review.*

In assessing alleged violations of constitutional rights, our standard of review is de novo; we make an independent evaluation of the totality of the circumstances as shown by the entire record. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998). In reviewing the district court's ruling on Graveman's motion to suppress, we consider both the evidence presented during the suppression hearing and at trial. *Id.* The adverse ruling on Graveman's motion to suppress preserved error for our review. *Id.*

III. *Denial of Motion to Suppress Based on Alleged Illegality of Stop.*

The Fourth Amendment to the United States Constitution and article I, section 8, of the Iowa Constitution protect individuals against unreasonable searches and seizures by government officials. As a general matter, a search or seizure must be conducted pursuant to a warrant issued by a judge or magistrate. Searches conducted without a warrant are per se unreasonable unless an exception to the warrant requirement applies. *Katz v. United States*, 389 U.S. 347, 357 (1967); *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997).

One of the well-established exceptions to the warrant requirement is formulated in *Terry v. Ohio*, allowing an officer to stop an individual or vehicle for investigatory purposes based on a reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). Reasonable suspicion is a less demanding standard than probable cause. *State v. Ohlsen*, 537 N.W.2d 794, 797 (Iowa App. 1995)(quoting *Adams v.*

Williams, 407 U.S. 143 (1972)). Reasonable suspicion can be established with information different in quantity or content than required to establish probable cause, and can arise from information less reliable than that required to show probable cause. *Id.* For example, 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. *Id.* An unverified tip from a known informant might not be reliable enough to establish probable cause, but sufficient to justify a *Terry* stop. *Id.* The final inquiry is whether the totality of the circumstances demonstrates reasonable suspicion. *Id.*

If a defendant challenges a stop, alleging 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. *State v. Aschenbrenner*, 289 N.W.2d 618, 619 (Iowa 1980). If the State fails to sustain its burden, evidence taken as a result of the stop must be suppressed. *State v. Markus*, 478 N.W.2d 405, 407 (Iowa App. 1991).

After de novo review of the record, we find the State met its burden in this case. Officer Knief knew the information of the informant was reliable. He had received information from this informant on at least ten previous occasions. Tips from the informant had led to the arrest of four other persons. The informant told

Officer Knief there was a drug supplier of methamphetamine at Randall's house, the exact location of the house, and the supplier would be leaving shortly.

Graveman complains nothing about his behavior indicated criminal activity so as to confirm the informant's tip. Important in forming a reasonable suspicion was the proximity in time of Graveman's conduct to the informant's tip. *See In re S.A.W.*, 499 N.W.2d 739, 741 (Iowa App. 1993)(officers had reasonable suspicion due to the close time and proximity to a gun battle when combined with the vehicle's movement away from the incident). Here, Officer Knief began surveilling Randall's residence twenty five minutes after the informant's tip. Ten minutes later, Graveman left Randall's house and begin his zig-zag pattern through Waterloo while followed by officers.

Further, seemingly innocent activities, combined with other factors may give an experienced officer reason to suspect wrongdoing. *State v. Rosenstiel*, 473 N.W.2d 59, 62 (Iowa 1991). This was the case here. Graveman's zig-zag pattern of driving through a residential area of Waterloo as he was being followed by officers was "furtive action." *See State v. Richardson*, 501 N.W.2d 495, 497 (Iowa 1993)(court considered defendant's pulling out of an area of a private business as the police approached "furtive action" significant in concluding there was reasonable suspicion to stop defendant's car).

We ~~conclude~~ the totality of the circumstances surrounding the stop of Graveman's vehicle provided reasonable suspicion for the belief that criminal activity was afoot. The informant's tip, the proximity of Graveman's conduct to the informant giving the tip, and Graveman's driving in a zig-zag pattern through residential Waterloo while being followed by officers, justified the stop of his vehicle. The officers had a reasonable suspicion that criminal activity was afoot. The trial court's denial of Graveman's motion to suppress is affirmed. Graveman's conviction is affirmed.

AFFIRMED.