

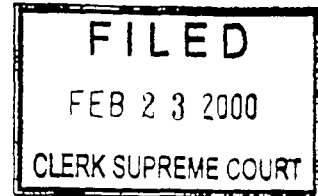
IN THE COURT OF APPEALS OF IOWA

No. 0-011 / 98-2167
Filed February 23, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL EDWARD SHORT, JR.,
Defendant-Appellant.



Appeal from the Iowa District Court for Madison County, J.W. Jordan and
David L. Christensen, Judges.

The defendant appeals from his conviction for operating a motor vehicle
while under the influence of alcohol, first offense, in violation of Iowa Code section
321J.2 (1997). **AFFIRMED.**

Randy G. Sargent, Norwalk, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, **and** Martin S. Ramsey, County Attorney, for appellee.

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

HECHT, J.

Michael E. Short ("Short") appeals from his conviction for operating a motor vehicle ~~while~~ under the influence of alcohol (OWI), first offense, in violation of Iowa Code section 321J.2 (1997). We affirm.

I. Factual Background and Proceedings. On June 13, 1998, the Winterset Police Department received an anonymous complaint about an intoxicated driver. The caller indicated the driver "stumbled out to his vehicle" after leaving a bar. The caller further indicated the driver was driving a red Chevrolet pickup truck with license plate number 886BTP north on John Wayne Drive in Winterset. Officer William Young observed a vehicle matching this description proceeding north on John Wayne Drive and then turning west on Highway 92. Officer Young turned on his flashing red lights and followed the car for thirteen blocks. During this time, he observed the car weaving back and forth within its lane. The driver of the car failed to pull over. Officer Young then turned on his siren, and the car pulled over. Officer Young identified Short as the driver of the vehicle.

Officer Young performed several field sobriety tests, and Short failed all of them. His preliminary breath test indicated his blood alcohol level was greater than .20. The State subsequently charged Short with OWI, second offense.¹ On September 21, 1998, Short filed a motion to suppress alleging the officer did not have reasonable cause to stop his vehicle. The district court denied the motion. After a stipulated bench trial, the district court found Short guilty of OWI, first offense. Short appeals.

¹ The charge was subsequently reduced to OWI, first offense.

II. Standard of Review. Because Short alleges a violation of his constitutional rights, our standard of review is de novo. See *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998). Under that standard, we must independently evaluate the totality of the circumstances as shown by the entire record. *State v. Howard*, 509 N.W.2d 764, 767 (Iowa 1993).

III. Reasonable Cause. Short contends the anonymous caller's tip was not sufficient to give the officer enough information to justify reasonable suspicion of criminal activity. The Fourth Amendment requires a police officer to have reasonable cause to stop a vehicle for investigatory purposes. *State v. Waters*, 538 N.W.2d 862, 863 (Iowa App. 1995) (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968)). When a stop is challenged on the basis reasonable cause did not exist, the State must show the stopping officer had specific and articulable cause to support a reasonable belief criminal activity was afoot. *State v. Lamp*, 322 N.W.2d 48, 51 (Iowa 1982).

Short argues the officer's reasonable belief cannot be based on an anonymous caller's tip because the tip relies on an unknown source of unknown credibility. The factual basis for stopping a vehicle need not arise from the officer's personal observations, but may be supplied by information acquired from another person. *Adams v. Williams*, 407 U.S. 143, 147, 92 S. Ct. 1921, 1924, 32 L. Ed. 2d 612, 615 (1972); *State v. Markus*, 478 N.W.2d 405, 407 (Iowa App. 1991). In this case, the other person was an anonymous citizen informant.

A citizen informant is ordinarily defined as a person who is a witness to or a victim of a crime. *State v. Peck*, 517 N.W.2d 230, 232 (Iowa App. 1994). Where

such a person provides information leading to a stop or an arrest, a common sense analysis of the totality of the circumstances must be undertaken to assess the reliability of the information. *State v. Niehaus*, 452 N.W.2d 184, 189-90 (Iowa 1990). Although anonymous tips have been considered "presumptively unreliable," the presumption can be overcome by external considerations. *Markus*, 478 N.W.2d at 409. If the officer corroborates the informant's statements, the information can be the basis for reasonable suspicion and justify stopping a vehicle. *See id.* at 408 (citing *Alabama v. White*, 496 U.S. 325, 331-32, 110 S. Ct. 2412, 2417, 110 L. Ed. 2d 301, 310 (1990)).

In the present case, Officer Young received the following information from the anonymous call: (1) the driver appeared to be intoxicated, (2) the vehicle was a red Chevrolet pickup truck, (3) the license plate number was 886BTP, and (4) the vehicle was traveling north on John Wayne Drive in Winterset, Iowa. After leaving the police station, Officer Young observed a vehicle matching each one of the physical descriptions given by the informant. The officer then observed the car "weaving" on the roadway consistent with the informant's belief the driver was intoxicated. Thus, we believe the informant's tip was sufficiently corroborated in order to form reasonable suspicion for the stop.

Furthermore, the informant's call was in close proximity to the time when Officer Young observed Short's pickup. *See Waters*, 538 N.W.2d at 863 (stating the proximity in time between the receipt of the citizen's complaint and the officer's observation of the defendant's vehicle lends support for a finding of reasonable cause for an investigatory stop). Specific and articulable cause existed to support

the stop of Short's vehicle. We therefore affirm the district court's denial of Short's motion to suppress and affirm the conviction.

AFFIRMED.