IN THE COURT OF APPEALS OF IOWA

No. 1-205 / 90-840

FILED
JUN 25 1991
CLERK SUPREME COURT

348

STATE OF IOWA,

Appellee,

vs.

SCOTT WESLEY UNKRICH,

Appellant.

Appeal from the Iowa District Court for Linn County, Michael J. Newmeister, District Associate Judge.

Defendant on appeal contends the trial court should have suppressed evidence recovered from the issuance of a search warrant and search of his garage. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Thomas S. Tauber, Assistant Attorney General, Denver D. Dillard, County Attorney, and William C. Croghan and Brian Claney, Assistant County Attorneys, for appellee.

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

PER CURIAM

On the 22nd day of November, 1989, at about 9:30 p.m. a pickup truck hit and damaged a Hardee's fast-food restaurant building situated at 6th Street and 16th Avenue Southwest, Cedar Rapids, Iowa. The vehicle was proceeding through the restaurant's drive-through lane. It did not stop but was driven away and left the scene. The minutes of testimony in the trial information indicated a witness identified the vehicle as a 1970 blue Chevrolet 4 x 4 with a silver stripe on it. One of the investigating officers found a turn signal lens at the scene. This broken lens was from a 1973 or later model. The pickup was damaged on the passenger side at a level of about three feet up from the ground.

On November 29, 1989, the police received an anonymous phone call. The caller reported the pickup had been driven by a "Scott" and it had sustained considerable passenger-side damage. Also Scott was keeping the truck hidden in a locked garage at the end of M Street Southwest, near Scott's residence. An officer determined Scott Unkrich lived near the end of M Street Southwest. Vehicle records showed Scott Unkrich owned two Chevrolet pickup trucks, a gold 1973 and a tan 1977. An officer went to the Unkrich home, found no one at home, peered through a crack into the Unkrich garage, and saw a pickup truck.

On the basis of this information, the officers obtained a warrant to search the Unkrich garage. Upon the execution

of the warrant they found a gold Chevrolet pickup with damage on the passenger side. The turn signal lens found in the restaurant parking lot matched the truck.

Unkrich was charged with striking fixtures in violation of Iowa Code section 321.265 and with driving while his license was suspended in violation of section 321J.21. After a bench trial on stipulated facts, he was convicted of both charges. He has appealed. We affirm.

Unkrich contends the district court should have suppressed evidence resulting from the search of his garage. He argues the search warrant was based on police representations which either were false or were made with reckless disregard for the truth. He asserts the warrant application (1) falsely stated the anonymous telephone tipster had given the name "Scott Unkrich" rather than just "Scott"; (2) omitted the fact officers had focused on Scott Unkrich only by checking mailboxes near the end of M Street S.W.; (3) misrepresented how far Unkrich's house was from the end of M Street Southwest; and (4) omitted the fact neither of Unkrich's trucks met the color or age descriptions given by the eyewitness.

Defendant raises a constitutional issue in this appeal. He claims the police officers obtained evidence against him in violation of the fourth amendment to the United States Constitution. Our review is on the totality of the circumstances, a de novo review. State v. Niehaus, 452 N.W.2d 184, 187 (Iowa 1990).

The State concedes the name "Unkrich" should be excised from lines seven and nine of the first paragraph. We examine the application for the search warrant without the name "Unkrich" in lines seven and nine of the first paragraph of attachment A to the application for search warrant. It is set out as follows:

ATTACHMENT A

Affiant's name: Dean K. Thompson
Occupation: Police Officer No. of years: 8 1/2
Assignment: Traffic No. of years: 3

Your affiant conducted an investigation and received information from fellow officers and other sources as follows:
(_____ See investigative and police reports, Attachment(s) _____.)

Your affiant, Dean Thompson, was assigned to investigate a hit and run that occurred on November 22, 1989, at Hardee's at 6th Street and 16th Avenue S.W. Cedar Rapids, Iowa. During the investigation, a body part was found from the hit and run vehicle and the part number indicated the hit and run vehicle was a 1973-to-1978 Chevy pickup. On November 29, 1989, Karen Waltz, the Night Detective Secretary, received an anonymous call. The caller stated that the person who had committed the hit and run was a Scott Unkrich and that he had driven a four-wheel drive pickup through the drive-through lane backwards. The caller additionally stated that Scott Unkrich had told the caller that he was going to store this truck in a garage at the deadend of M Street S.W. which is where Scott Unkrich is now residing.

Your affiant, Dean Thompson, in checking motor vehicle registrations found that Scott Unkrich has a gold 1973 Chevy pickup and a tan 1977 Chevy pickup registered to him. Also in checking the State Drivers License Records, they show that Scott Unkrich is currently under two different driver's licenses suspensions.

On November 30, 1989, your affiant, Dean Thompson, went to 1806 M Street S.W. the residence of Scott Unkrich in an attempt to interview him regarding this information; however, no one was home. While

> at this residence, your affiant noticed through an opening in the garage doors that there is a pickup truck parked in this garage. At this time, your affiant requests a search warrant for the garage at 1806 M Street S.W., to determine if the pickup truck in the garage is the hit and run vehicle.

Defendant also complains the first paragraph of the warrant application states "Scott" "was going to store this truck in a garage at the deadend of M Street S.W. which is where Scott Unkrich is now residing." Defendant claims this is false and misleading because Defendant lives in the third house from the dead end. Our supreme court held in State v. Niehaus, 452 N.W.2d 184, 187 (Iowa 1990), inclusion of apparently misleading information in the warrant application itself does not rise to the level of reckless disregard for the truth where the actual situation would be apparent to the magistrate examining the application and supporting documents as a whole. We determine this is the situation before us here and affirm on this claim.

Police officers may rely on an anonymous informant's accusation to generate probable cause to issue a search warrant. However, the issuing magistrate must employ a common-sense analysis of the totality of the circumstances to assess the reliability of the information supplied by the informant. Illinois v. Gates, 462 U.S. 213, 227-28, 103 S. Ct. 2317, 2326, 76 L. Ed. 2d 527, 541-42 (1983); State v. Niehaus, 452 N.W.2d at 189-90. The magistrate must be presented with enough information regarding the

veracity and basis of knowledge of the informant to justify a conclusion that there is a fair probability the information is truthful. State v. Niehaus, 452 N.W.2d at 190. Cases decided under the Gates totality-of-the-circumstances approach generally turn on the existence of corroboration of some elements of the informant's tip by independent police work. Id. at 191. The theory is that, where an informant has been shown to be right about some things, it is reasonable to suppose that he is right about others. Included in this is the informant's statement the object of the tip is engaged in criminal activity. Alabama v. White, 496 U.S. __, __, 110 S. Ct. 2412, 2417, 110 L. Ed. 2d 301, 310 (1990). However, officers are not required to corroborate the specifically inculpatory details of the informant's tip, so long as the circumstances surrounding the tip, when taken together, are sufficient to generate probable cause. State v. Niehaus, 452 N.W.2d at 191.

When we delete the name "Unkrich" from lines seven and nine of the first paragraph of the warrant application it still indicates "the anonymous caller stated a person named Scott committed the hit and run and that he had driven a four-wheel drive pickup through the drive-through lane backwards." This informant also stated "Scott" "had told the caller that he was going to store this truck in a garage at the deadend of M Street S.W." We observe this information furnished by the anonymous caller is corroborated by the officer's discoveries as follows:

1. A person named Scott lived in the last block on M Street three houses from the end of the street.

2. The garage at Scott's (defendant's) residence housed a pickup truck.

3. Scott Unkrich was the registered owner of two pickup trucks. One was a gold 1973 Chevrolet and the other a tan 1977 Chevrolet. Except for the color, the informant's description of the suspect's pickup was similar to defendant's pickup in many ways. This was brought to the magistrate's attention. The tail light lens found at the scene would have fit either truck.

We hold this independent discovery by the police officers was sufficient to corroborate the information furnished by the caller.

AFFIRMED.