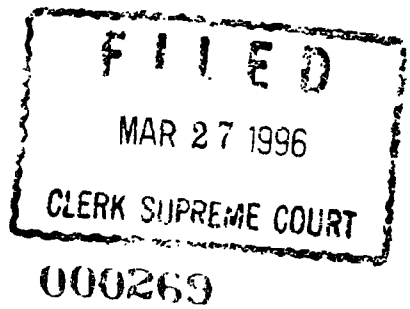
IN THE COURT OF APPEALS OF IOWA



No. 6-095 / 95-0593

STATE OF IOWA,

Appellee,

vs.

WILLIE E. JOHNSON,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister, Judge.

Willie Johnson appeals the judgment and sentence entered upon his convictions of possession of a controlled substance with the intent to deliver, failure to affix a drug tax stamp, and interference with official acts. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Cady and Streit, JJ.

STREIT, J.

At approximately 6 p.m. on March 8, 1994, Waterloo police officer Mark Meyer received an anonymous phone call from an adult male. The caller reported a black male named "Piggy" was dealing drugs just east of Shirley's Lounge at 115 Sumner. The caller stated Piggy had crack in his left front pants pocket. The caller claimed to have observed Piggy making several drug transactions with other people. According to the caller, Piggy was wearing a burgundy sweatshirt, blue jeans, and a burgundy cap with writing on it.

Approximately five minutes after receiving the call, Meyer and several other officers arrived at Shirley's Lounge. Meyer saw the appellant, Willie Johnson, dressed as described by the caller. Meyer was familiar with Johnson and knew his nickname was Piggy. Meyer told Johnson he had received information Johnson was selling crack cocaine and instructed him to put his hands against the wall. Meyer performed a pat down search of Johnson and felt what he believed was a large wad of money. Meyer then handcuffed Johnson. Meyer asked Johnson if he had anything on him. Johnson stated he only had money on him and further stated Johnson could search him. Meyer stuck his hand in Johnson's pants pockets and felt money. Meyer then told Johnson he could finish the search at the bar or at the police station. Johnson opted to finish the search at Shirley's Lounge.

Meyer and another officer took Johnson into the men's restroom. Meyer removed the handcuffs. Johnson removed his pants and handed them to Meyer. Inside the left front pocket, Meyer found two $100 pieces of crack cocaine. Meyer then informed Johnson he was under arrest. After putting his pants back on, Johnson attempted to force his way out of the restroom and the bar.

Johnson was convicted of possession of a controlled substance with intent to deliver, failure to affix a drug tax stamp, and interference with official acts. Johnson appeals claiming the district court erred in denying his motion to suppress. More specifically, Johnson argues he was placed under arrest when Meyer handcuffed him after the brief pat down. Johnson argues this arrest violated his Fourth Amendment rights because there was not probable cause to support the arrest. Johnson argues probable cause was lacking because there was insufficient evidence of the anonymous caller's reliability.

I. Standard of Review.

When a defendant is alleging error involving a constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such an error was made. *Rinehart v. State*, 234 N.W.2d 649, 658 (Iowa 1975); *State v. Jeffries*, 417 N.W.2d 237, 239 (Iowa App. 1987). As such, review of Johnson's claim is de novo. *State v. Aschenbrenner*, 289 N.W.2d 618, 619 (Iowa 1980).

II. Merits.

The State presents two bases upon which the district court's decision may be upheld. First, the State claims officers conducted a valid investigative *Terry* stop after which the defendant gave his consent to a more in-depth search which ultimately uncovered the drugs. Under this theory, the State claims the defendant was never placed under arrest until after the drugs were uncovered. In the alternative, the State claims, if Johnson was under arrest when the handcuffs were initially placed on him, the arrest was valid because probable cause existed. As such, the warrantless search of defendant's person was justified as a search incident to a proper arrest.

First, we must determine whether Johnson was under arrest when the handcuffs were placed on him after he was patted down. We have held an action tantamount to arrest takes place if the officers' conduct is more intrusive than necessary for an investigative stop. *United States v. Jones*, 759 F.2d 633, 636 (8th Cir. 1985). "There is, however, no 'litmus-paper test' or 'sentence or paragraph' rule to determine when, given the 'endless variations in facts and circumstances,' police-citizen encounters exceed the bounds of mere investigative stops." *Id.* (quoting *Florida v. Royer*, 460 U.S. 491, 506-07, 103 S. Ct. 1319, 1329, 75 L. Ed. 2d 229 (1983)). A defacto arrest occurs when the officers' "conduct is more intrusive than necessary for an investigative stop." *United States v. Bloomfield*, 40 F.3d 910, 916-17 (8th Cir. 1994). Factors to consider include: length of the detention; the degree of fear and humiliation the police

conduct engenders: whether suspect has been transported from one location to another or isolated from others: unnecessary delay; use of handcuffs; and confinement to police car. *Id.* at 917. Officers may take steps reasonably necessary to protect their personal safety and maintain the status quo. *Jones*, 759 F.2d at 636.

As the State points out, several courts have held the use of handcuffs does not automatically convert a stop into an arrest. *See United States v. Fountain*, 2 F.3d 656, 666 (6th Cir. 1993) (use of handcuffs does not necessarily turn an encounter into an arrest for which probable cause is required); *United States v. Sanders*, 994 F.2d 200, 206 (5th Cir. 1993) (use of handcuffs alone, or combined with other factors, does not automatically convert an investigatory detention into an arrest requiring probable cause; focus is on the reasonableness of the officer's actions); *United States v. Bautista*, 684 F.2d 1286, 1289-90 (9th Cir. 1982) (handcuffing of suspect did not convert stop into arrest when reasonable as a protective measure); *United States v. Purry*, 545 F.2d 217, 220 (D.C. Cir. 1976) (officer making stop entitled to use reasonable force, in the form of handcuffing, to maintain status quo). Although not specifically discussing handcuffs, Iowa and Eighth Circuit courts have held the use of a weapon by peace officers as a protective measure during an investigatory stop does not convert a stop into an arrest if the officer's action is reasonable under the circumstances. *See State v. Scott*, 518 N.W.2d 347, 350 (Iowa 1994); *See United States v. Jones*, 759 F.2d at 638.

We determine use of handcuffs as a protective measure during an investigatory stop, like the use of a weapon, does not automatically convert a stop into an arrest. Although the use of handcuffs in conjunction with other factors may amount to an arrest under certain circumstances, the circumstances surrounding the seizure of Johnson did not transform the stop into an arrest requiring a showing of probable cause. After looking at the factors set out in *Bloomfield*, it is apparent the police officers did not subject Johnson to any intrusion or restraint beyond that necessary for the investigation. The detention was brief. Johnson was not transported from one location to another until after Johnson consented to a search. There was no unnecessary delay or confinement to a police car. In fact, the only significant intrusion officers placed upon Johnson was handcuffing him. Johnson had a reputation for violence particularly when confronted by police. His prior behavior was described as "extremely violent and unreasonable," "out of control," and assaultive of a police officer. Briefly handcuffing Johnson was reasonable under the circumstances to effectuate a safe *Terry* stop.

In support of the argument defendant was arrested, Johnson emphasizes the fact the handcuffs were placed on him after a *Terry* pat down revealed he did not have a weapon. We find this fact insignificant under the circumstances of this case. Although police officers were aware Johnson did not have a weapon, safety was still a concern. Officers had many experiences with Johnson where he became violent and combative. Even though the initial pat down revealed no weapon, officer safety remained a

significant concern as the officers continued the investigatory questioning of Johnson. The use of handcuffs was reasonable. Handcuffing the defendant did not amount to an arrest

Because Johnson was not under arrest when the handcuffs were placed on him, the detention was merely a *Terry* stop. We must determine whether the *Terry* stop of Johnson was valid. Upon a "reasonable and articulable" suspicion of criminal activity, a police officer may briefly detain and pat-down (if reasonably necessary) an individual suspected of criminal activity. *See Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *State v. Wullner*, 401 N.W.2d 214 (Iowa App. 1986). Reasonable suspicion may be based on a tip from an informer. *United States v. McBride*, 801 F.2d 1045, 1047 (8th Cir. 1986). An anonymous tip may bear sufficient indicia of reliability to support police action. *Id.* Reasonable suspicion is a less demanding standard than probable cause in that lesser reliability is required for a tip supporting a *Terry* stop than a tip supporting a probable cause search. *Id.*

In this case, the anonymous tipster's information about Johnson's nickname, where Johnson would be located, and what he would be wearing was corroborated by officers on the scene. It is immaterial that the details corroborating informant's tip are as consistent with innocent conduct as with illegal activity. *Id., see also State v. Markus*, 478 N.W.2d 405, 408 (1991) (independent corroboration of inculpatory details of an informant's tip is not mandatory in order to support an investigatory stop). As a

result of the caller's report, the officers had a specific and articulable suspicion criminal activity was afoot. The brief questioning and pat down of Johnson was a valid *Terry* stop.

Lastly, we address the search of Johnson in the bathroom. While officers were questioning Johnson during the *Terry* stop, Johnson told them he had nothing on him and they could search him. An exception to the warrant requirement is when a person with authority gives consent knowingly and voluntarily without police coercion. *State v. Myer*, 441 N.W.2d 762, 765 (Iowa 1989). The burden is on the State to establish by a preponderance of the evidence the consent was voluntarily given. *State v. Garcia*, 461 N.W.2d 460, 462 (Iowa 1990). When reviewing the issue of voluntariness, the court makes an independent evaluation of the totality of the circumstances and determines whether the consent was voluntarily given. *Id.* Considering the totality of the circumstances, it is clear the defendant's consent was voluntary. There is no evidence the defendant did not voluntarily consent to the search. Officers did not request a consent search; rather, Johnson unequivocally told officers they could search him as he had nothing on him. The search conducted in bathroom was valid.

Although the district court found the defendant was arrested when he was placed in handcuffs, we disagree and find the defendant was not placed under arrest until after the drugs were uncovered. We determine police officers conducted a valid

investigatory *Terry* stop after which the defendant gave his consent to a more in-depth search which uncovered the drugs.

AFFIRMED.

Cady, J., concurs; Sackett, P.J., specially concurs without opinion.