FILED
APR 26 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

488

STATE OF IOWA, ex rel DAN L. JOHNSTON, POLK COUNTY ATTORNEY,

Plaintiff,

vs.

THE HONORABLE RAY A. FENTON, JUDGE OF THE FIFTH JUDICIAL DISTRICT OF IOWA,

Defendant.

Filed April 26, 1979

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2-61969

Writ of Certiorari to Polk District Court - Ray A. Fenton, Judge.

Certiorari action challenging trial court ruling sustaining a criminal defendant's motion to suppress evidence. Writ annulled.

Lona Hansen, Assistant Attorney General and James A. Smith, Assistant Polk County Attorney, of Des Moines, for petitioner.

Robert Wright, of Des Moines, for respondent.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

CARTER, J.

This is an original certiorari proceeding testing the legality of an order of the respondent trial court suppressing physical evidence in a criminal case. The criminal prosecution from which this proceeding arose was initiated by a county attorney's information accusing one Rosebud Biggles of the public offense of possession with intent to deliver a controlled substance contrary to section 204.401(1), The Code 1977. Biggles will be referred to as defendant and the other parties to the certiorari action as the State and the trial court. Prior to trial, defendant filed a motion to suppress the fruits of a warrantless search of his automobile after he was stopped by police officers in the early morning hours of February 3, 1978.

The trial court sustained the motion to suppress finding that the record had failed to establish any specific and articulable facts which afforded reasonable grounds for an investigatory stop of defendant's motor vehicle.

I. The question before us is whether the trial court acted illegally in suppressing this evidence. The legal issues presented are: (1) whether the evidence established specific and articulable cause that criminal activity was afoot sufficient to justify an investigatory stop of the automobile; and (2) whether the evidence established probable cause for a warrantless search of the automobile. As to both issues the State relies almost exclusively upon information allegedly received by an unidentified informant. To sustain the State's burden on either issue on this type of evidence we must be satisfied with respect to both the underlying facts from which the informant reached her conclusions and the facts from which the officers could assume the information furnished was reliable. See, e.g., State v. Kaufman, 265 N.W.2d 610, 616 (Iowa 1978). In the application of this standard to the record in the present case we find the State's evidence is insufficient to sustain either the stop or the search against defendant's fourth amendment challenge. The State seeks to buttress the informant's testimony on the ground she was a citizen informant. The circumstances which might support a finding of reliability on this theory are so vague, sketchy and indefinite as to be lacking in probative effect. Nor is the requisite degree of reliability supplied by confirmation of mere descriptive data. State v. Boer, 224 N.W.2d 217, 221 (Iowa 1974). The trial court did not act illegally in sustaining the motion to suppress.

II. In reaching the foregoing conclusion we have considered the State's claim that the trial court acted illegally in sustaining hearsay objections to questions seeking to

develop the information conveyed to the police by the informant. Because hearsay may and often does serve as the basis for probable cause this objection is not valid to evidence offered for this purpose. See State v. Birkestrand, 239 N.W.2d 353, 358 (Iowa 1976). But from the record before us we are unable to determine that these evidentiary rulings of the trial court altered the result on the motion to suppress or otherwise prejudiced the State. Of course the order of the trial court is not final and may be re-examined by that court at any time before final judgment. State v. Richards, 229 N.W.2d 229, 232-33 (Iowa 1975).

The writ of certiorari is annulled.