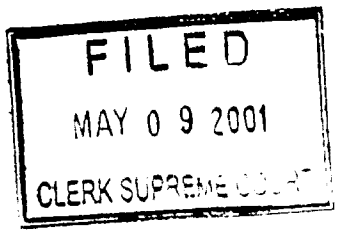
IN THE COURT OF APPEALS OF IOWA

No. 1-105 / 00-0625
Filed May 9, 2001



STATE OF IOWA,
Plaintiff-Appellant,

vs.

JAMES MADISON TYLER,
Defendant-Appellee.

Appeal from the Iowa District Court for Tama County, William R. Eads, Judge.

The State seeks discretionary review of a district court's grant of a motion to suppress. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Brent D. Heeren, County Attorney, and Richard D. Vander Mey, Assistant County Attorney, for appellant.

Michael L. Mollman of Mollman Law Office, Cedar Rapids, for appellee.

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

HUITINK, J.

I. Background Facts and Proceedings.

On November 23, 1999, Tama County Deputy Sheriff McBride received a phone call from Toledo postmaster Mark Chute, who informed her that "an apparently intoxicated person" was driving away from the post office in a blue Century, license plate number 792FMZ. McBride contacted the police department control room, which relayed this information to the Toledo Police Department. As McBride was speaking with the control room, she saw the defendant, James Tyler, back out of a parking space and drive away from the post office.

Toledo police officer, Joe Quandt, followed up on McBride's tip, stopping the vehicle as it pulled into a parking lot. Quandt smelled alcohol as he approached the vehicle, and Tyler admitted he had been drinking. A breath test showed defendant had an alcohol concentration of .20. Tyler was charged with operating while intoxicated, third offense, in violation of Iowa Code sections 321J.2, 902.8, and 902.9 (1999). He filed a motion to suppress, alleging there was no probable cause for the stop.

Following a hearing on the motion, the district court granted Tyler's motion, stating in pertinent part:

> The Court finds that a mere lay person's suspicion of an apparent intoxicated condition does not rise to the level of reasonable and articulable suspicion of criminal activity. Further, the Court concludes that there was nothing that was observed by either of the officers that would corroborate what the civilian had reported and there was nothing to substantiate a reasonable and articulable suspicion of criminal activity . . . .

> The fact that both officers had an opportunity to observe Tyler and his driving and observed nothing abnormal or wrong with his driving is heavily emphasized by the Court in its decision. Officer Quandt's observations were made shortly about Mr. Chute called the police department so that Tyler's alleged state of sobriety would not have been greatly altered. Mr. Chute did not testify at this suppression hearing, where he could have been cross-examined on his observations of Defendant immediately prior to his calling the police. In fact, the officer did not testify that Mr. Chute gave any details as to why he believed Defendant was intoxicated.

The State filed a timely application for discretionary review, contending that the district court erred in granting Tyler's motion to suppress. Specifically, the State argues that a tip from a known, citizen informant provides police officers reasonable cause to make an investigative stop. Moreover, it contends, contrary to the court's ruling, the officer was not required to independently corroborate the informant's report because of the presumptive reliability of a report from a citizen informant.

II. Standard of Review.

When constitutional rights, such as search and seizure rights, are at issue, our review is de novo. *State v. Bumpus*, 459 N.W.2d 619, 622 (Iowa 1990).

III. The Merits.

The Fourth Amendment requires a police officer to have reasonable cause to stop a vehicle for investigatory purposes. *State v. Ohlsen*, 537 N.W.2d 794, 796 (Iowa Ct. App. 1995). If a defendant challenges a stop, alleging that 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." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); *Ohlsen,* 537 N.W.2d at 796. 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. *Adams v. Williams*, 407 U.S. 143, 147, 92 S. Ct. 1921, 1924, 32 L. Ed. 2d 612, 617 (1972); *State v. Markus*, 478 N.W.2d 405, 407 (Iowa Ct. App. 1991).

The showing of reliability necessary to support crediting information from a citizen informant is considerably less than that necessary to support information received from a professional informant. *State v. Wright*, 244 N.W.2d 319, 321 (Iowa 1976). Where a citizen informant is involved, a common sense analysis of the totality of the circumstances must be applied to assess the reliability of the information. *Illinois v. Gates*, 462 U.S. 213, 238, 1035 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983); *State v. Markus*, 478 N.W.2d 405, 408 (Iowa Ct. App. 1991). Our supreme court has adopted the position that information imparted by a citizen informant is generally reliable. *State v. Niehaus*, 452 N.W.2d 184, 189 (Iowa 1990).

Using the totality of the circumstances test, we find there was sufficient evidence of the informant's reliability to support the stop. The informant was a postmaster, who stated that the defendant was leaving the post office in an apparently intoxicated state, and who was able to provide very specific information about the vehicle the defendant was leaving in. Moreover, not only did the officer who took the call personally know and trust the informant, but she also saw the described vehicle leaving the post office. It was error for the district court to find that a citizen informant's reliability must be independently corroborated. *See Florida v. J.L.*, 529 U.S. 266, 270, 120 S. Ct. 1375, 1378, 146

L. Ed. 2d. 254, 260 (2000) ("a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated" exhibits sufficient indicia of reliability to provide reasonable suspicion to make a stop); *Adams*, 407 U.S. at 147, 92 S. Ct. at 1924, 32 L. Ed. 2d at 617 (1972) (corroboration not required "when a credible informant warns of a specific impending crime"). We therefore reverse and remand this issue to the district court for further proceedings.

REVERSED AND REMANDED.