IN THE COURT OF APPEALS OF IOWA

No. 3-232 / 92-685

FILED
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CLERK SUPREME COURT

000785

STATE OF IOWA,

Plaintiff/Appellee,

vs.

TERRY LYNN HEISLER,

Defendant/Appellant.

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Appeal from the Iowa District Court for Polk County, A. M. Critelli, Judge.

Terry L. Heisler appeals his conviction, after a bench trial, of receipt, transportation, and possession of a firearm or offensive weapon by a felon. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia J. Cone-Fisher, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Thomas G. Fisher, Jr., Assistant Attorney General, John P. Sarcone, County Attorney, and Odell McGhee, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J. 000786

Defendant Terry Lynn Heisler appeals his conviction of receipt, transportation, and possession of a firearm or offensive weapon by a felon in violation of Iowa Code section 724.26 (1991). Heisler contends the trial court erred in denying his motion to suppress evidence obtained through an investigatory stop and search of his person in Des Moines' skywalk.

Two unidentified citizens reported the presence of a man carrying a gun in the skywalk to a private security guard. The guard worked for the NPI Security Agency (NPI). NPI then informed the Des Moines Police Department of the situation. Police officers in the area were given the defendant's name and description.

In searching the skywalk, Officer Phillip J. Cross was the first to see Heisler. Officer Cross testified he was unable to see any weapons when Heisler approached him nor did he observe any suspicious behavior by Heisler. Upon stopping Heisler in the skywalk, Officers Cross and Roger Hildreth ordered him at gunpoint to lie down and searched him. They found a .25 caliber pistol plus twenty-four rounds of ammunition, two knives, and a folding pocket knife.

The State charged Heisler with possession of a firearm by a felon and carrying weapons in violation of Iowa Code sections 724.26 and 724.4. Prior to trial, Heisler filed a motion to suppress. He maintained the police officers

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lacked reasonable suspicion to carry out an investigatory stop and the stop amounted to an arrest for which the police lacked probable cause.

The trial court denied Heisler's motion to suppress. Heisler stipulated to the minutes of testimony filed by the State and did not present any evidence. He was found guilty and sentenced to a period not to exceed five years on the felon in possession of a firearm charge. Pursuant to an agreement, the charge of carrying a weapon was dismissed. Heisler appeals, contending the trial court erred in denying his motion to suppress.

Our scope of review is de novo. State v. Markus, 478 N.W.2d 405, 407 (Iowa App. 1991) (citation omitted).

I. Heisler contends the police officers lacked reasonable suspicion to justify an investigatory stop. He contends the tip relayed to police by NPI security personnel lacked sufficient indicia of reliability. We disagree.

The two informants, according to Officer Hildreth's testimony, observed Heisler in the skywalk carrying a weapon. The informants made a face-to-face report of their observation to an NPI security guard. They also provided an accurate, detailed description and the name of defendant. This information was then relayed to the police. These facts were corroborated when the officers found Heisler in the skywalk.

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Officer Cross testified the informants had identified Heisler by name as the individual in the skywalk with the weapon. Officer Cross recognized Heisler's name because he had previous contact with him resulting from an altercation between Heisler and an American security guard. The officer had also seen Heisler frequently in the previous few days because Heisler had been spending a great deal of time in the skywalk. Officer Hildreth stated he received a detailed description of defendant from NPI employees.

We rely on the "totality of the circumstances" approach to determine whether an informant's tip established reasonable suspicion. State v. Markus, 478 N.W.2d 405, 408 (Iowa App. 1991) (citing Alabama v. White, 496 U.S. 325, 328, 110 S. Ct. 2412, 2415, 110 L. Ed. 2d 301, 308 (1990)). The police officers found the informants were accurate as to the description of defendant and his location. Therefore, the officers had reason to believe he was also accurate as to the alleged criminal activity. See id. "'Because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity.'" Id. (quoting Illinois v. Gates, 462 U.S. 213, 244, 103 S. Ct. 2317, 2335, 76 L. Ed. 2d 527, 552 (1983)).

The reliability of a citizen informant is generally shown "by the very nature of the circumstances under which the incriminating information became known." Markus, 478

N.W.2d at 408-09 (citations omitted). The information provided by the two informants indicates they had personal knowledge the described individual was carrying a concealed weapon. According to testimony of Officer Hildreth, Heisler allegedly showed the gun to the two informants. Unlike a person who makes an anonymous telephone call, these informants confronted the NPI security guard directly to relate the information.

In United States v. McClinnhan, the United States Court of Appeals for the Eighth Circuit addressed the issue of whether an investigatory stop of a pedestrian was justified by an anonymous tip verified by the officers' prestop observations. United States v. McClinnhan, 660 F.2d 500, 502 (8th Cir. 1981). An anonymous telephone caller informed police of a particular man who was carrying a sawed-off shotgun in a black briefcase. Id. at 501. The informant described the man and his clothes. Id. The police officers observed a man matching the description in the designated area. Id. The officers stopped defendant and conducted a weapons frisk. Id. The search revealed the described weapon. Id. The court found the investigatory stop was justified. Id. at 503. In its opinion the court emphasized the "unappealing" situation the officers faced in deciding whether to conduct an investigatory stop. Id. at 502. The court stated:

> Either they stopped McClinnhan on the basis of the tip as corroborated by their observation or they could at best follow him through the streets of Washington hoping he would commit a crime, or at

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> least brandish the weapon, out of doors, rather than walking inside a dwelling, and thus beyond police purview, before putting the shotgun to its intended use. Either they ignored their reasonable suspicion, or they took some action.

Id. at 502-03. The court explained:

> [T]o deny the officers the right to frisk for weapons in this situation would present them with a dangerous alternative: to question a suspect reported to be armed by a tipster whose information has in other respects been verified while fearing that individual . . . could remove [the weapon] . . . at any moment. When their suspicion is reasonable, the police should not be subjected to this degree of risk.

Id. at 503. A similar urgency of the situation exists in the instant case.

We determine the informants' tip contained sufficient indicia of reliability to provide reasonable suspicion to stop Heisler in the skywalk. When the officers stopped him, the informants' tip had been sufficiently corroborated by identification of defendant by name and location in the skywalk to establish reasonable suspicion he was engaged in criminal activity. The investigatory stop was justified. The trial court properly denied defendant's suppression motion. We affirm the decision of the trial court on this issue.

II. Heisler also contends even if reasonable suspicion existed, the officers' actions in ordering him to the ground at gunpoint was so intrusive it went beyond an investigative stop and amounted to an arrest for which the officers lacked probable cause.

The general rule is a pat down for weapons following an investigatory stop is proper if the police officer has reasonable cause to believe a frisk is necessary for the officer's safety. State v. Scott, 405 N.W.2d 829 (Iowa 1987). The rule governing weapons frisks pursuant to a Terry stop was set forth in Adams v. Williams:

> "So long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope" to protect the officers or others present.

United States v. McClinnhan, 660 F.2d 500, 503 (8th Cir. 1981) (quoting Adams v. Williams, 407 U.S. 143, 146, 92 S. Ct. 1921, 1923, 32 L. Ed. 2d 612, 617 (1972)). We hold the officers' actions were reasonable and justified.

The trial court properly overruled defendant's motion to suppress. We affirm the trial court decision in all respects.

**AFFIRMED.**