

**IN THE COURT OF APPEALS OF IOWA**

No. 0-311 / 09-1130  
Filed May 26, 2010

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**THOMAS JOSEPH JACKSON,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

Following the granting of discretionary review, the State seeks reversal of the district court order granting the defendant's motion to suppress all evidence arising after a traffic stop. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Bridgett A. Chambers, Assistant Attorney General, Ralph Potter, County Attorney, and Mark Hostager, Assistant County Attorney, for appellant.

Emilie Roth-Richardson of Roth Law Office, P.C., Dubuque, for appellee.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.\* Tabor, J., takes no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MAHAN, S.J.****I. Background Facts & Proceedings**

On Saturday, March 21, 2009, a citizen informant, who gave her name and telephone number, reported a green Chevrolet pickup traveling west on Highway 20 and gave the vehicle's license number. The citizen informant was on the telephone with the dispatch center for about seven minutes and reported the pickup was "all over the road," "he almost ran into us," and the vehicle "kept going off the shoulder of the road." The citizen informant also reported she was going sixty-five miles per hour, the speed limit, and the pickup was pulling ahead of her. The citizen informant stated she was exiting Highway 20 at Epworth, and no longer had contact with the vehicle so was ending the call.

Officer Douglas Springer of the Epworth Police Department parked his marked police car just to the west of the Epworth exit. He saw a pickup that matched the description given by the citizen informant traveling west on Highway 20. Officer Springer confirmed that the pickup had the same license number that had been reported. He noted the pickup was going about sixty-six or sixty-seven miles per hour, "no more than two miles over the limit." He did not notice any other traffic offenses.

Officer Springer followed the pickup until it left Highway 20 at Farley and stopped at a Casey's store. The vehicle did not park near the gas pumps or in the marked spaces in front of the store, but rather at the edge of the parking lot. The driver of the pickup, Thomas Jackson, entered the Casey's store. Officer Springer waited in his vehicle until deputy Erich Schaul of the Dubuque County

Sheriff's Department arrived. He apprised the deputy of the situation, and then returned to his duties in Epworth.

Deputies William Ostola and Dan Kearney soon arrived to assist deputy Schaul. They parked their vehicle a short distance away, but where they could observe the Casey's store.<sup>1</sup> Deputy Schaul also parked a short distance away on the other side of the Casey's store. After a few minutes Jackson came out of the Casey's store, went to his pickup, stood around, got something out of the pickup, then "just kind of slumped over the bed of the truck." He then walked back towards the store and got into the passenger side of a green Ford Taurus.

The Taurus was driving away from the Casey's store and deputies Ostola and Kearney decided to stop the vehicle. Deputy Ostola stated, "[w]e had probable cause to speak with Mr. Jackson because he was possibly involved with the OWI, with driving while intoxicated, and he left that scene and got into the vehicle." Deputy Kearney stated, "we need to make contact with that subject and verify that he's not intoxicated, and basically for the safety of the public."

Jackson was subsequently charged with operating while intoxicated or drugged, in violation of Iowa Code section 321J.2(1)(a) and (b) (2009). He filed a motion to suppress, claiming there were no reasonable grounds for the traffic stop of the vehicle in which he was a passenger. The district court granted the motion to suppress. The court stated:

The fault with the State's reliance is that Officer Springer made no corroborating evidence as to the female's observations of a "possible drunk driver." The observations made by the sheriff's

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<sup>1</sup> The deputies stated they did not approach Jackson inside the Casey's store because they did not wish to make a scene inside the store.

deputies did not rise to the level of reasonable suspicion that criminal activity was afoot.

The court also found there was insufficient evidence to support a traffic stop of the pickup for traveling in excess of the posted speed limit. The Iowa Supreme Court granted the State's application for discretionary review of the court's ruling on the motion to suppress.

## **II. Standard of Review**

We review *de novo* constitutional claims arising from a motion to suppress. *State v. Feregrino*, 756 N.W.2d 700, 703 (Iowa 2008). Our review is *de novo* in light of the totality of the circumstances. *State v. McConnelee*, 690 N.W.2d 27, 30 (Iowa 2004). While we are not bound by the district court's factual determinations, we may give deference to the court's credibility findings. *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004).

## **III. Merits**

Under the Fourth Amendment, in order to stop a vehicle, a peace officer must have a reasonable suspicion that criminal activity is afoot. *State v. Corbett*, 758 N.W.2d 237, 240 (Iowa Ct. App. 2008) (citing *Terry v. Ohio*, 392 U.S. 1, 20-22, 88 S. Ct. 1868, 1879-81, 20 L. Ed. 2d 889, 905-06 (1968)). "[T]he State must show by a preponderance of the evidence that the stopping officer had specific and articulable facts, which taken together with rational inferences from those facts, to reasonably believe criminal activity may have occurred." *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004). We consider the totality of the circumstances to determine whether the officer had an objective basis for suspecting criminal activity. *Corbett*, 758 N.W.2d at 240. Where evidence is obtained in violation of

the Fourth Amendment it is inadmissible. *State v. Lloyd*, 701 N.W.2d 678, 680 (Iowa 2005).

**A.** The State first claims there was reasonable suspicion to stop Jackson's vehicle based on the telephone call from a citizen informant. There is a rebuttable presumption that information provided by citizen informants is generally reliable. *State v. Niehaus*, 452 N.W.2d 184, 189 (Iowa 2001). No evidence was presented in this case to rebut that presumption. The citizen gave her name and telephone number to law enforcement officials, but asked that they remain confidential. She talked to the dispatch operator for about seven minutes while following defendant's vehicle, giving a report of his driving as it was taking place. She gave a description of the defendant's vehicle, including the license plate number, and related the location of the vehicle.

Reasonable suspicion does not "necessarily require[ ] an accurate prediction of future events or independent observations by the officer of inculpatory conduct." *State v. Walshire*, 634 N.W.2d 625, 627 (Iowa 2001). "Independent corroboration of the *inculpatory* details of an informant's tip is not mandatory." *State v. Markus*, 478 N.W.2d 405, 408 (Iowa Ct. App. 1991). "The officers did not have to see the defendant drive 'all over the roadway' since they had reliable information from the caller." *Id.* "When the officers found the informant to be accurate concerning the vehicle's description and location, they had reason to believe the informant was also accurate as to the alleged criminal activity." *Walshire*, 634 N.W.2d at 628.

The district court improperly required corroborating evidence by officers of a “possible drunk driver.” In *Walshire*, the Iowa Supreme Court found it was sufficient in that circumstance that officers “verified the caller’s description of the defendant’s vehicle, its license number, and its general location.” See also *State v. Christoffersen*, 756 N.W.2d 230, 232 (Iowa Ct. App. 2008) (noting “the informant further gave a description and the precise location of the vehicle”). In this case, officers observed a green Chevrolet pickup with the same license plate number in the location reported by the citizen informant. There was no need for the officers to also independently observe inculpatory conduct. We conclude the district court erred by granting the motion to suppress on the ground that officers had not sufficiently corroborated the information provided by the citizen informant.

**B.** The State raises an alternative ground to support a reversal of the district court’s ruling, arguing that officers had reasonable grounds to stop the vehicle based on an observation that defendant was exceeding the speed limit. Because we have determined the district court’s ruling should be reversed based on our reasoning above, we do not address this argument.

**C.** On appeal, Jackson claims the district court’s ruling should be affirmed because the information provided by the citizen informant was stale by the time he was stopped by officers. This issue was not raised before the district court, and was not ruled on by that court. We conclude this issue has not been preserved for our review. See *State v. Green*, 680 N.W.2d 370, 373 (Iowa 2004) (finding issue was preserved where it was raised “at some point during the

suppression hearing proceedings”); *State v. Bergmann*, 633 N.W.2d 328, 332 (Iowa 2001) (finding error was not preserved where an issue had not been raised in the motion to suppress or during the suppression hearing).

We reverse the decision of the district court granting defendant’s motion to suppress. We remand for further proceedings in the district court.

**REVERSED AND REMANDED.**