IN THE COURT OF APPEALS OF IOWA

No. 0-386 / 09-1245
Filed July 14, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYRONE ANTONIO WHITELOW,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor (judgment) and Bobbi M. Alpers (suppression), Judges.

Tyrone Whitelow appeals his convictions and sentences following the denial of his motion to suppress. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Michael J. Walton, County Attorney, and Jerald Feuerbach, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

POTTERFIELD, J.

I. Background Facts and Proceedings

At approximately 1:30 a.m. on January 6, 2009, Detective Ed Connelly of Rock Island called Sergeant Kevin Smull of Davenport. Connelly was working with an informant at his station who agreed to set up a purchase of $200 worth of crack cocaine from a dealer in Davenport. Connelly and Smull decided to have the informant set up the buy and then to have police, rather than the informant, waiting at the designated meeting place. With Connelly seated next to him, the informant placed a phone call and arranged to meet the dealer in a Hardee's parking lot in a high crime area of Davenport. After Connelly passed this information to Smull, Smull set up surveillance of the Hardee's parking lot.

A short time later, Connelly called Smull to relay that the dealer had just spoken to the informant and was about one-half block away from Hardee's. The dealer said he was riding in a "beat-up hooptie." Smull testified that he understood "hooptie" to refer to an older car. A few seconds later, a blue Chevrolet Corsica occupied by three people pulled into the Hardee's parking lot. Nobody exited or entered the vehicle, and the vehicle did not go through the drive-through. No other vehicles entered the parking lot.

After a few minutes, the vehicle left the Hardee's parking lot and headed east. At the same time, Smull received a call from Connelly, who stated that the informant had told the dealer to change the meeting point to a location approximately two blocks east of Hardee's.

Police followed the Corsica out of the Hardee's parking lot and stopped the vehicle. Tyrone Whitelow was riding in the passenger seat of the vehicle. He

consented to a search of his person, on which officers discovered 9.8 grams of marijuana. Later, officers discovered thirteen individually wrapped rocks of crack cocaine, totaling 3.42 grams, on the floor in the police car in which Whitelow was riding. Officers found no drug paraphernalia, indicating the drugs were not for personal use. No drug tax stamps were affixed to any of the drug packages.

Following this incident, Whitelow was charged with possession with intent to deliver crack cocaine in violation of Iowa Code section 124.401(1)(c) (2009), possession with intent to deliver marijuana in violation of Iowa Code section 124.401(1)(d), and failure to affix a drug tax stamp in violation of Iowa Code section 453B.12. Whitelow filed a motion to suppress all fruits of the search incident to the stop of the Corsica, alleging there was no probable cause to stop the vehicle. After a hearing on the matter, the district court denied the motion to suppress, finding there was probable cause for the stop of the Corsica. Whitelow was subsequently convicted by jury of all three charges. He appeals, arguing the district court erred in finding the stop of the vehicle in which he was a passenger was supported by reasonable suspicion and probable cause, and consequently erred in denying his motion to suppress.

II. Standard of Review

Whitelow's challenge to the district court's ruling is based on his constitutional right to be free from unreasonable search and seizure, as guaranteed by the Fourth Amendment to the United States Constitution. *See* U.S. Const. amend. IV. We review this alleged constitutional violation de novo in light of the totality of the circumstances as shown by the record. *State v. Turner*,

630 N.W.2d 601, 606 (Iowa 2001). We give deference to the district court's findings of fact, but we are not bound by these findings. *Id.*

III. Merits

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. According to the Iowa Rules of Criminal Procedure, anyone who is "aggrieved by an unlawful search and seizure may move to suppress for use as evidence anything so obtained" if the property was "illegally seized without a warrant." Iowa R. Crim. P. 2.12(1)(*a*).

"Generally, to be reasonable, a search or seizure must be conducted pursuant to a warrant . . . ." *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). Warrantless searches are presumed to be unreasonable unless the search falls within one of several exceptions to the warrant requirement. *Id.*

One exception to the warrant requirement is the *Terry* stop, which allows an officer to stop an individual for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring *Id.*; *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). This stop is a "seizure" within the meaning of the Fourth Amendment and therefore must be reasonable. *Kreps*, 650 N.W.2d at 641. An investigatory stop is lawful if the officer can "point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id*. (internal quotations omitted). "Circumstances raising mere suspicion or curiosity are not enough." *Id.* (quoting *State v. Heminover*, 619 N.W.2d 353, 357 (Iowa

2000)). However, the evidence justifying the stop does not need to rise to the level of probable cause. *State v. Scott*, 409 N.W.2d 465, 468 (Iowa 1987).

Reasonable suspicion is an objective test determined in light of the totality of the circumstances, including all information available to the officer at the time the decision to stop is made. *Kreps*, 650 N.W.2d at 642. "The circumstances under which the officer acted must be viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training." *Id.* (citations and internal quotations omitted). A good test of reasonable suspicion is whether "'the possibility of criminal conduct was strong enough that, upon an objective appraisal of the situation, we would be critical of the officers had they let the event pass without investigation.'" *Id.* at 642-43 (quoting 4 Wayne R. LaFave, *Search and Seizure* § 9.4(b), at 148 (3d ed. 1996)).

The State has proven that Smull had a reasonable suspicion that a criminal act was occurring. Connelly provided Smull with information that the suspected dealer was planning to meet the informant at Hardee's in a high crime area of town to complete a drug deal. *See Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676, 145 L. Ed. 2d 570, 576 (2000) (finding the fact that a stop occurred in a high crime area is a relevant contextual consideration in a *Terry* analysis). Seconds after Smull received information that the dealer was one-half block away and driving a "beat-up hooptie," a car that fit that general description pulled into Hardee's. None of the occupants left the car, nor did they drive up to get food. Then, just as Smull received information that the location of the drug deal had changed to a street approximately two blocks east of Hardee's, the vehicle left the Hardee's parking lot and headed east.

Although the officers in Davenport had no specific information about the Rock Island informant's reliability, the presence of Detective Connelly with the informant as the informant arranged the drug transaction provides confidence in the information about the location, timing, and transportation of the drug dealer. Because the information from the informant was accurate as to the general description of the vehicle, its location, and its direction of travel, the officers had reason to believe the informant was accurate as to the alleged criminal activity. *See State v. Markus*, 478 N.W.2d 405, 408 (1991) ("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."). The information provided by the informant in addition to the observations made by the officers provide reasonable suspicion to stop the vehicle. After considering the totality of the circumstances, we believe we would be critical of Smull had he not stopped the vehicle in which Whitelow was a passenger for investigatory purposes. The State has proven Smull's investigatory stop was based on reasonable suspicion.

AFFIRMED.