IN THE COURT OF APPEALS OF IOWA

No. 1-997 / 11-0738
Filed March 28, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEON KOOIMA,
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, Robert J. Dull, District Associate Judge.

A defendant appeals his judgment and sentence for operating a motor vehicle while intoxicated contending the district court should not have denied his motion to suppress evidence obtained following an investigatory stop of his vehicle. **AFFIRMED.**

Randy L. Waagmeester of Waagmeester Law Office, P.L.C., Rock Rapids, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, and Coleman McAllister, County Attorney, for appellee.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Leon Kooima appeals his judgment and sentence for operating a motor vehicle while intoxicated, second offense. He contends the district court should have granted his motion to suppress evidence obtained following an investigatory stop of his vehicle. He also takes issue with the court's denial of his request to present certain evidence during the hearing on the motion to suppress.

Because we agree with Kooima that the content of the citizen's telephone call that precipitated the stop and the dispatcher's conversation with peace officers relaying the caller's information are relevant to assessing the reliability of the tipster and the tip, we find the district court should have admitted that evidence at the suppression hearing. But even when we consider that evidence in our de novo review, we conclude the officers had reasonable suspicion to stop Kooima's vehicle to resolve any ambiguity as to whether he was operating while intoxicated.

I. Background Facts and Proceedings

At about 11:40 p.m. on June 16, 2010, peace officers with the Rock Valley Police Department received a call from the Sioux County dispatcher about a vehicle leaving Doon and traveling toward Rock Valley, the driver of which was reported to be intoxicated. The dispatch identified the make, model, and license plate number of the vehicle, as well as the address of the registered owner. The officers did not receive information regarding who conveyed the information to the dispatcher.

Shortly after the radio transmission, Officer Kyle Munneke spotted a vehicle that matched the description and he followed it for at least six blocks. He

did not observe the driver of the vehicle commit any traffic violations and he saw no equipment violations. Another officer, Travis Ryan, stopped the vehicle, which was being driven by Leon Kooima. The sole basis for the stop was the citizen tip conveyed by the dispatcher to the officers.

After he stopped the vehicle, Officer Ryan noticed that Kooima smelled of alcohol. Kooima admitted to having consumed alcoholic beverages. Kooima failed field sobriety tests and refused to submit to a preliminary breath test. He was arrested and transported to the Rock Valley Police Department on suspicion of driving while intoxicated. Kooima eventually submitted to a breath test, which revealed an alcohol content over the legal limit.

The State charged Kooima with operating while intoxicated, second offense. Kooima moved to suppress the evidence obtained after the traffic stop, contending that the officers lacked reasonable suspicion to stop him. The district court denied the motion. The court also denied Kooima's request to introduce certain evidence relating to the tipster, whose name had since become public, including lay witness opinions on the tipster's sobriety around the time of the stop.

Following a bench trial, the district court found Kooima guilty as charged and later imposed judgment and sentence. Kooima appealed.

II. Suppression Motion

Kooima contends the anonymous tip conveyed by the dispatcher did not afford the officers reasonable suspicion to make an investigative stop. In his view, the stop violated the Fourth Amendment to the United States Constitution and Article 1, section 8 of the Iowa Constitution. The State initially counters that

Kooima raised but did not argue an independent basis for finding a violation under our state constitution. We agree with the State that Kooima did not preserve error on his state constitutional claim. Accordingly, we will only consider Kooima's contention under the federal constitution. *See Hensler v. City of Davenport*, 790 N.W.2d 569, 579 (Iowa 2010) (noting that on appeal, an appellant did not cite the Iowa constitution and the case would therefore only be examined under the federal constitution). We review this constitutional issue de novo. *State v. Markus*, 478 N.W.2d 405, 407 (Iowa Ct. App. 1991).

"The Fourth Amendment prohibits 'unreasonable searches and seizures' by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 750, 151 L. Ed. 2d 740, 749 (2002). These kinds of stops will pass constitutional muster if officers observe unusual conduct which lead them reasonably to conclude in light of their experience that "criminal activity may be afoot." *Id*. (citations omitted); *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884, 20 L. Ed. 2d 889, 911 (1968). In this case, the officers did not observe suspicious conduct. They stopped the vehicle based solely on the tip to the dispatcher. Accordingly, we must determine whether the tip afforded the officers reasonable suspicion to stop the vehicle.

This court was faced with an almost identical question in *State v. Christoffersen*, 756 N.W.2d 230 (Iowa Ct. App. 2008). There, the stop was based on a tip to a dispatcher that a possibly intoxicated driver was in the parking lot of a Subway restaurant. *Christoffersen*, 756 N.W.2d at 231. The informant "gave a description and the precise location of the vehicle." *Id.* at 232. The

dispatcher, in turn, conveyed the information to a police officer. *Id.* at 231. The officer found a vehicle of this description in the parking lot, parked behind it, and got out of his vehicle. *Id.* Evidence taken from the driver disclosed a blood alcohol content in excess of the legal limit. *Id.* The district court granted Christoffersen's motion to suppress evidence obtained from the stop of a vehicle. *Id.*

On discretionary review, the State argued "that the anonymous tip, as corroborated by the officer, provided reasonable suspicion to conduct an investigatory stop." *Id.* at 232. This court accepted the State's argument, reasoning that "the anonymous call came from a citizen informant who reported a possible drunk driver," "[t]he informant further gave a description and the precise location of the vehicle," the officer "arrived at the parking lot in approximately thirty seconds," "the suspicious activity was open to the public view," and the drunk driver created "a great danger and a sense of urgency," obviating the need to confirm the tip by having the driver proceed to the public roadway. *Id*.

The anonymous tip in this case is virtually indistinguishable from the tip in *Christoffersen*. Here, a citizen-informant imparted the information to a dispatcher who transmitted the information to the officer. Officer Munneke followed a vehicle of that description and had Officer Ryan stop the vehicle only after the second officer confirmed that it was the same vehicle.

The State argues our opinion could end here, with an affirmance based on *Christoffersen*. But Kooima raises an issue not discussed in *Christoffersen*: the reliability of the citizen-informant. Kooima points out that information imparted by a citizen-informant only creates "a rebuttable presumption" of reliability. *See*

State v. Walshire, 634 N.W.2d 625, 626 (Iowa 2001). He asserts that he should have been allowed to proffer evidence that would have "overcome the presumption that an anonymous tip is generally reliable." We turn to this evidentiary issue.

The district court excluded certain evidence Kooima proffered at the suppression hearing. That evidence is in our record pursuant to Kooima's offer of proof. It consists of (1) the recording and transcript of the citizen's 911 call to the dispatcher; (2) the transcript of the dispatcher's "radio traffic" with the officers; (3) statements from four individuals who were present at the Doon Steakhouse and would have testified that in their opinions the tipster, Craig Post, was himself intoxicated when he called the dispatcher, but that Kooima did not appear to be impaired; and (4) the transcript of Post's deposition. The district court ruled that the evidence was not relevant because the officers involved in the vehicle stop were not privy to that information when they made the stop.

Relevant evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. Relevant evidence is generally admissible; conversely, irrelevant evidence is generally inadmissible. Iowa R. Evid. 5.402. We agree with the district court that, in the case of an investigatory stop, the only relevant information is the "information available to the officer at the time the decision to stop is made." *State v. Kreps*, 650 N.W.2d 636, 642 (Iowa 2002). We disagree that all the information Kooima proffered was unavailable to the officers at the time of the stop.

We base our conclusion that some of the proffered evidence was "available" to the officers on the "shared-knowledge doctrine" recognized by the Iowa Supreme Court. *See State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994) (imputing knowledge of one peace officer to another peace officer). This doctrine presumes that "the knowledge of one [police officer] is presumed shared by all." *State v. Owens*, 418 N.W.2d 340, 342 (Iowa 1988).

The Court has extended this "shared knowledge doctrine" to citizens acting together to perform a citizen's arrest. *See Rife v. D.T. Corner, Inc*., 641 N.W.2d 761, 770 (Iowa 2002) (imputing knowledge of one citizen to another citizen in a group of citizens performing a citizen's arrest). The doctrine permits one citizen to make an arrest "without knowledge of all of the predicate elements to support an arrest as long as other officers involved have the predicate knowledge." *Id.*

This extension leads us to conclude that the knowledge of the dispatcher receiving the citizen-informant's tip should be imputed to the officer or officers making the stop. *Cf. State v. Thornton*, 300 N.W.2d 94, 97–98 (Iowa 1981) (considering collective knowledge principle in the arrest context and concluding, "we should examine the situation as it appeared to (the first officer)") (quoting *United States v. Laughman*, 618 F.2d 1067, 1072–73 (4th Cir. 1980)); *see also City of Maumee v. Weisner*, 720 N.E.2d 507, 511 (Ohio 1999) ("[W]e clarify here that where an officer making an investigative stop *relies solely upon a dispatch*, the state must demonstrate at a suppression hearing that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity."). This type of imputation is not only consistent with *Rife*, but is supported by the law of other

jurisdictions. *See United States v. Torres*, 534 F.3d 207, 210 (3d Cir. 2008); *Feathers v. Aey*, 319 F.3d 843, 849 (6th Cir. 2003); *United States v. Kaplansky*, 42 F.3d 320, 327 (6th Cir. 1994); *Wilson v. Idaho Trans. Dep't*, 32 P.3d 164, 170 (Idaho Ct. App. 2001) (holding that reasonable suspicion is based on totality of circumstances including "collective knowledge of all those officers and dispatchers involved").

Kooima proffered three exhibits that contained information that was contemporaneous with the stop: the transcript and recording of the 911 call from the tipster to the dispatcher, and the transcript of the dispatcher's "radio traffic" with the officers. Under the shared-knowledge doctrine, the information received by the dispatcher and in the dispatcher's possession could be imputed to the officers. These proffered exhibits were the best evidence of what the tipster told the dispatcher and what the dispatcher, in turn, had available to tell the officers. For that reason, the information was relevant to a determination of the reliability of the citizen-informant and the information he reported, and the ultimate determination of whether reasonable suspicion existed to stop the vehicle Kooima was driving. *See* Iowa R. Evid. 5.401. As the evidence was relevant and the State did not object on grounds other than relevancy, we conclude this evidence was admissible.[1]

We cannot say the same of the witness statements attesting to Kooima's lack of impairment and Post's apparent intoxication. Those statements were

[1] Even if the State had objected to the evidence on hearsay grounds, the district court would have had latitude in allowing hearsay evidence during the suppression hearing. *See State v. Bailey*, 452 N.W.2d 181, 183 (Iowa 1990) *abrogated on other grounds by State v. Heminover*, 619 N.W.2d 353 (Iowa 2000).

after-the-fact assertions about before-the-fact events, namely alcohol consumption and related conduct at the Doon Steakhouse. None of the individuals who offered those statements relayed information to the officers at the time of the stop. Therefore, those statements did not factor into the reasonable suspicion equation and are irrelevant.

This brings us to Post's deposition transcript. While the deposition discussed the telephone call to the dispatcher, it was an after-the-fact recounting of events, no different in kind from the witness statements described above. The 911 transcript and recording and the radio traffic transcript, in contrast, documented the precise conversation that precipitated the dispatcher's call to police and the precise communication the dispatcher issued to police. We conclude the transcript of the later-conducted deposition was irrelevant and inadmissible.

Having determined that the transcript and recording of the 911 call as well as the transcript of the radio traffic were relevant and admissible, we turn to the information contained in those exhibits. The transcript of the 911 call reveals that the caller asked the dispatcher to "check cars in Doon area." He then identified the model of the vehicle and stated, "[C]arload of Rock Valley merchants, huge money guys. . . . And they are loaded, leaving Doon, and they are still sitting on curbside, ready to leave to Rock Valley."

The caller continued, "What bothers me is these guys get away with everything, cuz they know everybody in Rock Valley and they think they can do everything." The dispatcher then asked, "You're saying, you think they are drunk, you mean?" The caller responded, "I KNOW they are." He continued,

"Everybody in the damn vehicle is." The caller reiterated that the car was "on curbside" and stated, "They are opening their doors to get the last passengers in and then they are leaving." He again referred to their status, stating, "This includes people that own Van Zee Enterprises and they are on a golf outing and they think they are home free." He continued, "And it bothers me a lot. . . . And this thing is full of drunks."

The recording of the 911 call, also in evidence, is consistent with the transcription. From our own opportunity to listen to the recording, we do not perceive that the caller's speech was slurred or that he was mumbling.

Also relevant is the radio traffic transcription, which states

> Attention Sioux County cars possible 10-55 ATL special attention Rock Valley, possible 10-55 license number BC229, vehicle is just leaving Doon at the moment, RP stated all occupants are 10-55 be on a silver 2009 Chevy Suburban registered to a Rock Valley address 2015 North Main, end of broadcast 2326.

At the suppression hearing, Officer Munneke explained that "possible 10-55" meant a possible intoxicated driver. RP stood for reporting party. The transcript also indicated that Kooima had a "past 10-55."

On our de novo review, we are not convinced this evidence rebutted the presumption of reliability afforded citizen-informants. First, the transcript of the 911 call reveals that the caller was a witness to the imminent crime of operating while intoxicated. *See Walshire*, 634 N.W.2d at 629. Specifically, the caller was able to observe the individuals as they entered the vehicle and had personal information about their level of intoxication. *Id.* (focusing on "observational reliability" rather than "personal reliability). Second, the recording of the 911 call does not indicate the caller was intoxicated. Third, the transcript of the radio

traffic reveals that Kooima had a prior OWI offense on his record. *See State v. Grayson*, 336 S.W.2d 138, 146 (Mo. 2011) (noting past criminal activity can be one factor in reasonable suspicion analysis). These facts, available or imputed to the officers before the stop, bolstered, rather than undermined, the reliability of the citizen-informant and his tip and supported the district court's determination that there was reasonable suspicion for the stop. The officers' shared knowledge, as well as the late night hour, amounted to reasonable suspicion to pull over Kooima. *See Kreps*, 650 N.W.2d at 646 (noting "[t]ime of day" is an appropriate factor to consider whether there are grounds for an investigatory stop).

While we would have preferred the caller's information to have been less conclusory than "I KNOW they are [drunk]," the dispatcher could reasonably infer from the context that the caller's opinion was based on his observations of the would-be drivers. "It is well settled in this State that a lay witness may express an opinion regarding another person's sobriety, provided the witness has had an opportunity to observe the other person." *State v. Murphy*, 451 N.W.2d 154, 155 (Iowa 1990). Because the danger posed by a drunk driver is imminent and serious, our supreme court has upheld the minimal intrusion of an investigatory stop to resolve any ambiguity posed by a citizen report. *See Walshire*, 634 N.W.2d at 629 (comparing drunk driver to a mobile "bomb"). Accordingly, we affirm the denial of Kooima's motion to suppress and his judgment and sentence for operating a motor vehicle while intoxicated, second offense.

AFFIRMED.

Mullins, J., concurs; Vaitheswaran, P.J., dissents.

VAITHESWARAN, P.J. (dissenting)

I respectfully dissent because I am not convinced the anonymous tip the dispatcher received and conveyed to the officers had sufficient indicia of reliability to support a finding of reasonable suspicion to stop the vehicle.

I begin with *Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990). There, the Court made a distinction between anonymous tips and tips by known informants who provided information in the past. *White*, 496 U.S. at 328, 110 S. Ct. at 2415, 110 L. Ed. 2d at 307.[2] The Court reiterated that

> an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity inasmuch as ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations and given that the veracity of persons supplying anonymous tips is "by hypothesis largely unknown, and unknowable."

Id. at 329, 110 S. Ct. at 2415, 110 L. Ed. 2d at 308 (citation omitted). The Court made clear that reasonable suspicion was dependent on "both the content of information possessed by police and its degree of reliability." *Id.* at 330, 110 S. Ct. at 2416, 110 L. Ed. 2d at 309. Focusing on the degree of reliability, the Court asked whether an anonymous tip "exhibited sufficient indicia of reliability to

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[2] Courts have also distinguished between anonymous informants and citizen-informants, finding anonymous informants less reliable than citizen-informants. *See Maumee v. Weisner*, 720 N.E.2d 507, 513 (noting an anonymous informant "is comparatively unreliable and his tip, therefore, will generally require independent police corroboration," whereas "an identified citizen informant may be highly reliable and, therefore, a strong showing as to the other indicia of reliability may be unnecessary"). The majority makes reference to citizen-informants and the presumption of reliability afforded their statements. I am not convinced the tipster in this case was a "citizen-informant." I believe he was an anonymous tipster who should be afforded no presumption of reliability.

provide reasonable suspicion to make the investigatory stop." *Id.* at 327, 110 S. Ct. at 2414, 110 L. Ed. 2d. at 306. The Court recognized that

> [r]easonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Id. at 330, 110 S. Ct. at 2416, 110 L. Ed. 2d at 309. The Court nonetheless required some indicia of reliability, stating, "[I]f a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable." *Id.* Citing a prior opinion involving a probable cause determination, the Court stated,

> We think it also important that, as in *Gates*, "the anonymous [tip] contained a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted."

Id. at 332, 110 S. Ct. at 2417, 110 L. Ed. 2d at 310 (quoting *Illinois v. Gates*, 462 U.S. 213, 245, 103 S. Ct. 2317, 2335–36, 76 L. Ed. 2d. 527, 552 (1983)). Applying this standard, the Court stated,

> The fact that the officers found a car precisely matching the caller's description in front of the 235 building is an example of the former. Anyone could have "predicted" that fact because it was a condition presumably existing at the time of the call. What was important was the caller's ability to predict respondent's *future behavior*, because it demonstrated inside information—a special familiarity with respondent's affairs. . . . When significant aspects of the caller's predictions were verified, there was reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop.

Id.

In this case, we have nothing more than "easily obtained facts and conditions," without any accompanying predictive behavior. The anonymous tipster identified a parked vehicle.[3] He did not identify the driver or passengers and he did not indicate why the dispatcher should consider his information trustworthy. In short, he did not provide any of the indicia of reliability set forth in *White*.

The United States Supreme Court reiterated the necessity for such indicia in a subsequent opinion. *Florida v. J.L.*, 529 U.S. 266, 271–72, 120 S. Ct. 1375, 1379, 146 L. Ed. 2d 254, 261 (2000). Again faced with an anonymous tip, the Court stated:

> The tip in the instant case lacked the moderate indicia of reliability present in *White* and essential to the Court's decision in that case. The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct: The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L. If *White* was a close case on the reliability of anonymous tips, this one surely falls on the other side of the line.

Id. at 271, 120 S. Ct. at 1379, 146 L. Ed. 2d at 260–61. Notably, the Court discounted the fact that the tipster's description of the suspect ultimately proved to be accurate, stating:

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[3] As noted in the majority opinion, the details of the anonymous tipster's call to 911 dispatch were contained in a recording and transcript of that recording, which was presented to the district court by way of an offer of proof.

> An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

Id. at 272, 120 S. Ct. at 1379, 146 L. Ed. 2d at 261. I believe this language requires more than an officer's corroboration of the vehicle described in the anonymous tip.

I recognize that, following *J.L*, the Chief Justice of the United States Supreme Court weighed in on the applicability of that opinion to drunk driving cases, stating, "[I]t is not clear that *J.L.* applies to anonymous tips reporting drunk or erratic driving." *See Virginia v. Harris*, ___ U.S. ___, ___, 130 S. Ct. 10, 11, 175 L. Ed. 2d 322, 323 (2009) (Roberts, C.J., dissenting from denial of certiorari). However, that statement was made in a dissent to the Court's denial of certiorari from an opinion decided by the Virginia Supreme Court. As the majority considering whether to grant certiorari declined to accept the case, I would conclude that *J.L*. is equally the law for drunk driving stops as it is for other stops.

Chief Justice Roberts's statements, however, crystallize the issue. As the court noted, Iowa is one of a majority of States that has "upheld investigative stops of allegedly drunk or erratic drivers, even when the police did not personally witness any traffic violations before conducting the stops." *Id.* at ___, 130 S. Ct. at 11, 175 L. Ed. 2d at 324 (citing *State v. Walshire*, 634 N.W.2d 625 (Iowa 2001)). But, the Iowa Supreme Court only found reasonable suspicion in this context where the tipster observed erratic driving on the roadway. *See*

Walshire, 634 N.W.2d at 627–28. The court reasoned that, unlike *J.L.*, "the information provided here did not concern concealed criminal activity, but rather illegality open to public observation." *Id*. at 627. This key fact distinguishes *Walshire* from Kooima's case. Here, the anonymous tipster did not see erratic driving, or, for that matter, any driving. According to the transcript of the 911 call, which I agree is relevant and should have been admitted, the car was parked at the curb in Doon, Iowa and had yet to leave.

The same distinguishing fact is present in *State v. Markus*, 478 N.W.2d 405, 407 (Iowa Ct. App. 1991), decided less than a month before *Walshire*. There, an anonymous caller used a car phone to report that he was following a pickup truck that was "all over the roadway." *Markus*, 478 N.W.2d at 407. Markus moved to suppress the subsequent stop, which the district court sustained on the ground that the officers made no independent observations of erratic driving but relied solely on the anonymous telephone call. *Id.* This court reversed, noting that the caller gave "a point-by-point description" of the driver's location and stated he was "all over the roadway." *Id.* at 408. The court stated, "The specificity and underlying circumstances of the tip here increased its reliability." *Id*. at 409.

We do not have that specificity here. I recognize that we also did not have that level of specificity in *Christofferson*, but, as the majority notes, we were not expressly faced with the question of the tipster's reliability in *Christoffersen*. In

this case, that is the key and, indeed, only issue. I would distinguish *Christoffersen* on that basis and conclude that it does not control the result here.[4]

In addition to the absence of the reliability factors articulated in *White* and *J.L.*, we have affirmative evidence that the anonymous tipster harbored a grudge against the individuals in the vehicle. *See Bousman v. Iowa Dist. Ct.*, 630 N.W.2d 789, 800 (Iowa 2001) ("There are simply no facts in the affidavit that would have informed the court whether the witness was, in fact, a disinterested citizen, or was someone with a grudge against Bousman or someone who provided the information in exchange for some concession on charges pending against the informant."). The tipster identified the occupants as "huge money guys" who thought they "can do everything" and "could get away with everything" and who thought they were "home free." He opined that their attitude, "bothers me a lot." These are not the words of a neutral bystander who happened to observe a crime in progress, as was the case in *Walshire* and *Markus*. They are the words of a person who had it out for the individuals in the vehicle. For that reason as well, I would find the tip unreliable. *See Harris v. Commonwealth*, 668 S.E.2d 141, 146 (Va. 2008), *cert. denied*, ___ U.S. ___, 130 S. Ct. 10, 175 L. Ed. 2d 322 (2009) (noting "the informant provided information available to any

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[4] In *State v. Bailey*, 452 N.W.2d 181, 183 (Iowa 1990) (abrogated on other grounds by *State v. Heminover*, 619 N.W.2d 353 (Iowa 2000)), the Iowa Supreme Court stated:

> Where the issue is the validity of an investigatory stop, a reasonably founded suspicion may not be established solely by evidence of the receipt by the stopping officer of a radio dispatch. Proof of the factual foundation for the relayed message is also required. Were it otherwise, a radio message alone could parlay an absence of legally sufficient cause into a legal stop.

In *Christoffersen*, the court determined that the officer's observations of the car and its location provided this factual foundation. *Christoffersen*, 756 N.W.2d at 232. I believe this information speaks more to "the content of information possessed by police" than "its degree of reliability." *White*, 496 U.S. at 330, 110 S. Ct. at 2416, 110 L. Ed. 2d at 309.

observer, whether a concerned citizen, prankster, or someone with a grudge against Harris").

I acknowledge the court's statement in *Walshire* that "observational" rather than "personal" reliability is the appropriate standard. *See Walshire*, 634 N.W.2d at 629. However, that is a standard that has been applied to a "citizen informant," which the court defined as "one who is a witness to or a victim of a crime." *Id*. The tipster in Kooima's case was not a witness to or a victim of a crime. He simply saw a group of people who he believed to be drunk getting into a vehicle "at curbside." But even if he could be deemed a citizen-informant rather than a less-reliable anonymous tipster, I cannot find that the information he provided satisfied even the "relaxed" standard set forth in *Walshire*. *See id.* The additional fact that Officer Munneke followed the vehicle for at least six blocks and saw no traffic or equipment violations bolsters my view that the tip was unreliable. *See Harris*, 668 S.E.2d at 146 ("[T]he crime of driving while intoxicated is not readily observable unless the suspected driver operates his or her vehicle in some fashion objectively indicating that the driver is intoxicated.").[5]

In sum, I cannot conclude that the anonymous tip afforded the officers reasonable suspicion to stop the vehicle Kooima was driving. Accordingly, I would reverse the suppression ruling.

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[5] Notably, the Virginia Supreme Court declined to find the tip reliable even though the officer followed the vehicle after receiving the tip and noted "unusual" driving. *Harris*, 668 S.E.2d at 147. One commentator has suggested the court could have taken a more middle-of-the-road approach by requiring "independent police corroboration, but allow[ing] observations based on indicators of telltale drunk driving behavior or activity—short of erratic or illegal driving." Colby J. Morrissey, Note, Anonymous Tips Reporting Drunk Driving: Rejecting a Fourth Amendment Exception for Investigatory Traffic Stops, 45 New Eng. L. Rev. 167, 190 (2010).