

IN THE COURT OF APPEALS OF IOWA

No. 9-198 / 08-1612
Filed April 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

REED S. GILLMOR,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes (suppression motion) and Gary D. McKenrick (trial), Judges.

Defendant appeals his conviction for operating while intoxicated.

AFFIRMED.

Dennis D. Jasper, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Michael J. Walton, County Attorney, and Alan Havercamp and Tyler Grimm, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Mansfield, J., and Robinson, S.J.*

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

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

On the night of March 14, 2008, Linda Wright was driving to work when she noticed a vehicle that was being driven erratically. Near Walcott she dialed 911 and reported the vehicle, stating she thought the driver was impaired. The vehicle drove into the parking lot of a Casey's Convenience Store, and Wright was able to obtain the license plate number of the vehicle and observe the driver. She continued talking to the dispatcher and followed the vehicle until it pulled over on the side of the road.

Officer Jeffrey Blake of the Walcott Police Department learned of the incident from the dispatcher. He came on the scene as the vehicle drove off. Officer Blake identified the vehicle by the reported license plate number and description of the vehicle, a silver Ford Taurus. He followed the vehicle for about one and one-half miles and noted it was traveling from ten to twenty miles per hour below the posted speed limit. He stated he stopped the vehicle based on the slow speed and the complaint he received from the dispatcher.

The driver of the vehicle was Reed Gillmor. Officer Blake observed there was an open bottle of beer in the front passenger compartment. Gillmor failed the horizontal gaze nystagmus test and the walk-and-turn test. He refused to consent to a breath test.

Gillmor was charged with operating while intoxicated (OWI), first offense, in violation of Iowa Code sections 321J.2(1) and 321J.2(2)(a) (2007). Gillmor filed a motion to suppress, claiming the officer did not have sufficient cause to

stop his vehicle. The district court denied the motion to suppress, finding the officer had an articulable suspicion that criminal activity was afoot based on a legitimate citizen complaint. The case proceeded to a trial to the court based on the minutes of testimony. The court found Gillmor guilty of OWI. Gillmor was sentenced to 120 days in jail with all but two days suspended, and placed on probation for one year. Gillmor appeals the district court's decision on his motion to suppress.

II. Standard of Review

When a defendant's motion to suppress is based on a claimed constitutional violation, 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 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

Gillmor asserts the district court should have granted his motion to suppress. He claims Officer Blake did not have sufficient reason to stop his vehicle. He contends the officer did not personally observe any traffic violations during the one and one-half miles he followed the vehicle. Gillmor claims that during the time the officer was following him the information from the citizen informant became stale.

Under *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968), an officer must have specific and articulable cause to

reasonably believe criminal activity may be afoot. This is generally referred to as “reasonable suspicion.” *State v. Walshire*, 634 N.W.2d 625, 626 (Iowa 2001).

In *Walshire*, an anonymous citizen informant called to report the license plate, make and model of a vehicle, and that the caller thought the driver was drunk. *Id.* The stopping officer “did not personally observe any behavior that would generate reasonable suspicion for a traffic stop.” *Id.* The Iowa Supreme Court affirmed the district court’s denial of the defendant’s motion to suppress, finding that reasonable suspicion did not require “independent observations by the officer of inculpatory conduct.” *Id.* at 627. The court noted there was a “rebuttable presumption that ‘information imparted by a citizen informant is generally reliable.’” *Id.* at 629 (citation omitted).

Based on *Walshire*, we determine Officer Blake had reasonable suspicion criminal activity was afoot at the time he stopped Gillmor’s vehicle. He had received information from the dispatcher that a citizen informant reported the driver of a specific vehicle was impaired. He followed the vehicle for one and one-half miles and noticed the vehicle was driving between ten to twenty miles below the posted speed limit.¹ We affirm the decision of the district court denying Gillmor’s motion to suppress.

AFFIRMED.

¹ We reject Gillmor’s claim that the information from Wright was stale by the time Officer Blake stopped his vehicle. Officer Blake started following Gillmor just as he pulled onto the roadway after stopping. Wright testified she saw the police car go by. Furthermore, at about thirty-five miles per hour, the one and one-half miles Officer Blake followed Gillmor would take about two and one-half minutes.