

IN THE DISTRICT COURT OF JACKSON COUNTY, KANSAS

STATE OF KANSAS,

Plaintiff,

vs.

Case No.: 10-TR-696

Defendant.

ORDER SUPPRESSING EVIDENCE AND DISMISSAL OF CASE

FACTS RELEVANT TO THE CASE

On October 17, 2010 at approximately 8:48 p.m. Deputy Wheeler of the Jackson County Sheriff's department was dispatched to the area of 158th Road and W Road after a reporting party called 911 to advise that a dark colored SUV vehicle was in a cemetery located near the reporting party's property. The reporting party called 911 twice to report this vehicle and the fact that it had come in, out and to the back of the cemetery on more than one occasion. The reporting party gave his name address and telephone number. The reporting parties concern was that there was no reason for anyone to be in the cemetery after dark and that the suspicious persons in the vehicle might be doing some type of drugs in the cemetery.

When Deputy Wheeler responded to the call at 158th Road and V Road he observed vehicle headlights southbound coming toward him. He turned into a driveway and observed a dark colored vehicle in which he felt matched the vehicle given by the reporting party pass his location at a slow rate of speed. He then followed the vehicle and saw that it had a Shawnee County registration. Deputy Wheeler waited for another deputy to get closer to stop the vehicle. Deputy Wheeler then activated his emergency equipment to stop the vehicle in the area of 142 Road and W Road. Deputy Wheeler testified that the reason he stopped the vehicle was based upon the calls to 911, his knowledge of the frequency of number of burglaries and thefts in the area and it being approximately two weeks before Halloween. Upon approaching the driver Deputy Wheeler smelled the odor of an alcoholic beverage coming from the vehicle. Other "clues" led Deputy Wheeler to make an arrest of the defendant for driving under the influence of alcohol/drugs.

LEGAL FINDINGS AND DECISION OF THE COURT

Though the facts in this case would show that the two calls to 911 from the reporting party were not anonymous tips this court believes that the three-part test established in State v. Slater should be considered even when a reporting party gives their name, address and phone number.

Anonymous Tip

The issue in this case is whether the tip was sufficient to provide an adequate basis to justify the

stop and detention. The court will consider the three-part test established in State v. Slater, 267 Kan. 694, 986 P.2d 1038 (1999). That test is: (1) the type of tip or informant involved; (2) the detail given about the observed criminal activity; and (3) whether the police officer's personal observations corroborate the information supplied in the tip.

First, the tip received by Jackson County dispatch only reported a lawful activity. Information was given that the reporting party was concerned there was a suspicious vehicle in the area of a cemetery where he lived nearby. There were no signs to inform citizens that the cemetery was closed after dark or that access could only be made during certain times during the day. It is in fact legal for anyone to be at this cemetery during any time of night or day.

Second, there was no detail given about the observed criminal activity. Testimony was that the tip given only concerned a suspicious vehicle that came in and out several times and each time it would drive to the back of the cemetery. The reporting party stated that he "believed" he observed the lighting of some type of pipe and that the occupants of the vehicle "might" be doing some type of drugs in the cemetery.

Third, Deputy Wheeler testified that when he arrived he did not observe any violation of the law. His concern was that the vehicle was in a cemetery at night, there had been crime in this quadrant of the county in the past and it was near Halloween. Deputy Wheeler did not investigate further to determine if a crime had been committed. Deputy Wheeler's observations could not corroborate the information supplied in the tip because there was nothing given to corroborate.

This court as in the Slater case "must examine both the content of information possessed by the police officer in this case and its degree of reliability in our determination of whether based upon the totality of the circumstances – the whole picture – there existed reasonable suspicion to stop the defendant's vehicle. We concern ourselves with both the quantity and quality of the information possessed by the officer." State v. Slater, 267 Kan. At 697.

In State v. Ludes, 27 Kan. App. 2d at 1036 (2000), the court drew a conclusion that an anonymous tip may justify a public safety stop only in the presence of exigent circumstances. Where the danger to the public is clear, urgent and immediate, "the equation must be weighed in favor of protecting the public and removing the danger." That clearly was not the situation in this case.

Grounds for the Stop

There must be reasonable suspicion to justify an investigatory stop of an individual vehicle.

"[T]he collective knowledge of all of the officers involved must provide sufficient grounds to justify a reasonable suspicion of criminal activity. Here, there is no doubt that the collective knowledge of the officers failed to provide a sufficient basis for reasonable suspicion. Once the specious registration report is removed from the picture, [the] Officer ... lacked sufficient grounds for a stop. Similarly, the dispatcher who issued the report had no basis for a reasonable suspicion. The government cannot bootstrap reasonable suspicion from an officer's good faith reliance on a radio report when the issuing agent or dispatcher lacked reasonable suspicion."

United States v. de Leon-Reyna, 898 F.2d 486, 489 (8th Cir. 1990).

“The Terry rationale does not, of course, support stopping a vehicle merely because it is a stranger to the officers and the neighborhood Nor does the fact that an unsolved crime occurred justify stopping every vehicle for miles around for several hours after the crime is discovered.”
United States v. Basey, 816 F2d 980, 989 (5th Cir. 1987).

K.S.A. 22-2402(1) states: “Without making an arrest, a law enforcement officer may stop any person in a public place whom such officer reasonable suspects is committing, has committed or is about to commit a crime and may demand of the name, address of such suspect and an explanation of such suspect’s actions.”

“The stop of a vehicle being driven upon the streets . . . always constitutes a seizure. Therefore, to stop a moving vehicle an officer must have articulable facts sufficient to constitute reasonable suspicion under K.S.A. 22-2402 and Terry. State v. McKeown, 249 Kan. 506, 510, 819 P.2d 644

Something more than an unparticularized suspicion or hunch must be articulated in order to justify a stop. United States v. Sokolow, 490 U.S. 1,7,109 S. Ct. 1581,1585 104 L.Ed.2d 1 (1989); State v. DeMarco, 263 Kan. 727, 952 P2d 1276 (1998).

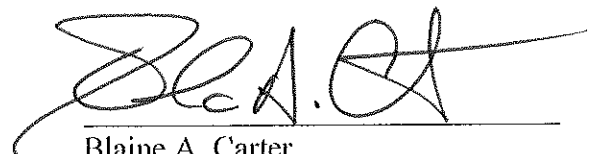
What we have in this case is a reporting party tip based completely upon a hunch. That coupled with two other hunches still equal a hunch. To use burglaries in the area and Halloween being near would allow an officer to stop any citizen for any reason during the month of October. That, with an absolute hunch given by a reporting party, does not give rise to reasonable suspicion that a crime is being committed, has been committed or is about to be committed.

In the instant case this court finds that reasonable suspicion did not exist under the totality of circumstances to justify the stop. None of the three point test under Slater has been met as well as there were no exigent circumstances to justify the stop. The Deputy found no violation of the law while observing the vehicle and the stop was completely based upon a hunch.

Issues surrounding Fourth amendment protection must be dealt with great scrutiny. To do so otherwise would allow the exception to become the rule.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED, AND DECREED that defendant’s motion is sustained, the evidence is suppressed and this case is dismissed with prejudice. The defendant is thereby discharged from further obligation in this matter.

AND IT IS SO ORDERED.



Blaine A. Carter
District Magistrate Judge
Second Judicial District
Jackson County, Kansas