

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PETER LENELL BOURRAGE,

Defendants.

No. 3:07-cr-0601-JAJ

ORDER

This matter comes before the court pursuant to the defendant's November 7, 2007, Motion to Suppress Evidence [dkt 16]. The court held an evidentiary hearing on this motion on November 30, 2007, at which the defendant was present and represented by Steve Hanna. The government was represented by Assistant United States Attorney Melisa Zaehringer. The defendant's Motion to Suppress is denied.

In the Motion to Suppress, the defendant contends that he was arrested on August 15, 2007, and searched incident to that arrest. He contends that there was no probable cause to arrest him that day. The government contends that there was reasonable suspicion to stop him initially and that the police had probable cause to arrest him when he attempted to flee from the investigatory detention. It contends that the physical evidence in question was seized lawfully as a search incident to arrest. The court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

On August 5, 2007, Sergeant Shawn Voights, of the Davenport Police Department, was moonlighting as a security guard at the Hy-Vee grocery store located at 2351 West Locust Street, Davenport, Iowa. He was wearing his summer police uniform in the parking lot of the grocery store to keep local fair goers from inappropriately parking at the grocery store.

At approximately 9:00 p.m. that evening, a woman wearing a dark lanyard with an identification badge, Lisa Warner, approached Sergeant Voights. She was carrying papers and described an individual in the grocery store for whom misdemeanor and felony warrants were outstanding. Sergeant Voights assumed that Ms. Warner was with the work release division of the Department of Corrections. Another off duty officer present, Rhonda Greene, described Ms. Warner's lanyard and identification as being "the same things that we wear". Ms. Warner was not, in fact, with the Department of Corrections. She works for Lederman Bail Bonds.

Ms. Warner described the suspect as a African American male in his thirties, wearing a t-shirt and with his hair in corn rows. She further stated that he was wearing a white t-shirt and was accompanied by an African American female and two children. When Sergeant Voights asked her to compare the suspect to Voights, Ms. Warner stated that the suspect was much larger. Voights is approximately six feet two inches tall.

Sergeant Voights went inside the Hy-Vee grocery store. He first contacted Officer Rhonda Greene. She works inside the grocery store, providing security for the transportation of large sums of money. She was informed of the description of the suspect. She remained at the front of the grocery store in a location where she could see two of the store's exits. Sergeant Voights and Lisa Warner then traversed the aisles of the grocery store in an attempt to locate the suspect. They looked for a considerable period of time until they got to the frozen foods aisle. As Voights and Warner were halfway down that aisle, Ms. Warner stated something to the effect of "There he is" or "There they go". Voights turned around and observed two children leaving the frozen foods aisle. He pursued them and observed the defendant, an African American male who was six feet six inches tall and weighed approximately 300 pounds. He was wearing a white t-shirt and had his hair braided in corn rows.

Sergeant Voights approached the defendant and asked him for his name. The defendant responded by asking Voights why he wanted to know this information. Voights said he was looking for someone wanted on a warrant. Sergeant Voights continued to

repeatedly ask the defendant for his name but the defendant refused to provide it. The defendant would not provide any form of identification. The defendant then abruptly walked away in an attempt to extricate himself from the interrogation. Voights told the defendant to stop several times but the defendant ran. Voights used a taser to stop and subdue the defendant.

As the defendant first was being approached by the Sergeant Voights and Ms. Warner, the African American female who was with him disappeared, in Sergeant Voights' words, "like a shot". The two children observed the defendant being tased and became hysterical. Eventually, one of the managers took custody of the children. The adult female returned, took custody of the children and then left the store.

As the defendant was lying on the floor of the grocery store, Sergeant Voights gave him his Miranda warnings. The defendant stated that he understood them. The defendant was in custody at this point. As he was laying on the floor, Ms. Warner came up to the defendant and looked him in the eye. At this point she determined that he was not the suspect for whom she was looking. She notified Sergeant Voights of this fact and then abruptly left the store. Sergeant Voights, dumbstruck by what had happened, asked the defendant the obvious question as to why he ran if there were no warrants outstanding for him. The defendant replied, "I've got some shit on me". A search incident to the defendant's arrest revealed crack cocaine and marijuana in his pockets.

There were three completely divergent stories told of the event in the grocery store. The first was told by the police, the second told by Lisa Warner, and the third told by the defendant. Ms. Warner had a very strange and exceedingly nervous demeanor. It struck the court as odd for someone who spends almost every day in courtrooms. She testified that she identified herself to Sergeant Voights and Officer Greene as Lisa Warner with Lederman Bonds. She testified that she gave an exceedingly elaborate description of a man named Jason Rickman that she was looking for. The description to which she testified obviously does not fit the defendant. Ms. Warner testified that she was not even in the grocery store when Sergeant Voights approached the defendant. She states that she heard

a commotion inside the store and saw young girls running from the store. She testified that she left the area where the defendant was arrested because she did not want to interfere with police business. This seems odd for someone who placed the entire process in motion. Finally she testified that she wore no form of identification whatsoever on August 5, 2007. Ms. Warner was so nervous that she nearly cried as she left the witness stand.

The court does not know why Ms. Warner's testimony was so stressful for her. The court can only surmise that she may be concerned about being a defendant in a wrongful arrest civil suit. This court believes that she was wearing some form of identification that evening. Otherwise, the police officers would not have been so quick to accept her statement that felony and misdemeanor warrants were outstanding for a suspect in the grocery store. As Sergeant Voights testified, if Ms. Warner appeared to be an ordinary citizen, he would have told her to call a uniformed on-duty police officer. The court believes that Ms. Warner is mistaken with respect to what police officers she spoke to first and whether Officer Greene was inside or outside the Hy-Vee grocery store when Officer Greene was first approached by Ms. Warner. The fact that she abruptly left the grocery store after it was determined that the defendant was not the suspect she was looking for lends some credence to the court's belief that she feared she might be held responsible for the mistake that was made.

The defendant testified that he had three children with him in the store. Two of them were his daughters for whom he could not precisely state their age. The third girl he identified was his niece. However, he does not know his niece's name nor does he know his niece's parents' names. In his testimony, however, he admitted that he refused repeatedly to give his name to the police, that he tried to leave without giving his name and that after he got tased, Lisa Warner came over and said that he was not the suspect that he was looking for.

II. CONCLUSIONS OF LAW

Defendant claims that he was unlawfully “seized” when Sergeant Voights approached him in the Hy-Vee store and asked him for his name on August 5, 2007. The Government argues that Sergeant Voights’ initial approach to the Defendant and request for his name does not constitute a “seizure” for Fourth Amendment purposes. This Court finds that Sergeant Voights possessed the requisite reasonable suspicion on August 5, 2007, and conducted a lawful *Terry* stop when he approached Defendant in the grocery store and asked him for his name.

“A *Terry* investigatory stop allows an officer briefly to detain a citizen if the officer has reasonable suspicion that ‘criminal activity may be afoot.’” United States v. Ortiz-Monroy, 332 F.3d 525, 528 (8th Cir. 2003) (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)). Officers engaged in a *Terry* stop can check for weapons and may take “any additional steps that are ‘reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.’” United States v. Thomas, 249 F.3d 725, 728 (8th Cir 2001) (internal citations omitted).

Reasonable suspicion “is a ‘particularized and objective basis’ for suspecting the person stopped of criminal activity.” Thomas, 249 F.3d at 729 (internal citation and quotation omitted). “In determining whether reasonable suspicion exists, we consider the totality of the circumstances in light of the officers’ experience and specialized training.” United States v. Davis, 457 F.3d 817, 822 (8th Cir. 2006) (citing United States v. Arvizu, 534 U.S. 266, 273 (2002)). “While ‘an officer’s reliance on a mere hunch is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.’” Ortiz-Monroy, 332 F.2d at 529 (quoting Arvizu, 534 U.S. at 274 (internal quotations and citation omitted)). In a reasonable suspicion analysis, one must consider both the “content of information possessed by police and its degree of reliability.” Alabama v. White, 496 U.S. 325, 330 (1990).

“Reasonable suspicion may be based on an informant’s tip where the tip is both reliable and corroborated.” United States v. Bell, 480 F.3d 860, 863 (8th Cir. 2007) (internal citations omitted). Officers that receive information from informants in person have the opportunity to assess the informant’s credibility and reliability. See Bell, 480 F.3d at 863 (citing United States v. Carpenter, 422 F.3d 739, 744 (8th Cir. 2005), *cert. denied*, 546 U.S. 1128 (2006). “[W]hen investigating tips from anonymous citizens, which are inherently less reliable than information provided by a sister law enforcement agency, the police may rely upon corroborating details that are ‘as consistent with innocent conduct as with illegal activity.’” United States v. Winters, 491 F.3d 918, 922 (8th Cir. 2007) (quoting United States v. Olson, 262 F.3d 795, 798 (8th Cir. 2001). An officer’s corroboration by observation of an anonymous informant’s detailed description, as well as corroboration of the description by other individuals, provides a sufficient basis for reasonable suspicion to conduct an investigatory stop. United States v. Seelye, 815 F.2d 48, 51 (8th Cir. 1987) (citing United States v. McBride, 801 F.2d 1045 (8th Cir. 1986) (internal citations omitted)).¹

Ms. Warner approached Sergeant Voights in person and provided him with a very detailed physical description of a wanted subject, including the subject’s sex, race, approximate height and weight, clothing and hairstyle. She also described the persons who had accompanied the subject into the store. Ms. Warner told Sergeant Voights that the subject was wanted on misdemeanor and felony warrants. Based on the lanyard she wore

¹ In Seelye, the Eighth Circuit Court of Appeals held that police officers had reasonable suspicion to conduct an investigative stop and frisk when the officers corroborated by observation a detailed physical description of a subject that was provided by an anonymous informant, and persons at the scene also provided corroboration of the description. The Court relied on its decision in McBride, in which the court quoted with approval the Sixth Circuit Court of Appeals decision in United States v. Andrews, 600 F.2d 563, 569-70 (6th Cir (citations omitted) , *cert. denied*, 444 U.S. 878 (1979). In Andrews, the Sixth Circuit Court of Appeals held that information from an unknown informant that is sufficiently detailed and corroborated will justify an investigative stop.

and the papers she carried, Voights had a reasonable belief that she represented the Department of Corrections. The fact that she was really a bail bond agent does not significantly affect the reasonableness of his suspicion concerning the defendant's status. Sergeant Voights testified that when he spotted Defendant in the store, his own visual observations corroborated Ms. Warner's physical description of the subject. Sergeant Voights also testified that Ms. Warner corroborated the physical description by indicating that Defendant was, in fact, the wanted subject. At that point, Sergeant Voights had reasonable suspicion to conduct a lawful *Terry* stop of Defendant. See Seeyle, 815 F.2d at 51.

During the *Terry* stop, Sergeant Voights repeatedly asked Defendant for his name. Defendant repeatedly refused to identify himself, and eventually, Defendant abruptly walked away from Sergeant Voights. Sergeant Voights told Defendant to stop several times, and Defendant ran from Sergeant Voights, attempting to flee the scene. At this point, Defendant violated Iowa Code § 719.1(1), Interference with official acts.² Under Iowa Code § 804.7(1), an officer can make a warrantless arrest when a person commits or attempts to commit a public offense in the officer's presence. See Iowa Code § 804.7(1). See also United States v. Pappas, 452 F.3d 767, 771 (8th Cir. 2006) (quoting Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001) (“If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his [or her] presence, he [or she] may, without violating the Fourth Amendment, arrest the offender.”)). Thus, Sergeant Voights' subsequent arrest of Defendant was proper under Iowa and federal law.

² “A person who knowingly resists or obstructs anyone known by the person to be a peace officer . . . in the performance of any act which is within the scope of the lawful duty or authority of that officer . . . or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a simple misdemeanor.” I.C.A. § 719.1(1).

After Sergeant Voights arrested Defendant, he administered Miranda warnings and asked the defendant why he had run if there were no outstanding warrants for him. Defendant replied, "I've got some shit on me." Sergeant Voights then conducted a search of Defendant's person incident to his earlier arrest, see United States v. Mendoza, 421 F.3d 663, 668 (2005) (citing United States v. Oakley, 153 F.3d 696, 698 (8th Cir. 1998)) (search of defendant and seizure of his cell phone were valid when arrest of defendant was proper). During the search, Sergeant Voights found contraband in the pockets of Defendant's clothing.

This Court denies Defendant's motion to suppress the evidence obtained by Sergeant Voights after the arrest of Defendant because it does not constitute "fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471, 488 (1963). Sergeant Voights made a lawful *Terry* stop of Defendant in the grocery store. When Defendant resisted Sergeant Voights' instructions to stop and attempted to flee the scene, he violated an Iowa statute. As a result, Sergeant Voights had authority to place him under arrest. Sergeant Voights conducted a lawful search of Defendant incident to arrest, thereby discovering the contraband in the pockets of Defendant's clothing.

Upon the foregoing,

IT IS ORDERED

That the defendant's Motion to Suppress Evidence [16] is denied.

DATED this 5th day of December, 2007.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA