

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41145
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

REBECCA RICHARDSON WELLS,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(1:93-CR-150)

(September 8, 1995)

Before WIENER, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

In this direct criminal appeal of her conviction based on a conditional plea of guilty to a charge of possessing with intent to distribute cocaine, Defendant-Appellant Rebecca Wells contends that

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the district court erred reversibly in refusing to suppress evidence of cocaine located on her person in a search following her detention and subsequent warrantless arrest. Concluding that the detention, arrest, and search were lawful and the evidence thus discovered was not tainted by any actions of the police, we affirm.

I

FACTS AND PROCEEDINGS

Detective Charles Ashworth of the Beaumont Police Department (BPD) received information from three different confidential informants (CIs) that Wells was transporting cocaine by Greyhound bus from Houston to Beaumont. Thereafter, Ashworth received a telephone call from one of the CIs who reported that Wells had just arrived at the bus terminal and was carrying cocaine. Wells left the terminal by taxicab before Ashworth and BPD Officers David Froman and Gerald LaChance arrived; however, the CI had supplied Ashworth with the taxicab's description and license number. Ashworth radioed the information relating to the taxi and its location to the BPD officers as they were arriving at the terminal, and they stopped the taxi based on Ashworth's orders to do so and detained Wells until Ashworth arrived on the scene a few minutes later. The officers noticed that Wells appeared extremely nervous when she exited the taxi, that she could not stand in one spot, and that her blouse had an unusual "bulge" between her breasts. Given the location of the "bulge," the officers called for a female officer to search Wells. Before the search, Wells was asked whether she carried any contraband on her person, and she responded

affirmatively. The subsequent search revealed three bags containing crack cocaine.

Wells was charged in a one-count indictment with possession with intent to distribute cocaine. She filed a motion to suppress evidence seized during the search of her person. After a suppression hearing, the district court denied Wells' motion, and she pleaded guilty to the charge, conditioned on the right to appeal the adverse ruling on her suppression motion. After the district court sentenced Wells, she timely appealed.

II

ANALYSIS

Wells contends that the district court erred in denying her motion to suppress evidence, urging that the police officers did not have reasonable suspicion to stop the vehicle in which she was traveling and did not have probable cause to search her person. The district court found that, under the totality of the circumstances, the information supplied by the CIs was sufficiently corroborated by the facts and circumstances to justify stopping Wells, and that the unusual appearance of her bulging clothing established probable cause to search her person.

We review for clear error the district court's factual findings following a pre-trial hearing on a motion to suppress, viewing the evidence in the light most favorable to the prevailing party. United States v. Inocencio, 40 F.3d 716, 721 (5th Cir. 1994). A clearly erroneous finding is one that is not plausible in light of the record viewed in its entirety. Anderson v. City of

Bessemer City, 470 U.S. 564, 573-76 (1985). We review de novo the district court's legal conclusion that officers had reasonable suspicion to stop a vehicle. Inocencio, 40 F.3d at 721. We have "long pitched the standard of review for a motion to suppress based on live testimony at a suppression hearing at a high level." United States v. Randall, 887 F.2d 1262, 1265 (5th Cir. 1989).

"An officer may conduct a brief investigatory stop of a vehicle and its occupants based on the 'reasonable suspicion' that the person is engaged, or about to be engaged in criminal activity." United States v. Tellez, 11 F.3d 530, 532 (5th Cir. 1993), cert. denied, 114 S. Ct. 1630 (1994)(citing Terry v. Ohio, 392 U.S. 1, 21-22 (1968)). To establish "reasonable suspicion" for such a stop, the prosecution must demonstrate a "minimal level of objective justification of the officer's actions, measured in light of the totality of the circumstances.'" Tellez, 11 F.3d at 532 (citation omitted). "Reasonable suspicion" need not be based on personal observation, but may be based on information supplied by a CI if the information possesses "indicia of reliability." Adams v. Williams, 407 U.S. 143, 147 (1972); United States v. Roch, 5 F.3d 894, 897 (5th Cir. 1993). In examining the totality of the circumstances, the "informant's veracity, reliability, and basis of knowledge . . . [are] important factors; however, a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or some other indicia of reliability." United States v. Jackson, 818 F.2d 345, 348 (5th Cir. 1987) (internal citation and quotation omitted).

The totality of information available to Detective Ashworth and Officers Froman and LaChance established reasonable suspicion that Wells was involved in criminal activity sufficient to justify their investigatory stop. See United States v. Holloway, 962 F.2d 451, 459 (5th Cir. 1992). First, two reliable CIs, who were known to Ashworth and had provided correct information in the past,¹ told Ashworth on separate occasions that Wells was transporting cocaine via the Greyhound bus service from Houston to Beaumont. Second, Ashworth received a telephone call from one of the reliable CIs who said that he saw Wells leave the bus terminal and that he knew she was carrying cocaine on her person. Third, this CI's credibility was enhanced by his ability to provide supporting details to the officers when they arrived at the bus terminal: He told Ashworth that Wells had just left the terminal in a taxicab, and he provided a description of the taxi, its license number, and direction it was headed. Finally, the officers knew that Wells had been arrested for aggravated possession of cocaine, that she had automobiles available to her use, and that transportation by bus was a common way to avoid drug interdiction stops between Houston and Beaumont. Although the information provided by the CIs regarding Wells' criminal activity was not known to BPD Officers Froman and LaChance when they stopped her, the court may consider the cumulative knowledge of the officers working on the case, rather than only the

¹ A third CI supplied the same information to Ashworth; however, this instance was the first time this CI had supplied information. Thus, the third CI was not yet known to be reliable.

knowledge possessed by the officer making the stop, when there has been "some degree of communication between them." United States v. Michel, 588 F.2d 986, 998 (5th Cir.), cert. denied, 444 U.S. 825 (1979).

Even though alone no one of these factors is sufficient to establish reasonable suspicion of illegal conduct, taken together they are sufficient to constitute reasonable suspicion of criminal activity, thereby justifying the stop. See Adams, 407 U.S. at 145-47; Holloway, 962 F.2d at 459-60; but see Roch, 5 F.3d at 898-99 (information from reliable informant insufficient to justify stop under circumstances).

Wells also contends that the officers lacked probable cause for the warrantless detention and search of her person. Implicit in Wells' contention and in the language she employs in it is the argument that the officers did not have probable cause to arrest her and that the search of her person was an unconstitutional search incident to arrest. See id.

Although Terry v. Ohio permits a warrantless search based on less than probable cause, the extent of the permissible search is carefully circumscribed. United States v. Maestas, 941 F.2d 273, 276 (5th Cir. 1991), cert. denied, 502 U.S. 1046 (1992). "Because the purpose of such a search is to enable the officer `tak[e] steps to assure himself that the person with whom he is dealing is not armed'. . . , the officer may only pat down the suspect's outer clothing in an effort to discover weapons." Id. Ashworth testified that the bulge under Wells' clothing did not have the

appearance of a weapon. Officer Froman testified that he was not in fear of either physical danger to himself or others or of Wells' flight. Thus, when the officers detained Wells to facilitate a search of her person, their actions went beyond that which is permissible under Terry. Thus the question becomes whether the officers' pre-search restraint of Wells constituted a lawful arrest.

An arrest occurs when "`under the totality of the circumstances, a reasonable person would have thought he was not free to leave.'" United States v. Raborn, 872 F.2d 589, 593 (5th Cir. 1989)(citation omitted). When officers arrest a person without a warrant, their actions must be supported by probable cause to believe that the person arrested has committed an offense. United States v. Pollack, 739 F.2d 187, 190 (5th Cir. 1984). Probable cause exists when facts and circumstances within the knowledge of the arresting officer would be sufficient to cause an officer of reasonable caution to believe that an offense has been or is being committed. Raborn, 872 F.2d at 593. While the standard is an objective one, it is determined by taking into account the expertise and experience of the police officer. Id.

When a search is made pursuant to an arrest, "the police may search the arrestee's person and the area within his immediate control -- construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." U.S. v. Johnson, 16 F.3d 69, 71-72 (5th Cir.) (internal quotations and citations omitted), on rehearing, 18 F.3d 293 (5th

Cir. 1994). If the custodial arrest is lawful, "a search incident to the arrest requires no additional justification." U.S. v. Hernandez, 825 F.2d 846, 852 (5th Cir. 1987) (internal quotations and citation omitted), cert. denied, 484 U.S. 1068 (1988). A search "incident to the arrest" may be valid even if the search occurred at the same time as or just before the actual arrest, as long as the arrest follows "`quickly on the heels of the challenged search.'" Id. (citation omitted).

Detective Ashworth and Officer Froman testified that when Wells got out of the taxi, she was never told that she was free to leave, and that when they noticed the unusual bulge in her blouse, they decided that a search was needed. Thus, after expiration of the brief time permitted for conducting a Terry search, Wells was under arrest because: Under the circumstances, a reasonable person would not think he was free to leave. See Raborn, 872 F.2d at 593.

The officers had probable cause to arrest Wells because the totality of the circumstances was such that a reasonable officer would believe that an offense was being committed. Three CIs had told Ashworth that Wells was transporting cocaine between Houston and Beaumont by Greyhound bus. The CI who called Ashworth from the bus terminal gave him accurate information regarding the vehicle in which she was traveling and the direction in which it was headed. The CI related further that Wells was carrying cocaine on her person. Viewed in light of that information, the bulge in Wells' blouse reasonably led the officers to believe that she was likely hiding cocaine under her outer clothing. Ashworth and Officer

Froman testified that in their experience, it was common for female drug carriers to hide contraband in such a manner, and that it was common for drug carriers to travel by bus. Based on the information supplied to the officers regarding Wells' activities and the circumstances following the stop, the officers had probable cause to arrest Wells.

III

CONCLUSION

The BPD officers had reasonable suspicion sufficient to justify the initial stop and detention. As the subsequent custodial arrest of Wells was lawful, the officers needed no additional justification to conduct the search. See Hernandez, 825 F.2d at 852. The search was lawful, even if it occurred just before the actual arrest, because the formal arrest followed "quickly on the heels of the challenged search." See id. It follows that the district court did not err in denying Wells' motion to suppress based on the valid Terry stop followed immediately by the search incident to her lawful arrest.

AFFIRMED.