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NO. COA01-1503

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

RONNIE HAYES,  
Defendant.

Guilford County  
Nos. 99 CRS 52869-70,  
99 CRS 23624

Appeal by defendant from judgment entered 29 June 2001 by Judge A. Moses Massey in Guilford County Superior Court. Heard in the Court of Appeals 1 July 2002.

*Attorney General Roy Cooper, by Special Deputy Attorney General Robert O. Crawford, III, for the State.*

*Ames C. Chamberlin for defendant-appellant.*

BRYANT, Judge.

On 16 August 1999, the Guilford County grand jury indicted defendant on two counts of possession of a firearm by a felon and with being an habitual felon. Defendant filed a motion on 29 May 2001 seeking to suppress evidence obtained by police as a result of a stop of his vehicle. Following a *voir dire* hearing on 28 June 2001, the trial court concluded the police officer had a reasonable articulable suspicion for stopping defendant's vehicle and denied the motion to suppress. On 29 June 2001, the jury found defendant to be guilty of both counts of possession of a firearm by a felon.

Defendant then pled guilty to having habitual felon status. After consolidating the two substantive offenses for judgment, the trial court sentenced defendant as an habitual felon to a minimum term of 66 months and a maximum term of 89 months imprisonment. From the trial court's judgment, defendant appeals.

Defendant contends the trial court erred by denying his motion to suppress evidence of two guns seized from him after a police officer stopped his vehicle. He argues the police officer lacked a reasonable and articulable suspicion to justify stopping his vehicle on the basis of a call from a police dispatcher that shots had been fired into a residence located around the corner from the vehicle's location. We disagree.

"Generally, in deference to the Fourth Amendment prohibition against unreasonable 'seizures,' before a police officer can conduct an investigatory stop and detention of an individual, the officer must have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." *State v. Tillett*, 50 N.C. App. 520, 523, 274 S.E.2d 361, 363 (1981). This protection also applies to "brief investigatory detentions such as those involved in the stopping of a vehicle." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994).

"The stop must be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." *Id.* However, "[t]he only requirement is a minimal level of objective justification, something more than an

'unparticularized suspicion or hunch.' *United States v. Sokolow*, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 10 (1989)." *Id.* at 442, 446 S.E.2d at 70. When making this determination as to whether such a reasonable suspicion exists, the trial court is to consider "the totality of the circumstances -- the whole picture. . . ." *United States v. Cortez*, 449 U.S. 411, 417, 66 L. Ed. 2d 621, 629 (1981).

At the conclusion of the *voir dire*, the trial court denied defendant's motion to suppress. In its order entered on 11 July 2001, the trial court found the following findings:

[A]t approximately 11:00 p.m. on May 20, 1999, Officer Johnny Raines . . . was dispatched to 303 West Camel Street . . . , the call having been received from the residence . . . indicating that shots had been fired, someone was in the back yard, and there was fear that the house would be shot into.

Officer Raines arrived within view of the residence in question within one to one and a half minutes. While doing so, he observed a vehicle moving away from the curb on Mary Eula Street, approximately 50 feet from West Camel Street and two to three houses away from 303 West Camel Street. He saw no other motor vehicle moving in the area. He observed nothing unusual about the operation of the motor vehicle, and noted that it did not move away rapidly from the curb.

Officer Raines activated his blue light and stopped the vehicle that he had observed moving away from the curb, to determine whether the driver was in any way connected with the reported firing of shots at 303 West Camel Street.

Officer Julius Tunstall was also dispatched to the scene, operating a separate patrol car, following Officer Raines. Officer Tunstall also arrived in the vicinity within one minute to one and one-half minutes of the call and saw Officer Raines activate the blue lights and stop the vehicle that Officer

Raines had observed leaving the curb on Mary Eula Street. Officer Tunstall approached the vehicle and saw laying on the front passenger seat of the vehicle two firearms, one of which he determined to be a Llama, .45-caliber pistol, with hammer cocked.

The driver was found to be the defendant, Ronnie Hayes. Mr. Hayes was not arrested. In fact, Mr. Hayes reported to the police that his home had been shot into earlier, and the police followed up with an investigation of that report incident.

Due to Mr. Hayes' agitated condition, and his voluntary statement to the police to the effect that it was a good thing that he had been stopped, because he was going to kill someone, the two weapons in question were confiscated, with instructions given to Mr. Hayes as to how the weapons could be retrieved.

Because defendant did not assign error to the trial court's findings of fact, "they are not reviewable." *Watkins*, 337 N.C. at 438, 446 S.E.2d at 68 (1994).

On the basis of its findings of fact, the trial court "conclude[d] as a matter of law that Officer Raines had a reasonable, articulable suspicion for the stop of the Hayes vehicle and that the stop was legal and valid." The trial court then denied the motion to suppress.

The evidence shows that the stop of defendant's vehicle was predicated upon a report of shots being fired in the area. Officer Raines arrived no later than one-and-a-half minutes of being dispatched. Given the time, the proximity to the reporting residence and defendant's vehicle being the only moving motor vehicle in the area, we conclude upon these facts and the natural inferences arising from them that Officer Raines' stop of defendant to ascertain his identity and his possible involvement in criminal

activity was reasonable. See *State v. Covington*, 138 N.C. App. 688, 691, 532 S.E.2d 221, 222 (2000), cert. denied, 352 N.C. 678, 545 S.E.2d 432 (2000); see also *Tillett*, 50 N.C. App. at 524, 274 S.E.2d at 364. Accordingly, the trial court did not err in denying defendant's motion to suppress.

Because defendant did not set out his second assignment of error in his brief, it is deemed abandoned. N.C.R. App. P. 28(b)(5). Defendant received a fair trial, free from prejudicial error.

No error.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).