NO. COA05-1199

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

STATE OF NORTH CAROLINA

v. Onslow County
No. 04 CRS 60950

RAHMID PAGE-BRYANT,
Defendant.

Appeal by defendant from judgment entered 15 June 2005 by Judge Jay D. Hockenbury in Onslow County Superior Court. Heard in the Court of Appeals 12 April 2006.

Attorney General Roy Cooper, by Assistant Attorney General Karen Ousley Boyer, for the State.

Sofie W. Hosford for defendant-appellant.

GEER, Judge.

Following his indictment for drug trafficking offenses, defendant Rahmid Page-Bryant filed a motion to suppress evidence seized during a search of his car, arguing that the police (1) lacked reasonable suspicion to stop his car and (2) lacked probable cause to search it. After the trial court denied that motion, defendant pled guilty while reserving his right to appeal the denial of his motion under N.C. Gen. Stat. § 15A-979(b) (2005). Based on the trial court's findings of fact, not assigned as error on appeal, we hold that the trial court properly denied the motion to suppress.

Our review of the denial of a motion to suppress by the trial court is ordinarily "limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). Because, in this case, defendant has not specifically assigned error to the trial court's findings of fact, those findings are binding on appeal, and the sole question for this Court is whether the trial court's findings support its conclusions of law. *State v. Cheek*, 351 N.C. 48, 63, 520 S.E.2d 545, 554 (1999), *cert. denied*, 530 U.S. 1245, 147 L. Ed. 2d 965, 120 S. Ct. 2694 (2000).[1]

Facts

The trial court made the following findings of fact. Prior to 4 November 2004, Agent Chad Nesbit of the Federal Bureau of Alcohol, Tobacco, and Firearms arrested Oscar Mitchell, who then agreed to cooperate with the authorities by becoming a cooperating defendant-informant. Agent Nesbit used Mitchell on three occasions prior to that involving defendant, and the information provided by Mitchell each time was accurate and reliable.

At approximately 8:15 a.m. on 4 November 2004, Mitchell called Agent Nesbit and said that he had been contacted by a person named

[1]Defendant's sole assignment of error states in its entirety: "The trial court committed reversible error when it denied the motion to suppress evidence. United States Constitution, fourth and fourteenth amendments."

"Little Cuz," later determined to be defendant, who wanted to sell Mitchell two kilograms of cocaine for the price of $22,500.00 a kilogram. Mitchell informed the officers that he had previously purchased similar amounts of drugs from another individual named "Sweet" with "Little Cuz" present. Agent Nesbit contacted Detective Michael Muni of the Jacksonville Police Department, and they arranged for Mitchell to have defendant bring the cocaine from Atlanta, Georgia to Jacksonville, North Carolina.

A phone tap was placed on Mitchell's cellular phone so that the officers could monitor the telephone conversations between Mitchell and defendant as defendant traveled to Jacksonville to complete the drug transaction. In one conversation, Mitchell asked defendant whether he was bringing crack or powder, and defendant responded, "soft-powder."

Because defendant had difficulty finding the route to Jacksonville, there were numerous phone calls between defendant and Mitchell during the trip. As requested by the officers, Mitchell instructed defendant to stop at a particular gas station outside of Kenansville, North Carolina. When defendant stopped at the gas station, officers observed that defendant and his vehicle matched the description Mitchell had provided for "Little Cuz." The officers also noted that defendant was on a cellular phone at the same time they knew Mitchell to be on his phone with "Little Cuz." Defendant, his vehicle, and his passenger (later identified as Marcus Webster) were thereafter put under surveillance.

Officers followed defendant's vehicle from the gas station to Jacksonville, where defendant stopped at an Andy's Restaurant to meet with Mitchell. Defendant and Mitchell left the restaurant and walked back to defendant's car. The passenger, Webster, stayed inside the restaurant. Defendant appeared nervous when he noticed two white males sitting in an sport-utility vehicle, but told Mitchell, "[D]on't worry, I have things in a safe spot." Defendant got in the driver's side of the vehicle, while Mitchell entered the passenger side. The car was immediately surrounded by police officers and patrol cars, and defendant said to Mitchell, "[D]on't worry, I have the thing stashed where 20 could be stashed."

Detective Ashley Brown removed defendant from the vehicle, handcuffed him, and told him he was being detained as a suspect in an ongoing narcotics investigation. Defendant claimed that he had gotten lost while going to Fayetteville to see a sick uncle and that he was also there to visit friends on a mini-vacation. Webster was likewise handcuffed and detained.

Mitchell was taken inside a patrol car, where he told officers that defendant was in fact the man Mitchell knew as "Little Cuz" and that the cocaine was in a hidden compartment in defendant's vehicle that could hold up to 20 packages of cocaine. Detective Muni instructed the officers to begin an immediate search of defendant's vehicle. Officer Jason Holland soon discovered several indications that a hidden compartment was behind the rear seat of the car, including: the rear seat would not fold down, there was a false wall between the trunk and the rear seat, an additional latch

was on the rear seat, the carpet in the trunk was glued down near the rear seat but loose everywhere else, there were shavings indicative of drilling, and there were several air fresheners commonly used to disguise the odor of controlled substances.

Detective Muni ordered the vehicle moved to the Jacksonville Police Department where the search could be performed under better lighting. Shortly thereafter, officers discovered two green cellophane bags in a hidden compartment behind the rear seat. An initial test of the contents indicated that the packages contained a very pure form of cocaine. Subsequent testing at the SBI lab established that the first package contained 987.2 grams of cocaine, while the second package contained 997.1 grams of cocaine.

Defendant was indicted for possession with intent to sell and deliver cocaine, maintaining a place or vehicle for the sale of controlled substances, trafficking in cocaine by possession of 400 grams or more, trafficking in cocaine by transportation of 400 grams or more, conspiracy to traffic in cocaine, attempt to sell cocaine, attempted delivery of cocaine, and misdemeanor possession of drug paraphernalia. After the denial of his motion to suppress, defendant pled guilty to trafficking in cocaine by possession of 400 grams or more of cocaine, but reserved his right to appeal the denial of his suppression motion. The trial court sentenced defendant to 175 to 219 months imprisonment. Defendant timely appealed to this Court.

I

Defendant first argues that the police did not have reasonable suspicion to stop his car at the Andy's Restaurant. Under the Fourth Amendment, before a police officer may conduct an investigatory stop of a vehicle without a warrant, the officer must have a reasonable suspicion that criminal activity may be occurring. *State v. McArn*, 159 N.C. App. 209, 212, 582 S.E.2d 371, 374 (2003) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 20 L. Ed. 2d 889, 911, 88 S. Ct. 1868, 1884 (1968)). "A court must consider 'the totality of the circumstances — the whole picture' in determining whether a reasonable suspicion to make an investigatory stop exists." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (quoting *United States v. Cortez*, 449 U.S. 411, 417, 66 L. Ed. 2d 621, 629, 101 S. Ct. 690, 695 (1981)).

Reasonable suspicion requires that the stop "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.* There must be a "minimal level of objective justification, something more than an 'unparticularized suspicion or hunch.'" *Id.* at 442, 446 S.E.2d at 70 (quoting *United States v. Sokolow*, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 10, 109 S. Ct. 1581, 1585 (1989)).

Here, the trial court found that the officers overheard defendant tell Mitchell that he was bringing from Atlanta "soft-powder" cocaine. In addition, Mitchell told Agent Nesbit that defendant, whom he knew from previous drug transactions at which defendant was present, wanted to sell him two kilograms of cocaine.

We note that "[a]lthough reasonable suspicion is less stringent than probable cause, it nevertheless requires that statements from tipsters carry some 'indicia of reliability.'" *State v. Watkins*, 120 N.C. App. 804, 809, 463 S.E.2d 802, 805 (1995) (quoting *Alabama v. White*, 496 U.S. 325, 332, 110 L. Ed. 2d 301, 310, 110 S. Ct. 2412, 2417 (1990)). "[I]ndependent police corroboration of the facts given by the informant are important in evaluating the reliability of the informant's tip." *State v. Earhart*, 134 N.C. App. 130, 134, 516 S.E.2d 883, 886, *appeal dismissed*, 351 N.C. 112, 540 S.E.2d 372 (1999).

The trial court specifically found that Agent Nesbit had used Mitchell as an informant on three previous occasions and Mitchell's information had proven accurate and reliable. Additionally, defendant was traveling the route Mitchell and defendant had arranged for transportation of the cocaine; defendant stopped at the gas station that the officers had requested Mitchell suggest to defendant; officers at the gas station observed that both defendant and his vehicle matched Mitchell's descriptions; and defendant was on his cellular phone at the "very moment" officers knew Mitchell to be on the phone with him. Moreover, defendant ultimately met with Mitchell in Jacksonville at the exact location and approximate time Mitchell had arranged to meet defendant for their drug transaction.

These findings of fact are more than sufficient to support the trial court's conclusion that, based on the totality of the circumstances, the officers had a reasonable suspicion that

defendant was transporting cocaine when he arrived at the Andy's Restaurant. *See State v. Downing*, 169 N.C. App. 790, 794-95, 613 S.E.2d 35, 38 (2005) (reasonable suspicion to stop defendant's vehicle existed when previously-proven confidential informant told police defendant would be transporting cocaine that day, defendant was driving a vehicle that matched description given by informant, tag numbers on the vehicle were registered to defendant, defendant was driving on the suspected route, and defendant crossed into county at approximate time informant had indicated); *State v. Leach*, 166 N.C. App. 711, 716, 603 S.E.2d 831, 835 (2004) (reasonable suspicion to stop defendant's vehicle existed when officers received tip from previously-proven informant that he was going to buy drugs from defendant, informant accurately described when and where defendant would arrive, and informant contemporaneously identified defendant in parking lot), *appeal dismissed*, 359 N.C. 640, 614 S.E.2d 538 (2005). Consequently, the trial court properly determined that the stop of defendant's vehicle did not violate the Fourth Amendment.

II

Defendant next argues that, even if the stop of his vehicle was constitutional, the officers lacked sufficient probable cause and exigent circumstances to conduct a warrantless search of the vehicle. It is well established that "[a] warrant is not required to perform a lawful search of a vehicle on a public road when there is probable cause for the search." *State v. Baublitz*, 172 N.C. App. 801, 808, 616 S.E.2d 615, 620 (2005). Contrary to defendant's

contention, "no exigent circumstances other than the motor vehicle itself are required in order to justify a warrantless search of a motor vehicle if there is probable cause to believe that it contains the instrumentality of a crime or evidence pertaining to a crime and the vehicle is in a public place." *State v. Isleib*, 319 N.C. 634, 638, 356 S.E.2d 573, 576-77 (1987). Probable cause exists when the facts and circumstances within the officers' knowledge, and of which the officers had reasonable trustworthy information, are sufficient to warrant a reasonable belief that an offense has been or is being committed. *Baublitz*, 172 N.C. App. at 808-09, 616 S.E.2d at 620-21.

Here, at the time officers surrounded defendant's vehicle, it was in a public place, and, consequently, no additional exigent circumstances were required. Further, the trial court found that (1) Mitchell identified defendant as the man he knew as "Little Cuz" before the officers conducted the search, and (2) Mitchell reported that defendant had told him that the cocaine was in a hidden compartment in his car. These findings, in addition to the findings discussed above with respect to the stop of defendant's car, are sufficient to support the trial court's conclusion that the officers had probable cause to believe that defendant's vehicle contained cocaine. *See State v. Collins*, 160 N.C. App. 310, 316, 585 S.E.2d 481, 486 (2003) (sufficient probable cause for warrantless search of defendant's car existed when previously-unproven informant accurately described vehicle, defendant, time, and location of upcoming drug transaction), *aff'd per curiam*, 358

N.C. 135, 591 S.E.2d 518 (2004); *State v. Martinez*, 150 N.C. App. 364, 369, 562 S.E.2d 914, 917 (sufficient probable cause for warrantless search of defendant's car existed when officers verified previously-unproven informant's description of the transporting automobile and its occupants, and informant accurately predicted the vehicle's arrival time and location), *appeal dismissed and disc. review denied*, 356 N.C. 172, 568 S.E.2d 859 (2002); *State v. Chadwick*, 149 N.C. App. 200, 203-04, 560 S.E.2d 207, 210 (sufficient probable cause for warrantless search of defendant's car existed when reliable informant accurately described the vehicle, driver, location, direction, and defendant's behavior during the alleged drug transaction), *disc. review denied*, 355 N.C. 752, 565 S.E.2d 672 (2002).

Defendant further argues, however, that even if a search in the restaurant parking lot was permissible, the officers violated his Fourth Amendment rights when they moved the vehicle to the police station for a more intensive search. Our appellate courts have held otherwise. In *State v. Mitchell*, 300 N.C. 305, 312, 266 S.E.2d 605, 610 (1980), *cert. denied*, 449 U.S. 1085, 66 L. Ed. 2d 810, 101 S. Ct. 873 (1981), our Supreme Court held that "[o]nce the right to make a warrantless search obtained, the officers could search the [car] immediately or could seize it and search it at the station house." This Court has explained in greater detail that when a warrantless search of a vehicle is justified, it may be removed to another location if circumstances warrant that removal and the warrantless search is conducted within a reasonable time.

State v. White, 82 N.C. App. 358, 363, 346 S.E.2d 243, 247 (1986) ("The right to make a warrantless search and seizure having accrued, it is of no consequence that the search was not conducted at the parking lot; the officers could search the vehicle at the parking lot or could seize it and search it at police headquarters."), *cert. denied*, 323 N.C. 179, 373 S.E.2d 124 (1988). Here, the trial court found that the officers moved the vehicle because they needed "better lighting conditions" to complete the search and that the search at the police department (using lights from a fire truck) was commenced 25 or 30 minutes after the car had initially been stopped. Based on these findings, the search of defendant's vehicle did not violate his Fourth Amendment rights, and the trial court properly denied his motion to suppress.

Affirmed.

Judges TYSON and JACKSON concur.

Report per Rule 30(e).