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NO. COA08-490

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2008

STATE OF NORTH CAROLINA

v.

Forsyth County
Nos. 06 CRS 031286
06 CRS 054388

GLENDSELL SATINI NELSON

Appeal by defendant from judgment entered 14 January 2008 by Judge William Z. Wood, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 17 November 2008.

Attorney General Roy Cooper, by Assistant Attorney General John F. Oates, Jr. for the State.

John Keating Wiles for defendant-appellant.

TYSON, Judge.

Glendell Satini Nelson ("defendant") appeals from judgment entered after he pleaded guilty to: (1) possession with intent to sell or deliver cocaine pursuant to N.C. Gen. Stat. § 90-95(a)(1) and (2) attaining habitual felon status pursuant to N.C. Gen. Stat. § 14-7.1. We affirm.

I. Background

At approximately 9:30 a.m. on 6 April 2006, Winston-Salem Police Sergeant Steven Tollie ("Sergeant Tollie") and Triad Alcoholic Beverage Control Commission Agent Debra McClaren ("Agent McClaren") were working a drug interdiction patrol at the Innkeeper

Motel in Winston-Salem. Sergeant Tollie drove around the secluded upper parking lot of the motel where several drug transactions had been previously discovered. While patrolling the lot, Sergeant Tollie noticed a male, who was later identified as Lenoir Stevens ("Stevens"), sitting in a car in the parking lot. Sergeant Tollie parked his patrol car, went into the motel's lobby, and positioned himself to monitor Stevens's activities.

After approximately five minutes, Sergeant Tollie observed defendant leave Room 514, walk through the lobby and parking lot to Stevens's vehicle. Defendant and Stevens appeared to be talking through the driver's side window. Defendant then walked back toward the lobby door, visually scanned the lobby, and walked back to Stevens's car. Sergeant Tollie observed Stevens and defendant engage in a hand-to-hand exchange of some unidentified item concealed by defendant's hand. After the exchange, defendant re-entered the lobby of the motel and returned to Room 514.

Sergeant Tollie followed defendant and stopped defendant at the door of Room 514. Sergeant Tollie asked defendant to identify the individual in the vehicle and explain what had transpired. Defendant stated he had exchanged a room key.

Sergeant Tollie asked defendant if he possessed any drugs, large amounts of currency, or weapons in the motel room. Defendant stated there were no drugs in the motel room and gave Sergeant Tollie permission to search his motel room. Sergeant Tollie then asked defendant if he had any drugs, large amounts of currency, or weapons on his person. Defendant reached into his front pockets

and pulled them inside out. A lighter and several coins fell to the floor. Sergeant Tollie noticed that defendant was "palming" a plastic bag in his left hand. The plastic bag contained an off-white substance that Sergeant Tollie recognized as crack cocaine. Sergeant Tollie reached out, grabbed defendant's left wrist, twisted defendant's arm behind his back, and forced him to the floor. As defendant landed, the plastic bag fell on the floor next to defendant's feet. Agent McClaren arrived at the scene and Sergeant Tollie instructed her to take possession of the plastic bag. Defendant was subsequently placed under arrest.

Defendant was indicted for possession with intent to sell and deliver cocaine and attaining habitual felon status. Prior to trial, defendant filed a motion to suppress all the evidence seized as a result of the stop and search of his person. Defendant's motion was heard on 14 January 2008. Following the hearing, the trial court denied defendant's motion to suppress. Defendant entered a guilty plea to both charges, reserving his right to appeal the denial of his motion to suppress. The trial court sentenced defendant to a minimum term of 93 months and a maximum term of 121 months imprisonment. Defendant appeals.

II. Issue

Defendant argues the trial court erred by denying his motion to suppress because Sergeant Tollie possessed neither probable cause nor a reasonable articulable suspicion to conduct an investigatory stop.

III. Motion to Suppress

A. Standard of Review

Review of a trial court's denial of a defendant's motion to suppress "is strictly limited to determining whether the trial court's findings of fact are supported by competent evidence, in which case they are binding on appeal, and in turn, whether those findings support the trial court's conclusions of law." *State v. Corpening*, 109 N.C. App. 586, 587-88, 427 S.E.2d 892, 893 (1993).

B. Analysis

This Court has stated:

It is well established that an officer may undertake an investigatory stop of a person, so long as that officer has a reasonable and articulable suspicion, based on objective facts, that the person is engaged in criminal activity. Courts must consider "the totality of the circumstances - the whole picture" in making the determination as to whether a reasonable suspicion to make an investigatory stop existed at the time the stop was made.

The totality of the circumstances test must be viewed through the prism of a reasonable police officer standard; that is, the reviewing court must take into account an officer's training and experience. Thus, a police officer must have developed more than an "unparticularized suspicion or hunch" before an investigatory stop may occur.

State v. Willis, 125 N.C. App. 537, 541, 481 S.E.2d 407, 410 (1997)
(citations and quotations omitted).

Here, Sergeant Tollie, a veteran police officer with nine years experience in the narcotics division, testified: (1) the Innkeeper Motel was monitored daily for drug activity; (2) the upper parking lot where Stevens was parked was secluded; (3) Sergeant Tollie had previously discovered several drug transactions

in the upper parking lot; (4) while defendant appeared to talk to Stevens, defendant continuously looked back into the lobby, and walked back to the lobby's entrance to visually scan the inside; (5) defendant returned to Stevens's vehicle; and (6) defendant and Stevens engaged in a hand-to-hand exchange of an unidentified item concealed by defendant's hand. Upon questioning, defendant appeared nervous. As defendant pulled his hands from his pockets, Sergeant Tollie observed defendant attempt to conceal crack cocaine. Based on the totality of the circumstances, a reasonable articulable suspicion existed that defendant engaged in criminal activity; i.e., defendant had conducted some type of drug transaction with Stevens. *Id.* Sergeant Tollie's "investigatory stop" of defendant was lawful. This assignment of error is overruled.

IV. Conclusion

The trial court did not err in denying defendant's motion to suppress. Competent evidence established Sergeant Tollie conducted a lawful investigatory stop based upon a reasonable suspicion that defendant had engaged in criminal activity. The trial court's order is affirmed.

Affirmed.

Judges BRYANT and ARROWOOD concur.

Report per Rule 30(e).