NO. COA11-278
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v. Guilford County
No. 09 CRS 092959
GRADY EARL ALSTON PAGE 092960
092963

Appeal by defendant from order entered 30 August 2010 by Judge Catherine C. Eagles denying his motion to suppress, and from judgment entered 7 September 2010 by Judge William Z. Wood, Jr., both in the Superior Court of Guilford County. Heard in the Court of Appeals 14 September 2011.

Attorney General Roy Cooper, by Associate Attorney General J. Rick Brown, for the State.

A. Wayne Harrison, for defendant-appellant.

STEELMAN, Judge.

Where the trial court found that defendant was stopped based upon a reasonable, articulable suspicion **(R. p. 136)**, the officer's actual motives for the stop were irrelevant. Where defendant consented to a pat down by the officer, this was not a violation of defendant's constitutional rights. Defendant was

not in custody when he was asked a question by the officer, and *Miranda* was not implicated.

I. Factual and Procedural Background

For a period of five weeks, Detective Blanks, of the Greensboro Police Department, conducted surveillance of the residence of Fatema Seray Rice, located at 5609 Fellowship Drive, Greensboro, North Carolina, on suspicion of drug trafficking. Grady Page ("defendant") also frequented the residence. On 15 September 2009, Detective Blanks noticed defendant and another male in the garage. The other male placed a large, white trash bag into the trunk of a Nissan automobile and drove off. Defendant left driving a BMW. Police followed the Nissan to a dumpster, where the other male was observed disposing of the white trash bag. Police recovered the white trash bag from the dumpster and found evidence of cocaine wrappings. Shortly thereafter, Officer Prescod was instructed to stop the BMW being operated by defendant.

Officer Prescod stopped the BMW for having tinted windows that were darker than allowed by statute. After producing his driver's license and registration, defendant was asked to step out of the car. Defendant verbally consented to a pat down by the officer. When defendant got out and turned to face the car

door, there was a thud. Officer Prescod asked defendant, "What was that?" Defendant did not initially respond, but after being asked a second time, defendant responded, "Drugs."

Defendant was then handcuffed and searched by Officer Prescod. A wrapped container was found in the front of defendant's shorts, tied to the drawstring. Officer Prescod asked defendant, "Is that a half-kilo?" and defendant replied, "Yes." Defendant was cited for the tinted windows by Officer Prescod and then turned over, along with the package of drugs, to another officer.

Defendant was indicted for the felonies of keeping and maintaining a vehicle for purposes of selling a controlled substance; trafficking in cocaine by possession of 400 grams or more; and trafficking in cocaine by transportation of 400 grams or more. On 28 April 2010, Defendant filed a suppression motion seeking to suppress evidence seized as a result of the traffic stop of defendant on 15 September. A hearing on defendant's motion to suppress was held on 11 August 2010. By order dated 13 August 2010, Judge Eagles granted the motion as to defendant's answer to Officer Prescod's question "Is that a half-kilo?" and denied the balance of the motion.

On 30 August 2010, defendant pled guilty to all three charges discussed above before the Honorable William Z. Wood, Jr. Under the terms of the plea agreement, defendant preserved his right to appeal the denial of his motions to suppress. The three charges were consolidated for judgment, and defendant was sentenced to the statutorily mandated active prison term of 175-219 months. *See* N.C. Gen. Stat. § 90-95(h)(3)(c) (2009).

Defendant appeals.

II. Motion to Suppress

In his only argument on appeal, defendant contends that the trial court erred in denying his motion to suppress. We disagree.

A. Standard of Review

The trial court's findings of fact in an order upon a motion to suppress are binding on appeal if supported by competent evidence. *State v. Campbell*, 359 N.C. 644, 661, 617 S.E.2d 1, 12 (2005), *cert. denied*, 547 U.S. 1073, 164 L. Ed. 2d 523 (2006). On appeal, defendant assigns error to the trial court's denial of his motion to suppress, but does not challenge any of the trial court's findings of fact. Thus, the findings of fact are binding on appeal, and the only question for our review is "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). "Conclusions of law are reviewed de novo and are subject to full review." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011).

B. Analysis

Traffic Stop

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. A traffic stop is a seizure "even though the purpose of the stop is limited and the resulting detention quite brief." *Delaware v. Prouse*, 440 U.S. 648, 653, 59 L. Ed. 2d 660, 667 (1979). To conduct an investigatory traffic stop, this state, applying *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889 (1968), has held that an officer must only have a "reasonable and articulable suspicion of criminal activity." *State v. Hughes*, 353 N.C. 200, 206-07, 539 S.E.2d 625, 630 (2000).

In *State v. Styles*, 362 N.C. 412, 665 S.E.2d 438 (2008), our Supreme Court clarified that "reasonable suspicion is the necessary standard for traffic stops, regardless of whether the traffic violation was readily observed or merely suspected." *Id.* at 415, 665 S.E.2d at 440. The trial court found that

Officer Prescod stopped defendant on suspicion of tinted windows which were darker than that which is statutorily allowed under N.C. Gen. Stat. § 20-127 (2009). Based on this finding of fact, the trial court correctly ruled that the basis for the traffic stop met the constitutional standard of reasonable and articulable suspicion.

Defendant also argues that the traffic stop was made with a pretextual motive, and is therefore invalid. However, in *Whren v. United States*, 517 U.S. 806, 135 L. Ed. 2d 89 (1996), the U.S. Supreme Court explained that an officer's actual motives, if different from the proffered, objectively reasonable basis for the stop, do not invalidate an otherwise justified stop. As noted above, the trial court's findings of fact show that Officer Prescod pulled defendant over on the basis of an observable, tinted windows violation, constituting an objective basis for the stop. Any additional motives for the stop are irrelevant based on this finding.

Pat Down

Defendant next contends that the pat down of his person by Officer Prescod during the traffic stop constituted an unreasonable search. It is well-established that a search of defendant's person may be validly made by an officer with

consent. "For the warrantless, consensual search to pass muster under the Fourth Amendment, consent must be given and the consent must be voluntary." *State v. Smith*, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997). The trial court's findings of fact show that defendant gave verbal consent to the pat down by Officer Prescod, without any evidence of coercion. Based on this voluntary consent, the pat down did not violate defendant's constitutional rights.

Questions by Officer Prescod

Defendant also briefly contends that Officer Prescod's question, "What was that?" and defendant's answer, "Drugs" amounted to custodial interrogation in violation of *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 (1966). In rejecting this argument, the trial court judge correctly cited *Berkemer v. McCarty*, 468 U.S. 420, 82 L. Ed. 2d 317 (1984), which stands for the proposition that a traffic stop, by itself, does not render a defendant "in custody" under the Fifth Amendment, for purposes of *Miranda*. The trial court found as a fact that defendant was not in custody at the time of this question, and there was no evidence that defendant was subjected to "restraints comparable to those associated with a formal arrest." *Id.* at 441, 82 L. Ed. 2d. at 336. The trial court found that defendant was "in

custody" and subject to Fifth Amendment protections only after he was placed in handcuffs. Officer Prescod's first question and defendant's answer prior to being handcuffed was admissible.

These arguments are without merit.

AFFIRMED.

Judges HUNTER, Robert C. and McCULLOUGH concur.

Report per Rule 30(e).