IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-263

Filed: 7 November 2017

Rockingham County, No. 11CRS051054

STATE OF NORTH CAROLINA

v.

CHARLES SAMUEL LEROY CASEY, Defendant.

Appeal by Defendant from judgment entered 8 February 2013 by Judge Lindsay R. Davis, Jr., in Rockingham County Superior Court. Heard in the Court of Appeals 21 September 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General T. Hill Davis, for the State.

Guy J. Loranger for the Defendant.

DILLON, Judge.

Charles S. Casey ("Defendant") appeals from the trial court's judgment finding him guilty of possession of cocaine. Defendant argues that the trial court committed plain error in denying his motion to suppress, contending that the cocaine was discovered as the result of an unlawfully extended detention. We find no error.

I. Background

The trial court's findings and the evidence supporting these findings show as follows: One night in April 2011, an officer stopped a van after observing that the van's tag lights were burned out and that the driver was braking erratically. Defendant was a passenger, riding in the front seat. The officer recognized Defendant from prior encounters involving drug-related infractions. The officer asked the driver to step out of the vehicle. While the officer was speaking with the driver, the officer noticed Defendant, who was still seated in the front passenger seat, reaching down toward the floorboard. At that point, the officer asked the driver for consent to search the vehicle, which the driver gave.

The officer then approached the passenger side of the vehicle and asked Defendant to step out. The officer asked Defendant for permission to search his person, which Defendant voluntarily gave. The officer found no contraband on Defendant. The officer then searched the vehicle, whereupon he discovered a plastic pill bottle containing thirty (30) rocks of cocaine under the passenger seat, where he had earlier seen Defendant reaching while he was talking with the driver.

The officer arrested Defendant and transported him to the police station for questioning. Defendant formally waived his *Miranda* rights. He admitted that the cocaine was his and that he intended to sell it. The officer noted Defendant's confession on a statement form, but Defendant refused to sign the form.

Defendant filed a motion to suppress the cocaine found in the van and his subsequent confession. The trial court denied Defendant's motion to suppress, and a jury ultimately convicted Defendant of possession of cocaine. Defendant pleaded guilty to attaining habitual felon status. Defendant filed a petition for writ of *certiorari* with this Court, which we allowed.

II. Analysis

Defendant contends that the trial court erred in denying his motion to suppress.[1] Defendant concedes that he failed to preserve his motion for appellate review, and thus requests that we review the denial of his motion for plain error.

When an appellant fails to properly preserve his claim for appellate review, this Court may nonetheless review the trial court's actions for plain error. *See State v. Greene,* 351 N.C. 562, 566, 528 S.E.2d 575, 578 (2000) ("[P]lain error analysis applies only to instructions to the jury and evidentiary matters."). Under a plain error review, the defendant must prove not only that error occurred, but that, absent the error, it is probable that the jury would have returned a different verdict. *State v. Juarez*, 369 N.C. 351, 358, 794 S.E.2d 293, 299-300 (2016).

Defendant argues that the trial court committed plain error when it denied his motion to suppress the cocaine found in the vehicle and his subsequent confession. Defendant contends that each was the fruit of an unconstitutionally prolonged

[1] We hold that Defendant had standing to pursue a motion to suppress, even though he was merely a passenger in the vehicle. *See. e.g., Brendlin v. California*, 551 U.S. 249, 259 (2007).

seizure and, therefore, should have been excluded from trial. We hold that the officer did not unreasonably prolong the traffic stop by requesting consent to search the vehicle. Therefore, we find no error.

An investigatory stop must be supported by an officer's reasonable suspicion, objectively based on specific and articulable facts that suggest criminal activity. *State v. Watkins*, 337 N.C. 437, 441-42, 446 S.E.2d 67, 70 (1994). The United States Supreme Court has recently held that a traffic stop may become unlawful if it continues beyond the time reasonably necessary to complete the intended initial purpose, even where the extension is *de minimis*. *Rodriguez v. United States*, ___ U.S. ___, ___ (2015).

This Court has held that a request for consent to search did not convert a lawful traffic stop into an unlawful seizure where the defendant's detention was not prolonged beyond the time reasonably necessary for the stop. *See, e.g., State v. Sellars*, 222 N.C. App. 245, 249-50, 730 S.E.2d 208, 211 (2012). However, this line of cases was decided based upon the *de minimis* rule, which was overruled in *Rodriguez*. We recognized this change in *State v. Warren*, 242 N.C. App. 496, 499, 775 S.E.2d 362, 365 (2015), in the context of the extension of a traffic stop to enable a dog sniff. In *Warren*, we embraced *Rodriguez* as stating that an officer may take actions unrelated to the mission of the traffic stop only if they (1) do not prolong the stop or

(2) where he or she has independent reasonable suspicion to support those actions. *Id.* at 498-99, 775 S.E.2d at 365.

Here, we hold that the trial court correctly concluded that the traffic stop was not unconstitutionally prolonged in this case. Defendant concedes that the officer's initial stop of the van was justified by his inability to read the license plate and observation of repeat, erratic braking. Throughout the course of routine questioning, the officer gained the driver's consent to search the vehicle. *See, e.g., U.S. v. Hill*, 852 F.3d 377, 382 (2017) (holding that "actions [beyond those routine for a traffic stop] may not prolong the duration of the traffic stop *absent consent of those detained* or reasonable suspicion of criminal activity").

Further, a driver's consent to search a vehicle is generally sufficient against all passengers, consenting or non-consenting. *State v. Hamilton*, 264 N.C. 277, 285, 141 S.E.2d 506, 512 (1965); *State v. McDaniels*, 103 N.C. App. 175, 187, 405 S.E.2d 358, 366 (1991) ("Our courts have often found that consent given by the owner or person lawfully in control of a vehicle is sufficient to justify a search that yields evidence used against a non-consenting passenger."). We thereby conclude that the driver's consent to search was adequate to allow the search of the car, and binding against Defendant as a mere passenger.

We conclude that the trial court did not err, much less commit plain error, in denying Defendant's motion to suppress. The officer discovered the evidence at issue following a lawful stop which was not unlawfully extended by routine questioning.

NO ERROR.

Judges HUNTER, JR., and ARROWOOD concur.

Report per Rule 30(e).