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NO. COA00-1380

NORTH CAROLINA COURT OF APPEALS

Filed: 2 January 2002

STATE OF NORTH CAROLINA

v.

Guilford County
Nos. 99 CRS 109254-257

PERRY VINCENT KNOWLES

Appeal by defendant from judgments entered 19 May 2000 by Judge Cy A. Grant, Sr., in Guilford County Superior Court. Heard in the Court of Appeals 15 October 2001.

Attorney General Roy Cooper, by Special Deputy Attorney General Douglas A. Johnston, for the State.

Walter T. Johnson, Jr., for defendant appellant.

TIMMONS-GOODSON, Judge.

On 19 May 2000, a jury found Perry Vincent Knowles ("defendant") guilty of conspiring to traffick in cocaine by possession and guilty of trafficking in cocaine by possession and by transportation. The State presented evidence at trial tending to show the following: On 20 November 1999, Detective Richard Melton ("Detective Melton") of the Guilford County Sheriff's Department received information from an informant concerning possible drug trafficking at Piedmont Triad International Airport ("the airport"). The informant, an airline company employee, had provided reliable information to Detective Melton on previous

occasions. When Detective Melton met with the informant, the informant provided him with a list of persons whom the informant suspected of drug trafficking. The list recited the following names: John Wilson, Marvin Taylor, Perry Knowles, Lonnie Coleman, Tonithia Gilliam and Gary Sweeting. The informant told Detective Melton that the named persons frequently traveled with AirTran Airlines to and from the south Florida area, remaining only two or three days on each trip and using one-way airline tickets each time. Moreover, one individual, Tonithia Gilliam ("Gilliam"), always purchased the airline tickets for all of the other persons named on the list, and she always paid for the tickets with cash. The informant noted that the suspects carried no luggage or only carry-on items, and that one of the persons, Gary Sweeting ("Sweeting"), had traveled under an alias on at least one occasion. Finally, Detective Melton learned that the suspects were scheduled to leave on a flight departing later that evening to Fort Lauderdale, Florida.

After speaking with the informant, Detective Melton went to the airport in order to observe individuals waiting to depart on the Fort Lauderdale flight. After observing the passengers board the airplane, Detective Melton developed suspicions about four individuals. He conferred with the informant, who verified that Detective Melton had chosen the following persons: Sweeting, Gilliam, John Wilson ("Wilson"), and Mark Bastian ("Bastian"). Upon further investigation, Detective Melton learned that the addresses given to the airline by Sweeting and Gilliam did not

exist. Detective Melton also learned that when Gilliam purchased the tickets for the Fort Lauderdale flight, she also purchased tickets in the names of defendant and Larry Coleman ("Coleman") for a flight departing to Miami, Florida, the following morning.

On 22 November 1999, Detective Melton returned to the airport in order to review videotaped surveillance filmed by the airport security cameras. On the videotape, Detective Melton observed two men who identified themselves as defendant and Coleman preparing to depart on the Miami flight. Upon further investigation, Detective Melton learned that defendant, along with Wilson and Bastian, was scheduled to return on a Delta Airlines flight arriving 24 November 1999. Detective Melton then arranged for additional law enforcement officers to assist him in his observation of defendant and the other suspects.

Detective Melton, accompanied by several other officers, returned to the airport on 24 November 1999 in order to await the arrival of defendant's flight. None of the officers was in uniform. At approximately 12:30 a.m., Detective Melton observed defendant, Sweeting, Wilson, Bastian, and a woman later identified as Crystal Lovett ("Lovett"), exit the airplane and walk up the south concourse to the main terminal area. Detective Melton noted that the persons walked as a group and frequently turned their heads, looking around the airport. Defendant was carrying only a small duffle bag. Detective Melton and the other officers followed defendant as he exited the airport with the group. After exiting the airport, defendant, Sweeting, and Lovett began walking swiftly

away from the others, at which point Detective Melton decided to stop and question the group. Detective Melton and accompanying law enforcement officers then approached the group and asked to speak to each person separately.

Detective James Steven Anders ("Detective Anders") approached defendant. Detective Anders showed defendant his identification badge and advised him that he was a deputy sheriff with the Guilford County Sheriff's Department. Defendant agreed to speak with Detective Anders. Detective Anders informed defendant that he was conducting a routine drug investigation and, after viewing defendant's airline ticket and identification, requested defendant's consent to search his duffle bag, which consent defendant gave. After searching defendant's bag, Detective Anders asked if he "could pat [defendant] down for narcotics." Defendant agreed to the pat-down, but requested that they return to the inside of the airport terminal to conduct the search. Detective Anders and defendant then went back inside the airport and to a men's restroom, where defendant proceeded to remove his coat. According to Detective Anders, defendant stated that he had "been through this several times before" and that he "was going to take all of his clothes off." Detective Anders informed defendant that the pat-down did not necessitate the removal of defendant's clothing, but defendant continued to unbutton his shirt. Defendant then requested Detective Ander's identification again, which Detective Anders produced and showed to defendant. Defendant asked Detective Anders to remove the identification badge from his

wallet, but Detective Anders declined defendant's request. Defendant "started raising his voice, stating that [Detective Anders] wasn't the police. [Defendant] started shouting that several times. He then walked out of the bathroom, leaving the coat and the duffle bag on the floor." Detective Anders followed defendant out of the restroom and advised him to speak more quietly, but defendant continued to shout. When Detective Anders moved closer to defendant, he "swung around with his arms and knocked [Detective Anders] away." Defendant then ran away, and Detective Anders pursued him through the airport exit and parking lot, over a fence, through a field and to a wooded area, where Detective Anders stopped and called for assistance. Law enforcement officers soon arrived and surrounded the wooded area. A canine unit was dispatched, and defendant emerged from the woods a few moments later. Defendant was no longer wearing his shirt, which the officers retrieved from the woods. In the near vicinity of defendant's shirt beneath some foliage, officers also discovered "two Ace bandage ankle wraps with some duct tape on them" and four packages sealed with duct tape. Although it was raining lightly at the time, the packages and bandages were dry. The packages contained between four to five pounds of cocaine. When law enforcement officers searched defendant, they discovered that his lower legs were red and showed signs of hair loss. The officers who searched Sweeting found identical packages of cocaine strapped with duct tape to his calves, and officers recovered a similar duct-taped package of cocaine from Lovett.

Defendant testified that he was a resident of Nassau, Bahamas. Defendant stated that he had only traveled to Greensboro, North Carolina, twice in order to visit his girlfriend in Winston-Salem. Defendant asserted that his friend, John Wilson, whom he identified as Ian Morley, purchased the 24 November 1999 ticket as a favor to defendant. Defendant stated that although he was acquainted with Sweeting and other members of the group, he was not friends with them, nor had he ever traveled with them. Defendant explained that he did not know that Sweeting and the others were on the 24 November 1999 flight until they exited the airplane together, whereupon defendant agreed to give them a ride from the airport.

Defendant testified that he consented to a search of his duffle bag and person, but requested that the search take place inside the airport. According to defendant, Detective Anders directed him to the restroom and requested that he remove his coat. After patting him down, Detective Anders began asking defendant questions, at which point defendant demanded to see Detective Ander's identification. Detective Anders refused, and defendant became scared and left the restroom. Once outside, defendant shouted for "someone [to] call the police, because this guy is pretending to be a police[man]." Detective Anders attempted to seize defendant by his arm, and he began running. Defendant asserted that he lost his shirt while climbing over the fence. After running into the woods, defendant stated that he re-emerged after seeing flashing blue police lights. Defendant informed the officers that "someone's chasing me." Defendant stated that his

leg was bruised from falling down, and he denied the State's claim that the hair on his legs had been pulled out. Defendant further denied any knowledge of the cocaine found in the woods and on Sweeting and Lovett.

The jury found defendant guilty of conspiring to traffick in cocaine by possessing 400 grams or more, trafficking in cocaine by transporting 400 grams or more, and trafficking in cocaine by possessing 400 grams or more. The trial court sentenced defendant to a minimum term of 175 months of imprisonment and a maximum term of 219 months of imprisonment, which conviction and sentence defendant now appeals.

The issues on appeal are (1) whether the detention of defendant was legal; (2) whether the trial court erred in denying defendant's motion to suppress; and (3) whether the trial court erred in denying defendant's motion to dismiss. For the reasons set forth herein, we find no error by the trial court.

Defendant first argues that law enforcement officers had no reasonable grounds to suspect that he was engaged in criminal activity, and that therefore, his detention was illegal. We disagree. We note initially that defendant's brief cites no authority for his argument, nor does it appropriately identify the assignments of error. Rule 28(b)(5) of the North Carolina Rules of Appellate Procedure states that, "[a]ssignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned."

N.C.R. App. P. 28(b)(5) (2001). Although defendant has failed to properly preserve this issue for appellate review, we nevertheless address defendant's argument in our discretion under Rule 2. See N.C.R. App. P. 2 (2001).

Defendant contends that the information provided by the informant, along with the information gathered by Detective Melton, was insufficient to form reasonable grounds for defendant's detention and subsequent search by law enforcement officers. Upon appellate review, we must determine "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). Although the factual findings made by the trial court are binding if supported by the evidence, we review *de novo* the trial court's conclusions of law. See *State v. Mahaley*, 332 N.C. 583, 592-93, 423 S.E.2d 58, 64 (1992), *cert. denied*, 513 U.S. 1089, 130 L. Ed. 2d 649 (1995).

In the instant case, the trial court made thirty-four findings of fact supporting its conclusion that "law enforcement officers had a reasonable articulable suspicion that the defendant was engaged in criminal activity, and that none of the defendant's federal or state constitutional rights were violated." Specifically, the trial court found, *inter alia*

(4) That on November 20, 1999, Detective Melton received communications from an employee at the Piedmont Triad International Airport in Greensboro, North Carolina. The

airport employee believed that certain persons were engaging in illegal activity at the airport. The employee is a person whom Detective Melton considered a confidential and reliable source of information, who had provided him with reliable information in the past.

(5) That on November 20th, Detective Melton went to the airport and met with a confidential source, and told him the name of four or five individuals, one female and four males, who had made repeated trips to the South Florida area over the past four weeks. The female would purchase one-way tickets to Miami, Florida, for each of the individuals, and she would always pay in cash. They would return to Greensboro a day or two later. They only carried small carry-on bags. One of the males had flown using an alias. The names of the individuals were John Wilson, Marvin Taylor; Lonnie Coleman; Tameka . . . Gilliam . . . ; Gary Sweeting . . . ; and Perry Knowles, the defendant. All the trips were via the AirTran Airline, and the destination was always to the South Florida area with a stopover in Atlanta.

. . . .

(9) That later on the evening of November 20th, Detective Melton returned to the Sheriff's Department and entered the names of the six individuals into various law enforcement computer [data] bases, in an attempt to further identify them. The names of Sweeting and Gilliam were found, and [Detective Melton] was able to retrieve a photograph for both of them that matched two of the individuals he had seen at the airport.

(10) That Detective Melton also learned that the home addresses given by Sweeting and Gilliam were non-existent, that is, fraudulent.

(11) That Detective Melton determined that the individuals met many of the indicators of a drug courier: (a) they purchased one-way tickets; (b) they paid in cash; (c) they only carried small carry-on bags; (d) an alias was used by one member in the group; (e) two

individuals of the group used a fraudulent home address; (f) several individuals in the group boarded the airplane last; and (g) they had made repeated flights to the South Florida area, where they only stayed one or two days.

(12) That these factors are indicators because people traveling to buy and return with drugs normally only buy one-way tickets because they are not certain of the exact date they will return, and it is more difficult for others to learn of their date of return. They pay cash so as not to leave a paper trail of their trip. They only carry small carry-on luggage because they only intend to stay a short period of time. They use aliases and false addresses to prevent others from learning of their identity or whereabouts. They board the airplane last because it makes it more difficult for the airline to place their name on the flight passenger manifest.

. . . .

(16) That at approximately 12:30 a.m. on November 24th, Detective Melton and two other officers went down the concourse of the airport to observe the individuals as they left the airplane, in an attempt to identify the individuals before they disbanded. Other officers were stationed in other areas of the airport.

(17) That as passengers exited the airplane, Detective Melton's attention was drawn to a group of people who were Gary Sweeting, John Wilson, Mark Bastian, Crystal Lovett, and the defendant, Perry Knowles. They exited the airplane together and walked up the concourse together. They appeared to be talking to each other as they walked. . . . Each of the individuals [was] carrying a carry-on bag.

. . . .

(20) That the group walked together to the Down escalators and proceeded down to the lower level. Members of the group continuously looked around. Detective Melton and other detectives followed the group the entire time.

(21) That the group exited the lower level of the terminal building and began walking together toward the taxicab and parking lot area. Detective Melton, Detective James Anders, and three other officers followed the group closely.

(22) That several people in the group looked behind them and appeared to notice the officers following them. Three of the individuals began to walk faster, speeding ahead of the group. The three individuals were Crystal Lovett, Gary Sweeting, and the defendant Knowles.

. . . .

(24) That Detective James Anders, with his badge and identification in his hand, walked up behind the defendant and told the defendant that he was a deputy sheriff, and asked the defendant if he could speak with him. The defendant stopped walking and agreed to speak with Detective Anders Defendant carried a duffle bag.

In determining whether the investigatory stop of defendant was permissible, we examine the totality of the circumstances to decide if the standard announced in *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889 (1968), has been met. See *State v. Thompson*, 296 N.C. 703, 706, 252 S.E.2d 776, 778, cert. denied, 444 U.S. 907, 62 L. Ed. 2d 143 (1979). The test under *Terry* in assessing the conduct of law enforcement officers in effecting a warrantless "seizure" of an

individual is whether specific and articulable facts known to the officers at the inception of the investigatory stop, together with any rational inferences to be drawn therefrom, reasonably warrant the intrusion. See *Terry*, 392 U.S. at 21, 20 L. Ed. 2d at 906; *Thompson*, 296 N.C. at 706, 252 S.E.2d at 779. Such circumstances "should be viewed as a whole 'through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.'" *Thompson*, 296 N.C. at 706, 252 S.E.2d at 779 (quoting *United States v. Hall*, 525 F.2d 857, 859 (D.C. Cir. 1976)). Because much of the information known to law enforcement officers at the inception of their investigatory stop of defendant was provided by an informant, we now assess the quality of the information supplied by the informant as found by the trial court.

Where an informant's tip contains sufficient indicia of reliability, such information may provide the reasonable suspicion necessary for a *Terry* stop. See *Alabama v. White*, 496 U.S. 325, 330, 110 L. Ed. 2d 301, 309 (1990); *State v. Sanchez*, __ N.C. App. __, __ S.E.2d __ (filed 18 December 2001, COA00-1075). An "informant's veracity, reliability, and basis of knowledge [are] important factors" in considering whether the informant's tip provides law enforcement officers with reasonable and articulable suspicion of criminal activity necessary for a *Terry* stop. *State v. Hughes*, 353 N.C. 200, 205, 539 S.E.2d 625, 629 (2000). Corroboration by law enforcement officers of information provided by an informant strengthens the indicia of reliability. See *id.*

In the instant case, the trial court found that the informant was an airline employee who had previously provided accurate and useful information to Detective Melton. The informant met with Detective Melton on several occasions and provided specific details regarding defendant's identity and actions, including his name and travel patterns. The information indicated that defendant was one of a group of persons making brief but regular trips to the south Florida area using one-way airline tickets purchased by one person and paid for in cash. The informant further indicated that one of the persons in the group had traveled under an alias, and that the persons carried little or no luggage. Detective Melton corroborated the information provided by the informant and discovered that two members of the group had given false addresses to the airline. The trial court further found that these actions by defendant and the others met several profiles used by law enforcement officers in identifying individuals engaged in drug trafficking. Moreover, Detective Melton observed defendant arrive at the airport with several members of the group on the 24 November 1999 flight identified by the informant. Defendant remained with the group as it exited the airport.

We hold that the above-stated evidence, as detailed in the trial court's findings, adequately sustained a reasonable and articulable suspicion by law enforcement officers that defendant was engaged in criminal activity. Thus, Detective Anders was justified in detaining defendant for an investigatory stop, and we therefore overrule defendant's first assignment of error.

By his second assignment of error, defendant argues the trial court erred in denying his motion to suppress evidence seized by law enforcement officers. Specifically, defendant objected to the admission of more than 400 grams of cocaine, two bandages with duct tape, and a shirt identified as belonging to defendant. Defendant argues that these items were obtained as a result of an illegal detention and search and therefore should have been excluded at trial. Defendant's argument has no merit.

The evidence to which defendant objected was not obtained by law enforcement officers as a result of their search of defendant. Rather, the evidence was discovered in the woods after defendant emerged therefrom. At trial, defendant claimed to have no knowledge of the evidence seized. Because the evidence was not obtained as a result of a search of defendant's person or property, defendant had no standing to contest its admission. See *State v. Jones*, 299 N.C. 298, 306, 261 S.E.2d 860, 865 (1980) (holding that where a defendant has no possessory interest or reasonable expectation of privacy in the property searched, he lacks standing to contest evidence seized therefrom). The trial court properly denied defendant's motion to suppress this evidence.

Defendant also argues that the trial court should have suppressed a videotape created by the Guilford County Sheriff's Department from several hours of the airport's surveillance cameras. Defendant contends the video was produced as a consequence of his illegal detention. Defendant's argument has no merit. As stated *supra*, we conclude that defendant's detention was

lawful. Moreover, the recordings in question were originally taken by an airport employee in charge of surveillance as part of routine security at the airport, not by law enforcement officers. The Guilford County Sheriff's Department merely reduced the footage of defendant to a single video at trial in order to simplify viewing by the jury. Finally, the videotape was not admitted into evidence and was used for illustrative purposes only. The trial court properly denied defendant's motion to suppress the videotape. We therefore overrule defendant's second assignment of error.

In his third assignment of error, defendant argues the trial court erred in denying his motion to dismiss. Defendant contends there was insufficient evidence that he possessed cocaine or was engaged in drug trafficking. We disagree.

Upon a motion to dismiss in a criminal action, the trial court must view all of the evidence in the light most favorable to the State. *See State v. Pierce*, 346 N.C. 471, 491, 488 S.E.2d 576, 588 (1997). Contradictions or discrepancies in the evidence must be resolved by the jury, and the State should be given the benefit of any reasonable inference. *See State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). The trial court must then decide whether there is substantial evidence of each element of the offense charged. *See State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 78-79, 265 S.E.2d at 169.

In the instant case, defendant was charged and found guilty of trafficking in cocaine by possessing and by transporting 400 grams or more, and of conspiring to traffick in cocaine by possessing 400 grams or more. Under the North Carolina Controlled Substances Act, "[a]ny person who . . . transports, or possesses 28 grams or more of cocaine . . . shall be guilty of . . . 'trafficking in cocaine.'" N.C. Gen. Stat. § 90-95(h)(3) (1999). In order to convict defendant of trafficking in cocaine by possession, the State was required to prove that defendant knowingly possessed the nearly five pounds of cocaine found in the woods near the airport. See *State v. Weldon*, 314 N.C. 401, 403, 333 S.E.2d 701, 702 (1985). In order to prove that defendant trafficked in cocaine by transportation, the State must show that defendant knowingly transported cocaine from one place to another. See *State v. Outlaw*, 96 N.C. App. 192, 197, 385 S.E.2d 165, 168 (1989), *disc. review denied*, 326 N.C. 266, 389 S.E.2d 118 (1990).

In the instant case, the State offered uncontroverted evidence that law enforcement officers located two packages sealed with duct tape containing four to five pounds of cocaine in the woods shortly after defendant emerged therefrom. Although it was raining, the packages were dry. Further, officers recovered two bandages edged with duct tape and noticed red welts and hair loss on defendant's calves. The officers seized similar packages containing cocaine from other persons associated with defendant, including Sweeting, who had smuggled the cocaine packages through the airport by attaching them to his lower legs with duct tape. A reasonable jury

could conclude from this evidence that the packages of cocaine found in the woods belonged to defendant, and that he had also smuggled the cocaine through the airport by taping the packages to his calves with duct tape. Based on the circumstances of defendant's arrest, we hold the trial court did not err in denying defendant's motion to dismiss the charges of trafficking in cocaine by possession and transportation.

We further hold that there was adequate evidence to support defendant's conviction of conspiracy to traffick in cocaine. "A criminal conspiracy is an agreement between two or more people to do an unlawful act or to do a lawful act in an unlawful manner." *State v. Morgan*, 329 N.C. 654, 658, 406 S.E.2d 833, 835 (1991). In order to prove conspiracy, the State need not prove an express agreement; evidence tending to show a mutual, implied understanding will suffice. See *State v. Bell*, 311 N.C. 131, 141, 316 S.E.2d 611, 617 (1984). The existence of a conspiracy may be supported by circumstantial evidence. See *id.* In the case *sub judice*, the State presented sufficient evidence that defendant conspired with others to traffick in cocaine. Two of the members of the group were arrested after officers discovered packages containing large quantities of cocaine taped to their bodies. Officers discovered identical packages of cocaine in the woods shortly after defendant emerged therefrom. A reasonable jury could conclude from the evidence presented that defendant was a member of a group of persons involved in drug trafficking. Given the evidence in the instant case, we hold the trial court properly denied defendant's

motion to dismiss the charge of conspiracy to traffick in cocaine.
We therefore overrule defendant's third assignment of error.

In conclusion, we hold defendant received a fair trial, free
from prejudicial error.

No error.

Judge McGEE and BIGGS concur.

Report per Rule 30(e).