NO. COA01-404

NORTH CAROLINA COURT OF APPEALS

Filed: 07 May 2002

STATE OF NORTH CAROLINA

v. Buncombe County
No. 99 CRS 57428

JOHN BRADLEY REES

Appeal by defendant from judgment entered 1 November 1999 by Judge Loto Greenlee Caviness in Buncombe County Superior Court. Heard in the Court of Appeals 23 January 2002.

Roy Cooper, Attorney General, by Rudy E. Renfer, Associate Attorney General, for the State.

Isabel Scott Day, Public Defender, by John T. Barrett, Assistant Public Defender.

THOMAS, Judge.

Defendant, John Bradley Rees, pled guilty to felonious possession of a controlled substance, but reserved a right to appeal. He now argues the trial court committed reversible error by denying his motion to suppress evidence obtained during a vehicle search. We affirm the order of the trial court.

On 13 June 1999, Officer Frederick Anthony Waters of the Asheville Police Department was conducting surveillance of the Lee Walker Heights housing complex. Waters observed defendant enter the complex, but did not recognize him or his vehicle. Based on prior experience timing drug transactions in the Lee Walker Heights

housing complex, Waters had determined that the average drug transaction takes about two minutes. Waters began timing defendant as he entered the complex. Defendant exited less than two minutes later. Believing defendant had just been involved in a drug transaction, Waters followed him as he drove from the housing complex. A short time later, after observing defendant commit several motor vehicle violations, Waters activated his blue lights and signaled defendant to stop.

Waters, however, did not arrest defendant for the motor vehicle violations. Instead, he asked him why he had been in the housing complex. Defendant replied that he was looking for his brother who had run out of gas on Ravenscroft Drive, a street less than half a mile from Lee Walker Heights, but that does not intersect it. As he talked with Waters, defendant was nervous and his hands were shaking.

Waters asked defendant to exit the vehicle, conducted a pat down search for safety purposes, and searched the driver's side area for weapons. Instead of a weapon, however, Waters found .27 grams of cocaine under the driver's seat. Defendant was placed under arrest. Waters then learned from the police dispatcher that there were five outstanding arrest warrants for defendant.

Defendant was indicted for possession of cocaine, pled guilty, and on 1 November 1999 was sentenced to six to eight months in prison. He appeals.

By defendant's only assignment of error, he argues the trial court erred in denying his motion to dismiss because neither the

competent evidence presented nor any finding of fact established probable cause to justify the vehicle search.

The scope of appellate review of a denial of a motion to suppress is limited to determining whether there is competent evidence to support the trial court's findings of fact and whether those findings of fact support the conclusions of law. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982).

As a preliminary matter, defendant contends the trial court's failure to make findings of fact or conclusions of law prevents this Court's consideration of evidence that contains a material conflict. In denying defendant's motion, the trial court stated only that: "The evidence will be subjected to admission at trial. I will find that it is within the officer's bounds."

When the competency of the evidence is challenged and a *voir dire* is conducted to determine admissibility, the general rule is that the trial court should make findings of facts to show the basis for the ruling. *State v. Phillips*, 300 N.C. 678, 685, 268 S.E.2d 452, 457 (1980). The trial court must do so where there is a material conflict in the evidence. *Id.* However, although it is always the better practice to find all facts on which the admissibility of the evidence depends, it is not error to admit the challenged evidence without specific findings of fact where there is no material conflict in the evidence. *Id.*

Defendant asserts that the testimony of Waters presented three material conflicts: (1) the conclusion that defendant did not live in Lee Walker Heights when Waters testified that he knew *most* of

its residents; (2) the sweeping determination that persons not familiar with the housing complex who entered and exited within two minutes had purchased narcotics; and (3) the assertion that Ravenscroft Drive, located less than half a mile from the housing complex, did not connect with the complex "in any way."

Defendant, however, lodged no objection to the testimony at the hearing. It established that Waters was an experienced narcotics officer who had conducted surveillance of the Lee Walker Heights housing complex for almost two years. Waters was familiar with the complex's inhabitants, their vehicles, and the amount of time a drug transaction ordinarily took to transpire there. It also established that Ravenscroft Drive was located downtown and was not a street that intersected with the housing complex. On cross-examination, defendant elicited no inconsistent statements or evidence of bias. We therefore find no merit to defendant's argument.

We now address defendant's contention that the search of his vehicle was invalid and unconstitutional because probable cause did not exist for the search. We disagree.

During a lawful investigatory stop, a police officer may search the interior of a vehicle for a weapon, limited to those areas in which a weapon may be placed or hidden, if the police have a *reasonable belief* that the suspect is dangerous and may gain control of his weapons. *Michigan v. Long*, 463 U.S. 1032, 1049, 77 L. Ed. 2d. 1201, 1219 (1983) (emphasis added). Defendant here does not contend that the stop of his vehicle was illegal. *See State v.*

Clyburn, 120 N.C. App. 377, 380, 462 S.E.2d 538, 540 (1995) (a police officer may conduct a brief investigatory stop of an individual without probable cause if the stop is based on a reasonable suspicion, supported by specific, articulable facts, that criminal activity may be afoot) (*citing Terry v. Ohio*, 392 U.S. 1, 30, 20 L. Ed. 2d. 889, 911 (1968)).

In *Michigan v. Long*, the U.S. Supreme Court set forth the rule for determining the legality of a police officer's protective search of a vehicle during a *Terry* stop:

> [T]he search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.

Long, 463 U.S. at 1049, 77 L. Ed. 2d. at 1220 (*quoting Terry*, 392 U.S. at 21, 20 L. Ed. 2d. at 906). If an officer reasonably believes that, under the circumstances, his safety or that of others is in danger, a search of the vehicle is justified as a protective frisk. *Clyburn*, 120 N.C. App. at 382, 462 S.E.2d at 541. Here, Waters was conducting surveillance of the Lee Walker Heights housing complex, an area known for drug activity, at the time he observed defendant enter the complex. Although the mere presence of defendant in a neighborhood frequented by drug users does not alone justify the conclusion that defendant himself was involved in drug activity, there were additional circumstances here supporting such a conclusion. *See State v. Butler*, 331 N.C. 227,

234, 415 S.E.2d 719, 722-23 (1992). Waters recognized neither defendant as an inhabitant of the housing complex, nor his vehicle as one belonging to an inhabitant. Defendant entered and exited the complex in less than two minutes. After asking defendant what he was doing in Lee Walker Heights, Waters noticed that defendant was very nervous and his hands were shaky.

An officer is entitled to formulate "common-sense conclusions" about "the modes or patterns of operation of certain kinds of lawbreakers." *United States v. Cortez*, 449 U.S. 411, 418, 66 L. Ed. 2d. 621, 629 (1981). Here, Waters's reasonable belief that defendant had just been involved in a drug transaction supported the reasonable assumption that defendant could be armed and dangerous. *See Clyburn*, 120 N.C. App. at 381-82, 462 S.E.2d at 541 ("The officers also reasonably believed that the defendant may be armed because of his suspected involvement in drug trafficking."); *see also Butler*, 331 N.C. at 234, 415 S.E.2d at 723 (an officer's assumption that a person reasonably suspected of drug trafficking may be armed is reasonable).

Waters then searched defendant's vehicle for weapons. The search was limited to the driver's side and the area within defendant's immediate reach, "areas in which a weapon may be placed or hidden." *Long*, 463 U.S. at 1049, 77 L. Ed. 2d. at 1220; *see also Clyburn*, 120 N.C. App. at 381, 462 S.E.2d at 541 (admitting into evidence a gun found in the vehicle's glove compartment during a justified search of the passenger area).

Accordingly, the limited search of defendant's vehicle was

justified as a protective frisk and we reject defendant's assignment of error.

AFFIRMED.

JUDGES HUDSON and JOHN concur.

Report per Rule 30(e).