NO. COA01-419

NORTH CAROLINA COURT OF APPEALS

Filed: 16 April 2002

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 99 CRS 26399

MARTY K. TORRENCE,
Defendant.

Appeal by defendant from judgment entered 25 October 2000 by Judge Robert Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 January 2002.

Attorney General Roy Cooper, by Assistant Attorney General Marvin R. Waters, for the State.

Public Defender Isabel Scott Day, by Assistant Public Defender Julie Ramseur Lewis, for defendant-appellant.

HUDSON, Judge.

Defendant appeals his conviction of possession of cocaine on the ground that the trial court erred in denying his motion to suppress evidence. Because defendant failed to preserve this issue for appeal, we overrule his assignment of error.

The following facts relevant to the motion to suppress are not disputed. On 7 July 1999, Officer H.W. Hinson and Officer J.W. Creech of the Charlotte-Mecklenburg Police Department had an alleged "drug house" under surveillance. They observed a Buick parked in the driveway. They "ran the tag" on the Buick and found

that the tag was assigned to a Ford Explorer. Shortly thereafter, the officers observed defendant driving the Buick with the improper tag. Defendant was not wearing a seatbelt. The officers stopped the vehicle, and Officer Hinson asked defendant for his driver's license. Defendant gave Officer Hinson his license. Officer Hinson asked defendant to turn off the car, step out, and come to the rear of his car. He informed defendant that he had been stopped "because of no seatbelt and the fictitious tag." Officer Hinson then asked for permission to search defendant for drugs or weapons, and defendant gave his consent.

Officer Hinson testified at the hearing on the motion to suppress that

> [a]t the point of giving consent, my partner was to -- I believe it would have been his left and my right. I was standing face to face with Mr. Torrence. As he was talking I noticed that he had a bag, a plastic bag, in his mouth with some white substance in the plastic bag. After he gave his consent we went about the search as if we didn't see the bag. After we searched his person and we didn't find anything, I asked him if he would open his mouth, and he did, but he would not raise his tongue. When I asked him to raise his tongue that's when he stepped back from me.

According to Officer Hinson, the officers grabbed defendant's arms and ordered him to spit out what was in his mouth. Defendant began chewing rapidly. Defendant broke away from the officers, but they caught him, brought him to the ground, and handcuffed him. Defendant was then arrested for resisting a public officer. Defendant finally opened his mouth after he was handcuffed. Officer Hinson testified that "it was white inside his mouth and

there was nothing there, it was gone." Defendant testified that he never had anything in his mouth and that he was not chewing anything.

Officer Creech searched defendant's car incident to the arrest and found four rocks of crack cocaine and an electronic scale. Defendant was given a warning ticket for the seatbelt violation; defendant was not given a ticket for any tag violation because he did not own the car.

Defendant argued that once the officers had completed their investigation of the traffic violations, the purpose of the stop was completed, and the officers could not continue to detain defendant. Defendant thus contended that all of this evidence should be suppressed because it was obtained as the result of an illegal detention, an illegal seizure, and an illegal arrest. The trial court denied defendant's motion to dismiss. At trial, the State introduced into evidence the cocaine and the scale seized from the car. Defendant did not object to the admission of this evidence or the report on the laboratory analysis of the cocaine.

The only assignment of error that defendant has brought forward is the trial court's ruling denying his motion to suppress. Defendant argues that, although the traffic stop was initially justified, the stop exceeded its reasonable scope, and therefore constituted an unreasonable detention in violation of his federal and state constitutional rights. As a result, defendant contends, the evidence obtained during the stop is inadmissible. *See State v. Jones*, 96 N.C. App. 389, 396, 386 S.E.2d 217, 221 (1989), *appeal*

dismissed and disc. review denied, 326 N.C. 366, 389 S.E.2d 809 (1990).

Our Supreme Court has held that a pretrial motion to suppress is insufficient to preserve for appeal the question of whether the evidence is admissible. *See State v. Golphin*, 352 N.C. 364, 405, 533 S.E.2d 168, 198 (2000), *cert. denied*, 532 U.S. 931, 149 L. Ed. 2d 305 (2001). The Court explained that a motion to suppress is a motion *in limine*, and, as the Court had earlier held, "a motion *in limine* [is] not sufficient to preserve for appeal the question of admissibility of evidence if the defendant does not object to that evidence at the time it is offered at trial." *Id.* (citing *State v. Hayes*, 350 N.C. 79, 80, 511 S.E.2d 302, 303 (1999) (per curiam)).

Defendant here did not object to the admission of the cocaine or scale when the State introduced them at trial. Therefore, under *Golphin*, defendant failed to preserve the issue of whether the evidence was properly admitted. Accordingly, this issue is not before us on appeal. *See Golphin*, 352 N.C. at 405, 533 S.E.2d at 198-99.

No error.

Judges WYNN and THOMAS concur.

Report per Rule 30(e).