NO. COA02-123

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

STATE OF NORTH CAROLINA

v. Buncombe County
Nos. 01 CRS 3483, 52602

EDWARD RANDOLPH HILL

Appeal by defendant from judgment entered 11 June 2001 by Judge Zoro J. Guice in Superior Court, Buncombe County. Heard in the Court of Appeals 30 September 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General John J. Aldridge, III, for the State.

Haley H. Montgomery for defendant-appellant.

McGEE, Judge.

Defendant Edward Randolph Hill pled guilty to one count of possession of a counterfeit controlled substance with intent to sell or deliver after the trial court denied his motion to suppress. He appeals the denial of his suppression motion, having preserved this issue for appellate review pursuant to N.C. Gen. Stat. § 15A-979(b) (1999).

Police Officer Mack Creason testified that at 11:50 p.m. on the night of 25 February 2001, he was conducting a routine patrol on Washington Road near Hillside Street in Asheville, North Carolina. He testified the area was known as "an open-air drug

market[,]" in which he had made between thirty and thirty-five drug arrests since 1996. As he approached Hillside Street, Officer Creason observed a vehicle parked irregularly with its rear end jutting into the road. He estimated that the car's "right rear quarter panel was probably . . . seven to ten [feet] from the curb." Because the car was a traffic hazard, Officer Creason pulled up behind it and activated his blue lights. Officer Creason saw a female driver and a male passenger in the car. As Officer Creason approached the vehicle, the passenger started to exit the car as to run, but Officer Creason told him to get back in the vehicle, which he did. Officer Creason shined his flashlight into the car, at which point he recognized defendant. Defendant greeted Officer Creason by name and said, "You know me." Officer Creason replied, "Yes, sir, I do[,]" and asked defendant to step outside and place his hands on the vehicle. When defendant opened the door, Officer Creason saw in plain view a clear plastic bag with "beige-colored rocks" that appeared to be crack cocaine. The bag was "[t]o the right side of [defendant's] seat on the passenger's side between the seat and the door."

Officer Creason arrested defendant and performed a field test on the rock-like substance, which indicated an absence of cocaine. On cross-examination, Officer Creason averred that at the time he asked defendant to step out of the car, he had formed a "suspicion of illegal drug activity."

Defendant called as a witness defendant's mother, Edna Hill, who resided at 279 Hillside Street. Hill testified that she looked

out of her door on the night in question and saw a police car parked behind "this other car." She saw the officer speak with the woman who was driving the car and then walk to the passenger's side of the car, asking defendant to "get out." Contrary to Officer Creason's testimony, Hill stated that the police car's blue lights were not activated. When asked whether the rear end of the other car was jutting into the road, Hill responded, "[t]he car looked like it was parked straight to me, but I couldn't say for sure."

The trial court denied defendant's motion to suppress the counterfeit crack cocaine. The trial court determined that the incident occurred close to midnight in a drug-infested neighborhood, that the vehicle in question was already stopped, and that Officer Creason "would have been derelict in his duty" if he had not addressed the traffic hazard in the roadway. The trial court concluded that Officer Creason stopped his patrol car in the road only to "determine the reason for the traffic hazard" and that his interaction with defendant "was initiated when the defendant had exited the vehicle" in what appeared to be "an attempt to flee the scene." The trial court noted that Officer Creason's encounter with defendant "lasted only a matter of seconds, or at most, minutes[.]" The trial court found that the plastic bag was in Officer Creason's plain view when defendant opened his door. Based on these facts, the trial court concluded that "there is and was no unreasonable search or seizure of the defendant," nor any violation of defendant's constitutional or statutory rights.

Defendant argues that although Officer Creason initially

stopped just to investigate a parked car, he subsequently performed an investigatory stop and seizure upon defendant without a reasonable suspicion of criminal behavior, as required by *Brown v. Texas*, 443 U.S. 47, 51, 61 L. Ed. 2d 357, 362 (1979). He avers that the trial court expressly found that Officer Creason had no reason to believe defendant had violated any criminal law and made no findings about defendant's conduct which would support a reasonable inference of such criminal conduct. Because the investigatory stop performed by Officer Creason violated the constitutional proscription against unreasonable seizures, defendant avers the trial court erred in refusing to suppress the evidence obtained thereby.

On appeal from a trial court's decision of a motion to suppress, the trial court's findings of fact are binding if supported by competent evidence. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). The trial court's conclusions of law will be upheld if supported by its findings of fact. *Id.* Because there is no material dispute regarding the basic facts found by the trial court, we must determine only whether these facts support the trial court's conclusions regarding the admissibility of the challenged evidence. We agree with the trial court's conclusion that defendant was not subjected to an unreasonable search or seizure requiring suppression of the counterfeit crack cocaine found in the vehicle. Officer Creason's act of stopping to address the potential hazard posed by the parked car was not a seizure for constitutional purposes, at least prior

to his interaction with defendant. *Cf. State v. Foreman*, 351 N.C. 627, 630, 527 S.E.2d 921, 923 (2000). Assuming Officer Creason "seized" defendant by instructing him to remain in the car, the circumstances of (1) the unusually parked car, (2) the late hour, (3) the location of the car in an area known as an open-air drug market, and (4) defendant's attempt to flee gave rise to a reasonable suspicion of illegal activity sufficient to support a brief investigatory stop. *See Illinois v. Wardlow*, 528 U.S. 119, 124-25, 145 L. Ed. 2d 570, 576-77 (2000); *State v. Butler*, 331 N.C. 227, 233-34, 415 S.E.2d 719, 722-23 (1992). Having properly initiated an investigatory stop, Officer Creason was permitted to order defendant out of the car as a safety precaution. *See State v. Pulliam*, 139 N.C. App. 437, 441, 533 S.E.2d 280, 283 (2000) (citing *Maryland v. Wilson*, 519 U.S. 408, 413-14, 137 L. Ed. 2d 41, 47-48 (1997)). Finally, no search of any kind was performed. The contraband immediately came into Officer Creason's plain view as defendant exited the car. *See State v. Hardy*, 339 N.C. 207, 226, 451 S.E.2d 600, 610-11 (1994) (citing Texas v. Brown, 460 U.S. 730, 744, 75 L. Ed.2d 502, 515 (1983)). "It is well settled that evidence of crime falling in the plain view of an officer who has a right to be in a position to have that view is subject to seizure and may be introduced into evidence." *State v. Mitchell*, 300 N.C. 305, 309, 266 S.E.2d 605, 608 (1980), *cert. denied*, 449 U.S. 1085, 66 L. Ed. 2d 810 (1981). The trial court did not err in denying defendant's motion to suppress.

No error.

Judges WYNN and CAMPBELL concur.

Report per Rule 30(e).