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NO. COA05-1498

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

STATE OF NORTH CAROLINA

v.

MICHAEL SELLERS and  
KISHA WYNN

Guilford County  
Nos. 04 CRS 75446,  
75448

Appeal by defendants from judgments entered 27 May 2005 by Judge L. Todd Burke in Guilford County Superior Court. Heard in the Court of Appeals 8 June 2006.

*Attorney General Roy Cooper, by Special Deputy Attorneys General J. Allen Jernigan and Marc D. Bernstein for the State.*

*Jon W. Myers for Michael Sellers defendant appellant.*

*J. Clark Fischer for Kisha Wynn defendant appellant.*

McCULLOUGH, Judge.

Defendants appeal from judgments entered after jury verdicts of guilty on trafficking heroin by possession and transportation charges. We find no error.

#### FACTS

On 22 July 2004, a Guilford County grand jury indicted both defendants for the offenses of two counts of trafficking in a controlled substance. On 28 February 2005, defendant Michael Sellers ("defendant Sellers") made a motion to suppress evidence

obtained in violation of the Fourth Amendment of the Constitution of the United States and defendant Kisha Wynn ("defendant Wynn") subsequently made a motion to adopt the motion to suppress. On 24 May 2005, the trial court conducted a pretrial hearing as to defendants' motions to suppress. The following testimony was presented during *voir dire*:

Officer Pratt testified that John Stokes ("Stokes"), an untested confidential source, contacted the High Point Police Department concerning information as to certain individuals who were possibly getting ready to make a trip to either New Jersey or Maryland to purchase a large quantity of heroin. Officer Pratt testified that at the initial meeting with Stokes, Stokes stated that he was aware of an individual who made frequent trips to New Jersey and Maryland in order to purchase heroin to bring back to High Point, North Carolina, for distribution. Stokes described the man as a heavy-set black man whom he knew as Mike. Stokes was then shown a picture of defendant Sellers by officers, whom he identified as the person to whom he was referring. Stokes further informed the officers that he believed Sellers would be making a trip to purchase heroin in the next few days and that he usually takes a "tester" with him to ensure the item purchased was actually heroin.

Stokes further informed the officers that he would rent a car from Enterprise Rent-A-Car and that he would subsequently pick up others and then make the trip to pick up the heroin. On 7 April 2004, detectives noticed a blue Dodge Stratus parked in Stokes'

driveway with the license plate RYW 9797. After running the license plate, the officers determined that the car was registered to Enterprise Leasing Company and, thereafter, the officers confirmed with Enterprise Leasing Company that Stokes had in fact leased the car. The officers began surveillance of the car, and on 7 April 2004 they observed the car leave Stokes' residence and drive to 2429 Francis Street. Stokes had informed Officer Pratt that Denise Smith lived at 2429 Francis Street, and upon further investigation, Officer Pratt determined that Denise Smith had been listed on defendant Sellers' prior arrest records as the girlfriend of Mr. Sellers and her address was further listed in those records as 2429 Apartment A Francis Street. The vehicle made several other stops before heading towards Greensboro on Highway 29-70 and the officers continued surveillance of the vehicle until it exited Guilford County.

Officer Pratt subsequently returned to the police department and used MapQuest as a search tool to determine the time it would take defendants to make a trip to the New Jersey area in order to estimate the return time. On 9 April 2004, officers received a call from Stokes in the early morning hours indicating that they were located at a rest stop near the North Carolina and Virginia border. Officer Pratt then organized a team of officers to be on watch for the car and giving instructions that the first to spot the car was to follow it, and then a marked police car was to make the stop. He further informed the officers that once the stop was

completed, everyone in the car was to be detained and a drug dog would survey the car.

Around 4:00 a.m. officers spotted the car in Greensboro headed towards High Point, North Carolina. When the car entered High Point on Highway 29-70, a marked police car activated its blue lights in an attempt to stop the car. As the police car activated its blue lights, defendants' car drove onto the curb in an effort to get around the officers attempting to block the car, but was unsuccessful. The officers placed the occupants of the car in handcuffs and explained it was for detention purposes, rather than arrest. It was determined at that time that defendant Sellers was the driver of the car, defendant Wynn was in the front passenger seat, and Stokes, along with another passenger, Lois McCoy, were in the back.

As the K-9 unit sniffed the car, the dog indicated that it detected something in the left passenger area. Upon investigation by Officer Pratt, two large packages wrapped in paper were discovered inside a purse. Officer Pratt determined, based on his experience, that the packages contained heroin. The passengers of the car were then all placed under arrest and a search of the rest of the car and their persons was commenced. Officer Pratt discovered eleven bindles of heroin in a coat pocket hanging over the driver's seat and an Aleve bottle containing Methadone pills in the front passenger area. Upon searching the persons of the occupants of the car, other officers discovered two pieces of what appeared to be an empty heroin bindle in defendant Wynn's pants

pocket and twenty bindles of heroin in defendant Sellers' rectum area.

The testimony of Officer Pratt was the only evidence offered at the hearing on the motion to suppress. The trial judge denied the motion to suppress at the end of the hearing and denied defendants' request to make findings of fact for the record. The following day, the case proceeded to trial, and the evidence sought to be precluded by the motion to suppress was introduced to the jury. The jury subsequently returned a verdict of guilty on the offenses of trafficking in heroin by possession and trafficking in heroin by transportation as to both defendants.

Defendants now appeal.

#### ANALYSIS

##### I

Defendants contend on appeal that the trial court erred in failing to state its findings of fact and conclusions of law in regard to its denial of defendants' motion to suppress. We disagree.

In ruling on a motion to suppress, a trial judge is generally required to make a determination after making findings of fact and must subsequently set forth those findings of fact and the conclusions of law in the record. N.C. Gen. Stat. § 15A-977(d)-(f) (2005). However, subsequent case law has recognized an exception to the general rule:

If there is no material conflict in the evidence on voir dire, it is not error to admit the challenged evidence without making

specific findings of fact, although it is always the better practice to find all facts upon which the admissibility of the evidence depends. In that event, the necessary findings are implied from the admission of the challenged evidence.

*State v. Phillips*, 300 N.C. 678, 685, 268 S.E.2d 452, 457 (1980) (citation omitted). Where, as in the instant case, a defendant fails to present any testimony during the hearing regarding the motion to suppress which refutes the testimony of the officer establishing the admissibility of the evidence, the findings of fact can be inferred from the subsequent admission of testimony. See *State v. Tate*, 58 N.C. App. 494, 499, 294 S.E.2d 16, 19, appeal dismissed, disc. review denied, 306 N.C. 750, 295 S.E.2d 386 (1982), *aff'd*, 307 N.C. 464, 298 S.E.2d 386 (1983). Therefore, the corresponding assignments of error are overruled.

## II

Defendants further contend on appeal that the trial court erred in denying their joint motion to suppress. We disagree.

Defendants concede in their brief to this Court that at the time of the stop, the officers only needed reasonable suspicion to warrant the stop; however, they contend that their detention in handcuffs transformed the stop into a formal arrest requiring probable cause.

The Fourth Amendment to the United States Constitution, as applied to the states by the Due Process Clause of the Fourteenth Amendment, prohibits only unreasonable searches and seizures. *State v. Grooms*, 353 N.C. 50, 73, 540 S.E.2d 713, 727-28 (2000), *cert.*

*denied*, 534 U.S. 838, 151 L. Ed. 2d 54 (2001). It is well settled that a brief investigatory stop of an individual is permissible under the Fourth and Fourteenth Amendments if there exists reasonable, articulable suspicion to show that criminal activity is afoot. *State v. Milien*, 144 N.C. App. 335, 339, 548 S.E.2d 768, 771 (2001). Reasonable suspicion is to be determined by the totality of the circumstances, viewed through the eyes of a reasonable, cautious police officer.

However, a more intrusive search and seizure requires probable cause. See *id.* at 340, 548 S.E.2d at 772 ("Where the duration or nature of the intrusion exceeds the permissible scope, a court may determine that the seizure constituted a *de facto* arrest that must be justified by probable cause, even in the absence of a formal arrest."). "The existence of probable cause depends upon 'whether at that moment the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.'" *Id.* at 341, 548 S.E.2d at 772 (quoting *State v. Bright*, 301 N.C. 243, 255, 271 S.E.2d 368, 376 (1980) (alterations in original)).

Probable cause can be established through the use of informants. *Illinois v. Gates*, 462 U.S. 213, 243 n.13, 76 L. Ed. 2d 527, 552 n.13, *reh'g denied*, 463 U.S. 1237, 77 L. Ed. 2d 1453 (1983). "In utilizing an informant's tip, probable cause is determined using a 'totality-of-the circumstances' analysis which 'permits a balanced assessment of the relative weights of all the

various indicia of reliability (and unreliability) attending an informant's tip.'" *State v. Holmes*, 142 N.C. App. 614, 621, 544 S.E.2d 18, 22, cert. denied, 353 N.C. 731, 551 S.E.2d 116 (2001) (citation omitted). A known informant's information may establish probable cause based on a reliable track record, or an anonymous informant's information may provide probable cause if the caller's information can be independently verified. *Alabama v. White*, 496 U.S. 325, 332, 110 L. Ed. 2d 301, 310 (1990).

In the instant case, the informant, Stokes, was neither an informant with a reliable track record nor an anonymous informant; however, the information provided was independently verified by officers in turn ensuring that the information was sufficiently trustworthy. Stokes alerted the officers that a known heroine dealer, Mike, would be making a trip to Maryland or New Jersey in the following days to obtain heroin for distribution in High Point, North Carolina. He further informed officers that this known heroin dealer was usually accompanied by a tester used to determine the authenticity of the drug. Police verified the identification of Mike by showing Stokes a photograph of defendant Sellers, who Stokes in turn affirmed was in fact the person who would be making the trip to obtain the heroin for distribution.

Stokes further informed the police of certain details surrounding the trip, including: that Stokes would get a rental car from Enterprise Rent-A-Car in High Point, North Carolina and provided the residence of Denise Smith, 2429 Francis Street, as a residence where he would stop. Police officers subsequently



conducted surveillance of Stokes' residence and noticed a vehicle located in the driveway. Upon running the tags of the vehicle, they verified that the car was registered to Enterprise Leasing Company and thereafter confirmed with Enterprise Leasing Company that Stokes' had in fact leased the car.

Thereafter, officers continued to conduct surveillance of the vehicle and verified that it made several stops as it left town, one of those stops being 2429 Francis Street. Officer Pratt, seeking independent verification of the address, looked at previous arrest records of defendant Sellers and found that Denise Smith was listed as defendant Sellers' girlfriend and her residence was listed as 2429 Francis Street. Officers followed the car until it left Guilford County headed on Highway 29-70 towards Greensboro.

Officer Pratt then returned to the police station and determined through the use of MapQuest the length of time it would take to make a trip to the New Jersey area. Based on the information received, he determined that it would take approximately 9 hours and 10 minutes to make the trip and approximated that the vehicle would be returning in the early morning hours of the next day. In the early morning hours of the day after departure, officers received a call from Stokes indicating that they were located at a rest stop near the Virginia and North Carolina border, headed back for High Point, North Carolina. Around 4:00 a.m., officers spotted the vehicle and attempted to stop it. Upon activation of the blue lights,

defendants attempted to evade the officers by running up on the curb, but were unsuccessful.

Upon review of the independent verification of details provided by the untested informant, it appears that there existed facts and circumstances, known to the officers, which provided reasonably trustworthy information sufficient to warrant a prudent man in believing that defendants committed the offense.

Further, where this Court finds that the officers had sufficient probable cause to warrant the search and seizure, then certainly reasonable suspicion which meets the test of the totality of the circumstances is also present. Therefore, the corresponding assignments of error are overruled.

Accordingly, we affirm the trial court's denial of defendants' motion to suppress and find no error in the judgments appealed therefrom.

No error.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).