

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-1632

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

STATE OF NORTH CAROLINA

v.

New Hanover County
No. 04 CRS 67046

LEN WAYNE BANKS, JR.,
Defendant.

Appeal by defendant from judgment entered 18 August 2005 by Judge Kenneth F. Crow in the Superior Court in New Hanover County. Heard in the Court of Appeals 10 July 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Robert T. Hargett, for the State.

Sofie W. Hosford, for defendant-appellant.

HUDSON, Judge.

While preserving his right to appeal the court's denial of his motion to suppress evidence, defendant pled guilty to felonious possession of a gun on educational property. The court sentenced defendant to a prison term of six to eight months. The court suspended the sentence and placed defendant on probation for three years.

The court's findings of fact in its order denying the motion to suppress show the following:

On 7 November 2004, Lisa Savitts and Justin Varella, campus police officers of the University of North Carolina at Wilmington,

came to Hewlett Hall, a dormitory on campus, to investigate a possible violation of alcoholic beverage control laws. While discussing the matter with Kelly Brinson and Kelly Cason, two residence assistants, the officers heard someone among a group of three men ask whether anyone had any "weed." The officers saw defendant, who was among the three men, standing near an elevator. The officers approached defendant, asked to talk to him, and asked for permission to search his person. Defendant agreed to talk to the officers but refused to consent to a search of his person. As the officers talked to defendant, they observed that he had red, glassy eyes and that he repeatedly put his hands in his pockets. The officers asked defendant to refrain from putting his hands in his pockets. The officers also asked defendant whether he had "anything on him that they should know about," by implication drugs or weapons. Defendant responded that he had a knife in his pocket. Defendant reached for the knife but the officers intervened. Officer Varella retrieved the knife from defendant and handed it to Officer Savitts. At this point Officer Savitts conducted a patdown search of defendant. As she patted him around the waistline, she felt the handle or butt of a pistol. She retrieved a .22 caliber pistol from defendant's waistband and handed it to the other officer. The officers arrested defendant and conducted a search incident to arrest. They found in defendant's pocket a plastic baggie containing Schedule II prescription medications.

The court concluded that defendant was not in custody at the time he was questioned by the officers. The court further

concluded that the officers had reasonable and articulable suspicion to conduct an investigatory stop of defendant and to conduct a patdown search for weapons based upon defendant's furtive gestures.

Appellate review of a trial court order denying a motion to suppress is limited to determining whether the findings of fact are supported by competent evidence and whether the conclusions of law are supported by the findings of fact. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). Defendant has not assigned error to any of the court's findings of fact; therefore, they are deemed supported by competent evidence and are binding on appeal. *State v. Adams*, 159 N.C. App. 676, 679, 583 S.E.2d 689, 690, *appeal dismissed*, 357 N.C. 659, 590 S.E.2d 272 (2003). Defendant challenges the court's conclusions of law. He argues that the officers illegally seized him without either probable cause or reasonable suspicion to detain him.

"When an officer observes conduct which leads him reasonably to believe that criminal conduct may be afoot, he may stop the suspicious person to make reasonable inquiries. If he reasonably believes that the person is armed and dangerous, the officer may frisk the person to discover a weapon or weapons." *State v. Pearson*, 348 N.C. 272, 275, 498 S.E.2d 599, 600 (1998). As justification for a limited investigative detention, the officer only needs a reasonable suspicion, based upon specific and articulable facts and the rational inferences that may be drawn therefrom, as guided by the officer's training and experience, that

the person is involved in criminal activity. *State v. Thompson*, 296 N.C. 703, 706, 252 S.E.2d 776, 779, cert. denied, 444 U.S. 907, 62 L. Ed. 2d 143 (1979). In determining whether an officer had reasonable suspicion to make an investigatory stop, the reviewing court must consider the totality of the circumstances. *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994).

The totality of the circumstances in this case shows that the officers were in a college dormitory room where alcoholic beverages had been consumed possibly in violation of the law, when a group of males, including defendant, walked by. One of the men asked where they could obtain some marijuana. Not knowing which of the men made the statement about desiring to commit an illegal act, the officers reasonably approached defendant, as one of the men in the group, for further investigative questioning. Defendant consented to talk to the officers. As they talked with defendant, the officers observed that he had red and glassy eyes, supporting a rational inference that he had been drinking alcohol or consuming controlled substances. They also noticed that defendant kept placing his hands in his pockets, thereby raising reasonable concerns, based upon their training and experience, that he may have a weapon. When defendant indicated that he had a knife, the officers acted reasonably in conducting a patdown search for their safety to assure that defendant did not have any other weapons on his person.

We hold the trial court properly concluded that the officers had reasonable suspicion to detain defendant for an investigatory

stop and to conduct a patdown search for weapons. Once they discovered the gun as a result of the patdown search, the officers had probable cause to arrest defendant for possession of a firearm on educational property and to search defendant incident to arrest.

Affirmed.

Judges MCCULLOUGH and STEELMAN concur.

Report per Rule 30(e).