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NO. COA06-154

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

STATE OF NORTH CAROLINA

v.

Guilford County
Nos. 97 CRS 23493, 45283

LARRY GARY, JR.

Appeal by defendant from judgment entered 11 May 2005 by Judge Steve A. Balog in Guilford County Superior Court. Heard in the Court of Appeals 11 December 2006.

Attorney General Roy Cooper, by Assistant Attorney General Marc X. Sneed, for the State.

Linda B. Weisel for defendant-appellant.

LEVINSON, Judge.

On 4 August 1997, Larry Gary, Jr. (defendant) was indicted on charges of possession with intent to sell and deliver a controlled substance and being an habitual felon. On 21 October 1997, defendant was convicted on both counts and sentenced to a term of 133 to 169 months imprisonment. This Court dismissed defendant's appeal. *State v. Gary*, 132 N.C. App. 40, 510 S.E.2d 387 (1999).

On 5 April 2000, defendant filed a motion for appropriate relief in superior court. Defendant argued that he received ineffective assistance of trial counsel. The motion was allowed

and defendant was granted a new appeal by the trial court. However, this Court dismissed the appeal on 13 November 2001. On 28 January 2005, the trial court again allowed defendant's motion, this time vacating his conviction and ordering a new trial.

Prior to trial, defendant filed a motion to suppress. A hearing was held on the motion on 9 May 2005. The motion was denied. The defendant then entered an *Alford* plea of guilty, reserving his right to appeal the denial of his motion to suppress. Defendant was sentenced to a term of 107 to 138 months imprisonment. Defendant appeals.

At the suppression hearing, the State presented the following evidence: On 1 May 1997, Corporal B.E. Davis of the Greensboro Police Department was assigned to a special operations unit whose main duty was drug suppression. The unit would work areas where drugs were reportedly being sold, conduct surveillance and attempt to make drug arrests. As part of their duties, the unit was focusing on a house at 1903 Martin Luther King Drive. The police department had received numerous complaints from the community, as well as information from confidential informants, that illegal narcotics were being sold from this location. Specifically, the officers were told that drug buyers would walk into the backyard of the residence and purchase drugs at a rear basement door. Corporal Davis was familiar with the house and its layout, including the rear basement door, because he had been inside the residence on prior complaints of illegal narcotic activity. In the two months preceding the defendant's arrest, the unit conducted surveillance

of the residence and observed "quite a bit" of foot and vehicular traffic coming to the residence. The officers observed suspected buyers walk to the rear of the residence, briefly disappear around a brushy area, and reappear three to five minutes later. The suspected buyers would then walk or drive away. Corporal Davis, as well as other officers, came into contact with several suspected buyers after they left the residence "and a majority of the time they were in possession of crack cocaine."

On 1 May 1997, Corporal Davis was conducting surveillance on the residence. At 6:40 p.m., Corporal Davis observed a white Honda Civic parked next to the residence. The defendant, who was seated in the front passenger seat, exited the vehicle and went behind the residence. Defendant walked around the brushy area in the backyard and briefly disappeared from view. Approximately three to five minutes later, defendant emerged and reentered the vehicle. The vehicle then drove away. Corporal Davis contacted Corporal R.H. Sizemore and instructed him to stop the vehicle due to illegal narcotics activity.

Corporal Sizemore stopped the vehicle two blocks away, and Corporal Davis arrived shortly thereafter. Corporal Davis approached the passenger side of the vehicle and recognized defendant as being the same person who had been at the residence. Defendant was staring straight ahead and was clenching his jaw. Corporal Davis noted that defendant appeared nervous, and also observed a bulge in his mouth that seemed to move from side to side. Corporal Davis asked defendant if he had any identification.

Defendant responded "no", but when he spoke his voice was muffled as if something was in his mouth. Corporal Davis asked defendant to exit the vehicle, and then asked him what he had in his mouth. Defendant clenched his mouth real tight and replied "Nothing." When he did so, Corporal Davis noticed what appeared to be a brown piece of paper, described as a ball the size of a quarter, in the defendant's mouth. Corporal Davis instructed defendant to spit out the object and informed him he was under arrest. Corporal Davis tried to force the object out of defendant's mouth, but defendant resisted. Defendant pulled away and began to run, but he was tackled and subdued with pepper spray. Eventually, defendant spit the object out. Corporal Davis described the item as a "very wet brown piece of paper rolled up in a ball" with "white crumbly substance coming out of it."

Defendant's sole argument on appeal is that the trial court erred by denying his motion to suppress. Defendant renews his contention from his motion to suppress that police lacked reasonable suspicion to justify the stop. Defendant asserts that the only factor, his presence in a known drug location, is insufficient to establish reasonable suspicion.

After careful review of the record, briefs and contentions of the parties, we affirm. "The scope of review on appeal of the denial of a defendant's motion to suppress is strictly limited to determining whether the trial court's findings of fact are supported by competent evidence, in which case they are binding on appeal, and in turn, whether those findings support the trial

court's conclusions of law." *State v. Corpening*, 109 N.C. App. 586, 587-88, 427 S.E.2d 892, 893 (1993).

In the case *sub judice*, the trial court found that the stop was properly based on reasonable articulable suspicion that defendant was engaged in criminal activity, namely, the unlawful possession of controlled substances. Our Supreme Court has stated that:

It is well established that an officer may undertake an investigatory stop of a person, so long as that officer has a reasonable and articulable suspicion, based on objective facts, that the person is engaged in criminal activity. Courts must consider the totality of the circumstances -- the whole picture in making the determination as to whether a reasonable suspicion to make an investigatory stop existed at the time the stop was made.

The totality of the circumstances test must be viewed through the prism of a reasonable police officer standard; that is, the reviewing court must take into account an officer's training and experience. Thus, a police officer must have developed more than an unparticularized suspicion or hunch before an investigatory stop may occur.

State v. Willis, 125 N.C. App. 537, 541, 481 S.E.2d 407, 410 (1997) (internal quotation marks and citations omitted). Here, the trial court cited Corporal Davis' experience and training in drug investigations. Corporal Davis was a veteran officer of fourteen years, was a member of a unit that concentrated on street level drug transactions, and had received specialized training in street level drug investigations and interdiction. Additionally, Corporal Davis had accounted for between 50 to 100 drug related arrests during his tenure. The trial court found that "[t]hrough his

education, training and practical experience, Corporal Davis became acquainted and familiar with drugs and the manner in which they are bought and sold in various neighborhoods."

The trial court also considered the complaints about and observations of suspected drug activity at 1903 Martin Luther King Drive. The trial court noted that Corporal Davis' unit was specifically informed that drug buyers would walk behind the residence and purchase drugs at a rear basement door. Corporal Davis was familiar with the residence and the door, having previously visited the home during a drug investigation. Consistent with the information that the unit had received, officers observed people enter the backyard and briefly disappear behind the residence. Furthermore, several persons who had been stopped after leaving the residence were found in possession of crack cocaine. In identical fashion, defendant appeared at the house, walked into the backyard, disappeared for three to five minutes, reappeared and walked immediately to his waiting car and left. Based on the totality of the circumstances, we hold that the trial court properly concluded that reasonable suspicion existed. Thus, the investigatory stop was lawful. Accordingly, we affirm.

Affirmed.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).