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NO. COA06-672

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

STATE OF NORTH CAROLINA

v.

Stanly County
Nos. 04 CRS 4038, 50806

ANGELO LAMARK MCALWAIN

Appeal by defendant from judgment entered 12 October 2005 by Judge Susan C. Taylor in Stanly County Superior Court. Heard in the Court of Appeals 26 February 2007.

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

Glover & Petersen, P.A., by James R. Glover and Ann B. Petersen, for defendant-appellant.

ELMORE, Judge.

On 3 May 2004, defendant Angelo Lamark McAlwain was indicted on charges of felony larceny, felonious possession of stolen goods, and first-degree trespass. On 12 July 2004, defendant was indicted for being an habitual felon. The case was tried at the 12 October 2005 Criminal Session of Stanly County Superior Court.

On 16 March 2004, shortly after 3 a.m., Officer Jeremy Clark of the Albemarle Police Department was on patrol when he noticed a Ford Ranger pickup truck pulling a trailer with three

lawnmowers on it. The mowers appeared to be brand new with the tags still on them and blowing in the wind. Following very closely behind the trailer was a brown Mercury automobile. The car was following so closely behind the trailer that there was not room for another car to get between. Officer Clark was aware that Bowers Implement was nearby and had a history of larcenies occurring every spring. Officer Clark pulled behind vehicles and activated his blue light and siren. When he did so, the Mercury slowed down as if to stop, while the truck kept going. Officer Clark pulled around the Mercury and pursued the truck. While pursuing the truck, Officer Clark received confirmation over the radio a fence had been cut at Bowers Implement and mowers were missing. Officer Clark pursued the truck for seven miles. Eventually, the driver lost control of the truck and it crashed into a ditch.

Officer Clark arrived at the scene of the accident, and observed the Mercury automobile pass by very slowly. Officer Clark ran up to the truck, but it was abandoned. Officer Clark began searching the area for the driver. Meanwhile, Officer Christine Swink pulled up to the scene. Officer Clark told Officer Swink about the Mercury, and at that time, the car slowly came back down the road towards them. Officer Clark told Officer Swink to stop the Mercury, and she yelled for it to stop. The Mercury pulled off onto the shoulder of the road. The officers approached the vehicle with guns drawn, but put

their weapons away once they could see the hands of the vehicle's occupants. The officers got the occupants out of the car and patted them down for weapons. While patting down defendant, Officer Clark found a "brass, shiny-looking screw bolt thing." He asked defendant what it was, and defendant stated that it went with some scales that were in the back of the car. Officer Clark returned the screw to defendant and he stuck it back in his pocket. The officers separated the two occupants of the Mercury and questioned them. While they were questioning them, Officer Clark noticed the screw lying on the ground at defendant's feet. Officer Clark picked up the screw and placed it into an evidence bag.

Prior to trial, defendant made a motion to suppress. Defendant first argued that the police did not have a reasonable, articulable suspicion to justify the stop of his automobile. Defendant next argued that any statement he made during the stop should be suppressed. Finally, defendant argued that evidence of the contents of his vehicle should be suppressed. The motion was denied. Defendant was subsequently convicted of felony larceny and first degree trespass, and was determined to be an habitual felon status. Defendant was sentenced to a term of 80 to 105 months imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by denying his motion to suppress. Defendant first renews his contention that police lacked reasonable suspicion to justify

the stop. Defendant further claims that even if the stop was justified, the frisk was unlawful because the officers lacked a reasonable and articulable suspicion that he was armed and dangerous.

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. This 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) (citations omitted). Here, based on Officer Clark's testimony, the trial court made the following findings: (1) at 3:20 a.m., Officer Clark observed a Ford truck pulling a trailer with three new lawn mowers on it, approximately two miles from Bowers Implement a John Deere dealer; (2) the Mercury automobile driven by defendant was following so closely behind the trailer that Officer Clark could not see the license tag on the trailer; (3) while following the vehicles, Officer Clark confirmed that Bowers Implement's fence had been cut and lawn mowers were missing; and (4) after the truck and trailer crashed into a ditch, defendant's car passed by, and then returned to the scene a short time later. Pursuant to these findings, the trial court concluded that Officer Clark had a reasonable and articulable suspicion that the Mercury was involved in a larceny from Bowers Implement, and that the stop of defendant's vehicle was proper. We find that Officer Clark's testimony supports the trial court's findings of fact, and agree with the trial court's conclusion that the stop of defendant's vehicle was based on reasonable suspicion that criminal activity was afoot.

Defendant next claims that even if the stop was justified, the screw found in his pocket which was, later determined to be a part of a stolen lawn mower, should have been suppressed because it was found during an unlawful frisk. Defendant asserts that the frisk was unlawful because there was no evidence to support a conclusion that he was armed and dangerous. However, even assuming

arguendo that the frisk was unlawful, we conclude that seizure of the screw was permissible.

Officer Clark testified and the trial court found as fact that the screw was discovered during the frisk of defendant, and then returned to him when the frisk was completed. Officer Clark further testified that upon returning the screw to defendant, defendant "[s]tuck it back in his pocket." A short time later, while Officer Swink was interviewing defendant, Officer Clark observed the screw on the ground at defendant's feet. Officer Clark picked up the screw and placed it into an evidence bag. The trial court concluded that the "screw was properly seized by the officer as it was in plain view at Defendant's feet after the officer had examined and returned the same to the Defendant." We agree. Officer Clark lawfully seized the screw after it was apparently discarded by defendant. There was no evidence to the contrary. See *State v. Cromartie*, 55 N.C. App. 221, 225, 284 S.E.2d 728, 730 (1981) ("The protection of the Fourth Amendment does not extend to abandoned property. When one abandons property, [t]here can be nothing unlawful in the Government's appropriation of such abandoned property.") (internal citations omitted); see also *United States v. Colbert*, 474 F.2d 174, 176 (5th Cir. 1973) ("[I]t is settled law that one has no standing to complain of a search or seizure of property he has voluntarily abandoned."). Furthermore, there is no evidence that the abandonment of the screw was the result of the allegedly unlawful frisk. See *State v. Cooke*, 54 N.C. App. 33, 44, 282 S.E.2d 800, 808 (1981) ("While it

is true that a criminal defendant's voluntary abandonment of evidence can remove the taint of an illegal stop or arrest, it is equally true that for this to occur the abandonment must be truly voluntary and not merely the product of police misconduct."). Accordingly, we conclude that the trial court properly denied the motion to suppress.

Affirmed.

Judges WYNN and GEER concur.

Report per Rule 30(e).