

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-712

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

STATE OF NORTH CAROLINA

v.

Wayne County
No. 04 CRS 61172

JOHN DOUGLAS BOOTH

Appeal by defendant from judgment entered 28 November 2005 by Judge Jerry Braswell in Wayne County Superior Court. Heard in the Court of Appeals 22 January 2007.

Attorney General Roy Cooper, by Assistant Attorney General Patricia A. Duffy, for the State.

Haithcock, Barfield, Hulse & Kinsey, PLLC, by B. Geoffrey Hulse and Glenn A. Barfield, for defendant-appellant.

MARTIN, Chief Judge.

Defendant was charged by citation with driving while impaired. He was found guilty of the charge in district court. He appealed to the superior court, where he filed a motion to suppress evidence obtained as a result of an allegedly illegal and unconstitutional arrest. The superior court held an evidentiary hearing and denied the motion. Defendant then pled no contest to the charge and the court imposed a suspended sentence. He appeals pursuant to N.C. Gen. Stat. § 15A-979(b) (2005).

The evidence at the suppression hearing tends to show that on 11 December 2004, Officer Dave Cloutier of the Goldsboro Police

Department was driving his personal vehicle when he observed a vehicle ahead of him enter a curve at a 45 degree angle and almost hit an oncoming vehicle. Officer Cloutier continued to follow the vehicle. He observed the vehicle swerve into the other lane and off the right side of the road several times. Officer Cloutier radioed for a deputy sheriff to assist because Officer Cloutier was approaching the city limit boundary into the county outside of his jurisdiction. After he radioed for assistance, Officer Cloutier observed the vehicle run off the right side of the road and almost strike a guard rail. Officer Cloutier continued to follow the vehicle, which ultimately parked in a residential driveway. Officer Cloutier parked his vehicle in the driveway behind the suspect vehicle. Defendant exited the suspect vehicle and approached the officer. Officer Cloutier smelled alcohol on defendant's person. Officer Cloutier asked to see defendant's driver's license. Officer Cloutier chatted with defendant for several minutes as he awaited the arrival of a deputy sheriff to assist. He held defendant's driver's license until Deputy Sheriff Chuck Arnold subsequently arrived. He informed Deputy Arnold what he had observed.

Deputy Arnold testified that he received Officer Cloutier's request for assistance. Upon his arrival at the scene, Officer Cloutier related what he had observed. Deputy Arnold asked defendant whether he had been drinking. Defendant admitted that he had. He administered an AlcoSensor test to defendant. About two to three minutes later Trooper Smith of the highway patrol arrived.

Trooper Smith arrested defendant.

Defendant testified that when Officer Cloutier's vehicle stopped in his driveway, he went to see who it was. Officer Cloutier asked him whether he had been drinking. As he turned to go into his house, Officer Cloutier told him to stay outside because a sheriff's deputy was coming to talk to him. He waited another minute or two and started to go into his house again. Officer Cloutier told him to wait because the sheriff's deputy was arriving. He waited and cooperated with the sheriff's deputy and a highway patrol trooper. Officer Cloutier never identified himself as a law enforcement officer.

Defendant argues his arrest was illegal, and therefore unconstitutional, because a police officer acting outside of his territorial jurisdiction conducted the initial detention and investigation.

We find defendant's argument is flawed. Evidence must be suppressed if it is obtained "as a result of a substantial violation of the provisions" of Chapter 15A. N.C. Gen. Stat. § 15A-974(2) (2005). A city law enforcement officer is authorized by N.C. Gen. Stat. § 15A-402(c) to make an arrest "at any point which is one mile or less from the nearest point in the boundary of such city." N.C. Gen. Stat. § 15A-402(c) (2005). Terry R. Pearsall, a senior planning technician with the City of Goldsboro Planning Department, testified without contradiction that he measured by computerized mapping the distance from the city limit boundary to defendant's residence. He measured the distance as 5,140.70 feet,

which is less than 5,280 feet, the total number of feet in a mile. Thus, Officer Cloutier could legally arrest defendant at defendant's residence. Even if the arrest occurred beyond one mile outside of the city limit boundary, the fact the detention may have been "illegal" did not make it unconstitutional. See *State v. Eubanks*, 283 N.C. 556, 560, 196 S.E.2d 706, 709 (1973) ("[N]othing in our law requires the exclusion of evidence obtained following an arrest which is constitutionally valid but illegal for failure to first obtain an arrest warrant."); *State v. Pearson*, 131 N.C. App. 315, 318, 507 S.E.2d 301, 302 (1998) (arrest by officer acting outside of his territorial jurisdiction was alone not "a 'substantial violation' of defendant's rights."). An officer may constitutionally approach a parked vehicle and question the driver-occupant of the vehicle. See *State v. Brooks*, 337 N.C. 132, 141-42, 446 S.E.2d 579, 585-86 (1994) (holding officer's approach of parked vehicle and questioning of driver did not require reasonable suspicion). "[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions." *Florida v. Bostick*, 501 U.S. 429, 434, 115 L. Ed. 2d 389, 398 (1991).

We affirm the order and judgment.

Affirmed.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).