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NO. COA07-219

NORTH CAROLINA COURT OF APPEALS

Filed: 16 October 2007

STATE OF NORTH CAROLINA

v.

JESSIE RAY GARNER,
Defendant.

Alamance County
Nos. 05 CRS 19661
05 CRS 56861-63

Appeal by defendant from judgment dated 25 September 2006 by Judge W. Osmond Smith, III, in Alamance County Superior Court. Heard in the Court of Appeals 13 September 2007.

Attorney General Roy Cooper, by Assistant Attorney General John F. Oates, Jr. for the State.
Mary March W. Exum for defendant-appellant.

BRYANT, Judge.

Jessie Ray Garner (defendant) appeals from the trial court's pre-trial denial of his motion to suppress evidence. For the reasons stated herein, we affirm the order of the trial court.

Facts

On 15 August 2006, Officer Robert Parks of the Graham Police Department responded to a call from the desk clerk of a local motel indicating there was ongoing drug activity in Room 114 of the motel. Officer Parks was familiar with the motel, having previously conducted investigations there. Officer Parks, along

with Sergeant Duane Flood and Officer Sisk, investigated the complaint.

Ms. Terry Lynn Flack responded to the officers' knock at the door of Room 114. Ms. Flack allowed the officers into the room. Ms. Flack was the only person in the room at the time and she informed the officers that there was drug activity going on in and out of the room and that she was in possession of a single marijuana cigarette. Ms. Flack told the officers there were two other people occupying the room, a white female named Jamie Hicks and a black male called "Juice", but they had borrowed her truck some time earlier and should return shortly. Ms. Flack further stated that Ms. Hicks and "Juice" had drugs with them and that any time "Juice" left the room, he took his narcotics with him.

The officers waited for "Juice" and Hicks to return in Ms. Flack's truck, a red 1995 Ford Ranger. Officers Parks and Sisk stayed inside the motel room, while Sergeant Flood waited outside in his patrol car. The officers had waited approximately an hour and fifteen minutes before Hicks and "Juice" returned in Flack's truck. During the time they waited, one unknown person called the room and advised Flack that she needed to leave because the "police were all around the room," and three unknown persons came and knocked on the door of the room.

When Sergeant Flood observed a red 1995 Ford Ranger approaching the motel, he notified Officer Parks by radio. A white female, later identified as Ms. Hicks, was driving the truck and there was a black male, later identified as defendant, in the

passenger seat. As the truck stopped in front of Room 114, Sergeant Flood pulled his patrol car behind the truck, at which point Officer Parks stepped out of the motel room. Officer Parks then approached the driver's side of the truck while Sergeant Flood approached the passenger's side and told the occupants to get out and put up their hands. Ms. Hicks and defendant were taken into custody. After handcuffing Hicks and defendant, the officers found money in the parking lot beside the truck, and marijuana on the floor board of the passenger side of the truck, where defendant had been sitting. The officers later received consent from Ms. Flack to search the motel room where they found numerous items of drug paraphernalia.

Procedural History

On 19 September 2005, defendant was indicted for possession with intent to sell or deliver cocaine; manufacturing cocaine; possession of drug paraphernalia; possession with intent to sell or deliver marijuana; manufacture of marijuana; resisting a public officer; attaining the status of an habitual felon; and possession of a firearm by a felon. Defendant filed a motion to suppress evidence on 26 May 2006, and the trial court held a hearing and denied this motion on 25 September 2006.

Defendant subsequently pleaded guilty to all charges, except the charge of possession of a firearm by a felon, which the State dismissed in exchange for the plea. Defendant expressly reserved his right to appeal the denial of the motion to suppress during plea negotiations. The trial court sentenced defendant in the

presumptive range to an active term of a minimum of 108 and a maximum of 139 months imprisonment with the North Carolina Department of Correction. Defendant now appeals the trial court's denial of his motion to suppress evidence.

Defendant's sole issue on appeal is whether the trial court erred in denying his pre-trial motion to suppress evidence. Defendant challenges the investigatory stop as unreasonable, asserting that information officers received from an informant was not sufficiently reliable to meet the requirements of the Fourth Amendment. "[T]he standard of review in evaluating a trial court's ruling on a motion to suppress is that the trial court's findings of fact 'are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.'" *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (quoting *State v. Brewington*, 352 N.C. 489, 498, 532 S.E.2d 496, 501 (2000)). However, the trial court's conclusions of law are reviewable *de novo*, and must support the order denying the motion. *State v. Barnhill*, 166 N.C. App. 228, 230, 601 S.E.2d 215, 217, *appeal dismissed and disc. review denied*, 359 N.C. 191, 607 S.E.2d 646 (2004).

This Court has held that "before the police can conduct a brief investigatory stop of a vehicle and detain its occupants without a warrant, the officer must have a reasonable suspicion of criminal activity." *State v. McArn*, 159 N.C. App. 209, 212, 582 S.E.2d 371, 374 (2003) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 20 L.

Ed. 2d 889, 911 (1968)). "The reasonable suspicion must arise from the officer's knowledge prior to the time of the stop." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000). Where there is insufficient indicia as to why an informant is reliable and credible, we review the legality of a stop under the anonymous tip standard as opposed to the confidential and reliable informant standard. *Id.* at 204-05, 539 S.E.2d 628-29.

"An anonymous tip may provide reasonable suspicion if it exhibits sufficient indicia of reliability and if it does not, then there must be sufficient police corroboration of the tip before the stop can be made." *McArn*, 159 N.C. App. at 213, 582 S.E.2d at 374 (citing *Hughes*, 353 N.C. at 207, 539 S.E.2d at 630). However, to provide reasonable suspicion, an anonymous tip must "be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.'" *Hughes*, 353 N.C. at 209, 539 S.E.2d at 632 (quoting *Florida v. J.L.*, 529 U.S. 266, 272, 146 L. Ed. 2d 254, 261 (2000)). "A court must consider 'the totality of the circumstances--the whole picture' [--] in determining whether a reasonable suspicion to make an investigatory stop exists." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (quoting *United States v. Cortez*, 449 U.S. 411, 417, 66 L. Ed. 2d 621, 629 (1981)).

Here, defendant's initial detention was based upon information given to the investigating officers by Ms. Flack during questioning at the motel. The officers had no prior contact or dealings with Ms. Flack, and there are no indicia as to why she should be

considered credible or reliable. We thus review whether Ms. Flack's information is sufficient to support the stop based upon the anonymous tip standard.

The investigating officers initially went to Room 114 after receiving information of drug activity occurring in the room. Upon their arrival, Ms. Flack informed the officers that she was staying in Room 114 with two others, a white female and a black male. She stated these two associates had left prior to the officer's arrival, but they were due back shortly. Ms. Flack also informed the officers that these associates had narcotics with them, and gave a detailed description of the truck they were using. While waiting for the two associates to return, Ms. Flack received one phone call warning her to leave the room because of the visible police presence around the motel, and three individuals came to the room, knocked on the door, and left. The officers subsequently observed a truck matching the description given by Ms. Flack pull into the parking lot of the motel. The occupants of the truck matched the description of Ms. Flack's associates and the truck came to a stop in front of Room 114. We hold the foregoing facts, when considered under the totality of the circumstances, provide sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop. This assignment of error is overruled.

Affirmed.

Judges STEELMAN and GEER concur.

Report per Rule 30(e).