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NO. COA07-657

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

STATE OF NORTH CAROLINA

v.

Cumberland County
No. 05 CRS 050810

HARRY MARWAN LACEWELL

Appeal by defendant from judgment entered 24 January 2007 by Judge Thomas H. Lock in Cumberland County Superior Court. Heard in the Court of Appeals 11 December 2007.

Attorney General Roy Cooper, by Assistant Attorney General Jay L. Osborne, for the State.

Greene & Wilson, P.A., by Thomas Reston Wilson, for defendant.

ELMORE, Judge.

Harry Marwan Lacewell (defendant) was convicted by a jury of felony possession of cocaine and driving without displaying a current inspection sticker. He received a suspended sentence of six to eight months' incarceration, and twenty-four months of supervised probation.

On 12 January 2005, Sergeant Jason Campbell and Sergeant Robert Lee Coughlin were on patrol in Fayetteville. They saw defendant make a U-turn at a red light, so they initiated a traffic stop by pulling him over into a parking lot. Sergeant Coughlin approached the passenger side of defendant's vehicle. He testified

that as he approached, he "could see through the passenger window that there was a can of beer on the floor - what I perceived to be beer - on the floorboard. It was a silver can, had a bag around it, little bit of liquid on the floorboard." Sergeant Coughlin opened the door and retrieved the beer and confirmed that it was a beer can that was still cold and about one fourth full. He motioned to Sergeant Campbell that he had the beer and Sergeant Campbell asked defendant to step out of the vehicle. Sergeant Coughlin searched the vehicle for more alcohol, but did not find any.

Sergeant Campbell testified that after defendant stepped out of the car,

I asked him if he had any weapons on him. That was my primary concern. After I asked if he had any weapons on him, I asked him if there was anything else he had that he shouldn't have . . . narcotics, contraband, anything like that, anything that might poke me, stick me or cut me. No. I then asked if I could search him. He said yes. I performed a consent search.

Sergeant Campbell then began his search and felt a bottle in defendant's pants pocket, which he thought "was a little odd for normal people to carry that round in their pocket." He asked defendant what it was, and defendant replied that it was medicine or Advil. Sergeant Campbell removed the bottle from defendant's pocket and confirmed that it was a small Advil container. He testified that

it did not seem normal for most people to carry around an Advil bottle in their pocket. I shook it; and, as I shook it one time, you could hear that it wasn't a regular pill in

there. They were making a different noise. It was very soft, almost a muffled sound when I shook it. My training and experience led me to believe that it may be narcotics, cocaine, crack cocaine.

Sergeant Campbell then opened the pill bottle and found a "tan, rocklike substance inside of it that [he] thought to be cocaine." The substance was sent to the State Bureau of Investigation for a laboratory analysis, which confirmed that the substance was a tenth of a gram of crack cocaine.

Before trial, on 6 March 2006, defendant filed a motion to suppress the evidence obtained as a result of the stop and search. The motion alleged (1) that Sergeants Campbell and Coughlin stopped defendant's car without probable cause, reasonable suspicion, or exigent circumstances, and (2) that Sergeant Campbell obtained consent only to search for weapons, not to search for contraband. Judge Gregory A. Weeks conducted a hearing on the motion to suppress on 7 March 2006. During the hearing, Sergeant Campbell testified that they stopped defendant's car after he made a U-turn at a red light. He testified that he asked defendant if defendant had any weapons, or anything that could poke him, stick him, or cut him, or any illegal contraband. He testified that he asked for defendant's consent to search, and that defendant consented.

Defendant offered no evidence during the hearing, but during cross-examination, defense Counsel asked Sergeant Campbell, "With respect to - to the search, do you recall on your written report it indicates that you asked him if you could check for weapons and he agreed, no indication of other controlled substances or anything?"

Sergeant Campbell agreed that he had written in the report that he had specifically asked for permission to look for weapons.

After hearing testimony from Sergeants Campbell and Coughlin, the trial court denied defendant's motion to dismiss. Judge Weeks stated:

Essentially, folks, I'm going to ask you both to submit proposed orders finding that the traffic stop was a lawful stop based on the unlawful U-turn which takes care of the first issue. And secondarily to that, that the search which ensued was in part predicated on the officer's observation of open alcohol containers within the vehicle and, more importantly, was with the consent of the defendant. I understand what you're saying about what was written in the report but the report is not in evidence.

* * *

What is in evidence is the testimony of the officer. That evidence is un rebutted. His testimony was that he asked for consent to search for, among other things, weapons and anything else that might harm him or include contraband of any kind. That's the un rebutted testimony. So the motion is denied and if you'll submit your proposed orders. I'll do my own draft but I'm giving you an opportunity to input into the findings -

Judge Weeks did not enter a written order denying the motion to suppress.

Defendant argues that the trial court erred by denying his motion to suppress and by failing to make findings of fact and conclusions of law in its order denying the motion to suppress.

Our review of a denial of a motion to suppress by the trial court is limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings

in turn support the judge's ultimate conclusions of law.

State v. Barden, 356 N.C. 316, 340, 572 S.E.2d 108, 125 (2002) (citations and quotations omitted). Judge Weeks' underlying findings of fact were that Sergeant Campbell's testimony was unrebutted, and that he testified that he asked for consent to search for both weapons and contraband. Having reviewed the hearing transcript, we hold that these findings are supported by competent evidence.

Sergeant Campbell testified that he asked defendant whether defendant had any weapons or contraband on his person, that defendant indicated that he had no weapons or contraband, and that he asked defendant for consent to search him. "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *State v. Stone*, 362 N.C. 50, 53, 653 S.E.2d 414, 417 (2007) (quoting *Florida v. Jimeno*, 500 U.S. 248, 250-51, 114 L. Ed. 2d 297, 302 (1991)). In this case, a typical reasonable person would have understood that after being asked by the officer whether he had any weapons or contraband, the scope of the ensuing search would include both weapons and contraband. Sergeant Campbell found the crack cocaine in defendant's pants pocket, which a reasonable person could expect an officer to inspect for weapons or contraband. Defendant compares his situation to that of the defendant in *Stone*, who had a flashlight trained on his genitals after the officer pulled defendant's pants

away from his body. Our Supreme Court held that a reasonable person "would not have understood that his general consent to a search permitted the officer to pull his pants away and look into his genital area with a flashlight" *Id.* at 57, 653 S.E.2d at 419. We find the comparison unpersuasive. Unlike the officer in *Stone*, Sergeant Campbell did not exceed the scope of defendant's consent.

Although defense counsel attempted to impeach Sergeant Campbell by asking why the written report indicates that he asked for consent only to search for weapons, that written report was not in evidence. Defendant offered no other contradictory evidence, and thus Sergeant Campbell's testimony was unrebutted. Accordingly, Judge Weeks' findings of fact are supported by competent evidence. These findings of fact support his ultimate conclusion of law, that defendant consented to the search for weapons and contraband.

N.C. Gen. Stat. § 15A-977 requires that when ruling on a motion to suppress, "[t]he judge must set forth in the record his findings of facts and conclusions of law." N.C. Gen. Stat. § 15A-977(f) (2007). However, "findings are not required if there is no material conflict in the evidence at the suppression hearing." *State v. Baldwin*, 161 N.C. App. 382, 386, 588 S.E.2d 497, 502 (2003) (citations omitted). Here, the evidence of defendant's illegal U-turn, open container, and consent to search for both weapons and contraband was unrebutted. Accordingly, there was no

material conflict in the evidence at the suppression hearing, and no written findings of fact and conclusions of law were required.

We hold that the trial court did not err by denying defendant's motion to suppress or by not issuing a written order with findings of fact and conclusions of law.

Affirmed.

Judges WYNN and BRYANT concur.

Report per Rule 30(e).