NO. COA08-384

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2008

STATE OF NORTH CAROLINA

v. Cabarrus County
Nos. 07 CRS 003702
07 CRS 050024

RICHARD BRANDON SCOTT

Appeal by defendant from judgment entered 31 October 2007 by Judge Susan C. Taylor in Cabarrus County Superior Court. Heard in the Court of Appeals 17 November 2008.

Attorney General Roy Cooper, by Assistant Attorney General John R. Green, Jr., for the State.

Geoffrey W. Hosford, for defendant-appellant.

TYSON, Judge.

Richard Brandon Scott ("defendant") appeals from judgment entered after a jury found him to be guilty of: (1) felony possession of cocaine pursuant to N.C. Gen. Stat. § 90-95(d)(2) and (2) possession of drug paraphernalia pursuant to N.C. Gen. Stat. § 90-113.22. Defendant pleaded guilty to attaining habitual felon status pursuant to N.C. Gen. Stat. § 14-7.1. We hold there to be no error in the jury's verdict or the judgment entered thereon.

I. Background

At approximately 11:00 p.m. on 2 January 2007, Cabarrus County Sheriff Deputy Klinglesmith ("Deputy Klinglesmith") observed a

vehicle parked in the parking lot of a bank after business hours. He observed two occupants of the vehicle bend over and move rapidly from left to right and back again. Aware that break-ins had occurred in this area in the past, Deputy Klinglesmith decided to investigate.

Deputy Klinglesmith approached the vehicle on the driver's side and knocked on the window. Defendant, who was seated behind the steering wheel, lowered the window. A young woman was seated on the passenger side of the vehicle. Deputy Klinglesmith asked to see defendant's driver's license, and asked what defendant was doing in the area. Defendant told Deputy Klinglesmith his driver's license had been revoked, and that he had driven to the bank to speak to his girlfriend.

Detective Klinglesmith saw a plastic baggy containing a white powder residue lying on the steering column in front of the speedometer behind the steering wheel. He also saw blood on defendant's knuckles and blood on the passenger seat.

Deputy Klinglesmith asked defendant to step out of the vehicle. As defendant stepped out, Deputy Klinglesmith observed that defendant was bleeding from the inside of his arm. He then noticed an orange syringe cap on the armrest. Deputy Klinglesmith handcuffed defendant and advised him that he was not under arrest, but that he was being handcuffed in order to prevent any exchange of bodily fluids or to prevent the blood from coming into contact with another person.

Deputy Klinglesmith called for assistance from other law

enforcement officers. Defendant was advised of his *Miranda* rights, indicated he understood his rights, and stated he was willing to talk to Deputy Klinglesmith. Deputy Klinglesmith asked defendant about the plastic baggy. Defendant admitted it belonged to him and that it contained cocaine. Defendant was arrested for driving while license revoked and possession of cocaine. Deputy Klinglesmith conducted a search of the vehicle incident to arrest and found two used syringes and a broken needle on the driver's side floorboard.

On 25 January 2007, defendant was indicted for: (1) felony possession of cocaine; (2) possession of drug paraphernalia; and (3) driving while license revoked. Defendant was subsequently indicted for attaining habitual felon status. On 25 September 2007, defendant moved to suppress "certain statements allegedly made by defendant on January 2, 2007 admitting to possession of cocaine." The trial court denied defendant's motion to suppress.

On 31 October 2007, a jury found defendant to be guilty of: (1) felony possession of cocaine and (2) possession of drug paraphernalia. Defendant pleaded guilty of attaining habitual felon status. The trial court determined defendant to be a prior record level III offender and sentenced him to a minimum of seventy and a maximum of ninety-three months incarceration. Defendant appeals.

II. Issue

Defendant argues the trial court erred when it denied his motion to suppress the evidence seized from his vehicle and his

inculpatory statements made to Deputy Klinglesmith.

III. Standard of Review

> The trial court's findings of fact regarding a motion to suppress are conclusive and binding on appeal if supported by competent evidence. This Court determines if the trial court's findings of fact support its conclusions of law. Our review of a trial court's conclusions of law on a motion to suppress is *de novo*.

State v. Edwards, 185 N.C. App. 701, 702, 649 S.E.2d 646, 648 (internal citations and quotations omitted), *disc. rev. denied*, 362 N.C. 89, 656 S.E.2d 281 (2007).

IV. Motion to Suppress

Defendant has not assigned error to the trial court's findings of fact. These findings of fact are binding on appeal. Our review is limited to determine whether the trial court's findings of fact support its conclusions of law. State v. Cheek, 351 N.C. 48, 63, 520 S.E.2d 545, 554 (1999), *cert. denied*, 530 U.S. 1245, 147 L. Ed. 2d 965 (2000).

Defendant argues the trial court erred when it concluded: (1) Deputy Klinglesmith had a reasonable suspicion of criminal activity that justified an investigatory stop of the vehicle and (2) defendant gave a knowing and voluntary statement. We disagree.

A. Investigatory Stop

The Fourth Amendment of the United States Constitution and Article I, Section 20 of the North Carolina Constitution protect against unreasonable searches and seizures. *State v. McClendon*, 350 N.C. 630, 636, 517 S.E.2d 128, 132 (1999). A law enforcement officer does not violate this proscription by merely approaching an

individual on the street or other public place and asking the individual whether he is willing to answer questions. *Florida v. Royer*, 460 U.S. 491, 497, 75 L. Ed. 2d 229, 236 (1983). A brief investigatory detention of a person may be made by a police officer if an officer is "able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 20 L. Ed.2d 889, 906 (1968). In addition, a law enforcement officer may make a brief investigative stop of a vehicle if he is led to do so by specific, objective facts giving rise to a reasonable suspicion of illegal activity. *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994). Courts must consider the totality of the circumstances in making the determination as to whether a reasonable suspicion existed. *United States v. Cortez*, 449 U.S. 411, 417, 66 L. Ed. 2d 621, 629 (1981), *cert. denied*, 455 U.S. 932, 71 L. Ed. 2d. 464 (1982).

Here, Deputy Klinglesmith observed the occupants of the vehicle moving rapidly and abruptly from left to right and back again and bending over; movements Deputy Klinglesmith considered out of the ordinary. He noted the parking lights of the vehicle were illuminated and the vehicle was not parked near an ATM; a possible justification for the vehicle's presence in the bank parking long after the bank had closed. Deputy Klinglesmith also knew break-ins had occurred in the area in the past.

These facts provide sufficient basis to support a reasonable suspicion by the officer that the occupants of the vehicle may be,

or may about to be, engaged in criminal activity. The trial court did not err when it concluded that Deputy Klinglesmith had a reasonable suspicion of criminal activity. This assignment of error is overruled.

B. Knowing and Voluntary Statements

In determining whether to admit a confession, the court must determine whether, under the totality of the circumstances, the confession is voluntary. *State v. Medlin*, 333 N.C. 280, 294, 426 S.E.2d 402, 409 (1993). "[A] defendant's intoxication at the time of a confession does not preclude a conclusion that a defendant's statements were freely made." *State v. Barnes*, 154 N.C. App. 111, 116, 572 S.E.2d 165, 168 (2002), *disc. review denied*, 356 N.C. 679, 577 S.E.2d 892 (2003). "An inculpatory statement is admissible unless the defendant is so intoxicated that he is unconscious of the meaning of his words." *State v. Oxendine*, 303 N.C. 235, 243, 278 S.E.2d 200, 205 (1981). The relevant inquiry is whether the defendant was so impaired to be unconscious of the meaning of his words, not whether the defendant has consumed drugs or alcohol. *State v. Marion*, 126 N.C. App. 58, 60, 483 S.E.2d 447, 448 (1997).

The uncontested findings of fact show that Deputy Klinglesmith did not detect any odor of alcohol on defendant's breath or anything to indicate defendant was under the influence of an impairing substance. Although the evidence suggests defendant may have recently injected himself with an impairing substance, defendant has failed to show, and nothing in the record suggests, that he was impaired or unconscious of the meaning of his words at

the time he made the statement. *Id.* The trial court properly concluded that defendant gave a knowing and voluntary statement. This assignment of error is overruled.

V. Conclusion

The trial court properly denied defendant's motion to suppress the evidence seized from his vehicle and defendant's inculpatory statements resulting from the lawful investigatory stop. Defendant received a fair trial, free of the prejudicial errors he preserved, assigned, and argued. We hold there to be no error in the jury's verdict or the judgment entered thereon.

No error.

Judges BRYANT and ARROWOOD concur.

Report per Rule 30(e).