

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-260

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

STATE OF NORTH CAROLINA

v.

Forsyth County
Nos. 07 CRS 30156
07 CRS 56652

CHRISTOPHER ANTONIO ALLEN, JR.

Appeal by defendant from order entered 3 September 2008 by Judge L. Todd Burke in Forsyth County Superior Court. Heard in the Court of Appeals 30 November 2009.

Attorney General Roy Cooper, by Assistant Attorney General Philip A. Lehman, for the State.

Faith S. Bushnaq, for defendant-appellant.

CALABRIA, Judge.

Christopher Antonio Allen, Jr. ("defendant") appeals the trial court's order denying his motion to suppress. After careful review, we affirm.

On 4 July 2007, Officer V.C. Costner ("Officer Costner") of the Winston-Salem Police Department ("W.S.P.D.") responded to a call regarding shots being fired in the 3600 block of Cornell Boulevard, in Winston-Salem, North Carolina. Upon arrival, Officer Costner spoke to three women who witnessed the incident. Officer Costner identified the witnesses as Tonya Goodson, Linda Cantrell, and Trinisha Fulton ("the witnesses"). The witnesses stated that

they saw a white Cadillac automobile ("the Cadillac"), with tinted windows and large silver wheels, involved in the shooting incident. The witnesses also told Officer Costner that the Cadillac was parked in the 3600 block of Cornell Boulevard when the shots were fired, and that the driver of the Cadillac drove away from the area along with another white four-door vehicle after the shots were fired.

After he finished speaking with the witnesses, Officer Costner began to walk away from them to investigate the incident. As Costner turned to do so, the witnesses stated that they had "just seen the vehicle, and they all pointed to a white Cadillac with silver wheels [traveling north on] Cornell Boulevard." Officer Costner immediately instructed an assisting officer to initiate a stop of the Cadillac.

Officer B. Logsdon ("Officer Logsdon") assisted in the investigation of the reported shooting incident. While interviewing witnesses to the shooting, Officer Logsdon observed another officer stop the Cadillac. Officer Logsdon approached the passenger side of the Cadillac and encountered defendant sitting in the front passenger's seat. Although he was able to see defendant's right hand, defendant's left hand was located down by his hip and out of sight. Officer Logsdon asked defendant to show both his hands. Initially, defendant complied, but after a few seconds placed his left hand back down beside his hip. Officer Logsdon became concerned about his safety and the possibility that

defendant was hiding a gun. Accordingly, he asked defendant to step outside the Cadillac.

Defendant exited the vehicle without protest. Officer Logsdon then obtained consent from defendant to search his person for weapons. As Officer Logsdon began to frisk defendant, defendant brought his left hand up against his chest and then pressed his chest close up against the Cadillac so that Officer Logsdon could not see his hand. Officer Logsdon commanded defendant to show his hands, but defendant failed to comply. Officer Logsdon was concerned that defendant might have a weapon in his hand, so he pulled defendant back from the Cadillac and attempted to grab defendant's hand. At that point, defendant dropped his left hand down by his hip and Officer Logsdon saw a "green leafy substance all over [defendant's] white T-shirt." Logsdon then looked directly down on the ground and saw "two clear plastic bags containing green leafy matter" lying between defendant's feet. The green leafy matter had not been on defendant's shirt, and the bags had not been on the ground, prior to the time defendant exited his vehicle. Officer Logsdon arrested defendant for possession of marijuana. After a search of defendant incident to his arrest, Officer Logsdon disclosed several rocks of crack cocaine.

On 14 April 2008, defendant was indicted on charges of felony possession of a Schedule II controlled substance, misdemeanor possession of marijuana, and attaining the status of an habitual felon. Prior to trial, defendant moved to suppress all of the evidence that was seized by W.S.P.D.. Defendant argued that the

stop was illegal because W.S.P.D. did not have reasonable and articulable suspicion of criminal wrongdoing or probable cause to justify the stop. On 3 September 2008, the trial court denied the motion to suppress. Defendant then pled guilty, reserving his right to appeal the denial of his motion to suppress. The offenses were consolidated for judgment and the trial court sentenced defendant to a minimum of 80 months to a maximum of 105 months in the North Carolina Department of Correction. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by denying his motion to suppress because W.S.P.D. lacked reasonable suspicion or probable cause to justify the stop of the automobile. 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). Defendant did not assign error to the trial court's findings of fact, and therefore, these findings are binding on this Court. *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36 (2004).

Our Supreme 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).

In the instant case, the witnesses all described a white Cadillac automobile with silver rims as the vehicle that was involved in the shooting incident. The witnesses subsequently identified defendant's vehicle as the same vehicle involved in the shooting incident. Furthermore, the car identified by the witnesses matched the description they previously provided Officer Costner. Therefore, W.S.P.D. had reasonable suspicion to initiate an investigatory stop of the Cadillac.

Once the stop was initiated, defendant's behavior was sufficient to justify Officer Logsdon's subsequent search of defendant. During Officer Logsdon's investigation, he was informed that the Cadillac had been involved in a recent shooting. In addition, defendant refused to keep his left hand in full view of Officer Logsdon, causing justifiable concern that defendant may have been concealing a firearm. It was therefore appropriate for Officer Logsdon to order defendant to step outside the Cadillac.

Once defendant stepped outside the Cadillac, he consented to a search of his person. This search led to the discovery of defendant's marijuana. Once Officer Logsdon arrested defendant for possession of marijuana, a more thorough search subsequent to the arrest yielded defendant's cocaine. Neither the initial search, based on defendant's consent, nor the subsequent search after the arrest violated defendant's rights under the Fourth Amendment.

Based on the trial court's findings of fact regarding the description and subsequent identification of defendant's vehicle by the witnesses, we hold the trial court could properly conclude that, under the totality of the circumstances, W.S.P.D. had reasonable suspicion to stop defendant. After the stop was initiated, defendant's suspicious behavior provided justification for Officer Logsdon to search defendant. Accordingly, we affirm the trial court's denial of defendant's motion to suppress.

Affirmed.

Judges WYNN and STROUD concur.

Report per Rule 30(e).