NO. COA10-353

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

STATE OF NORTH CAROLINA

v.	Sampson County No. 09 CRS 51 09 CRS 50004 09 CRS 50005
CORY LENDELL JOYNER, Defendant.	

Appeal by the State from order entered 3 November 2009 by Judge Russell J. Lanier, Jr., in Sampson County Superior Court. Heard in the Court of Appeals 3 November 2010.

Attorney General Roy Cooper, by Assistant Attorney General Derrick C. Mertz, for the State.

Rudolf Widenhouse & Fialko, by M. Gordon Widenhouse Jr., for defendant-appellee.

HUNTER, Robert C., Judge.

The State appeals the trial court's order granting Corey Lendell Joyner's ("defendant") motion to suppress pursuant to N.C. Gen. Stat. § 15A-979(c) (2009) and N.C. Gen. Stat. § 15A-1445(b) (2009) upon proper certification.[1] After careful review, we affirm the trial court's order.

Background

[1] Some documents in the record spell defendant's first name as "Cory."

The evidence at defendant's motion to suppress hearing tended to establish the following facts: On 1 January 2009, Officer Lacy Ward ("Officer Ward") of the Warsaw Police Department was shopping at an Auto Zone in Clinton, North Carolina. Officer Ward was off-duty, outside of her jurisdiction, and attending to a personal matter. When she pulled into the Auto Zone parking lot, Officer Ward parked to the left of the entrance. She noticed that there was one parking space between her car and the only other vehicle parked on that side of the parking lot. This vehicle was later identified as a dark colored Land Rover belonging to defendant. Officer Ward did not see anything on the ground between her car and the Land Rover prior to entering the store. Upon entering the store, Officer Ward observed three black males near the front of the store, one of which had long dreadlocks. Officer Ward remained in the store for approximately 10 to 15 minutes, and, upon exiting the store, she noticed "fresh blunt guts" on the ground beside the Land Rover. Officer Ward clarified at the hearing that "blunt guts" is a term used for tobacco contained inside a cigar. Based on her training and experience, blunt guts are often removed from a cigar and replaced with marijuana and other controlled substances. She believed that the blunt guts had just come out of a cigar because they were still in a cylindrical shape and had not been weathered, stepped on, or driven over.

Officer Ward then went over to her car, got down on the ground, and attempted to replace a bolt on the car's bumper. While she was laying on the ground, Officer Ward glanced back at the Land

Rover and saw that a "blunt tip had appeared on the ground right next to the blunt guts." The windows were tinted on the Land Rover, but Officer Ward saw the three men she had just seen in the Auto Zone Store inside the Land Rover. The driver of the Land Rover, later identified as defendant, was eating a hamburger, the man with the dreadlocks was sitting in the front passenger seat, and the third man was sitting in the back seat. Both passengers were looking down and appeared to be "doing something in their lap[s]." Officer Ward did not see anyone from the Land Rover dump the cigar guts or the blunt tip onto the ground, nor did she see any of the men with a cigar, but she did not observe anyone else in the area when she came out of the store and began repairing her bumper. Officer Ward testified:

> Through my training and experience, due to what I saw, the totality of the circumstances, I believe that I would have had enough reasonable suspicion to approach the vehicle and ask[] if they were the ones that had dumped the blunt guts on the ground.

However, Officer Ward was outside of her jurisdiction and did not have her badge so she called the Sampson County police dispatch and informed them "of where [she] was at, and what [she] had seen." Soon thereafter, the Land Rover began to leave the parking lot. Officer Ward noted the license plate number and placed a second call to the dispatch center to report the plate number and the direction the Land Rover was traveling.

Detective Adrian Mathews ("Detective Mathews"), with the City of Clinton Police Department, received a dispatch that "drug activity" had been reported at "the auto parts store" and he was

given a description of the vehicle and the license plate number. Detective Mathews located the vehicle and pulled it over. When Detective Mathews asked defendant for his driver's license, defendant responded that his license had been revoked. What occurred after defendant admitted to driving without a valid license is not contained in the record.

On 6 April 2009, defendant was indicted on the following charges: (1) driving while license revoked; (2) possession of a firearm by a felon; (3) resisting, delaying, or obstructing a public officer; (4) carrying a concealed weapon; and (5) possession with intent to sell or deliver cocaine. On 26 June 2009, defendant filed a motion to suppress "evidence seized from the Defendant pursuant to an invalid search and seizure . . . ." After a hearing on the motion to suppress, the trial court entered a written order on 3 November 2009 granting the motion to suppress. The State appealed to this Court.

Discussion

The State argues that the trial court erred in granting defendant's motion to suppress. It is well established that

> the scope of appellate review of an order such as this is strictly 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. Cooke, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). The State in the present case has not challenged any of the trial court's findings of fact, and, therefore, they are binding on

appeal. *Id.* "The trial court's conclusions of law, however, are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

The State takes issue with two of the trial court's conclusions of law: (1) "[t]hat defendant committed no traffic violations in the presence of Officer Mathews and, therefore, Officer Mathews did not have probable cause to stop the vehicle in which defendant was driving," and (2) "[t]hat Officer Ward nor Officer Mathews did not have reasonable suspicion or probable cause to believe that the defendant had committed, was committing or was about to commit a crime."[2]

Pursuant to Fourth Amendment protections, "[b]efore a police officer may stop a vehicle and detain its occupants without a warrant, the officer must have a reasonable suspicion that criminal activity may be occurring." *State v. Jacobs*, 162 N.C. App. 251, 254, 590 S.E.2d 437, 440 (2004).

> "[R]easonable suspicion" requires that "[t]he stop . . . be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." All that is required is a "minimal level of objective justification, something more than an 'unparticularized suspicion or hunch.'" A court must consider the totality of the circumstances in determining whether reasonable suspicion to make an investigatory stop existed. This Court reviews *de novo* the

[2] We note that the State in its brief used an ellipsis to leave out the "reasonable suspicion" language in the second disputed conclusion of law. We disapprove of what appears to be an attempt to mislead this Court concerning the trial court's application of the law in this matter.

> trial court's conclusion of law that a reasonable, articulable suspicion existed to justify a stop.

Id. at 255, 590 S.E.2d at 440 (quoting *State v. Watkins*, 337 N.C. 437, 441-42, 446 S.E.2d 67, 70 (1994)). "[T]he ultimate issue before the trial court in a case involving the validity of an investigatory detention is the extent to which the investigating officer has a reasonable articulable suspicion that the defendant might be engaged in criminal activity." *State v. Mello*, __ N.C. App. __, __, 684 S.E.2d 483, 488 (2009).

As a preliminary matter, the State argues that the trial court incorrectly concluded that no *probable cause* existed for the stop of defendant's Land Rover because Officer Mathews did not observe a traffic violation. The State accurately points out that only *reasonable suspicion* is necessary to form the basis for a lawful traffic stop. *State v. Jones*, 96 N.C. App. 389, 394, 386 S.E.2d 217, 221 (1989) ("An officer's stop of a car to investigate a potential traffic offense does not require a complete showing of probable cause because of its limited intrusiveness, but as a limited seizure it is governed by the reasonableness standards of the Fourth Amendment."). Accordingly, the trial court did err in concluding "[t]hat defendant committed no traffic violation in the presence of Officer Mathews; therefore, Officer Mathews did not have *probable cause* to stop the vehicle in which defendant was driving." (Emphasis added). Nevertheless, it is undisputed that Officer Mathews did not see defendant commit a traffic violation, and, therefore, Officer Mathews did not have a *reasonable suspicion*

to stop defendant's vehicle on that basis. The trial court's erroneous use of the probable cause standard in the first disputed conclusion of law is irrelevant because a traffic violation did not serve as the basis for the stop. The sole basis for the stop was Officer Ward's observations in the Auto Zone parking lot, which were subsequently relayed to Officer Mathews.

The key issue to be decided in this case is whether Officer Ward's observations were sufficient to justify a reasonable suspicion that illegal drug activity was taking place.[3] In the second contested conclusion of law, the trial court determined that reasonable suspicion did not exist and we agree. Taking into consideration the totality of the circumstances, the only basis for Officer Ward's belief that drug activity was taking place was the appearance of "blunt guts" and a "blunt tip" on the ground, which may have come from defendant's Land Rover. Officer Ward testified

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[3] We note that Officer Mathews, who conducted the stop, relied on a report that there was "drug activity" taking place in the Auto Zone parking lot. Officer Mathews was not aware of the circumstances that led Officer Ward to believe that drug activity was taking place. Defendant did not argue at the hearing, and no findings of fact or conclusions of law were entered, concerning the fact that Officer Ward, not Officer Mathews, claimed to have reasonable suspicion for the stop of defendant's vehicle. Nevertheless, we acknowledge that it has been held that "information given by one officer to another officer is reasonably reliable information to provide probable cause." *State v. Matthews*, 40 N.C. App. 41, 44, 251 S.E.2d 897, 900 (1979); *see also State v. Coffey*, 65 N.C. App. 751, 756-57, 310 S.E.2d 123, 127 (1984) ("[I]t is sufficient if the various officers who participate in an investigation and arrest have the probable cause information between them. This principle has been applied and adhered to in many cases."). The same reasoning applied in these cases with regard to probable cause would certainly apply in cases, such as the one before us, where reasonable suspicion is the correct standard.

that in her experience the tobacco is often removed from cigars and replaced with marijuana, and, therefore, she "believe[d] that [she] . . . had enough reasonable suspicion to approach the vehicle and ask[] if they were the ones that had dumped the blunt guts on the ground." Officer Ward would have been justified in making that inquiry. "Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons." *Terry v. Ohio*, 88 S. Ct. 1868, 1979 n.16, 20 L. Ed. 2d. 889, 905 n.16 (1968).

> Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free "to disregard the police and go about his business," the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature.

State v. Campbell, 359 N.C. 644, 662, 617 S.E.2d 1, 13 (2005) (quoting *Florida v. Bostick*, 111 S. Ct. 2382, 2386, 115 L. Ed. 2d 389, 398 (1991)). Accordingly, had Officer Ward simply approached the vehicle and asked the occupants if they had dumped the blunt guts on the ground, a seizure would not have taken place and reasonable suspicion would not have been required. However, it is undisputed that a seizure took place when Officer Mathews activated his blue lights and pulled over defendant's vehicle. We hold that reasonable suspicion did not exist to justify the seizure.

Although the State tries to distinguish *State v. Simmons*, __ N.C. App. __, 688 S.E.2d 28 (2010), we find it analogous to the case at bar. In *Simmons*, the defendant was pulled over by a North

Carolina State Highway Patrol Officer for failing to wear a seatbelt, and, upon further inquiry it was determined that the defendant's driver's license had been revoked. *Id.* at __, 688 S.E.2d at 29. The defendant was cited for failing to wear a seatbelt and driving while license revoked. *Id.* During his discussion with the defendant, the officer saw a plastic bag in plain view inside the defendant's vehicle and when he asked the defendant what was in the bag, he stated that the bag contained "cigar guts." *Id.* Based on his training and experience, the officer was aware "that marijuana was sometimes placed inside cigars for the purpose of smoking the cigars." *Id.* at __, 688 S.E.2d at 31. Because the defendant was in possession of "cigar guts," the officer felt he had probable cause to search the defendant's car. *Id.* During the search, marijuana was discovered. *Id.* The defendant filed a motion to suppress the evidence obtained as a result of the search, which the trial court denied. *Id.* at __, 688 S.E.2d at 30. On appeal, this Court evaluated the case law presented and stated that "the parties have not provided us with any authority tending to show that the mere presence of 'cigar guts,' standing alone, is sufficient to justify a finding of probable cause. Instead, the available decisions tend to show merely that the presence of loose tobacco, along with other factors, may suffice to support a valid search and seizure." *Id.* at __, 688 S.E.2d at 33. The Court further stated:

> Although [the officer] testified that cigars from which the tobacco has been removed and replaced with marijuana had become a popular means of consuming controlled substances, that

> evidence tended to establish the existence of a link between the presence of hollowed out cigars and the presence of marijuana rather than the existence of a link between the presence of loose tobacco and the presence of marijuana. Furthermore, the record is completely devoid of any evidence tending to show that Defendant was stopped in a drug-ridden area or at an unusual time of day or that [the officer] had any basis, apart from Defendant's admission that the plastic bag contained "cigar guts," for believing that Defendant had been involved in the manufacture, use, or distribution of "Philly Blunts." Thus, reduced to its essence, the record does no more than establish that Defendant possessed a legal item without providing any indication that this item was being used in an unlawful manner.

Id. Consequently, we held that the possession of "cigar guts" alone was insufficient to establish probable cause to search a vehicle. *Id.*

In the present case, the standard to be applied is one of reasonable suspicion, not probable cause; however, the logic applied in *Simmons* translates to a reasonable suspicion analysis. As with probable cause, reasonable suspicion requires a common-sense determination, but reasonable suspicion must still be based on more than mere suspicion that criminal activity is afoot. *Jacobs*, 162 N.C. App. at 255, 590 S.E.2d at 440. As held in *Simmons*, loose tobacco standing alone is not sufficient to raise more than a mere suspicion that an individual is replacing the tobacco with marijuana. Given the totality of the circumstances, we hold that Officer Ward and Officer Mathews did not have reasonable suspicion to stop defendant's vehicle. Consequently, we

affirm the trial court's order as the findings of fact support the conclusions of law.[4]

Affirmed.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).

[4] The State argues in its brief that defendant littered by dumping the cigar guts on the ground, which also served as a basis for stopping defendant's vehicle. This argument is without merit. Officer Ward and Officer Mathews never testified that littering was the basis for the stop. Rather, Officer Mathews testified that he was informed that drug activity was occurring in the Auto Zone parking lot. The trial court made no findings of fact or conclusions of law pertaining to defendant's littering. We decline to further address this argument.