NO. COA10-444

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

STATE OF NORTH CAROLINA,

v. Guilford County
No. 04 CRS 75420

MARCUS DEVAN HUNTER,
Defendant.

Appeal by defendant from judgment entered 27 April 2009 by Judge Henry E. Frye, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 14 October 2010.

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

Glover & Peterson, P.A., by Ann B. Peterson, for defendant-appellant.

THIGPEN, Judge.

Defendant appeals the judgment entered on his guilty plea. He challenges the trial court's denial of his motion to suppress. On 6 December 2004, defendant was indicted for first degree murder. On 7 July 2006, defendant filed a motion to suppress evidence. The motion to suppress was denied on 13 September 2006. Defendant pled guilty to the charge of first degree murder on 27 April 2009, but preserved his right to appeal the orders denying his motions to suppress. Defendant was sentenced to life imprisonment without parole. Defendant gave oral notice of appeal.

The State's evidence tended to show that at 4:25 a.m. on 6 April 2004, the Greensboro Police Department received a "subject down" call. Upon arriving at the scene, law enforcement officers found a cab down an embankment and a dead man lying outside of the cab. The victim had been shot twice. During the course of the investigation, officers discovered that the victim had a cell phone which was not located at the scene or on the victim's person. Phone records were requested for the cell phone. The records revealed that two calls had been placed at 4:45 a.m. and 4:46 a.m. The phone number called belonged to defendant's grandmother. Detectives went to the home address of defendant's grandmother. The grandmother told detectives that her grandson had called her at about four or five a.m. that morning stating that "he needed a place to stay." She stated that defendant had slept on the couch in the living room. The grandmother also told detectives she had not seen her grandson in about two years before this incident and that he had left the home that morning at about 10 a.m. She did not know where he had gone and gave no indication of whether he would return.

The grandmother indicated that some clothing "wadded up" on the couch belonged to defendant. A detective asked if he could take the clothing and the grandmother agreed. A small red stain that later tested positive for blood was found on a piece of the clothing.

An arrest warrant was secured for defendant and defendant was arrested at his grandmother's home. Defendant waived his rights

and gave a statement to police, elements of which law enforcement were able to corroborate.

On appeal, defendant argues the trial court erred in denying his motion to suppress the clothing seized from his grandmother's house. He challenges the trial court's conclusions of law that he had no reasonable expectation of privacy in the clothes left at his grandmother's home and that even if he had a reasonable expectation of privacy, his grandmother could consent to the seizure of the clothing. We conclude defendant did not have standing to challenge the seizure of the clothing.

"In order to challenge the reasonableness of a search or seizure, defendant must have standing. Standing requires both an ownership or possessory interest and a reasonable expectation of privacy." *State v. Swift*, 105 N.C. App. 550, 556, 414 S.E.2d 65, 68-69 (1992). The possessory interest may be in the place searched or in the property seized. *Rakas v. Illinois*, 439 U.S. 128, 148, 58 L. Ed. 2d 387, 404 (1978) (holding that petitioner's claims "fail" because "[t]hey asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized"). While defendant clearly did not have a possessory interest in his grandmother's home, living room, or couch, he may have had a possessory interest in the clothing which was seized by police officers.

Assuming *arguendo* that defendant did have a possessory interest in the clothing, he still fails to show he had a reasonable expectation of privacy in the clothing at the time of

the seizure. Thus, defendant fails to meet the second requirement to prove standing. Defendant argues he had a reasonable expectation of privacy in the clothes left at his grandmother's home because the State failed to show he "intended not to return and to abandon the property he left there." "The Fourth Amendment protects against governmental invasions into a person's legitimate expectation of privacy, which has two components: (1) the person must have an actual expectation of privacy, and (2) the person's subjective expectation must be one that society deems to be reasonable." *State v. Wiley*, 355 N.C. 592, 602, 565 S.E.2d 22, 32 (2002), *cert. denied*, 527 U.S. 1117, 154 L. Ed. 2d 795 (2003). We conclude defendant did not have a reasonable expectation of privacy in the clothing left at his grandmother's home.

This Court held in *State v. Jordan*, 40 N.C. App. 412, 252 S.E.2d 857 (1979), "[w]hen one voluntarily puts property under the control of another, he must be viewed as having relinquished any prior legitimate expectation of privacy with regard to that property, as it becomes subject to public exposure upon the whim of the other person." *Id.* at 415, 252 S.E.2d at 859. In the case *sub judice*, defendant voluntarily left the items with his grandmother and under her control when he left the home. Defendant left the clothes in a common room in a home he rarely visited. He had no right to exclude the public from the home and gave no indication to the owner of the home whether or not he intended to retrieve the clothing. Defendant's situation is analogous to that of the defendant in *Rawlings v. Kentucky*, 448 U.S. 98, 65 L. Ed. 2d 633

(1980) placing contraband in someone else's purse. In neither case would defendants have a reasonable expectation of privacy in their items because they had surrendered control of the items to another person.

Therefore, we conclude that because defendant had no standing to challenge the seizure of the clothing the trial court did not err in denying defendant's motion to suppress. Thus, the judgment of the trial court is affirmed.

AFFIRMED.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).