IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-510

Filed: 6 December 2016

Mecklenburg County, No. 14 CRS 207496, 207102-3

STATE OF NORTH CAROLINA,

v.

RONNIE BARNETTE NEAL, JR., Defendant.

Appeal by Defendant from judgment entered 27 January 2016 by Judge Daniel A. Kuehnert in Mecklenburg County Superior Court. Heard in the Court of Appeals 2 November 2016.

Attorney General Roy Cooper, by Special Deputy Attorney General E. Burke Haywood, for the State.

Andrew K. Yu for defendant-appellant.

ENOCHS, Judge.

Defendant Ronnie Barnette Neal, Jr. ("Defendant") appeals the denial of his motion to suppress evidence that he possessed a firearm and marijuana, when arrested, based on his argument that the arresting officer lacked reasonable suspicion to detain him. We affirm the trial court's denial of Defendant's motion to suppress because the officer had specific and articulable facts from which reasonable suspicion could be determined.

Factual Background

On 21 February 2015 at approximately 3:00 p.m., Officer Eric Herron of the Charlotte-Mecklenburg Police Department was assisting other officers execute a high-risk search warrant on Clanton Road in Charlotte, North Carolina. Officer Herron was acting as "close cover" for an undercover officer who was operating in the area of a known drug house and target location of the search warrant.

While Officer Herron was waiting, the undercover officer informed him over the radio that an individual was walking away from the target location and was seen concealing a handgun in his waistband and covering it with his shirt. The undercover officer also conveyed to Officer Herron that he was familiar with the individual because of multiple prior arrests and identified him as Aaron Thompson. Thompson walked to the end of the block on Clanton Road and turned onto Barringer Drive, at which point Officer Herron was able to see him and watch where he was going.

Officer Herron called over the radio for assistance because he was going to make contact with Thompson, and pulled his marked police car up to the house where Thompson was standing. Officer Herron then exited his vehicle with his weapon unholstered. Thompson immediately threw his weapon down and put his hands up. It was at this time that Officer Herron noticed Defendant because he was squatting down behind a nearby vehicle.

Officer Herron then heard a semiautomatic weapon chambering ammunition from where Defendant was crouched. Officer Herron recognized the sound based on his training as a range safety officer and his 17 years of experience on the police force. He told Defendant to drop his weapon and put his hands up. Defendant then dropped his weapon and ran.

As Defendant was fleeing the scene, he ran into another Charlotte-Mecklenburg Police vehicle that was coming to assist Officer Herron. Defendant fell to the ground when he ran into the police vehicle, but quickly jumped up and fled again, jumping a fence into the backyard of a nearby house. Defendant was apprehended in this backyard and arrested. When Defendant was searched incident to arrest, he had 23.1 grams of marijuana on him.

Defendant was indicted on 17 March 2014 by a Mecklenburg County grand jury for felony possession of a firearm by a felon, misdemeanor possession of a schedule VI controlled substance, and misdemeanor resisting a public officer. A superseding indictment was also issued on 4 May 2015 by the grand jury re-indicting Defendant for possession of a firearm by a felon.

Defendant filed his initial motion to suppress on 8 October 2014, and an amended motion on 16 June 2015. The motion was heard in Mecklenburg Superior Court on 16 June 2015. The trial court denied the motion to suppress, finding that there was probable cause to arrest Defendant, and that there was reasonable,

articulable suspicion for the stop and detention of Defendant, and for the search incident to arrest.

Defendant entered an *Alford* plea to misdemeanor possession of marijuana, misdemeanor resisting a public officer, and felony possession of a firearm by a felon on 27 January 2016, reserving his right to appeal the denial of his motion to suppress. He was sentenced to 14 to 26 months imprisonment, which was suspended, and placed on 24 months of unsupervised probation. It is from this judgment that Defendant timely appeals.

Analysis

Defendant contends in his only argument that the trial court erred in denying his motion to suppress evidence. He argues that the Charlotte-Mecklenburg police officers did not have sufficient reasonable suspicion to detain him, and that the evidence seized as a result of his arrest should have been suppressed. We disagree.

In reviewing the denial of a motion to suppress evidence, if the trial court's findings of fact are supported by competent evidence, they are conclusive and binding on appeal. *State v. Brown*, 199 N.C. App. 253, 256, 681 S.E.2d 460, 463 (2009). We review the conclusions of law *de novo*. *Id.*

Defendant does not assign error to any of the findings of fact made by the trial court when it ruled at the end of his suppression hearing. Therefore, "the findings of fact are binding on appeal, and our review is limited to whether the findings of fact

support the trial court's conclusions of law." *Id.* at 256-57, 681 S.E.2d at 463, (citing *State v. Allison*, 148 N.C. App. 702, 704, 559 S.E.2d 828, 829-30 (2002)). The trial court concluded that officers had a reasonable, articulable suspicion for his detention when Officer Herron heard the sound of Defendant's weapon chambering ammunition, and thereafter had probable cause for arrest, and search incident to arrest, at the time Defendant attempted to flee the scene.

The Fourth Amendment of the U.S. Constitution provides, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. "[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 145 L. Ed. 2d 570, 576 (2000). "[R]easonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Id.* (citing *U.S. v. Sokolow*, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 10 (1989)). "[T]he Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Id.*

In determining whether an officer has reasonable suspicion to make an investigatory stop, we must consider the totality of the circumstances. *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (internal citations omitted). "The stop must 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." *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 20 L. Ed. 2d 889, 906 (1968)). "These facts and inferences must yield the substantial possibility that criminal conduct has occurred, is occurring, or is about to occur in order for an investigatory stop to be valid." *State v. Battle*, 109 N.C. App. 367, 370, 427 S.E.2d 156, 158 (1993) (internal quotation marks and citations omitted).

In assessing whether the arresting officer in this case had the requisite facts before him to have a reasonable suspicion that criminal activity was afoot, this Court must look at the known facts to see if that information in totality will give rise to reasonable suspicion. Additionally, what is known to the arresting officer may be coupled with other officers' knowledge. "The collective knowledge of both officers may form the basis for reasonable suspicion . . ., if and to the extent the knowledge possessed" is communicated between the officers. *Id.* at 370-71, 427 S.E.2d at 159.

First, the officer may consider the location of the defendant. "While the defendant's mere presence in a high crime area is not by itself enough to raise reasonable suspicion, an area's propensity toward criminal activity is something that an officer may consider." *State v. Clyburn*, 120 N.C. App. 377, 381, 462 S.E.2d 538, 541 (1995) (internal citations omitted). Officer Herron was assisting in the execution of a high-risk search warrant at a known drug house. This fact, when coupled with other competent evidence, could give rise to a reasonable suspicion.

Second, the officer may consider with whom the defendant is associating. Although when viewed singularly, "a person's mere association with or proximity to a suspected criminal does not support a conclusion of particularized reasonable suspicion . . . without more competent evidence," an officer may consider this fact with other facts in finding reasonable suspicion. *State v. Bedient*, ___ N.C. App. ___, ___, 786 S.E.2d 319, 326 (2016); *see also United States v. Rodriguez*, 831 F.2d 162, 164-65 (7th Cir. 1987) (finding that, when coupled with other facts, law enforcement had reasonable suspicion based upon defendant's association with known members of a drug conspiracy). Officer Herron initially came into contact with Defendant when Officer Herron saw him walking with Aaron Thompson, a suspect with multiple previous arrests, who was known to police, was leaving a known drug house, and had a concealed weapon on his person. That the Defendant was associating with Thompson would contribute to the existence of reasonable suspicion.

It was when Officer Herron saw these two men walking down Barringer Drive that he radioed to his fellow officers that he had seen the suspect, that he was going to approach the suspect, and that he required backup. This sufficiently communicated facts that the officers coming into the area as backup could use as "collective knowledge" to form the basis for reasonable suspicion.

Third, the officer may consider the actions of the defendant. Evasive conduct by the defendant is among the circumstances that may give rise to reasonable

suspicion when coupled with other facts. *See State v. Butler*, 331 N.C. 227, 233-34, 415 S.E.2d 719, 722-23 (1992). "[W]hen an individual's presence at a suspected drug area is coupled with evasive actions, police may form, from those actions, the quantum of reasonable suspicion necessary to conduct an investigatory stop." *State v. Willis*, 125 N.C. App. 537, 542, 481 S.E.2d 407, 411 (1997) (internal citations omitted). "Flight – wherever it occurs – is the consummate act of evasion." *Wardlow*, 528 U.S. at 124, 145 L. Ed. 2d at 574. Furthermore, refusal by the defendant to obey an officer's direct orders may be considered in determining reasonable suspicion. *See State v. Miller*, 198 N.C. App. 196, 200, 678 S.E.2d 802, 805-06 (2009). Officer Herron ordered Defendant to drop his weapon and put his hands in the air. Defendant did not comply with Officer Herron's orders when he fled the scene. Furthermore, during Defendant's flight, he ran into the vehicle of the officers coming as backup for Officer Herron, and continued to flee by jumping a fence into the backyard of a nearby house.

Both Officer Herron and the officer who ultimately arrested Defendant had reasonable suspicion necessary to detain Defendant. Defendant was in a high-crime area, associating with a known offender. Officer Herron heard a semiautomatic weapon chambering ammunition from the area where Defendant was crouching. Defendant fled the scene, only to run into another officer's vehicle. Defendant fled from that officer over a fence into a backyard.

When these facts are viewed through the eyes of a reasonable, cautious officer in the totality of the circumstances, we hold that the trial court did not err in concluding that there was a reasonable, articulable suspicion for Defendant's stop. Because the officers had a reasonable suspicion that Defendant was involved in criminal behavior, his detention was justified. Therefore, the trial court did not err in denying Defendant's motion to suppress the evidence obtained from his detention.

Conclusion

We find no error. The trial court's denial of Defendant's motion to suppress and the resulting judgment are affirmed.

AFFIRMED.

Judges DAVIS and INMAN concur.

Report per Rule 30(e).