North Carolina v. Hudson

407 S.E.2d 583 (1991) | Cited 9 times | Court of Appeals of North Carolina | August 20, 1991

Defendant argues that the trial court erred in denying his motion to suppress. Defendant contends that the trial court erred in concluding that the stop and the subsequent search were constitutionally permissible. After careful review of the record, we find no error.

When reviewing a trial court's order denying a motion to suppress, the scope of appellate review 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).

When the police seize evidence from a vehicle, the first inquiry involves ascertaining the lawfulness of the activity by which the police obtained access to the vehicle and entered it. State v. Gray, 55 N.C. App. 568, 286 S.E.2d 357 (1982). Defendant contends that

the police lacked reasonable suspicion of illegal conduct to make the stop. Defendant further argues that the investigatory stop was merely a pretext for an unlawful exploratory search and that the evidence arising from this search should be suppressed. We disagree.

[1] On this record the evidence is adequate to support the trial court's conclusion that the defendant's vehicle was lawfully stopped by Officer Thompson.

A police officer may conduct a brief investigative stop of a vehicle where justified by specific, articulable facts which give rise to a reasonable suspicion of illegal conduct. See, e.g., United States v. Brignoni-Ponce, 422 U.S. 873, 880, 95 S. Ct. 2574, 2580, 45 L. Ed. 2d. 607, 616 (1975); Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868, 1883, 20 L. Ed. 2d. 889, 909 (1968). However, police may not make Terry -stops merely on the pretext of a minor traffic violation. United States v. Smith, 799 F.2d 704, 710-11 (11th Cir. 1986).

In determining the traffic stop was pretextual, the trial court should look at what a reasonable officer would do rather than what an officer validly could do. Id. [Emphasis in original.]

State v. Morocco, 99 N.C. App. 421, 427, 393 S.E.2d 545, 548 (1990). The officer testified at the hearing that the 30-day temporary tag was illegible because both the expiration date and the numbers were "faded out." G.S. 20-79.1(e) states that the date of issuance and expiration are to appear "clearly and indelibly on the face of each temporary registration plate." See G.S. 20-79.1(k), 20-63(c). From this

testimony, the trial court had sufficient competent evidence from which to conclude that the officer had an articulable and reasonable suspicion that the tag may have been more than thirty days old in violation of G.S. 20-79.1(h) and that the vehicle may have been improperly registered with the Department of Motor Vehicles in violation of G.S. 20-50. A violation of either G.S. 20-50 or G.S. 20-79.1 is a misdemeanor offense. G.S. 20-176(a). See State v. Gray, 55 N.C. App. 568, 286 S.E.2d 357 (1982). Defendant's reliance on Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d. 660 (1979) is misplaced. In Prouse, the Court held that an articulable and reasonable suspicion that an automobile was not registered was a valid ground for stopping an automobile and detaining the driver in order to check his driver's license and vehicle registration. Id. at 663, 99 S. Ct. at 1401, 59 L. Ed. 2d. at 673.

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Page 716} [2] Immediately after stopping defendant's vehicle here, Officer Thompson asked defendant for his driver's license and for the vehicle's registration. "Any person operating or in charge of a motor vehicle, when requested by an officer in uniform . . . who shall refuse, on demand of such officer . . . to produce his license and exhibit same to such officer . . . for the purpose of examination . . . shall be guilty of a misdemeanor." G.S. 20-29. Defendant stated that he did not have a driver's license. Operating a motor vehicle without being licensed by the Division of Motor Vehicles is a misdemeanor. G.S. 20-7(a), (o). Failure to carry one's license "at all times while engaged in the operation of a motor vehicle" is also a misdemeanor. G.S. 20-7(n), (o). Accordingly, the officers had sufficient probable cause to place defendant under arrest for these violations. See U.S. v. Dixon, 729 F. Supp. 1113, 1116 (W.D.N.C. 1990). Defendant stated that he did not have the vehicle registration card because the vehicle belonged to a friend. A registration card must be carried "at all times . . . in the vehicle to which it refers" and must be displayed "upon demand" of the officer. G.S. 20-57(c). Failure to comply with G.S. 20-57 is also a misdemeanor. G.S. 20-176(a). The faded condition of the temporary tag combined with the failure of the defendant to produce his driver's license and the vehicle's registration was enough to create an articulable and reasonable suspicion that the vehicle might have been stolen.

[3] We believe that the officer was also justified in asking the defendant to step out of his car after he failed to produce a driver's license or vehicle registration. The officer testified that there was a considerable amount of traffic on I-85 and that he asked the defendant to sit in the police car "so I could run his name through D.M.V. for my safety because it was dangerous on 85." The safety of an officer exposed to heavy traffic during a stop for a traffic violation is a legitimate concern and justifies the officer's request that the driver step out of the vehicle to a place nearby where the inquiry may be pursued with greater safety. Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330, 54 L. Ed. 2d. 331 (1977) (per curiam). See State v. Morocco, 99 N.C. App. 421, 393 S.E.2d 545 (1990). Furthermore, "out of a concern for the safety of the police, the Court has held that officers may, consistent with the Fourth Amendment, exercise their discretion to require a driver who commits a traffic violation to exit the vehicle even though they lack any particularized reason for believing the

driver possesses a

weapon." New York v. Class, 475 U.S. 106, 115, 106 S. Ct. 960, 967, 89 L. Ed. 2d. 81, 91 (1986).

[4] After defendant got out of the car, Officer Thompson asked Officer Mullhall to go to defendant's car and write down the vehicle identification number (VIN). Automobiles sold in the United States are marked with a unique identifying number which must be placed in a particular location on the automobile. See 49 C.F.R. 571.115 (1990). This number is used in a computer check to determine if the vehicle has been reported as stolen. An officer who has lawfully stopped a vehicle may locate and examine this number due to its importance and to the lack of a significant privacy interest in the number itself. New York v. Class, 475 U.S. at 111-14, 106 S. Ct. at 964-66, 89 L. Ed. 2d. at 88-90.

During the time Officer Mullhall was writing down the VIN, he noticed the passenger in the front seat with a newspaper opened fully and spread across her lap. The officer testified that his suspicion was aroused because it was dusk at this time and the newspaper was not being held at an angle suitable for reading. Officer Mullhall asked to see the passenger's identification. The passenger replied that she had no identification. After he completed the computer check on the VIN, Officer Mullhall returned to again ask the passenger if she had any identification. The officer testified that upon his return to the vehicle "[s]he was still sitting up there with the newspaper unfolded on her lap. Now, it takes time to run the VIN . . . it was close to darkness with no street lights on. The dome light was not on in the car." The officer also testified there was not enough light to read the newspaper at this time and that just minutes earlier he had had to use a flashlight to read the number on the VIN plate.

Based on his suspicion that the passenger may have been hiding a weapon under the newspaper, Officer Mullhall testified that he feared for his own safety and asked the passenger to step out of the car. "[P]olice may order persons out of an automobile during a stop for a traffic violation, and may frisk those persons for weapons if there is a reasonable belief that they are armed and dangerous." Michigan v. Long, 463 U.S. 1032, 1047-48, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d. 1201, 1219 (1983). Furthermore, we note that the Court stated in Terry that

[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in

the circumstances would be warranted in the belief that his safety or that of others was in danger. . . . And in determining whether the officer acted reasonably in such circumstances, due weight must be given . . . to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

Id. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d. at 909 (citations omitted). Because of the passenger's lack of identification, the unmoved newspaper spread fully across her lap for five to ten minutes, and the

likely inability to read because of the darkness, the trial court had sufficient competent evidence to conclude that Officer Mullhall possessed an articulable and reasonable suspicion that the passenger may have been trying to hide a weapon.

[5] Officer Mullhall testified that as defendant Mobley was stepping out of the car, he observed the butt of a gun sticking out of a briefcase lying on the floorboard of the automobile. We conclude from the record before us that the evidence in question was properly seized under the "plain view" doctrine.

"When an officer's presence at the scene is lawful (and at least if he did not anticipate finding such evidence), he may, without a warrant, seize evidence which is in plain sight and which he reasonably believes to be connected with the commission of a crime, even though the 'incident to arrest' doctrine would not apply; and such evidence is admissible."

State v. Bagnard, 24 N.C. App. 54, 57, 210 S.E.2d 93, 95 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975) (citation omitted). Officer Mullhall was in a lawful position to make a plain view observation of the briefcase lying on the floorboard with the butt of a gun exposed. Additionally, the Supreme Court has upheld the validity of protective searches notwithstanding the plain view doctrine by stating

the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer in believing that the suspect is dangerous and the suspect may gain immediate control of the weapons.

Michigan v. Long, 463 U.S. at 1049-50, 103 S. Ct. at 3481, 77 L. Ed. 2d. at 1220 (emphasis added; footnote and citations omitted). See California v. Acevedo, U.S. , 59 U.S.L.W. 4559, 4564, 111 S. Ct. 1982, 1991, 114 L. Ed. 2d. 619, 634 (1991). ("The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.") Upon seeing the gun protruding from the briefcase, Officer Mullhall was justified in conducting a more thorough search of the briefcase for his own protection, as the trial court had sufficient competent evidence from which to conclude that he possessed an articulable and reasonable belief that the suspect was armed and could gain immediate control of the weapons. Pennsylvania v. Mimms, 434 U.S. at 111-12, 98 S. Ct. at 333-34, 54 L. Ed. 2d. at 337-38. Upon opening the briefcase, he saw a second gun, the money, and the two boxes of mannitol. "If, while conducting a legitimate Terry search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances." Michigan v. Long, 463 U.S. at 1050, 103 S. Ct. at 3481, 77 L. Ed. 2d. at 1220 (citations omitted). The trial court's conclusion of law regarding the lawful seizure of the briefcase lying on the floorboard is amply supported by the findings of fact.

Accordingly, defendant's argument is without merit.

[6] Defendant also contends that Officer Mullhall lacked sufficient probable cause to conduct a warrantless search of the other "purse/briefcase" that the passenger held onto when she got out of the car. When Officer Mullhall asked the passenger if this briefcase was hers, she responded, "Yes." Defendant has failed to show any ownership or possessory interest in this "purse/briefcase." "It is a general rule of law in this jurisdiction that one may not object to a search or seizure of the premises or property of another. . . . Absent ownership or possessory interest in the premises or property, a person has no standing to contest the validity of a search." State v. Greenwood, 301 N.C. 705, 707-08, 273 S.E.2d 438, 440 (1981) (citations omitted). Defendant has failed to meet his burden of proving that he had a legitimate expectation of privacy in the passenger's property. Rawlings v. Kentucky, 448 U.S. 98, 100 S. Ct. 2556, 65 L. Ed. 2d. 633 (1980). Accordingly, we hold that defendant

failed to show that the seizure and search of the "purse/briefcase" infringed upon his own personal rights under the Fourth Amendment and that defendant's motion to suppress its contents was properly denied by the trial court.

Accordingly, we conclude that there is ample competent evidence to support the trial court's findings of fact and that the findings of fact support the trial court's conclusions of law.

No error.

Disposition

No error.