

Arrest, Search & Investigation

State v. Mbacke, __ N.C. __, __ S.E.2d __ (Jan. 27, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8zM0ExMS0xLnBkZg==>). The court reversed the court of appeals and determined that a search of the defendant's vehicle incident to his arrest for carrying a concealed gun did not violate the Fourth Amendment. The defendant was indicted for, among other things, trafficking in cocaine and carrying a concealed gun. Officers were dispatched to a specific street address in response to a 911 reporting that a black male armed with a black handgun, wearing a yellow shirt, and driving a red Ford Escape was parked in his driveway and that the male had "shot up" his house the previous night. Officers Walley and Horsley arrived at the scene less than six minutes after the 911 call. They observed a black male (later identified as the defendant) wearing a yellow shirt and backing a red or maroon Ford Escape out of the driveway. The officers exited their vehicles, drew their weapons, and moved toward the defendant while ordering him to stop and put his hands in the air. Officer Woods then arrived and blocked the driveway to prevent escape. The defendant initially rested his hands on his steering wheel, but then lowered them towards his waist. Officers then began shouting at the defendant to keep his hands in sight and to exit his vehicle. The defendant raised his hands and stepped out of his car, kicking or bumping the driver's door shut as he did so. Officers ordered the defendant to lie on the ground and handcuffed him, advising him that he was being detained because they had received a report that a person matching his description was carrying a weapon. After the defendant said that he had a gun in his waistband and officers found the gun, the defendant was arrested for carrying a concealed gun. The officers secured the defendant in the back of a patrol car, returned to his vehicle, and opened the driver's side door. Officer Horsley immediately saw a white brick wrapped in green plastic protruding from beneath the driver's seat. As Officer Horsley was showing this to Officer Walley, the defendant attempted to escape from the patrol car. After re-securing the defendant, the officers searched his vehicle incident to the arrest but found no other contraband. The white brick turned out to be 993.8 grams of cocaine. The court noted that the case required it to apply *Arizona v. Gant*, 556 U.S. 332 (2009) (officers may search a vehicle incident to arrest only if (1) the arrestee is unsecured and within reaching distance of the passenger compartment when the search is conducted; or (2) it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle). It began its analysis by concluding that as used in the second prong of the *Gant* test, the term "reasonable to believe" establishes a threshold lower than probable cause that "parallels the objective 'reasonable suspicion' standard sufficient to justify a *Terry* stop." Thus, it held that "when investigators have a reasonable and articulable basis to believe that evidence of the offense of arrest might be found in a suspect's vehicle after the occupants have been removed and secured, the investigators are permitted to conduct a search of that vehicle." Applying that standard, the court concluded:

[D]efendant was arrested for . . . carrying a concealed gun. The arrest was based upon defendant's disclosure that the weapon was under his shirt. Other circumstances . . . such as the report of defendant's actions the night before and defendant's furtive behavior when confronted by officers, support a finding that it was reasonable to believe additional evidence of the offense of arrest could be found in defendant's vehicle. Accordingly, the search was permissible under *Gant* . . ."

The court ended by noting that it "[was] not holding that an arrest for carrying a concealed weapon is *ipso facto* an occasion that justifies the search of a vehicle." It expressed the belief that "the 'reasonable to believe' standard required by *Gant* will not routinely be based on the nature or type of the offense of

arrest and that the circumstances of each case ordinarily will determine the propriety of any vehicular searches conducted incident to an arrest.”

State v. Burke, __ N.C. __, __ S.E.2d __ (Jan. 27, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8yOTIBMTetMS5wZGY=>). In a per curiam opinion, the court affirmed the decision below in *State v. Burke*, __ N.C. App. __, __ S.E.2d __ (June 21, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMCOxMDgOLTEucGRm>) (over a dissent, the court held that the trial judge erred by denying the defendant’s motion to suppress when no reasonable suspicion supported a stop of the defendant’s vehicle; the officer stopped the vehicle because the numbers on the 30-day tag looked low and that the "low" number led him to "wonder[] about the possibility of the tag being fictitious"; the court noted that it has previously held that 30-day tags that were unreadable, concealed, obstructed, or illegible, justified stops of the vehicles involved; here, although the officer testified that the 30-day tag was dirty and worn, he was able to read the tag without difficulty; the tag was not faded; the information was clearly visible; and the information was accurate and proper).