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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-3

Filed: 15 May 2018

Mecklenburg County, No. 16 CRS 219217

STATE OF NORTH CAROLINA

v.

ADAM TRUESDALE

Appeal by defendant from judgment entered 7 July 2017 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 2 May 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Nicholas W. Yates, for the State.

Stephen G. Driggers for defendant.

ARROWOOD, Judge.

Adam Truesdale ("defendant") appeals the denial of his motion to suppress following the entry of judgment on his conviction for felony possession of a schedule II controlled substance. For the following reasons, we find no error.

I. Background

On 17 January 2017, a Mecklenburg County Grand Jury indicted defendant on one count of possession of cocaine, a schedule II controlled substance, and for attaining the status of an habitual felon. On 23 June 2017, defendant filed a motion to suppress "all evidence that was obtained pursuant to a search or seizure of any kind in [this] case" on the basis that his arrest was not supported by probable cause.

Defendant's case came on for trial on 5 July 2017 in Mecklenburg County Superior Court before the Honorable Eric L. Levinson. The judge first considered pretrial motions and, upon hearing from the State and the defense, decided to hear defendant's motion to suppress during the course of the trial to avoid repeat evidence.

The evidence presented during the presentation of the State's case tended to show that late in the evening on 21 May 2016, two officers assigned to a Charlotte-Mecklenburg Police Department violent crime task force, "Operation Anthem," were patrolling the area around the Brookwood Inn on West Sugar Creek Road in Charlotte. As one of the officers explained, the goal of the task force was to suppress violent crime in certain areas of the city through proactive work to reduce "the things that tend to accompany violent crimes such as drug trafficking, human trafficking, possession of weapons, things like that." The area around the hotel was targeted by the task force because it is an area known to be commonly used for prostitution.

While patrolling together that night, the officers noticed a red Toyota Camry backed into a parking spot on the backside of the hotel. They observed a young female

who they believed was a juvenile sitting in the driver's seat and an older man, later identified as defendant, sitting in the front passenger seat. The officers circled the hotel and decided to make voluntary contact when the vehicle was still there upon their return one or two minutes later. One of the officers approached the passenger side of the vehicle and made contact with defendant because defendant appeared to be the adult in the vehicle. The other officer went to the back of the vehicle to call in the license tag to dispatch. The officer speaking with defendant testified that both defendant and the younger female, who appeared to be a minor, seemed a little nervous. In response to the officer's questions, defendant indicated they were not staying at the hotel but they were visiting someone at the hotel. Defendant, however, was unable to provide a room number, raising the officer's suspicion that something prostitution related may be going on.

While defendant was speaking with the officer at the passenger side door, the other officer was informed by dispatch that the vehicle was stolen. At that point, the officers asked defendant and the female to exit the vehicle and placed them in handcuffs. When a secondary check confirmed that the vehicle was stolen, defendant was searched and placed in the back of the patrol car. The female initially gave officers a false name and date of birth which further raised the officers' suspicions. It was later discovered that the female was fifteen years old, reported as a missing

person, and had an outstanding secure custody order. Defendant was 52 years old at the time.

A search of the female at the scene discovered in her bra what was believed by police to be powder cocaine. The officers then searched the vehicle and discovered a pill bottle in the glove compartment containing what was believed by police to be powder cocaine.

Defendant was transported to a police division office where he was interviewed by a detective in regards to possession of a stolen vehicle. Based on that interview, the detective did not think charging defendant with possession of a stolen vehicle was appropriate. Defendant was instead charged with possession of cocaine and contributing to the delinquency of a minor.

Defendant was then taken to be processed at the sheriff department's intake facility. As part of the intake process, another search of defendant was conducted. During the search, a plastic bag containing eight smaller individually wrapped pieces of a hard, white, rock-like substance fell out of defendant's shoe. The officer immediately believed the hard, white, rock-like substance was crack cocaine, which lab tests later confirmed. Lab tests of the powder substances found on the female and in the vehicle revealed that the powder substance was not cocaine.

At the close of the State's case and out of the presence of the jury, the trial court took up defendant's motion to dismiss. Upon consideration of the evidence

presented during the presentation of the State's case, additional *voir dire* testimony that included defendant's testimony, and arguments from the State and the defense, the trial court denied defendant's motion to suppress, concluding the officers had probable cause to arrest defendant. The trial court indicated it would make findings later if the jury convicted defendant. The defense did not put on any of its own evidence and, after closing arguments, the case went to the jury.

On 7 July 2017, the jury returned verdicts finding defendant guilty of possession of cocaine and not guilty of being an habitual felon. After receiving the jury verdicts, the trial court made findings and conclusions regarding defendant's motion to suppress. Specifically, the court concluded:

> The [c]ourt rejects the challenge for probable cause for the arrest for the reasons I've discussed with counsel outside the presence of the jury. There was probable cause for the arrest for contributing to the delinquency of a minor. There was probable cause for arrest at the scene for possession of a stolen vehicle, even though the district attorney ultimately did not go forward on possession of a stolen vehicle.
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> Therefore, the discovery of the cocaine in the shoe at the intake center was properly admitted in court.

The trial court then moved forward with sentencing. The court determined defendant was a prior record level six and entered judgment sentencing defendant to a term of 8 to 19 months imprisonment for felony possession of cocaine. Defendant gave notice of appeal in open court and later filed written notice of appeal on 20 July 2017.

II. Discussion

The sole issue on appeal is whether the trial court erred in denying defendant's motion to suppress. Our review of a trial court's denial of a motion to suppress 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 trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

Defendant argues the trial court erred in denying his motion to suppress because there was no probable cause for his arrest. Specifically, defendant contends the trial court's findings do not support its conclusions that the officers had probable cause to arrest him for contributing to the delinquency of a minor and possession of a stolen vehicle. We disagree.

"The Fourth Amendment of the U.S. Constitution protects individuals from unreasonable searches and seizures. This Fourth Amendment protection includes the right not to be arrested without probable cause." *Roberts v. Swain*, 126 N.C. App. 712, 719, 487 S.E.2d 760, 765 (1997) (citations omitted). "To be lawful, a warrantless arrest must be supported by probable cause." *State v. Zuniga*, 312 N.C. 251, 259, 322 S.E.2d 140, 145 (1984); *see also* N.C. Gen. Stat. § 15A-401(b) (2017).

> A warrantless arrest is based upon probable cause if the facts and circumstances known to the arresting officer warrant a prudent man in believing that a felony has been committed and the person to be arrested is the felon. Probable cause for an arrest has been defined to be a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty.

State v. Shore, 285 N.C. 328, 335, 204 S.E.2d 682, 686-87 (1974) (internal citations and quotation marks omitted).

> The Supreme Court has explained that probable cause does not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical probability that incriminating evidence is involved is all that is required. A probability of illegal activity, rather than a *prima facie* showing of illegal activity or proof of guilt, is sufficient.

State v. Robinson, 221 N.C. App. 266, 273, 727 S.E.2d 712, 717 (2012) (internal quotation marks and citations omitted). The United States Supreme Court has recently explained that,

> [t]o determine whether an officer had probable cause for an arrest, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. Because probable cause deals with probabilities and depends on the totality of the circumstances, it is a fluid concept that is not readily, or even usefully, reduced to a neat set of legal rules. It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. Probable cause is not a high bar.

District of Columbia v. Wesby, __ U.S. __, __, 199 L. Ed. 2d 453, 463 (2018) (internal quotation marks and citations omitted).

In this case, the State concedes that defendant was under arrest when he was placed in handcuffs, searched, and placed in the back of the patrol car upon confirmation that the vehicle he was in was stolen. The only question is whether there was probable cause for defendant's arrest for contributing to the delinquency of a minor or for possession of a stolen vehicle.[1]

In arguing there was insufficient evidence for probable cause for his arrest in the present case, it appears that defendant conflates the probable cause standard and the standard to survive a motion to dismiss and allow the case to go to a jury. *See State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (" 'Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. . . .' ") (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). Defendant cites the elements of each offense and argues the trial court's findings do not establish that there was evidence of each

[1] Despite the trial court's determination that there was probable cause to arrest defendant for contributing to the delinquency of a minor and for possession of a stolen vehicle, the State further argues there was probable cause to arrest defendant for possession of cocaine. Under the applicable standard of review, we review only the trial court's findings and conclusions and do not address additional grounds argued by the State.

element. As made clear in the probable cause standard set forth above, the standards are not the same. All that is required for probable cause is a probability or substantial chance of illegal activity; it is not a "high bar." *Wesby*, __ U.S. at __, 199 L. Ed. 2d at 463.

The trial court's findings in this case are supported by the testimony of the arresting officer. The pertinent findings establish that Charlotte-Mecklenburg police officers, who were part of a task force related to interdiction efforts, were patrolling close to midnight in an area around a hotel known to be frequented by prostitutes in a neighborhood with human trafficking issues when they noticed a vehicle occupied by a young female, who the officers believed to be a juvenile, and defendant backed into a parking spot at the hotel. The female was in the driver's seat and defendant was in the front passenger seat. After the officers circled the block, the vehicle was still there and the officers approached the vehicle. One officer approached defendant while the other officer called in the tag on the vehicle. Defendant and the juvenile appeared nervous and anxious. Defendant told the officer that he was not staying at the hotel and that he came to visit a friend at the hotel, but defendant could not provide a room number. During this time, the officers were informed that the vehicle had been reported stolen.

We hold these findings of fact, without consideration of the evidence following defendant's arrest, are sufficient to show a probability of contributing to the

delinquency of a minor and possession of a stolen vehicle and warrant a prudent man in believing defendant is guilty. Thus, the trial court did not err in concluding there was probable cause to arrest defendant for contributing to the delinquency of a minor and for possession of a stolen vehicle. Defendant's motion to suppress was properly denied.

III. Conclusion

For the reasons discussed, we hold the officers had probable cause to arrest defendant. Thus, trial court did not err in denying defendant's motion to suppress.

NO ERROR.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).