

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-229

Filed: 1 October 2019

Cabarrus County, No. 17CRS052368-69

STATE OF NORTH CAROLINA

v.

QUINTON ANDREW JONES, Defendant.

Appeal by defendant from order entered 9 November 2017 by Judge W. Robert Bell and judgment entered on or about 29 November 2017 by Judge Joseph N. Crosswhite in Superior Court, Cabarrus County. Heard in the Court of Appeals 19 September 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Alexander G. Walton, for the State.*

*Everson Law Firm, PLLC, by Cynthia Everson, for defendant-appellant.*

STROUD, Judge.

Defendant appeals an order denying his motion to suppress and his judgment for drug-related offenses. Defendant moved to suppress evidence found during a search of his residence conducted by a probation officer and other law enforcement officers, alleging that the search was not “directly related” to his probation supervision under North Carolina General Statute § 15A-1343(b)(13). Because the trial court’s findings of fact support its conclusion that the search was “directly

related” to his supervision, we affirm the order and conclude there was no error in the judgment.

I. Background

Defendant was placed on probation after he was convicted of possession of a firearm by a felon on 19 January 2017. Cabarrus County Probation and Parole Officer Michelle Welch began supervising defendant’s probation on 1 February 2017. Defendant met with Officer Welch and discussed the regular conditions of his probation, which included warrantless searches of his residence by a probation officer for purposes directly related to his probation supervision. Officer Welch also conducted a risk level assessment of defendant, using his criminal history along with an “Offender Traits Inventory instrument” (“OTI”) used by probation officers. Officer Welch determined defendant was at “Level 1” for supervision purposes, which meant that he was at “extreme high risk for supervision which indicates he needs close supervision in the community.”

In May 2017, the Kannapolis Police Department, Concord Police Department, and U.S. Marshals undertook an initiative to perform warrantless searches of certain probationers in Cabarrus County. Personnel from the Cabarrus County probation office participated in the initiative. Officer Waylan Graham, a Cabarrus County Probation and Parole Officer, was involved in the search of defendant’s residence. The purpose of the initiative was for “high-risk and gang offenders[.]” Officer Graham

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testified that defendant was identified as one of the high risk probationers because “the type of felony that he had, which is a possession of a gun charge, high risk, positive drug screen.” Prior to conducting the search, Officer Graham read defendant’s probation file so he would be familiar with defendant’s case.

At about 7:46 a.m. on 18 May 2017, officers began the search of defendant’s residence, where he lived with his cousin and his cousin’s girlfriend. Officer Welch was aware that defendant’s residence was to be searched but she did not participate in it. For the searches done by the joint initiative, including the search of defendant’s residence, the probation department was the lead agency for the search, so probation officers were the first officers in the residence, and they performed the first sweep of the residence. Only after the probation officers had entered the residence and secured the probationer would officers from other law enforcement agencies assist in the search.

At defendant’s residence, Officer Graham knocked on the door and defendant answered. Officer Graham told defendant he was there “to conduct a warrantless search[,]” and defendant was handcuffed. Officer Graham and three other probation officers then did the initial sweep of the residence and found marijuana in several places, including in a cup and a mason jar on the kitchen counter, and marijuana plants growing in the backyard and “hanging from a clothesline in the laundry room.” The officers searched the common areas and defendant’s bedroom initially, and then

obtained consent to search defendant's cousin's and his cousin's girlfriend's bedroom. The officers also searched the garage and found an EBT card with defendant's name along with ecstasy, heroin, burnt marijuana, a mason jar with marijuana residue, and digital scales. The girlfriend told one of the officers that defendant used the garage as a recording studio.

Defendant was charged with several drug-related felonies as a result of the drugs and paraphernalia found during the search. On 16 June 2017, Defendant filed a "MOTION TO SUPPRESS ILLEGAL SEARCH AND SEIZURE[.]" requesting suppression of the drugs and paraphernalia, and the trial court heard the motion on 26 October 2017. On 9 November 2017, the trial court entered an order denying defendant's motion to suppress. On or about 29 November 2017, defendant entered an *Alford* plea to all charges and reserved his right to appeal the denial of the motion to suppress. Defendant appeals both the order of the denial of his motion to suppress and the judgment of his drug convictions.

## II. Findings of Fact and Conclusions of Law

Defendant's only issue on appeal is whether the trial court erred in denying his motion to dismiss because the search of his residence and garage were reasonable, arguing specifically that the search was not "directly related" to his probation

supervision. Defendant challenges 6 of the trial court's 19 findings of fact as unsupported by competent evidence:<sup>1</sup>

6. Based upon an offender traits inventory evaluation conducted at the time he was placed on probation, his criminal history and performance on previous probations the Defendant was assessed as an "extreme high risk" probationer requiring close supervision in the community.
7. Between February 1, 2017 and May 17, 2017 the Defendant moved twice and tested positive for drug use. Defendant's use of illegal drugs violated the conditions of his probation that he not use or possess any controlled or illegal drugs and that he commit no criminal offense. His probation officer used her discretionary delegated authority to place an electronic monitor on the Defendant for a period of 30 days as a sanction.  
  
. . . .
10. The purpose of the searches was to provide closer supervision and oversight to the selected probationers because of their high risk status.
11. A number of teams were assigned to the task. A team consisted of probation officers and law enforcement officers. The teams were led by the probation officers and the law enforcement officers were there to provide security and assistance.
12. The probationers to be searched were selected by the probation officers because of the high risk status and need for closer supervision. They were not selected

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<sup>1</sup> Defendant's brief mentions findings of fact 7, 11, and 14 in the issues presented in the record on appeal but makes no specific argument regarding these findings, and thus these issues are abandoned. See N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reasons or argument is stated, will be taken as abandoned.").

at random or by the law enforcement officers nor for the purpose of conducting any police investigation.

13. Graham and several other probation officers went to the Defendant's residence. They were accompanied by Kannapolis Police Department (KPD) Officers and U.S. Marshals. Graham selected the Defendant based upon his risk assessment, suspected gang affiliation, and positive drug screen. The purpose of the search was to give the added scrutiny and closer supervision required of "high risk" probationers such as the Defendant.
14. Prior to going to the Defendant's house he notified the Defendant's assigned probation officer and read Defendant's case file.
15. At the residence, . . . PO Graham initiated the search by knocking on the residence door. The KPD and Marshals remained in the yard. Graham explained to the Defendant why they were there and what they intended to do. Defendant consented to the search.
16. Because the Defendant was living at the residence with his cousin, his cousin's girlfriend and a minor child only the common areas of the house and Defendant's bedroom were searched initially. That search revealed marijuana in plain sight in the kitchen and laundry room. It was also found growing in a grill in the backyard.
17. The female gave consent to search her bedroom and the garage. Digital scales, heroin and ecstasy were found in the garage.

The trial court made the following conclusions of law:

1. N.C.G.S. § 15A-1413(b)(13) provides that a probation officer may, at reasonable times, conduct warrantless searches of a probationer's person and

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of the probationer's vehicle and premises while the probationer is present, for purposes directly related to the probation supervision.

2. The issue presented is whether the search of Defendant's residence conducted by probation officer Graham was directly related to the probation supervision. The Court finds that it was.
3. PO Graham initiated the search because the Defendant was a high risk probationer requiring more supervision than most. He had moved residences twice within the three months between the time he was placed on probation and the date of the search. He had tested positive for illegal drug use and his probation officer had exercised her discretionary delegated authority to place him on an electronic monitor for a period of 30 days as a sanction.
4. The presence and participation of Kannapolis Police Officers and U.S. Marshals does not change the result. Their presence was at the request of the probation officers conducting the search and they were there to provide security and assistance to the probation officers. The search was not part of or in response to the initiative of law enforcement nor for the purpose of conducting an investigation.
5. The search was not random or conducted at the whim of the probation officer or done in conjunction with any law enforcement purpose. Its purpose was to supervise the probationer.

Defendant also challenges conclusions of law 2-5 as unsupported by the findings of fact. But "conclusion of law" 3 is actually a finding of fact and we address it as such.

*See Westmoreland v. High Point Healthcare, Inc.*, 218 N.C. App. 76, 79, 721 S.E.2d

712, 716 (2012) (“The labels ‘findings of fact’ and ‘conclusions of law’ employed by the trial court in a written order do not determine the nature of our review.”).

A. Standard of Review

“When reviewing a motion to suppress, the trial court’s findings of fact are conclusive and binding on appeal if supported by competent evidence. We review the trial court’s conclusions of law *de novo*.” *State v. Fields*, 195 N.C. App. 740, 742–43, 673 S.E.2d 765, 767 (2009) (citation omitted).

B. Competency of the Evidence

As to findings of fact 15 and 17, the trial court did not use consent as the basis of the search but concluded that “N.C.G.S. §15A-1413(b)(13) provides that a probation officer may, at reasonable times, conduct warrantless searches of a probationer’s person and of the probationer’s vehicle and premises while the probationer is present, for purposes directly related to the probation supervision.” Therefore, we need not address the superfluous findings. *See generally Fleming v. Fleming*, 49 N.C. App. 345, 348, 271 S.E.2d 584, 586 (1980) (“Defendant was not prejudiced by Judge Styles’ superfluous jurisdictional findings because they were unnecessary to the issue before the court and were therefore of no effect upon the rights of the parties in the subsequent enforcement hearing.”).

As to the remaining challenged findings of fact, defendant does not actually challenge the findings of fact as unsupported by the evidence but instead contends

that one of the documents the State relied upon in the officers' testimony, the OTI, was not "competent evidence." Defendant's argument conflates an argument regarding admission of the State's exhibits with his argument regarding whether the trial court's findings of fact support its conclusions of law.

During Officer Welch's testimony, the State offered two exhibits. Exhibit 1 was the Conditions of Probation form and Exhibit 2 was the Risk Needs Assessment also referred to as an OTI. Defendant objected to the two exhibits but did not state any basis for the objection.<sup>2</sup> The trial court overruled the objection, and defendant's counsel then stated that she wished to be heard. The trial court responded, "Overruled. Admitted. Denied." The trial court's ruling was terse but its meaning is clear in the context of the transcript. The defendant's general objection to admission as evidence of State's Exhibits 1 and 2 was "[o]verruled." State's Exhibits 1 and 2 were "[a]dmitted." The trial court "[d]enied" defendant's request "to be heard" regarding the objection to admission of State's Exhibits 1 and 2. Defendant did not make any other objections to the probation officer's testimony regarding his risk level and made no further argument before the trial court regarding the admissibility or

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<sup>2</sup> The legal basis for defendant's evidentiary objection to State's Exhibits 1 and 2 is not apparent from the transcript or context of the hearing, nor does defendant argue on appeal about any particular reason this evidence should not have been admitted. It is difficult to imagine any legitimate basis for an evidentiary objection to State's Exhibit 1, the conditions of defendant's probation. State's Exhibits 1 and 2 were admitted when defendant's probation officer was testifying regarding defendant's probation supervision and the information they reviewed together regarding his high risk status and conditions of probation. Even without the exhibits, the probation officer's testimony alone supports the trial court's findings of fact.

competency of the exhibits as evidence.<sup>3</sup> Defendant also did not make a proffer of additional evidence regarding the exhibits, particularly the OTI noting defendant was high risk – one of the bases upon which the probation officers determined his residence would be searched – though it was an available option even after the trial court overruled the objection to State’s Exhibits 1 and 2.

Again, defendant does not argue that there was no evidence to support the findings that the OTI determined he was an “extreme high risk” probationer; that he had moved twice within three months; that he was suspected of being involved in a gang; and that he had tested positive for illegal drugs. Instead defendant contends that the OTI was crucial evidence used against him, and it was not competent evidence. Defendant argues that “[t]he complete OTI itself was not provided, simply a one-page synopsis of its purported results, which appears to be pre-populated, is entirely conclusory, and is non-specific to” defendant.<sup>4</sup> But defendant did not make any objections or requests for the complete OTI; as noted above, to the extent defendant attempts to present an evidentiary issue on appeal, he did not preserve any objection to State’s Exhibits 1 and 2 in the trial court and did not argue plain

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<sup>3</sup> Defendant’s counsel made only two objections in the entire hearing. The first was the general objection to State’s Exhibits 1 and 2; the second was an objection based upon hearsay later in the testimony regarding the search.

<sup>4</sup> Indeed, it would most likely be to defendant’s disadvantage for the State to present further evidence regarding the OTI or defendant’s risk level determination, as that evidence would most likely be *harmful* to defendant – good reason for his counsel not to pursue the objection any further.

error on appeal. The State's presentation of only the "synopsis" of the OTI may go to the weight of the evidence, but not its competency as evidence.

Defendant bases his argument regarding "competency" of the OTI primarily on cases regarding satellite-based monitoring ("SBM") of certain sex offenders. But defendant has conflated two entirely separate issues. The requirements for SBM are specific to monitoring of sex offenders and are not comparable to the requirements for random searches of a probationer's home in accord with the conditions of probation. Perhaps the OTI's use of the word "risk" has led defendant to attempt to equate the risk evaluation tool used in SBM cases, the STATIC-99, with the OTI, but there is no support in our statutes or case law for this argument. *See generally State v. Kilby*, 198 N.C. App. 363, 367, 679 S.E.2d 430, 432–33 (2009) ("The procedure for SBM hearings is set forth in N.C. Gen. Stat. §§ 14–208.40A and 14–208.40B. N.C. Gen. Stat. § 14–208.40A applies in cases in which the district attorney has requested that the trial court consider SBM during the sentencing phase of an applicable conviction. N.C. Gen. Stat. § 14–208.40B applies in cases in which the offender has been convicted of an applicable conviction and the trial court has not previously determined whether the offender must be required to enroll in SBM. . . . The hearing procedure set forth in N.C. Gen. Stat. § 14–208.40B has two phases; N.C. Gen. Stat. § 14–208.40B(c), for purposes of convenience and clarity, we will refer to these two phases as the qualification phase and *the risk assessment phase*." (emphasis added))

(citations omitted)). Unlike SBM, *see id.*, no statute requires the probation officer to use the OTI or to establish a certain level of “risk” to justify a search incident to probation; the search must be “directly related to the probation supervision[.]” N.C. Gen. Stat. § 15A-1343(b)(13) (2015).<sup>5</sup> The statutes do not set out any particular method for the probation officer to decide to make a random search, as long as it is “directly related to the probation supervision[.]” *Id.*

The OTI is simply a tool used by the probation officer to assist in supervising a probationer and to advise the probationer of the areas in which he needs improvement. There is no statute requiring any particular result on an OTI to support a finding that the search is “directly related” to the probation supervision. The OTI was one of several pieces of information the officers relied upon in their supervision of defendant, along with defendant’s other characteristics and behavior. The OTI noted that the information was provided to defendant “to help you understand the areas of your life that your officer will be discussing with you during supervision. You can use this information as a guide to help yourself be successful while under supervision.” The assessment noted defendant had these characteristics:

You tend to spend time with people who don’t think that illegal behavior is a big deal and who sometimes influence you to do things that get you into trouble. It appears some of the people you hang around, spend most of your time with, or even consider your friends are increasing your risk of committing a new crime.

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<sup>5</sup> Since amended. *See* N.C. Gen. Stat. § 15A-1343 Editor’s Note (2017) (noting three amendments between 2016-2017).

It appears you sometimes don't think how your actions affect others and take risks that lead to trouble. If you reported you had conduct prior to the age of 15 and/or reckless behavior of poor impulse control, you are at a greater risk of committing new crime.

You tend to make quick decisions instead of thinking things through. This sometimes gets you into trouble. It appears you have problems controlling your behaviors and tend not to think before acting which is increasing your risk of committing new crime.

The OTI also noted "Problem Life Area[s]" of "[e]mployment" and "[l]egal" and that defendant's level of "Interest in Improving (out of 10)" was zero. Defendant had signed the OTI acknowledging that his probation officer had gone over his level of supervision and results with him.

C. Search Directly Related to Probation Supervision

Defendant also relies on *State v. Powell*, \_\_\_ N.C. App. \_\_\_, 800 S.E.2d 745 (2017), and this case, while distinguishable, does address how to determine if a search is "directly related" to probation supervision. Defendant was subject to the regular conditions of probation:

As one of the regular conditions of probation, a defendant must:

- (13) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, *for purposes directly related to the probation supervision*, but the probationer may not be required to submit to any other search that would otherwise be unlawful.

N.C. Gen. Stat. § 15A-1343(b)(13) (emphasis added). In *Powell*, this Court first discussed the meaning of the phrase “directly related to the probation supervision,” which was an amendment to North Carolina General Statute § 15A-1343 in 2009; previously the statute required a warrantless search to be “reasonably related” to the probation:

The General Assembly did not define the phrase “directly related” in its 2009 amendment to N.C. Gen. Stat. § 15A-1343(b)(13). It is well established that where words contained in a statute are not defined therein, it is appropriate to examine the plain meaning of the words in question absent any indication that the legislature intended for a technical definition to be applied.

The word “directly” has been defined as “in unmistakable terms.” “Reasonable” is defined, in pertinent part, as “being or remaining within the bounds of reason.” When the General Assembly amends a statute, the presumption is that the legislature intended to change the law. Thus, we infer that by amending subsection (b)(13) in this fashion, the General Assembly intended to impose a higher burden on the State in attempting to justify a warrantless search of a probationer’s home than that existing under the former language of this statutory provision.

*Id.* at \_\_\_, 800 S.E.2d at 751 (citations and quotation marks omitted).

In *Powell*, the trial court “summarily denied Defendant’s motion to suppress without making any findings of fact or conclusions of law.” *Id.* at \_\_\_, 800 S.E.2d at 749. The search in *Powell* was part of “an ongoing operation of a U.S. Marshal’s Service task force.” *Id.* at \_\_\_, 800 S.E.2d at 753. The operation was initiated by the

U.S. Marshal's Service for its own law enforcement purposes and the searches were conducted with the assistance of local law enforcement. *See id.* at \_\_\_, 800 S.E.2d at 745. The operation targeted defendants on probation because their conditions of probation allow warrantless searches. *See id.* The defendant's probation officer did not participate in the search, and there was "no suggestion in the record that Defendant's own probation officer was even notified—much less consulted—regarding the search of Defendant's home." *Id.* at \_\_\_ n.3, 800 S.E.2d at 753 n.3. Officer Lackey, who was not defendant's probation officer, testified that he had no particular reason for searching the defendant's home nor was he aware of "any complaints about [the defendant], and any illegal activity, contraband he might have had, any reason to have gone to his house other than just a random search[.]" *Id.* at \_\_\_, 800 S.E.2d at 749-50. Investigator Blackwood testified there was no "indication whatsoever" that the defendant was involved in any gang activity or that his probation officer had ever had "any suspicions of any kind of illegal activity, or anything contrary to his probation[.]" *Id.* at \_\_\_, 800 S.E.2d at 750-51. This Court ultimately determined that the State had "failed to meet its burden of demonstrating that the search of [the defendant's] residence was authorized" under the statute. *Id.* at \_\_\_, 800 S.E.2d at 754.

Thus, defendant's argument that "[t]his case is indistinguishable from *State v. Powell*" is not supported by *Powell*, since the situations are quite different. *Compare*

*id.*, \_\_\_ N.C. App. at \_\_\_, 800 S.E.2d at 745. The purpose for the search, the reason for including defendant in the initiative, and the officers conducting the search are entirely different. Here, a Cabarrus County Probation Officer reviewed defendant's file and decided to include his residence in the searches for the purposes of his probation supervision. Defendant's assigned probation officer was aware that defendant's residence would be searched, although she did not participate in the search. The fact that the search was part of a joint initiative with other law enforcement agencies does not automatically mean the search was not "directly related" to the probation supervision. In *Powell*, the search was initiated by a separate law enforcement agency for its own purposes. *Id.* Here, the trial court made findings of fact and conclusions of law, and those findings establish that defendant's probation officer had determined him to be an extreme high risk for reoffending based upon many factors, including that he had moved twice within three months, was suspected of being involved in a gang, and had tested positive for illegal drugs. A probation officer reviewed defendant's file to determine if he should be included in the searches based upon his history and risk level. Even with no consideration of the OTI, which defendant contends is not competent evidence, the other findings make this case entirely distinguishable from *Powell*. *Compare id.*

The only issue presented here under North Carolina General Statute § 15A-1343(b) is whether the search was "for purposes directly related to the probation

supervision” as defendant does not dispute that the search was conducted at a “reasonable time” and that he was present. N.C. Gen. Stat. § 15A-1343(b)(13). All of the evidence, including the OTI, supported the probation officer’s determination that a warrantless search of defendant’s residence was “directly related” to his probation. *Id.* Here, the State met its burden “of demonstrating that the search of [the defendant’s] residence was authorized” under the statute. *Powell*, \_\_\_ N.C. App. at \_\_\_, 800 S.E.2d at 754.

One of the conditions of defendant’s probation was to “[n]ot use, possess, or control any illegal drug or controlled substance[.]” Defendant had already had a positive drug screen and was a “high risk” probationer. The reason for the search was to supervise defendant and to ensure his compliance with the conditions of his probation. This situation is entirely different from *Powell*, where a different law enforcement agency randomly selected the probationers to be searched and was admittedly conducting an entirely separate investigation, without even informing the defendant’s probation officer. *See generally Powell*, \_\_\_ N.C. App. \_\_\_, 800 S.E.2d 745. Defendant’s “high risk” status was important to his probation officer because “high risk” probationers logically require more supervision, and to provide that supervision, a probation officer may decide to conduct a warrantless search “directly” related to the supervision. *See* N.C. Gen. Stat. § 15A-1343(b)(13). This argument is overruled.

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III. Conclusion

We affirm the trial court's order denying defendant's motion to suppress and conclude there was no error in the judgment.

AFFIRMED and NO ERROR.

Judge ZACHARY concurs.

Judge MURPHY dissents.

MURPHY, Judge, dissenting.

The trial court failed to provide Defendant a true opportunity to be heard on his argument to suppress the evidence recovered during the warrantless search of his home. I would vacate the trial court’s order denying Defendant’s motion to suppress and remand for further proceedings. I respectfully dissent.

A warrantless search of a probationer’s residence is reasonable if it is “directly related to the probation supervision.” N.C.G.S. § 15A-1343(b)(13) (2017). As the Majority notes, this statutory language was changed from “*reasonably* related” in 2009, but the General Assembly did not specifically define the phrase “*directly* related.” In *Powell*, our only published case discussing this change, we held the State had not met its burden to prove a warrantless search was directly related to probation supervision where the purpose of the search in question was investigatory in nature rather than in furtherance of the supervisory goals of probation. *Powell*, 253 N.C. App. at 603-04, 800 S.E.2d at 752. We were also persuaded by the fact that “the search of [the] Defendant’s home occurred as a part of an ongoing operation of a U.S. Marshal’s Service task force.” *Powell*, 253 N.C. App. at 604, 800 S.E.2d at 752. I agree with the distinction *Powell* draws between searches that are supervisory in nature, and are therefore directly related to probation supervision, and those that are investigatory in nature.

While reasonable minds can differ on this point, the search in this case was—with two exceptions—nearly identical to the search in *Powell*, which we held was not

directly related to the defendant's probation supervision and therefore must be suppressed. First, unlike in *Powell*, although it involved U.S. Marshals and local police, the search of Defendant's residence was organized and effectuated primarily by probation officers. Second, the State argues Defendant's classification as a "high risk" probationer makes this case distinguishable from *Powell*, where the Defendant was randomly chosen to be searched without consideration of his risk level.

Admittedly, the fact that the search was executed by probation officers—rather than police or U.S. Marshals—suggests that the search was executed for the purpose of probation supervision. Yet, Probation Officer Graham also testified Defendant was chosen to be searched partly due to previous positive drug screens, which suggests that Defendant's residence may have been searched due to the probation officer's desire to investigate the extent of Defendant's involvement in drugs through a warrantless search. Additionally, there is not a clear picture of why Defendant's "high risk" status is important to the State, probation officers, or the trial court's decision that the search in question was directly related to Defendant's probation supervision.

As Defendant's counsel noted during oral argument, "Not only did we object to the [results of the OTI report]. We asked for a hearing on it, we were shot down. The appellant wasn't allowed to argue about that[.]" *See Wilmington Sav. Fund v. IH6 Prop.*, 829 S.E.2d 235, 238 (N.C. Ct. App. 2019) (considering an argument raised at

oral argument and noting our “scope of review is limited by what is included in the record, the transcripts, and any other items filed pursuant to Rule 9, all of which can be used to support the parties’ briefs and oral arguments”). I would hold that the trial court failed to provide Defendant a meaningful opportunity to be heard as to whether the State could prove he was, in fact, a “high risk” probationer, and the impact of such a determination for the purposes of a warrantless search.

At the suppression hearing, Probation Officer Welch’s testimony and Exhibit 2, Defendant’s Risk Needs Assessment, were the only support for the State’s contention that Defendant was, in fact, a “high risk” probationer.<sup>6</sup> When Defendant attempted to object to the entrance of such evidence, he was denied an opportunity to be heard by the trial court, which responded only that the objection was “Overruled. Admitted. Denied.” The record does not provide any reason why the trial court would not allow Defendant’s counsel to be heard on this matter, especially given its importance to Defendant’s suppression motion.

A probationer must receive “full due process” before a court may revoke probation. *State v. Hunter*, 315 N.C. 371, 377, 338 S.E.2d 99, 104 (1986). Indeed, a keystone of our judicial system is the basic premise that “a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause.” *Boddie v. Connecticut*, 401 U.S 371, 379, 28 L. Ed. 2d. 113, 120

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<sup>6</sup> Indeed, the record lacks any information about what “high risk” entails or how it is calculated by a probation officer.

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*MURPHY, J., dissenting*

(1971). Here, Defendant was not afforded a meaningful opportunity to be heard on the issue of whether the State adequately proved he was a “high risk” probationer and what the impact of such a finding would be. Accordingly, I would vacate the trial court’s order denying Defendant’s *Motion to Suppress* and remand for further proceedings consistent with this dissenting opinion.