IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-30

No. COA20-281

Filed 16 February 2021

Pamlico County, Nos. 17 CRS 050369, 19 CRS 000068

STATE OF NORTH CAROLINA

v.

TYREE MARQUELL JONES, Defendant.

Appeal by Defendant from Judgment entered 23 October 2019 by Judge Richard Kent Harrell in Pamlico County Superior Court. Heard in the Court of Appeals 12 January 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Matthew L. Liles, for the State.

Richard Croutharmel for defendant-appellant.

MURPHY, Judge.

¶ 1 Before his trial, Defendant moved to suppress evidence obtained pursuant to a traffic stop as fruit of the poisonous tree, arguing the police lacked reasonable articulable suspicion of criminal activity prior to initiating the warrantless traffic stop resulting in his arrest. The motion to suppress was denied in open court and a written order was entered that denied the motion to suppress based on the arresting

officer having "reasonable suspicion to look for and temporarily detain [Defendant] to investigate narcotics activity in Pamlico County." The trial court also denied the motion based on the community caretaking doctrine.

¶ 2 On appeal, Defendant contends the trial court committed plain error in denying his motion to suppress the evidence obtained from the traffic stop because "the arresting officer had not witnessed a traffic violation and there was no exigent circumstance that would have justified the stop absent a warrant." Defendant presents no argument related to any of the findings of fact the trial court relied on to find the arresting officer had reasonable articulable suspicion. Although Defendant does "challenge[] the findings and conclusions of law the trial court listed under the heading, 'Ruling' in the latter three pages of its written order," including the conclusions of law about reasonable articulable suspicion, he does not make any specific argument as to these conclusions of law. Defendant's complete discussion related to reasonable articulable suspicion is a limited statement of law and two sentences asserting there was no traffic violation:

> When a police officer stops an automobile and detains the occupants briefly, the stop amounts to a seizure within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996); see also *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002) (noting that the Fourth Amendment's protection against "unreasonable searches and seizures" extends to "brief investigatory stops of persons or vehicles"). Traffic stops have "been

> historically reviewed under the investigatory detention framework first articulated in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)." *United States v. Delfin-Colina*, 464 F.3d 392, 396 (3d Cir. 2006) (citation omitted). Under *Terry* and subsequent cases, a traffic stop is permitted if the officer has a "reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675, 145 L. Ed. 2d 570, 576 (2000). "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren*, 517 U.S. at 810.
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> First note that Deputy Jones did not stop Mr. Jones's truck based on a perceived traffic violation. He said as much on direct examination by the prosecutor.

¶ 3 Although Defendant argues no traffic violation occurred, referring to caselaw that holds as a general matter the decision to stop an automobile is reasonable when there has been a traffic violation, at no point does Defendant argue more broadly about reasonable articulable suspicion. Instead, Defendant focuses on the community caretaking doctrine, arguing "the State failed to establish the second prong of the community caretaking doctrine: an objectively reasonable basis for a community caretaking function."

¶ 4 Defendant's sole argument is there was no traffic violation justifying the stop, which is one potential ground for reasonable articulable suspicion, but not the one relied upon in the trial court's order. Defendant never argues there was not reasonable articulable suspicion for the stop otherwise. Defendant's failure to

otherwise challenge the trial court's conclusion the arresting officer had reasonable articulable suspicion renders the issue abandoned. *See* N.C. R. App. P. Rule 28(a) ("The scope of review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party's brief are deemed abandoned."). Additionally, "it is the appellant's burden to show error occurring at the trial court, and it is not the role of this Court to create an appeal for an appellant or to supplement an appellant's brief with legal authority or arguments not contained therein." *Thompson v. Bass*, 261 N.C. App. 285, 292, 819 S.E.2d 621, 627 (2018), *disc. review denied*, 822 S.E.2d 617 (N.C. 2019); *see also Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (*per curiam*) ("It is not the role of the appellate courts . . . to create an appeal for an appellant."), *reh'g denied*, 359 N.C. 643, 617 S.E.2d 662 (2005).

¶ 5 Since the trial court concluded there was reasonable articulable suspicion for the stop in its order denying Defendant's motion to suppress, the abandonment of this issue on appeal means, regardless of our decision regarding the community caretaking exception, the outcome of the case cannot change because the order would be upheld on the finding of reasonable articulable suspicion. Therefore, even presuming the application of the community caretaking exception was error, it was not prejudicial error.

¶ 6 Defendant's abandonment of any argument asserting reasonable articulable

suspicion did not exist in this case requires us to hold the trial court did not err in denying his motion to suppress.

NO PREJUDICIAL ERROR.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).