An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-330

No. COA20-501

Filed 6 July 2021

Guilford County, Nos. 18 CRS 83426, 83429; 19 CRS 79116; 20 CRS 28051

STATE OF NORTH CAROLINA

v.

KENDRICK ALLEN BROWN

Appeal by defendant from judgment entered 25 February 2020 by Judge Lori I. Hamilton in Guilford County Superior Court. Heard in the Court of Appeals 23 March 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Kristine M. Ricketts, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine Jane Allen, for the defendant.

DIETZ, Judge.

¶ 1 Defendant Kendrick Brown pleaded guilty to several drug related charges resulting from illegal drugs found during a traffic stop and a search of his home. On appeal, he argues that the trial court erred by denying his motions to suppress because law enforcement officers lacked probable cause to arrest him after initiating a traffic stop for littering.

¶ 2 This is a new argument on appeal. Brown's two motions to suppress in the trial court asserted that law enforcement officers lacked reasonable suspicion to initiate the traffic stop and that the officers lacked consent from Brown's mother to search the residence that they shared. Because the argument raised on appeal was not presented to the trial court and preserved for appellate review, we cannot address it on direct appeal. We therefore find no error in the trial court's judgment.

Facts and Procedural History

¶ 3 In September 2018, officers from the Greensboro Police Department were surveilling a residence after receiving reports of illegal drug activity at that address. An officer followed a car that left that residence and saw the driver throw an object resembling "clear plastic bags jumbled up together" out of the driver's side window. The officer activated his lights and siren and stopped the driver for littering. As the car slowed to a stop, the officer saw the driver drop another small plastic bag out of the car window.

¶ 4 The officer approached the driver, later identified as Defendant Kendrick Brown, and told him to get out of the car and turn the engine off. Brown did as the officer instructed. The officer immediately put Brown in handcuffs and, while handcuffing him, smelled marijuana. Brown then admitted that there was marijuana in his car and consented to a search. More officers arrived and searched Brown, his car, and the side of the highway where Brown threw objects out of his car window.

The officers recovered marijuana from the car and heroin in one of the bags that Brown threw out of the car window.

¶ 5 After officers read Brown his *Miranda* rights, Brown told the officers there was heroin in his residence and consented to a search of the residence. The officers then searched the residence and seized additional heroin as well as cash and drug paraphernalia from Brown's bedroom. As the officers continued their search of Brown's bedroom, Brown's mother, who owned the home, arrived and revoked consent for the search. The officers then informed Brown's mother that they were leaving.

¶ 6 The State charged Brown with two counts of trafficking heroin, possession with intent to sell or deliver heroin, maintaining a dwelling house for keeping and selling controlled substances, and attaining habitual felon status. Brown moved to suppress the evidence seized from his residence based on lack of consent to conduct the search. He also moved to suppress the evidence seized from his car and the surrounding area based on the officer's lack of reasonable suspicion to initiate the traffic stop. After a hearing, the trial court denied both motions to suppress.

¶ 7 Brown then pleaded guilty using an *Alford* plea while reserving his right to appeal the denial of his motions to suppress. Brown failed to timely appeal the final judgment and later petitioned for a writ of certiorari to review his suppression arguments. Because Brown's intent to appeal is apparent, we exercise our discretion to issue a writ of certiorari to review the issues Brown asserts in this appeal. N.C. R.

App. P. 21.

Analysis

¶ 8 Brown challenges the trial court's denial of his motion to suppress, reasoning that when the officer handcuffed him and removed him from the car "that was a seizure which constituted a de facto arrest for which probable cause was required." As explained below, this issue is not preserved for appellate review on direct appeal.

¶ 9 "[T]o preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." *State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 304 (2019). This Court has held that when a criminal defendant moves to suppress evidence, the defendant "is not entitled to advance a particular theory in the course of challenging the denial of a suppression motion on appeal when the same theory was not advanced in the court below." *State v. Hernandez*, 227 N.C. App. 601, 608, 742 S.E.2d 825, 829 (2013).

¶ 10 In the trial court, Brown filed two motions to suppress. One motion argued that the officers lacked consent from Brown's mother to search the residence they shared. The other argued that the initial stop of Brown's car was illegal because law enforcement lacked reasonable suspicion to conduct the stop. These were the only two legal theories that Brown presented to the trial court as grounds for his motions to

suppress. Brown did not argue to the trial court that, in addition to these two grounds, law enforcement also lacked probable cause to arrest him after initiating the traffic stop. Because Brown's argument on appeal is not one that Brown pursued in the trial court, we cannot review it on direct appeal. Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Judges MURPHY and GORE concur.

Report per Rule 30(e).