IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-389

No. COA20-498

Filed 20 July 2021

Cabarrus County, No. 17CRS053642-43

STATE OF NORTH CAROLINA

v.

ANTWAN BERNARD PARKER, Defendant.

Appeal by Defendant from judgment entered 14 January 2020 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 24 March 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Sage A. Boyd, for the State.

Sharon L. Smith for the Defendant.

DILLON, Judge.

¶ 1 Antwan Bernard Parker ("Defendant") appeals from a judgment finding him guilty of misdemeanor fleeing to elude arrest; misdemeanor resisting a public officer; misdemeanor simple possession of marijuana; and misdemeanor child abuse.

I. Background

¶ 2 On 2 August 2014, while on patrol, a Kannapolis police officer saw three men walk up to a car stopped in the middle of the road. One of these three men was Mr. Wiltshire, a known local drug dealer. The officer saw Mr. Wiltshire, who was in the driver's seat of the stopped car, speak with Defendant for several minutes while the other two men kept a lookout. The officer did not see any drugs change hands, and Mr. Wiltshire left after one of the lookouts noticed the officer's car.

¶ 3 Once Mr. Wiltshire left, the officer initiated a traffic stop. He approached Defendant's car and observed four child passengers. Defendant repeatedly asked the officer why he had been pulled over. The officer did not tell Defendant why he had been stopped. The officer, though, asked Defendant to give him his license and to get out of the car. Defendant provided his license but refused to exit the car.

¶ 4 The officer called for backup. He then returned to Defendant's car and leaned toward Defendant so the children would not hear him discuss illegal drugs. As he leaned forward, he observed a bag of marijuana in the driver-side door.

¶ 5 Once backup arrived, the officer again asked Defendant to exit the car. When Defendant refused, the officer opened the car door. Defendant cursed and drove off with the car door still open. Although Defendant did not hit anything as he drove away, the police officer testified that Defendant drove through a four-way intersection at about sixty (60) miles per hour, that he did not stop at a stop sign, and that he nearly collided with several cars.

¶ 6 Defendant was arrested the next day. Following a jury trial, Defendant was convicted on all charges. Defendant timely appealed.

II. Analysis

¶ 7 Defendant makes two arguments on appeal. We address each in turn.

A. Admissibility of the Officer's Testimony

¶ 8 Defendant first argues that the trial court erred by allowing the officer to testify that Mr. Wiltshire was "a known drug dealer and person who is constantly involved in possessing and selling drugs in that area in Kannapolis," and that the Kannapolis Police Department had multiple open drug investigations regarding Mr. Wiltshire as of August 2, 2014.

¶ 9 Defendant bases his argument on appeal based on Rules 403 and 404(a),(b) of our Rules of Evidence. The State contends that Defendant's arguments were not preserved. However, for the reasons stated below, we conclude that even if Defendant's arguments were preserved, the trial court did not commit reversible error in allowing the testimony.

¶ 10 When reviewing a trial court's evidentiary rulings, this Court determines (1) whether the evidence was proper under Rule 404(b); (2) whether the evidence was relevant under Rule 401; and (3) whether the trial court abused its discretion under Rule 403. *State v. Martin*, 191 N.C. App. 462, 467, 665 S.E.2d 471, 474 (2008).

¶ 11 As an initial matter, we agree with the State that Rule 404(b) is not implicated here because the officer's testimony was not offered to show that a drug transaction occurred or that Defendant committed any other act. Any potential challenge to the trial court's ruling must therefore be based in Rule 404(a).

¶ 12 Defendant argues that the State used character evidence in violation of Rule 404(a) because (1) Defendant did not challenge the legality of the traffic stop, making it unnecessary for the State to introduce evidence explaining the officer's underlying reasonable suspicion; (2) the officer's testimony about Mr. Wiltshire was irrelevant to the charges against Defendant; and (3) because the "sole purpose of the testimony was to impugn [Defendant's] character by association with Wiltshire." Defendant essentially argues that the State used Mr. Wiltshire's reputation to color the jury's opinion of why Defendant fled the traffic stop, suggesting that he fled from the officer due to a drug deal rather than out of concern for the safety of himself and his children.

¶ 13 Under both the U.S. and North Carolina Constitutions, law enforcement officers may conduct brief investigatory stops, including traffic stops, based on a reasonable suspicion that an individual is engaged in criminal activity. *See State v. Otto*, 366 N.C. 134, 136-37, 726 S.E.2d 824, 827 (2012). Reasonable suspicion requires "specific, articulable facts indicating present, ongoing criminal activity and will not allow a stop based on a mere inchoate suspicion or 'hunch[.]' " *State v. Jackson*, 368 N.C. 75, 77-78, 772 S.E.2d 847, 849 (2015).

¶ 14 Defendant cites no authority that the State cannot introduce evidence to establish reasonable suspicion where the defendant stipulates to the legality of a traffic stop. Our Supreme Court has held that reasonable suspicion, while a "less demanding standard than probable cause," still "requires a showing" of "some minimal level of objective justification" to protect defendants' Fourth Amendment rights. *State v. Barnard*, 362 N.C. 244, 247, 658 S.E.2d 643, 645 (2008).

¶ 15 Further, evidence similar to Mr. Wiltshire's reputation as a drug dealer has been held admissible to prove reasonable suspicion. *See Jackson*, 368 N.C. at 78-81, 772 S.E.2d at 849-51. In *Jackson*, the defendant's presence in a high-crime area was deemed not enough on its own to establish reasonable suspicion. Rather, the court held that the arresting officer had reasonable suspicion based on the high-crime nature of the area *in addition to* the defendant's suspicious conduct and the fact that he was standing outside a specific store known to the officer as being the site of many hand-to-hand drug transactions and prior drug crime arrests. *Id.* at 80, 772 S.E.2d at 850.

¶ 16 Here, the officer's knowledge of Mr. Wiltshire's prior criminal activity served a similar purpose as the *Jackson* officer's knowledge of the store; in both cases, the officers' general suspicions were focused and elevated by the reputation of a specific person or place as the hub of repeated drug transactions. Indeed, Mr. Wiltshire's reputation was the crucial factor in the officer's conclusion that he had reasonable

suspicion sufficient to initiate a traffic stop. This is so because the officer did not see drugs exchanged and observed no traffic violations by Defendant. Absent Mr. Wiltshire's known reputation, the officer would merely have observed Defendant speaking with another man in a high-crime area.

¶ 17 Finally, even if the trial court erred, the error was not prejudicial. Based on Defendant's stipulation to the legality of the stop and the State's other evidence, we conclude that it is not reasonably possible that a different result would have been reached at trial if the officer's testimony had not been allowed. *See* N.C. Gen. Stat. § 15A-1443 (2014); *see also State v. Malachi*, 371 N.C. 719, 733, 821 S.E.2d 407, 418 (2018).

¶ 18 We conclude that the trial court did not violate Rule 404(a) or 404(b) by admitting the officer's testimony. Further, the trial court did not abuse its discretion under Rule 403 because the probative value of the officer's testimony did not substantially outweigh the danger of unfair prejudice due to the strength of the State's independent evidence.

B. Defendant's Motion to Dismiss

¶ 19 Defendant next argues that the trial court erred in denying his motion to dismiss the charge of misdemeanor child abuse because the State presented insufficient evidence.

¶ 20 On appeal, this Court must determine if the State presented "substantial evidence" of every essential element of the crime. *State v. Smith,* 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980). Substantial evidence is relevant evidence that a reasonable juror "might accept as adequate" to establish an element. *Id.* at 78, 265 S.E.2d at 169. All evidence must be considered in the light most favorable to the State, "giving the State the benefit of every reasonable inference[.]" *State v. Squires*, 357 N.C. 529, 535, 591 S.E.2d 837, 841 (2003).

¶ 21 Defendant challenges his child abuse conviction under N.C. Gen. Stat. § 14-318.2(a) (2014), which states in relevant part that:

> Any parent of a child less than 16 years of age . . . who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the Class A1 misdemeanor of child abuse.

This statute does not define "substantial risk of injury." In child abuse cases where the issue presented is a "close question[,]" our Court has held that a motion to dismiss should be denied. *State v. Watkins*, 247 N.C. App. 391, 396, 785 S.E.2d 175, 178 (2016).

¶ 22 At trial, the jury also convicted Defendant for misdemeanor fleeing to elude arrest under N.C. Gen. Stat. § 20-141.5 (2014), rather than for felony fleeing, which requires a finding that the driver drove recklessly as defined by N.C. Gen. Stat. § 20-140. *See* N.C. Gen. Stat. § 20-141.5(b)(3), (8).

¶ 23 Because the jury convicted Defendant of misdemeanor fleeing to elude arrest notwithstanding the undisputed presence of child passengers, the jury implicitly found that Defendant did *not* drive recklessly while leaving the traffic stop.[1] Defendant argues that this lesser conviction automatically defeats the child abuse charge because the State introduced no non-driving evidence tending to show a "substantial risk of injury" to the children. We disagree.

¶ 24 Interpreted in the light most favorable to the State, the evidence presented at trial showed that Defendant drove off from the traffic stop with his driver's door open, drove through a parking lot at approximately sixty (60) miles per hour, and narrowly avoided several collisions with other cars while driving through a four-way intersection without stopping.[2] Although the jury did not find that this evidence satisfied the court's specific definition of "reckless driving," a reasonable juror could nonetheless conclude that driving at sixty (60) miles per hour with a car door open creates a "substantial risk of injury" for any passengers, including children, in the

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[1] The trial court instructed the jury that "reckless driving" included two elements: (1) "that the Defendant drove a vehicle upon a public vehicular area," and (2) that [Defendant] drove that vehicle at a high rate of speed and through a stop sign located in an intersection within the parking lot without stopping, and that in doing so he acted carelessly or heedlessly in willful or wanton disregard of the rights and safety of others."

[2] Defendant himself admits in his brief that he sped through the parking lot and that he could have caused "a car accident."

vehicle. Our jurisprudence leads us to conclude that close questions in child abuse cases should be decided by the jury.

III. Conclusion

¶ 25 We conclude that the trial court did not commit reversible error in allowing the officer to testify as to Mr. Wiltshire's reputation as a drug dealer. Further, the trial court did not err in denying Defendant's motion to dismiss the charge of misdemeanor child abuse.

NO ERROR.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).