IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-72

No. COA20-865

Filed 1 February 2022

Forsyth County, No. 17 CRS 59353, 59355

STATE OF NORTH CAROLINA, Plaintiff,

v.

BRANDON LAMONT ADAMS, Defendant.

Appeal by Defendant from judgment entered 10 August 2018 by Judge Lori I. Hamilton in Forsyth County Superior Court. Heard in the Court of Appeals 2 November 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Robert T. Broughton, for the State.

Sharon L. Smith, for Defendant-Appellant.

WOOD, Judge.

¶ 1 Defendant Brandon Lamont Adams ("Defendant") appeals from his August 10, 2018 convictions of possession of a firearm by a felon and possession of marijuana. On appeal, Defendant contends the trial court erred by denying his pre-trial motion to suppress evidence obtained "from a traffic stop and searches arising therefrom." After careful review of the record and applicable law, we affirm the order of the trial

court.

I. Factual and Procedural Background

¶ 2 On October 8, 2017, Deputy Brandon Jones ("Deputy Jones") of the Forsyth County Sherriff's Office was on patrol when he observed Defendant driving his vehicle in a southbound direction. At approximately 1:50 a.m., Deputy Jones observed Defendant stop his vehicle and activate his hazard lights. Defendant exited and surveyed the vehicle before reentering it and turning the engine off. Thereafter, Deputy Jones pulled his vehicle behind Defendant's vehicle and initiated an "assist motorist" action. Deputy Jones did not activate his emergency lights or siren.

¶ 3 According to Deputy Jones, an "assist motorist" is when law enforcement "look[s] out for the well-being of the community, whether their car breaks down and their suffering some form of difficulty with the vehicle they're operating." In other words, Deputy Jones approached Defendant's vehicle "to render aid and see if everything was all right with his vehicle."

¶ 4 After parking his patrol vehicle, Deputy Jones approached Defendant on foot. Upon approaching the vehicle, Deputy Jones saw Defendant had a flat tire. Deputy Jones also "detected a strong odor of marijuana emanating from the vehicle." When asked for his identification, Defendant conceded he did not have his driver's license with him but gave Deputy Jones his name. Deputy Jones went back to his patrol vehicle, where he searched Defendant's information and discovered Defendant's

license was suspended.

¶ 5 Deputy Jones returned to Defendant's vehicle and informed him he would not charge Defendant with "driving while suspended." Deputy Jones, however, "asked the driver about the presence of illicit narcotics, or marijuana, [and] he informed [Deputy Jones] he did have marijuana inside the vehicle." Thereafter, Deputy Jones "requested an additional unit to assist in an investigation of the violation of the Controlled Substance Act."

¶ 6 While Deputy Jones was speaking with Defendant, a second vehicle approached them. This vehicle was driven by "an associate – or an acquaintance" of Defendant. The acquaintance had responded to Defendant's call to "assist in swapping the flat tire with a spare tire." Deputy Jones asked Defendant's acquaintance to return to his vehicle "while [Deputy Jones] conducted [his] investigation of the violation of controlled substances." The acquaintance replied that "he would not and began to walk toward [Deputy Jones] with a tire iron and a car jack."

¶ 7 Although Deputy Jones asked the acquaintance to return to his vehicle a second time, the acquaintance and Defendant walked away "into a grass field that was located next to [the] . . . vehicles." Deputy Jones "observed what [he] believed to be a hand-to-hand transaction." Deputy Jones described a "hand-to-hand transaction" as "the transferring of one item by hand to the hands of an additional

subject." After observing this, Deputy Jones detained Defendant because he "believed [Defendant] was possibly attempting to distance, or rid himself, of the controlled substance."

¶ 8 Thereafter, other law enforcement officers arrived on scene and detected a "smell . . . [of] marijuana coming from the vehicle." A search of Defendant's vehicle revealed a digital scale containing what law enforcement believed to be residue of narcotics; a marijuana cigar; a loaded firearm in the glove compartment; and "a partially consumed malt beverage in the center cup holder, adjacent to the driver's seat."

¶ 9 On March 12, 2018, Defendant was indicted for possession of a firearm by a felon; possession of drug paraphernalia; possession of marijuana up to one-half ounce; and possession of an open container after consuming alcohol. On August 2, 2018, Defendant filed a motion to suppress evidence obtained from the search of his vehicle. This motion was denied.

¶ 10 Defendant's trial for possession of a firearm by a felon, carrying a concealed weapon after or while consuming alcohol, possession of marijuana up to one-half ounce, possession of drug paraphernalia, and possession of an open container after consuming alcohol began on August 8, 2018. Defense counsel did not object to the admission of evidence obtained from Defendant's vehicle at trial. On August 9, 2018, the jury convicted Defendant of possession of a firearm by a felon and possession of

marijuana up to one-half ounce. Defendant was acquitted of the remaining charges. On August 10, 2018, Defendant came before the court for sentencing. During sentencing, the trial court permitted Defendant to address the court. Defendant stated,

> As a man I know I did make a mistake. I know I was wrong, you know what I'm saying. You was respectful. I know you wasn't out to get me when everything happened. And everybody in here did their job, you know what I'm saying. I know I committed a crime. I'm guilty. Regardless of what happened, I'm guilty.

Thereafter, the trial court consolidated the judgments and sentenced Defendant to a minimum of twenty months and a maximum of thirty-three months incarceration.

¶ 11 Defendant filed a *pro se* "Motion and Notice of Appeal Pursuant to MAR, 4th Amendment Violation" on April 29, 2019. The trial court reviewed Defendant's *pro se* motion as a motion for appropriate relief ("MAR"). The trial court denied Defendant's MAR because it did "not comply with the statutory filing and service requirements; . . . the contentions in Defendant's [MAR] [were] wholly unsupported by the statutorily required affidavit or other . . . evidence; and . . . Defendant's [MAR] is procedurally barred." Defendant filed a petition for writ of certiorari ("PWC") with this Court on October 17, 2019. Defendant's PWC to review the judgment entered on

August 10, 2018 was allowed by order of this Court on October 22, 2018.[1]

II. Discussion

¶ 12 In his sole argument on appeal, Defendant contends the trial court erred by "denying [Defendant's] motion to suppress where it conflated the *Terry* stop standard with the community caretaking doctrine." We disagree.

¶ 13 "The law in this State is now well settled that 'a trial court's evidentiary ruling on a pretrial motion [to suppress] is *not* sufficient to preserve the issue of admissibility for appeal unless a defendant renews the objection during trial.' " *State v. Hargett*, 241 N.C. App. 121, 124, 772 S.E.2d 115, 119 (2015) (alteration in original) (quoting *State v. Oglesby*, 361 N.C. 550, 554, 648 S.E.2d 819, 821 (2007) (emphasis in original) (citations omitted)); *see also State v. Parker*, 277 N.C. App. 531, 2021-NCCOA-217, ¶ 15 (quoting *State v. Golphin*, 352 N.C. 364, 463, 533 S.E.2d 168, 232 (2000); *State v. Newborn*, 2021-NCCOA-426, ¶ 20-21 (citation omitted).

¶ 14 Defendant concedes that "[t]rial counsel did not object when the evidence obtained from the search of [his] car was admitted at trial." However, Defendant asks this Court to review the admission of the evidence for plain error. While the denial

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[1] It appears Defendant was released from prison on April 3, 2020. Accordingly, his appeal may be dismissed as moot. *See State v. Daw*, 277 N.C. App. 240, 2021-NCCOA-180, ¶ 12. However, the COA may hear a moot case under the public interest exception. *Id.* at ¶ 14. "Under the public interest exception to mootness, an appellate court may consider a case, even if technically moot, if it involves a matter of public interest, is of general importance, and deserves prompt resolution." *Id.* (cleaned up).

of Defendant's motion to suppress is not preserved for appellate review, our precedent permits this Court to review the admission of the evidence subject to the suppression motion for plain error where a "[d]efendant 'specifically and distinctly' argues on appeal that the trial court's denial of his motion, and subsequent admission of the . . . evidence, amounted to plain error." *Newborn*, ¶ 21; *see also Oglesby*, 361 N.C. at 554, 648 S.E.2d at 821; *Hargett*, 241 N.C. App. at 126-27, 772 S.E.2d at 120-21. Here, Defendant contends that the "trial court's denial of the motion to suppress amounted to plain error."

¶ 15 To establish plain error,

> [A] defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings.

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (cleaned up) (citations omitted). "In conducting our review for plain error, we must first determine whether the trial court did, in fact, err in denying Defendant's motion to suppress." *State v. Powell*, 253 N.C. App. 590, 594, 800 S.E.2d 745, 748 (2017). "The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact

support the conclusions of law." *Newborn*, ¶ 24 (quoting *State v. Jackson*, 368 N.C. 75, 78, 772 S.E.2d 847, 849 (2015)). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *State v. Ashworth*, 248 N.C. App. 649, 651, 790 S.E.2d 173, 176 (2016) (citation omitted).

¶ 16 On appeal, Defendant argues the trial court erred by denying his motion to suppress because "the trial court conflated the reasonable articulable suspicion analysis under *Terry* with the community caretaking exception." We address the standards separately. *State v. Brown*, 265 N.C. App. 50, 55, 827 S.E.2d 534, 537 (2019).

¶ 17 This Court adopted the community caretaking exception to a warrantless search and seizure in *State v. Smathers*, 232 N.C. App. 120, 753 S.E.2d 380 (2014). In *Smathers*, a law enforcement officer observed the defendant lawfully operating her vehicle when a large animal ran into the road in front of her vehicle. 232 N.C. App. at 121, 753 S.E.2d at 381. The defendant "struck the animal, causing her vehicle to bounce and produce sparks as it scraped the road." *Id.* The officer activated his blue lights and "pulled his police cruiser behind [the] defendant," to ensure that "she and the vehicle were 'okay.' " *Id.* The defendant did not stop her vehicle, so the officer activated his siren and followed the defendant for approximately one mile. *Id.* Once stopped, the defendant told the officer she had hit a dog. *Id.* at 122, 753 S.E.2d at 382. During his interaction with the defendant, the officer "detected the scent of

alcohol coming from [the] defendant . . . [and] that she also had glassy eyes and slurred speech." *Id.* Law enforcement conducted "roadside sobriety tests, which [the] defendant failed." *Id.* The defendant later pleaded guilty to driving while impaired and appealed to the Transylvania County Superior Court, where she moved to suppress all evidence gathered from the stopping of her vehicle. *Id.*

¶ 18 Upon the trial court's denial of her suppression motion, the defendant entered an *Alford* plea and appealed to this Court. *Id.* The *Smathers* Court noted there was "no reasonable articulable suspicion of criminal activity" when the defendant was seized. *Id.* at 123, 753 S.E.2d at 383. However, the trial court's denial of the defendant's suppression motion was affirmed under the "community caretaking" doctrine. *Id.* at 131-32, 753 S.E.2d at 388.

¶ 19 Under the community caretaking "test," the State has the burden of proving three things:

> (1) a search or seizure within the meaning of the Fourth Amendment has occurred; (2) if so, that under the totality of the circumstances an objectively reasonable basis for a community caretaking function is shown; [and] (3) if so, that the public need or interest outweighs the intrusion upon the privacy of the individual.

Id. at 128-29, 753 S.E.2d at 386 (citations omitted); *see Brown*, 265 N.C. App. at 55-56, 827 S.E.2d at 537-38 (citation omitted); *State v. Sawyers*, 247 N.C. App. 852, 860, 786 S.E.2d 753, 758 (2016) (citation omitted).

> [T]he overarching public policy behind this widespread adoption [of the community caretaking doctrine] is the desire to give police officers the flexibility to help citizens in need or protect the public even if the prerequisite suspicion of criminal activity which would otherwise be necessary for a constitutional intrusion is nonexistent. The doctrine recognizes that, in our communities, law enforcement personnel are expected to engage in activities and interact with citizens in a number of ways beyond the investigation of criminal conduct. Such activities include a general safety and welfare role for police officers in helping citizens who may be in peril or may otherwise be in need of some form of assistance.

Sawyers, 247 N.C. App. at 860, 786 S.E.2d at 758 (quoting *Smathers*, 232 N.C. App. at 125, 753 S.E.2d at 384 (citations omitted)).

¶ 20 Here, Defendant contends the trial court did not apply the three-part test as articulated in *Smathers*, but rather applied the "reasonable suspicion analysis" and focused its analysis "on what occurred *after* the stop." While Defendant is correct that a traffic stop constitutes a seizure under the Fourth amendment, *see State v. Smith*, 192 N.C. App. 690, 693, 666 S.E.2d 191, 193 (2008) ("A traffic stop is a seizure even though the purpose of the stop is limited and the resulting detention quite brief."), he ignores that there was not a traffic stop in the present appeal.[2]

¶ 21 Generally, "a person is seized, [when,] taking into account all of the

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[2] "Under *Terry* and subsequent cases, a traffic stop is permitted if the officer has a 'reasonable, articulable suspicion that criminal activity is afoot.' " *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675, 145 L. Ed. 2d. 570, 576 (2000)).

circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *State v. Wilson*, 250 N.C. App. 781, 784, 793 S.E.2d 737, 739 (2016) (cleaned up).

> Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Id. at 785, 793 S.E.2d at 740 (quoting *U.S. v. Mendenhall*, 446 U.S. at 554-55, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497, 509-10 (1980)); *State v. Knudson*, 229 N.C. App. 271, 282, 747 S.E.2d 641, 649 (2013) (citation omitted); *State v. Farmer*, 333 N.C. 172, 187, 424 S.E.2d 120, 129 (1993) (citations omitted).

¶ 22 Here, Deputy Jones observed Defendant's vehicle stopped on the side of the road with the vehicle's hazard lights activated. Deputy Jones did not activate his siren or emergency lights but pulled his patrol vehicle behind Defendant's vehicle to inquire if Defendant needed assistance and to "render aid." Deputy Jones was the only officer at the scene at the time he stopped to render aid to Defendant. Deputy Jones stopped and asked Defendant what was wrong with his vehicle. There is no

evidence in the record that Deputy Jones did this in a threatening or intimidating manner that would compel compliance, nor did Deputy Jones touch or otherwise constrain Defendant. Accordingly, Defendant was not "seized" at the time Deputy Jones conducted an "assist motorist."

¶ 23 A "*Terry* stop" is a brief "stop and frisk" or investigatory detention, "which must rest on a reasonable, articulable suspicion of criminal activity." *State v. Carrouthers*, 213 N.C. App. 384, 388, 714 S.E.2d 460, 463 (2011) (cleaned up). "Reasonable suspicion is a 'less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.' " *State v. Barnard*, 362 N.C. 244, 247, 658 S.E.2d 643, 645 (2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675-76, 145 L. Ed. 2d 570, 576 (citation omitted)).

¶ 24 "To determine whether reasonable suspicion exists, courts must look to the totality of the circumstances as viewed from the standpoint of an objectively reasonable police officer." *State v. Walton*, 277 N.C. App. 154, 2021-NCCOA-149, ¶ 19 (citing *State v. Johnson*, 370 N.C. 32, 34-35, 803 S.E.2d 137, 139 (2017)); *see also State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) ("A court must consider 'the totality of the circumstances—the whole picture' in determining whether a reasonable suspicion to make an investigatory stop exists." (citation omitted)). "Only some minimal level of objective justification is required." *Barnard*, 362 N.C. at 247, 658 S.E.2d at 645 (cleaned up) (citations omitted). However, there must be

"something more than an 'unparticularized suspicion or hunch.' " *Watkins*, 337 N.C. at 442, 446 S.E.2d at 70 (quoting *U.S. v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1, 10 (1989)).

¶ 25 In *State v. Rivens*, 198 N.C. App. 130, 679 S.E.2d 145 (2009), this Court found that law enforcement had reasonable suspicion to conduct a "non-consensual search" where an officer "noticed a bulge in [the] defendant's shirt, the smell of marijuana on [the] defendant, and the nervous twitch of [the] defendant's mouth." 198 N.C. App. at 134, 679 S.E.2d at 149 (citation omitted). Similarly, in *State v. Smith*, 192 N.C. App. 690, 666 S.E.2d 191 (2008), this Court affirmed the trial court's denial of a motion to suppress where a law enforcement officer testified that he "detected the odor of marijuana as he approached [the] defendant's vehicle." 192 N.C. App. at 694, 666 S.E.2d at 194 (cleaned up) (citation omitted).

¶ 26 Moreover, in *State v. Greenwood*, 301 N.C. 705, 273 S.E.2d 438 (1981), our Supreme Court held that an officer has *probable cause* to conduct a warrantless search of a vehicle when an officer detects the odor of marijuana emanating from a vehicle. 301 N.C. at 708, 273 S.E.2d at 441 ("[The Court of Appeals] correctly concluded that the smell of marijuana gave the officer probable cause to search the automobile for the contraband drug."); *see also State v. Yates*, 162 N.C. App. 118, 122, 589 S.E.2d 902, 904 (2004) (citations omitted).

¶ 27 Here, Deputy Jones detected the strong odor of marijuana when he approached

Defendant's vehicle and when asked, Defendant admitted to possessing marijuana. Deputy Jones also observed a hand-to-hand transaction between Defendant and the person whom he had called for assistance with his flat tire and believed Defendant was trying to distance or rid himself of contraband. Accordingly, we hold the trial court did not err by denying Defendant's pre-trial motion to suppress, as Deputy Jones had a reasonable, articulable suspicion to investigate a violation of the Controlled Substances Act. We further hold that the trial court did not err by "conflating" the community caretaking doctrine with the reasonable suspicion *Terry* standard, because under the community caretaking doctrine, Defendant was not seized when Deputy Jones stopped to assist Defendant with his vehicle.

III. Conclusion

¶ 28 After careful review of the record and applicable law, we are not persuaded that the trial court erroneously conflated the two exceptions to warrantless searches and seizures because under the community caretaking doctrine, Defendant was not "seized" when Deputy Jones stopped to assist Defendant. We further hold the trial court properly denied Defendant's motion to suppress under the reasonable, articulable suspicion standard where the deputy detected the strong odor of marijuana and the defendant affirmed the presence of marijuana in the vehicle. Accordingly, the trial court's denial of Defendant's motion to suppress is affirmed.

AFFIRMED.

Judges DILLON and GORE concur.

Report per Rule 30(e).