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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-176

No. COA21-562

Filed 15 March 2022

New Hanover County, No. 20 JB 118

IN THE MATTER OF: D.K.B.

Appeal by Juvenile from orders entered 9 August 2021 and 24 August 2021 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 9 February 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Janelle E. Varley, for the State.

Kellie Mannette for Juvenile-Appellant.

JACKSON, Judge.

¶ 1 D.K.B. ("Dean")[1] appeals from the trial court's denial of his motion to suppress, the 9 August 2021 order adjudicating him delinquent, and the 24 August 2021 order giving him a Level 3 disposition and ordering him to be indefinitely committed to a youth development center. After careful review, we affirm.

I. Background

¶ 2 On 15 June 2021, Dean, a 17-year-old black male, was hanging out in

[1] Pseudonyms are used to protect the identity of the juvenile and the juvenile witness in this case. *See* N.C. R. App. P. 42(b)(1).

Wilmington, North Carolina, with a couple of friends, including Jennifer. Jennifer drove the group to a store in her car and Dean went into the store while Jennifer remained in the car. While waiting for Dean, Jennifer saw a police car pull in behind her car. The police officer appeared to examine Jennifer's car tag. Dean then left the store, got in the backseat of the car on the driver's side, and the group drove out of the store's parking lot.

¶ 3 Shortly thereafter, Jennifer was pulled over by law enforcement. Jennifer had a temporary tag on the car, which had expired ten days prior on 5 June 2021. Jennifer had received the permanent tag from her dealership but had not yet replaced the temporary tag. Two law enforcement officers, Corporal J. Beagle of the New Hanover County Sheriff's Department and Officer B. Pineiro of the Wilmington Police Department, approached the driver's side of Jennifer's car and a third officer approached the passenger's side. Officer Pineiro had previously encountered Dean in four gun-related incidents over the last year and a half. The officers were all members of the Mobile Field Force, a gang task force working in Wilmington.

¶ 4 After walking up to the car, Corporal Beagle began talking with Jennifer, asking for her driver's license and registration. Seconds later, Officer Pineiro alerted the other officers that Dean was sitting in the backseat. Corporal Beagle then told Jennifer to have Dean open the backdoor and directed her to unlock the door. While Corporal Beagle directed Jennifer to unlock the backdoor, Officer Pineiro saw through

the car window Dean "fidgeting" with a black jacket on his lap and "moving his hands behind his waistband underneath his black jacket." Officer Pineiro told Dean: "Let me see your hands." After Jennifer unlocked the backdoor, Officer Pineiro opened the door and pulled Dean out of the car, intending to perform a weapons frisk. Officer Pineiro grabbed Dean by the arm to prevent him from reaching for his waistband and as he did so, Officer Pineiro asked Dean: "You got nothing on you, do you?" Dean responded to Officer Pineiro's question and Officer Pineiro later testified that Dean stated: "Yeah, I got one." Based on his experience, Officer Pineiro took that to mean Dean had a gun on his person.

¶ 5 At that point, Officer Pineiro and another officer immediately detained Dean, placing him in handcuffs. Several more law enforcement officers had arrived on scene to assist Corporal Beagle and Officer Pineiro. Officer Pineiro lifted Dean's shirt and found a black handgun in Dean's waistband. Officers then walked Dean toward the patrol cars and removed the gun from his waistband. While talking with Dean, Officer Pineiro stated that they stopped Jennifer's car because of the expired tag. Officer Pineiro also explained that he took Dean out of the car and frisked him because of his previous personal encounters with Dean in the gun-related incidents and Dean saying "Yeah, I got one" when Officer Pineiro asked if Dean had a gun on him. After a couple of minutes, Dean then told Officer Pineiro he had "a perc in [his] sock." Officer Pineiro removed a small plastic bag from Dean's sock.

¶ 6 On 13 July 2021, Dean filed a motion to suppress. The motion came on for hearing before the Honorable J.H. Corpening, II, on 20 July 2021. After hearing testimony from Jennifer, Corporal Beagle, and Officer Pineiro and reviewing Officer Pineiro's body cam footage, the trial court denied the motion to suppress. Dean entered notice of appeal as to the denial of the motion to suppress in open court. The trial court later entered a written order denying Dean's motion to suppress evidence on 16 September 2021.

¶ 7 Dean then admitted to the offenses of carrying a concealed weapon, possession of a handgun by a minor, possession of a Schedule II controlled substance, and two probation violations. The trial court entered an order adjudicating Dean delinquent on 9 August 2021. Following the admission colloquy, the trial court continued disposition to refer Dean for an interdisciplinary evaluation in accordance with N.C. Gen. Stat. § 7B-2502(c) and *In re E.M.*, 263 N.C. App. 476, 823 S.E.2d 674 (2019).

¶ 8 The parties reconvened for disposition on 24 August 2021. The trial court accepted a Comprehensive Clinical Assessment and the recommendations of Juvenile Justice regarding disposition for Dean. The trial court ordered Dean committed to a youth development center for an indefinite period not to exceed his nineteenth birthday. The trial court entered a written disposition order on 24 August 2021.

¶ 9 Dean entered timely notice of appeal on 26 August 2021.

II. Analysis

¶ 10 Dean argues first that the trial court erred in denying his motion to suppress challenging Findings of Fact 9, 16, and 17-22 in the trial court's written order and contending that Officer Pineiro lacked the reasonable suspicion that Dean was armed necessary to perform a *Terry* frisk. Dean argues second that the trial court erred in accepting a mental health assessment that was not equivalent to an interdisciplinary evaluation under N.C. Gen. Stat. § 7B-2502(c) when entering the final disposition order.

A. Motion to Suppress

¶ 11 "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." *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011). "The trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. The conclusions of law made by the trial court from such findings, however, are fully reviewable on appeal." *State v. Saldierna*, 371 N.C. 407, 421, 817 S.E.2d 174, 183 (2018) (internal marks and citations omitted).

¶ 12 On appeal, Dean challenges Findings of Fact 9, 16, 17 and "the finding implicit in the collective reading of facts numbers 17-22 that the Terry frisk did not begin until after Dean said he 'ha[d] one' on him." The applicable findings of fact in the trial court's 16 September 2021 order are as follows:

> 9. On June 15, 2021, Corporal Beagle stopped a silver Acura driven by [Jennifer] because the North Carolina registration temporary tag on the vehicle was expired.
>
> . . .
>
> 16. Officer Pineiro observed the juvenile's hands messing with his waistband while a jacket covered his waistband.
>
> 17. Officer Pineiro ordered the juvenile to exit the vehicle to perform a weapons frisk based on the juvenile's movements inside the vehicle and Officer Pineiro's prior knowledge of the juvenile.
>
> 18. While the juvenile was exiting the vehicle, Officer Pineiro asked the juvenile if he had "anything on him."
>
> 19. The juvenile responded to Officer Pineiro's question by stating "I've got one on me."
>
> 20. Based on Officer Pineiro's training and experience, he knew the statement "I've got one on me" to mean that the juvenile had a firearm on him.
>
> 21. At the time the juvenile was removed from the vehicle, Officer Pineiro knew the juvenile to be presently armed and dangerous.
>
> 22. Officer Pineiro detained the juvenile by placing him in handcuffs and conducted a weapons frisk pursuant to *Terry v. Ohio*.

We review each finding of fact to ensure that it is supported by competent evidence.

¶ 13 Regarding Finding of Fact 9, both Jennifer and Corporal Beagle testified at the hearing that the temporary tag on her car was expired on 15 June 2021. Law enforcement officers can be heard on Officer Pineiro's body cam video telling Dean

the tag had expired on 5 June 2021. Dean acknowledges in his brief "that was a valid reason the car could be stopped[.]" Accordingly, Finding of Fact 9 is supported by competent evidence.

¶ 14 Regarding Finding of Fact 16, Officer Pineiro testified on direct examination that "[Dean] had a black jacket on his lap. He kept moving with it, fidgeting it." Officer Pineiro testified on cross-examination that "You can't see on the body cam because of where I had my camera, but when he was sitting there he was moving his hands behind his waistband underneath his black jacket." As Dean points out in his brief, Officer Pineiro does not mention Dean moving his hands near his waistband when explaining to Dean the reasons for the search on the body cam video. However, in reviewing Officer Pineiro's body cam, there is a distinct period of time between when Officer Pineiro states Dean is in the car and when Officer Pineiro tells Dean to show him his hands in which Officer Pineiro could have observed Dean fidgeting with the jacket and moving his hands behind his waistband. Officer Pineiro remains standing next to the driver's side passenger window during this period. Accordingly, Finding of Fact 16 is supported by competent evidence.

¶ 15 Regarding Finding of Fact 17, in addition to listing the prior interactions he had with Dean on the body cam video, Officer Pineiro testified at the suppression hearing to each firearm-related incident concerning Dean that he had either been directly involved in or had personal knowledge of the details. Further, as outlined

above, Officer Pineiro testified at the hearing that he observed Dean fidgeting with the jacket and moving his hands behind his waistband. The body cam video reflects that Officer Pineiro was in a position and had the opportunity to observe such movements. Accordingly, Finding of Fact 17 is supported by competent evidence.

¶ 16 Lastly, Dean contends that it is implicit in Findings of Fact 17-22 that the *Terry* frisk did not begin until after Dean said he had one on him but that the body cam video demonstrates the search began as Officer Pineiro pulled Dean out of the car. We do not agree that there is an implicit finding that the *Terry* frisk began after Dean stated he had one on him. Nevertheless, even if we agreed, such a finding would be supported by competent evidence as Officer Pineiro testified at the hearing that he decided to perform a weapons frisk because of Dean's movements in the car and his knowledge of the various firearm-related incidents involving Dean.

¶ 17 We next review the trial court's conclusions of law:

> 1. None of the juvenile's constitutional rights, either federal or state, were violated by the frisk of the juvenile's person.
>
> 2. The vehicle was stopped for a legitimate reason, that being the vehicle's North Carolina temporary tag was expired.
>
> 3. There was reasonable suspicion to believe the juvenile was armed and presented a threat to officer safety and the safety of others due to the juvenile's prior history regarding firearms, his behavior in the vehicle, and his statement to law enforcement indicating that he had a

firearm concealed on his person.

By individually examining each part of the traffic stop and subsequent weapons frisk conducted by Corporal Beagle and Officer Pineiro, we conclude that the trial court did not err in its conclusions of law.

¶ 18 Law enforcement initiated a traffic stop on Jennifer's car because her temporary tag had expired ten days previously. "A law enforcement officer may stop a motorist when the officer has 'probable cause' to believe that the motorist has committed a readily observable traffic infraction." *State v. Parker*, 183 N.C. App. 1, 7, 644 S.E.2d 235, 240-41 (2007) (quoting *Whren v. United States*, 517 U.S. 806, 819 (1996)). An expired temporary tag violates N.C. Gen. Stat. § 20-50 and § 20-111, providing Corporal Beagle and Officer Pineiro with probable cause that Jennifer had committed a traffic violation. While the reason for the stop appears pretextual based on the rapid and sizeable response of law enforcement to a minor traffic violation, such stops are nevertheless constitutional. *State v. McClendon*, 350 N.C. 630, 635, 517 S.E.2d 128, 131-32 (1999) (holding that pretextual stops are allowed under the North Carolina Constitution). "A law enforcement officer's subjective motivation for stopping a motorist is irrelevant to the validity of a traffic stop if the stop is supported by probable cause." *Parker,* 183 N.C. App. at 8, 644 S.E.2d. at 241. Accordingly, the traffic stop on Jennifer's car was lawful.

¶ 19 As soon as Corporal Beagle and Officer Pineiro approached Jennifer's car and

saw Dean sitting in the backseat, Corporal Beagle began directing Jennifer to unlock the backdoor and have Dean step out of the car. "Police may order passengers from a vehicle when they have made a lawful traffic stop of the vehicle." *State v. Stone*, 179 N.C. App. 297, 302, 634 S.E.2d 244, 248 (2006); *see also Maryland. v. Wilson*, 519 U.S. 408, 414-15 (1997) ("an officer making a traffic stop may order passengers to get out of the car pending completion of the stop[]" as the interest in officer safety outweighs the intrusion on passengers). Therefore, Corporal Beagle's actions in ordering Dean to get out of Jennifer's car were not a violation of the Fourth Amendment's prohibition against unreasonable searches and seizures. *Wilson*, 519 U.S. at 412, 414.

¶ 20 Next, we review whether Officer Pineiro had the necessary reasonable suspicion pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), to frisk Dean for weapons after pulling him out of Jennifer's car. During a lawful traffic stop, "an officer may conduct a pat down search, for the purpose of determining whether the person is carrying a weapon, when the officer is justified in believing that the individual is armed and presently dangerous." *State v. Sanders*, 112 N.C. App. 477, 480, 435 S.E.2d 842, 844 (1993) (citing *Terry*, 392 U.S. at 24). Our Supreme Court has adopted the standard delineated in *Terry* to determine if this belief is justified— "whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger[.]" *State v. Peck*, 305 N.C. 734, 742, 291 S.E.2d 637, 642

(1982) (quoting *Terry*, 392 U.S. at 27)). The police do not need to be certain that an individual is armed but rather "are 'entitled to formulate common-sense conclusions about the modes or patterns of operation of certain kinds of lawbreakers' in reasoning that an individual may be armed." *State v. Johnson*, 246 N.C. App. 677, 692, 783 S.E.2d 753, 764 (2016) (quoting *State v. Butler*, 331 N.C. 227, 234, 415 S.E.2d 719, 723 (1992) (internal marks and citation omitted)). Additionally, we examine whether an officer's conclusion that a defendant "may have been armed and dangerous" was reasonable within the totality of the circumstances. *State v. Johnson*, 378 N.C. 236, 246, 2021-NCSC-85, ¶18.

¶ 21 First, Officer Pineiro cited his previous interactions with Dean in firearm-related incidents as one reason he conducted the *Terry* frisk. "Standing alone, defendant's criminal record for which defendant has already paid his debt to society does not constitute reasonable suspicion and hence cannot singly serve as a basis for the law enforcement officer who effected the traffic stop to conduct a *Terry* search of the passenger compartment of defendant's vehicle." *Johnson*, 378 N.C. at 245, 2021-NCSC-85, ¶18. We extend that same principle to a *Terry* frisk of a defendant's person for weapons. *See Johnson*, 378 N.C. at 262, 2021-NCSC-85, ¶55 (Earls J., dissenting) ("One of the fundamental principles of our common law jurisprudence is that we punish acts, not an individual merely because of his or her status."). However, where, as here, the stopping officer has personal knowledge of the individual's criminal

history, the criminal history is related to the weapon believed to be on the individual's person, the criminal history is recent, and there are other factors to support reasonable suspicion, such reliance on an individual's criminal activity to formulate reasonable suspicion is permissible.

¶ 22 Second, Officer Pineiro observed Dean fidgeting with a jacket on his lap and moving his hands near his waistband prior to pulling Dean out of the car. Our Court has "found similar movements to be relevant in finding reasonable articulable suspicion existed." *State v. Royster*, 2021-NCCOA-595, ¶26; *see also State v. Sutton*, 232 N.C. App. 667, 669, 680, 754 S.E.2d 464, 466, 472 (2014) (listing a defendant's overt action of "grab[bing] his waistband to clinch an item[]" once he encountered law enforcement as a factor supporting reasonable suspicion).

¶ 23 Third, Officer Pineiro testified that Dean stated, "Yeah, I got one," when Officer Pineiro asked if Dean had anything on him as he pulled Dean out of the car. Our Supreme Court has held that "questions asked by law enforcement officers to secure their own safety or the safety of the public and limited to information necessary for that purpose are excepted from the *Miranda* rule." *State v. Brooks*, 337 N.C. 132, 144, 446 S.E.2d 579, 587 (1994) (citing *New York v. Quarles*, 467 U.S. 649 (1984)). Based on his personal knowledge of Dean's involvement in firearm-related incidents and having just observed Dean moving his hands near his waistband, it was reasonable for Officer Pineiro to ask Dean if he had anything on him out of a concern

for the safety of all officers present as well as Jennifer and the other passenger in the car. Further, our Court has found an admission like Dean's sufficient in part to create the reasonable belief needed to support a *Terry* search of a vehicle. *See Parker*, 183 N.C. App. at 11-12, 644 S.E.2d at 243-44 (after initially approaching an officer's patrol car and being ordered to return to his own vehicle, defendant informed law enforcement there was a gun in the car while seated in the backseat of the vehicle).

¶ 24 In assessing Officer Pineiro's conclusion that Dean may have been presently armed under the totality of the circumstances, we hold his belief was reasonable. During the traffic stop itself, Officer Pineiro observed Dean fidgeting with the jacket and moving his hands around his waistband, and Dean told Officer Pineiro that he "had one" on him. Those real-time observations combined with Officer Pineiro's existing personal knowledge of Dean's recent criminal activity related to firearms. Officer Pineiro was entitled to draw common-sense conclusions from these patterns of operation in reasoning that Dean was armed. Accordingly, Officer Pineiro had the necessary reasonable suspicion to conduct a *Terry* frisk and the trial court did not err in denying Dean's motion to suppress.

B. Interdisciplinary Evaluation

¶ 25 Dean argues second that the trial court violated N.C. Gen. Stat. § 7B-2502(c) by accepting a Comprehensive Clinical Assessment (the "CCA") that Dean posits was not a sufficient interdisciplinary evaluation within the meaning of the statute.

"[A]lleged statutory errors are questions of law. A question of law is reviewed *de novo*. Under the *de novo* standard, the Court considers the matter anew and freely substitutes its own judgment for that of the lower court." *In re A.M.*, 220 N.C. App. 136, 137, 724 S.E.2d 651, 653 (2012) (internal citation omitted).

¶ 26 In pertinent part, N.C. Gen. Stat. § 7B-2502(c) mandates that,

> [i]f the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. . . . The area mental health . . . director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.

N.C. Gen. Stat. § 7B-2502(c) (2019), *repealed by* 2021 S.L. 123 § 8(b). "Faced with any amount of evidence that a juvenile is mentally ill, a trial court has a statutory duty to refer the juvenile to the area mental health services director for appropriate action." *In re E.M.*, 263 N.C. App. 476, 480, 823 S.E.2d 674, 677 (2019) (internal marks and citation omitted). If such evidence is identified, the interdisciplinary evaluation is required to take place prior to committing a juvenile to a youth development center as "the statute envisions the area mental health services director's involvement in the juvenile's disposition[.]" *Id.*

¶ 27 Here, the trial court was presented with evidence of Dean's mental illness as his mother reported previously trying to have him involuntarily committed and a risk

and needs assessment completed by the Juvenile Justice section of the North Carolina Department of Public Safety indicated that he needed mental health treatment. Subsequently, the trial court ordered an interdisciplinary evaluation to be completed prior to final disposition. In the 26 July 2021 order, the trial court ordered Trillium Health Resources to "take appropriate action . . . including arranging an interdisciplinary evaluation of the Juvenile and identify any resources needed to meet the needs of the Juvenile[,]" thus fulfilling the statutory mandate under § 7B-2502(c).

¶ 28 Dean contends, however, that the CCA which was subsequently completed by L. Bentz, a Licensed Clinical Addiction Specialist, was in essence a checkbox evaluation that was not individually tailored for Dean's specific needs and was therefore insufficient to qualify as the "interdisciplinary evaluation" contemplated by § 7B-2502(c).

¶ 29 In reviewing the CCA, we note that the assessment covered Dean's mental status as well as his developmental, social, trauma, work, education, behavioral, and substance abuse history. The CCA concluded with the following recommendation: "Given his history of delinquent behavior and substance abuse, [Dean] is being recommended to a highly supervised secured, structured placement that can provide the opportunity of treatment to address substance use and anti-social behaviors." Additionally, the CCA included a "specific treatment recommendation" of

"[p]lacement at a structured, secured, highly supervised setting to address substance use, gang affiliation, continued legal issues and learn impulse control and healthy decision-making skills."

¶ 30 An interdisciplinary evaluation is not defined under § 7B-2502(c). Dean cites this Court's decision in *In re A.L.B.*, 273 N.C. App. 523, 849 S.E.2d 352 (2020), to contend that the trial court therefore should have received evidence or testimony that the CCA "is the same or equivalent to" an interdisciplinary evaluation and mobilization of resources. *Id.* at 528, 849 S.E.2d at 356. We distinguish *In re A.L.B.* from the case at bar as the trial court there *did not* make the statutorily-mandated referral for an interdisciplinary evaluation prior to entering final disposition. *Id.* at 526-27, 849 S.E.2d. at 355. The trial court in *In re A.L.B.* did hear testimony from a representative of the managed care organization that had been directing the juvenile's therapeutic care about a recent "coordinated care assessment" and the accompanying recommendations. *Id.* at 524-25, 527-28, 849 S.E.2d. at 354-56. The State argued this testimony fulfilled the statutory mandate such that the juvenile was not prejudiced in her final disposition and the case did not need to be remanded. *Id.* at 528, 849 S.E.2d at 356. Our Court rejected the State's contention because the representative was not a licensed clinician, had never spoken to the juvenile or the clinicians who conducted the assessment, did not actually have a copy of the assessment in her records, and could only repeat the accompanying recommendations

but not the underlying rationale. *Id.* at 528-29, 849 S.E.2d at 356-57. Our Court concluded therefore that it was not evident from the representative's testimony that an interdisciplinary evaluation had been completed. *Id.* at 531, 849 S.E.2d at 358.

¶ 31 Here again, the trial court *did* make a referral for an interdisciplinary evaluation prior to entering the final disposition. The CCA review by the trial court was completed by a licensed clinician after meeting with Dean on 3 August 2021 at the youth detention center. Based on the information personally gathered during an hour-long assessment, the clinician made specific treatment recommendations for Dean in relation to identifiable social, behavioral, and substance abuse issues. This contrasts with the testimony that the State argued could be accepted in place of an interdisciplinary evaluation in *In re A.L.B.* as the representative testifying about treatment recommendations was not a clinician and had never met the juvenile. Although the trial court did not hear testimony from the clinician who completed the CCA, testimony about a completed interdisciplinary evaluation is not required by § 7B-2502(c) prior to the court entering final disposition.

¶ 32 Accordingly, we conclude that the CCA accepted by the trial court was sufficient to qualify as an interdisciplinary evaluation under § 7B-2502(c).

III. Conclusion

¶ 33 For the foregoing reasons, we affirm the trial court's denial of the motion to suppress and affirm the entry of the disposition order.

AFFIRMED.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).