IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-763

No. COA21-720

Filed 15 November 2022

New Hanover County, Nos. 20 CRS 2861, 20 CRS 53036

STATE OF NORTH CAROLINA

v.

RAMISH TIQUNA DOUGHTY, Defendant.

Appeal by defendant from judgment entered 26 March 2021 by Judge G. Frank Jones in New Hanover County Superior Court. Heard in the Court of Appeals 25 May 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Martin T. McCracken, for the State.

Blass Firm, PLLC, by Danielle Blass, for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Ramish Tiquna Doughty ("Defendant") appeals from a final judgment entered upon a plea agreement. Defendant argues the trial court erred in denying his motion to suppress because the trial court's findings of fact in its written suppression order (the "Order") are not supported by competent evidence. He further contests several

of the trial court's conclusions of law. After careful review, we conclude the initial search of Defendant's vehicle was unlawful. Accordingly, we reverse and remand the Order of the trial court.

I. Factual & Procedural Background

¶ 2 On 12 June 2020, Defendant filed a motion to suppress any evidence obtained from his vehicle, incident to a 28 April 2020 traffic stop and a subsequent search of his vehicle. On 24 February 2021, a hearing was conducted before the Honorable G. Frank Jones, judge presiding, to consider Defendant's motion.

¶ 3 The trial court first heard testimony from Officer Caitlin Meyer ("Officer Meyer") as to the legality of her stop of Defendant's vehicle. Officer Meyer testified she effected the stop at approximately 12:32 a.m. on 28 April 2020. Prior to stopping the vehicle, Officer Meyer formed an opinion that the vehicle's window tinting was darker than the legal limit set in North Carolina. Officer Meyer previously observed the same vehicle in the daytime and noticed the tinting appeared "extremely dark," although she was not permitted to conduct traffic stops at that time due to a COVID-19 policy employed by the Wilmington Police Department. This policy was lifted on the day of, and shortly before, the stop.

¶ 4 After Officer Meyer activated the emergency lights on her vehicle, she followed Defendant for approximately one block. She opined it was a "slow stop" because Defendant took "a longer time than normal" to pull over. When Defendant pulled

over, three officers located nearby arrived within one minute. Officer Meyer then approached Defendant's vehicle on the driver's side. She observed Defendant's window was down "maybe two or three inches," which she testified was "very unusual" of someone pulled over speaking with the stopping officer. Officer Meyer did not testify as to whether she had stopped any other vehicles during the COVID-19 pandemic or whether the pandemic influenced drivers' willingness to roll down their windows during traffic stops. Defendant ultimately produced a vehicle registration, but not a driver's license.

¶ 5 On cross examination as to the stop, Officer Meyer testified Defendant had not engaged in any "evasive maneuvers or reckless driving," although she reiterated Defendant's stop was a "slow" pull over. She further testified there were no vehicles parked on the block where Defendant pulled over. No video evidence was admitted as to the traffic stop.

¶ 6 After hearing arguments from the State and counsel for Defendant as to the stop, the trial court orally announced its finding that Officer Meyer had "a reasonable and articulable suspicion that [D]efendant committed a violation in her presence of North Carolina General Statute [§] 20-127." Accordingly, the trial court denied Defendant's motion to suppress evidence obtained from the stop.

¶ 7 The trial court then heard testimony as to the legality of the search of Defendant's vehicle. Officer Meyer testified Corporal Allan Mitchell ("Corporal

Mitchell") of the Wilmington Police Department arrived on the scene, and Corporal Mitchell spoke with Defendant. Defendant ignored multiple commands from the officers for him to exit the vehicle. Officer Meyer described Defendant's behavior as "aggressive, combative, [and] uncooperative." Officer Meyer's partner, New Hanover County Deputy Sheriff Paul McMahon ("Deputy McMahon"),[1] advised Officer Meyer that Defendant "had very recent firearm charges."

¶ 8 Based on Defendant's behavior, slow stop, Officer Meyer's belief regarding Defendant's recent firearm charges, and Officer Meyer's inability to see inside the vehicle, Officer Meyer decided to remove Defendant from the vehicle to frisk him and the vehicle due to the danger she believed he posed.

¶ 9 During cross examination of Officer Meyer, counsel for Defendant admitted into evidence, without objection by the State, footage from Officer Meyer's body camera worn during the stop.

¶ 10 Deputy McMahon testified he assisted with removing Defendant from the vehicle. He unbuckled Defendant's seatbelt and, along with Officer Meyer, grabbed Defendant's arms or hands. The officers performed a protective pat-down of Defendant and found no contraband or weapons on his person. Three officers stood

[1] Officer Meyer and Deputy McMahon serve on the Mobile Field Force, a joint task force established between the Wilmington Police Department and the New Hanover County Sheriff's Department.

with Defendant at the rear of the vehicle.

¶ 11 Corporal Mitchell testified he searched the vehicle and found "what appeared to be a marijuana roach sitting on top of the ice" in a red Solo cup in the vehicle's center console. Corporal Mitchell notified Officer Meyer that Defendant could be arrested for drug paraphernalia and searched further. During Corporal Mitchell's testimony, the State admitted a video of Corporal Mitchell's body camera footage obtained during the stop to "assist in explaining what all happened" that night.

¶ 12 The officers detained Defendant, and Deputy McMahon began searching the rest of the vehicle and found a pink firearm under the front passenger seat as well as what appeared to be heroin inside the center console. Defendant was placed under arrest for resisting an officer, possessing a Schedule I controlled substance, and possessing a stolen firearm.

¶ 13 At the conclusion of the suppression hearing, the trial court orally denied Defendant's motion to suppress with respect to the stop, the *Terry*[2] frisk of Defendant, and the protective search of the vehicle. It found "the protective search of the [vehicle] was reasonable and limited to the means and manners necessary to effectuate a search for weapons" based upon the totality of the circumstances. In addition, the

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[2] In *Terry v. Ohio*, the Supreme Court of the United States concluded a brief stop and frisk did not violate a defendant's Fourth Amendment rights when "a reasonably prudent man would have been warranted in believing [the defendant] was armed and thus presented a threat to the officer's safety while he was investigating [the defendant's] suspicious behavior." 392 U.S 1, 28, 88 S. Ct. 1868, 1883, 20 L. Ed. 2d 889, 910 (1968).

trial court found "the discovery of marijuana paraphernalia incident to the protective search constituted probable cause for the arrest of the defendant as well as a search of the vehicle." Counsel for Defendant notified the trial court of Defendant's intention to enter notice of appeal from the Order.

¶ 14 On 21 September 2020, a New Hanover County grand jury indicted Defendant on charges of possession of a firearm by a felon, in violation of N.C. Gen. Stat. § 14-34(a); resisting a public officer, in violation of N.C. Gen. Stat. § 14-223; possession of a stolen firearm, in violation of N.C. Gen. Stat. § 14-71.1; and felony possession of a Schedule I controlled substance, in violation of N.C. Gen. Stat. § 90-95(a)(3).

¶ 15 On 16 March 2021, the trial court entered its written Order, in which it made the following findings of fact:

> 1. At about half an hour after midnight on April 28, 2020, Officer C. Meyer (hereinafter 'Meyer') of the Wilmington Police Department was assigned to the Mobile Field Force, with a specific responsibility for suppressing gang and gun violence patrolling the area of Campbell Street and Anderson Street here in Wilmington[.]
>
> 2. At that time and location, Meyer was stationary in a marked patrol vehicle speaking with fellow officer Moore who was in a separate vehicle. Meyer observed a small, red, two-door vehicle drive past her on Campbell Street which she recognized as an automobile regularly driven by . . . [D]efendant[.]
>
> 3. Meyer was aware that on a recent or previous occasion, [D]efendant had been stopped by law enforcement and

that a firearm was found in his possession in the vehicle and further that the criminal charge resulting therefrom had been dismissed.

4. Meyer had previously observed this vehicle in daylight multiple times and had formed the opinion at those earlier times and places that the vehicle's windows were tinted in violation of North Carolina General Statute § 20-127, such that the total light transmission of the tinted windows was not at least 35 percent. Meyer did not conduct a traffic stop at those earlier times and places due to her then extant departmental (COVID-19 related) polices prohibiting patrol officers from making vehicle stops.

5. Meyer had for several years been a patrol officer and had had many occasions to observe other vehicles with similar window tint and also many occasions to determine the numerical percentages of light transmission of such window tint using the naked eye and comparing that with the result from mechanical devices designed for that purpose[.]

6. At the time of this incident, Meyer again formed the opinion that the vehicle's windows were illegally tinted. Meyer, as a night officer, was accustomed to making such observations at night and was unable, because of the dark tint, to see into this vehicle.

7. Meyer then pulled behind the vehicle and activated her emergency equipment to conduct a traffic stop as soon as the vehicle turned north onto North 8th Street. Meyer did not, apart from the window tint, observe any other motor vehicle violation[.]

8. The vehicle did not immediately stop but continued to drive north on North 8th Street for a block which drew Meyer's attention given there was no traffic upon or cars parked alongside Campbell Street and thus multiple opportunities for the vehicle to stop before it

actually did[.]

9. When the vehicle did finally stop, Meyer got out of her patrol vehicle and walked up to the front driver's side door. Officer Meyer, owing to the dark tint, could not see through the vehicle's windows into the interior of the vehicle[.]

10. [D]efendant (later determined to be the sole occupant of the vehicle) only rolled his driver's side window down two or three inches to talk with Meyer–a fact which drew Meyer's attention. Meyer was able to observe and identify . . . Defendant through the partially lowered side window[.]

11. Meyer asked [D]efendant to produce his driver's license and registration, informed [D]efendant of the reason for the stop, and asked why [D]efendant did not immediately pull over[.]

12. [D]efendant did not answer Meyer's question regarding the delayed stop, but eventually provided his vehicle registration and his name. Defendant did not produce a driver[']s license[.]

13. Officer Moore arrived followed shortly by [Corporal Mitchell] and [Deputy] McMahon—all officers arriving within approximately one minute. Meyer and Mitchell briefly spoke, and Mitchell went to speak with [D]efendant while Meyer spoke with McMahon. No officer displayed a drawn weapon, made threats of physical harm, or use[d] profanity with or toward [D]efendant.

14. [Deputy] McMahon, on the passenger side of the vehicle, illuminated the driver's compartment with his flashlight such that he could see the seated [D]efendant.

15. Mitchell advised Meyer that [D]efendant needed to be pulled from the vehicle and frisked due to [D]efendant's

recent firearm offenses coupled with the delayed stop of the automobile[.]

16. [Deputy] McMahon advised Meyer that [D]efendant had very recent firearm charges[.]

17. Mitchell, who was also a part of the Mobile Field Force, spoke with [D]efendant, who Mitchell knew through numerous, personal, prior encounters and was familiar that [D]efendant had multiple, prior firearm and drug-related charges in the past[.]

18. [Deputy] McMahon was aware that [D]efendant, prior to becoming a convicted felon, possessed a concealed handgun permit and possessed firearms on each occasion that [Deputy] McMahon had encountered [D]efendant including an arrest of [D]efendant involving a firearm.

19. The officers repeatedly asked [D]efendant to unlock the vehicle and step out of the vehicle. Defendant initially declined to reply or respond and remained seated with his seatbelt fastened. The driver's door was unlocked, the driver's door opened, and officers repeatedly instructed [D]efendant to exit the vehicle. Defendant did not comply and instead continually asked the reason for being asked to step out of the vehicle[.]

20. Owing to [D]efendant's continuing non-compliance, Meyer and [Deputy] McMahon physically removed [D]efendant from the vehicle and [D]efendant resisted his extraction. Once removed, [D]efendant became compliant, officers conducted a protective pat down of his person for weapons, and escorted him to the rear, driver's side, wheel-well area of his vehicle. Defendant was not placed in handcuffs and Meyer and [Deputy] McMahon were in close physical proximity to [D]efendant. Mitchell was in the driver's door area and Officer Moore was on scene[.]

21. Mitchell had, on a prior occasion, arrested [D]efendant[,] removing him from a vehicle[,] and described [D]efendant's behavior and demeanor on that earlier occasion as compliant and unlike the behavior and demeanor defendant exhibited on this occasion[.]

22. Based on [D]efendant's failure to immediately stop when Meyer activated her emergency equipment, his reluctance to roll down the driver's side window, the window tinting affecting the officer's ability(ies) to see inside the vehicle, [D]efendant's refusal to answer the question regarding his delayed stop, [D]efendant's demeanor on this occasion differing from that displayed to Mitchell on an earlier occasion, and the officers' personal familiarity with defendant—including his history of gun charges and proclivity to possess firearms, the officers believed [D]efendant was presently armed, dangerous, and posed a threat or risk to their safety[.]

23. Immediately upon [D]efendant being removed from the vehicle, Mitchell leaned into the driver's compartment and conducted a brief, weapons frisk/protective search of the lungeable [sic] areas of [D]efendant's vehicle without [D]efendant's consent[.]

24. On top of ice in a red Solo cup in the center console of [D]efendant's vehicle, Mitchell found what appeared to him, based on his training and experience, to be the remnants of a marijuana cigarette commonly referred to as a "roach," and relayed this information to the officers present. The odor of marijuana was not apparent to the officers in either the vehicle or upon [D]efendant's person[.]

25. Meyer then placed [D]efendant under arrest and placed [D]efendant in handcuffs[.]

26. [Deputy] McMahon walked to the passenger side of the vehicle and assisted Mitchell in a further search of the

> passenger compartment of the vehicle. [Deputy] McMahon slid the passenger seat forward and observed a handgun on the floorboard underneath the back of the seat.

¶ 16 The trial court then made the following conclusions of law:

> 1. Campbell Street is a 'street' or 'highway' within the meaning and intent of [N.C. Gen. Stat.] §§ 20-4.01(13) and (46).
>
> 2. In the totality of the circumstances, Officer Meyer had reasonable and articulable suspicion to stop [D]efendant's vehicle for a violation of the window tint law under [N.C Gen. Stat.] § 20-127 based upon her training and experience.
>
> 3. Officer Meyer could and did lawfully ask [D]efendant to step out or exit his vehicle.
>
> 4. The physical removal of [D]efendant and the physical escort of [D]efendant to the rear of his vehicle was reasonable for officer safety based upon a totality of the circumstances, including, but not limited to:
>
> a) Time of day;
>
> b) Location;
>
> c) Dark tinting of defendant's vehicle[;]
>
> d) Officers' knowledge of [D]efendant's firearm history;
>
> e) Defendant's delayed response in stopping his vehicle;
>
> f) Defendant's lowering his driver's side window only 2-3 inches; and
>
> g) Defendant's attitude, demeanor, and non-

compliance[.]

5. The physical force employed by officers in removing [D]efendant and escorting him to the rear of his vehicle was reasonable, restrained, and limited to that necessary to assure officer safety.

6. Upon a consideration of the totality of the circumstances, the officers possessed a reasonable and articulable belief that [D]efendant was armed and dangerous, and thus officers were permitted to conduct a protective pat down of [D]efendant's outer clothing.

7. Upon a consideration of the totality of the circumstances, the officers possessed a reasonable and articulable belief that [D]efendant was armed, dangerous, and may gain immediate control of a weapon from his vehicle thus justifying a protective search of the passenger compartment of the vehicle in areas where a weapon may be placed or hidden.

8. Upon a consideration of the totality of the circumstances, the protective search of the vehicle was reasonable and limited to the means and manner necessary to effectuate a search for weapons.

9. The discovery by [Corporal] Mitchell of marijuana paraphernalia incident to the protective search constituted probable cause for the arrest of [D]efendant as well as probable cause for a search of the vehicle for evidence relevant to the crime of arrest.

10. Insuring officer safety is an indispensable consideration of any traffic stop and thus an integral part of the mission of this particular vehicle stop.

11. Upon consideration of the totality of the circumstances, the officer or officers acted diligently, timely, and did not unreasonably or without reasonable suspicion of criminal activity prolong [D]efendant's detention

> beyond that incidental to the stop.
>
> 12. Upon further consideration of the totality of circumstances, [D]efendant's behavior and demeanor effectively prevented Officer Meyer and/or other officers from conducting a mechanical tint check, checking [D]efendant's driver's license (which he did not produce), checking for outstanding warrants, or other tasks tied to the traffic infraction.

(Citations omitted). Accordingly, the trial court denied Defendant's motion to suppress the stop of his vehicle as well as evidence seized from the vehicle on 28 April 2020.

¶ 17 On 26 March 2021, Defendant pled guilty, pursuant to a plea agreement, to possession of a firearm by a felon and possession of a Schedule I controlled substance, and the State dismissed the remaining charges. Defendant received consecutive active sentences of thirteen to twenty-five months and five to fifteen months of imprisonment. Defendant gave oral notice of appeal in open court.

II. Jurisdiction

¶ 18 This Court has jurisdiction to address Defendant's appeal from a final judgment pursuant to N.C. Gen. Stat. § 7A-27(b) (2021) and N.C. Gen. Stat. § 15A-979(b) (2021). We note Defendant properly preserved his right to appeal the Order before entry of his guilty pleas. *See State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979) ("[W]hen a defendant intends to appeal from a suppression motion denial pursuant to [N.C. Gen. Stat. §] 15A-979(b), he must give notice of his intention

to the prosecutor and the court before plea negotiations are finalized or he will waive the appeal of right provisions of the statute."), *cert. denied*, 446 U.S. 941, 100 S. Ct. 2164, 64 L. Ed. 2d 795.

III. Issue

¶ 19 The sole issue before this Court is whether the trial court erred in denying Defendant's motion to suppress evidence seized pursuant to a traffic stop and subsequent to the search of his vehicle.

IV. Standard of Review

¶ 20 "[T]he scope of appellate review of an order [on a motion to suppress evidence] is strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence . . . and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Stanley*, 175 N.C. App. 171, 174, 622 S.E.2d 680, 682 (2005) (citing *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)). "[T]he trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (citation and quotation marks omitted). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *Eley v. Mid/East Acceptance Corp. of N.C.*, 171 N.C. App. 368, 369, 614 S.E.2d 555, 558 (2005) (citation and quotation marks omitted).

¶ 21 Findings of fact not challenged on appeal are binding on this Court. *State v. Brown,* 199 N.C. App. 253, 256, 681 S.E.2d 460, 463 (2009). "The trial court's conclusions of law[,]" however, "must be legally correct, reflecting a correct application of applicable legal principles to the facts found." *State v. Fernandez,* 346 N.C. 1, 11, 484 S.E.2d 350, 357 (1997).

V. Analysis

¶ 22 On appeal, Defendant challenges several findings of fact and conclusions of law. We first consider Defendant's arguments as to the findings of fact.

A. Challenged Findings of Fact

¶ 23 Defendant takes exception to fifteen of the trial court's twenty-six findings of fact made in the Order. We discuss each of Defendant's challenges in turn.

1. Finding of Fact 5

¶ 24 Finding of fact 5 provides:

> 5. Meyer had for several years been a patrol officer and had had many occasions to observe other vehicles with similar window tint and also many occasions to determine the numerical percentages of light transmission of such window tint using the naked eye and comparing that with the result from mechanical devices designed for that purpose[.]

¶ 25 First, Defendant argues there is no competent evidence to support the findings that Officer Meyer was a patrol officer for several years and had "prior experience with window tint observations, accuracy, or measurements."

¶ 26 Officer Meyer testified she began working for the Wilmington Police Department in January 2017 as a patrol officer. She then transitioned to the Mobile Field Force, where she was working the night of the traffic stop in April 2020. Her duties included patrolling and "focusing in areas of high crime and violence." This testimony supports the finding that Officer Meyer had been a "patrol officer" for several years, even if Officer Meyer also served on a special task force for some time between 2017 and 2020.

¶ 27 We agree with Defendant to the extent he argues there is no competent evidence to support the rest of finding of fact 5. Officer Meyer did not testify as to her experience observing other vehicles, visually determining the percentage of light transmission through vehicle window tint, or comparing her visual inspections with the results of mechanical devices used for measuring window tint light transmission; thus, no competent evidence supports these findings. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

2. Findings of Fact 6 and 9

¶ 28 Findings of fact 6 and 9 provide:

> 6. At the time of this incident, Meyer again formed the opinion that the vehicle's windows were illegally tinted. Meyer, as a night officer, was accustomed to making such observations at night and was unable, because of the dark tint, to see into this vehicle.
>
> 9. When the vehicle did finally stop, Meyer got out of her

> patrol vehicle and walked up to the front driver's side door. Officer Meyer, owing to the dark tint, could not see through the vehicle's windows into the interior of the vehicle[.]

¶ 29 Defendant challenges findings of fact 6 and 9 on the basis Officer Meyer provided inconsistent testimony because she initially testified she was unable to see Defendant through the driver window on the night in question, but on cross-examination admitted she did in fact see Defendant through the window. Defendant further contends the footage from the officers' body cameras shows Defendant "clearly visible through the window" of his vehicle on the night in question. Lastly, Defendant maintains "there is no competent evidence that any officer actually measured the window tint and determined that it was illegal."

¶ 30 Defendant points to Officer Meyer's testimony on cross examination in which she testified she could see Defendant through his driver window in the body camera footage played at the hearing. Officer Meyer then clarified her response: "I couldn't see through the back of the window, no. When I approached the driver's side, I didn't really see anybody until I was really at the driver window."

¶ 31 On direct examination, Officer Meyer testified she could not see into the windows when she first noticed Defendant's vehicle on the night of 28 April 2020. Additionally, she "was not able to see through the backside of the window" due to the dark tint.

¶ 32 Our review of the record reveals Officer Meyer did not provide contradictory

testimony with respect to her ability to see Defendant through the windows of his vehicle. Although finding of fact 9 does not specify at which point Officer Meyer "could not see through the vehicle's windows into the interior of the vehicle," it is clear from her testimony she was not able to see into the vehicle until she was standing in front of the driver's window. In any event, Officer Meyer's testimony provided "competent evidence" to support findings of fact 6 and 9 even if there was evidence to the contrary. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682; *see also State v. Malone*, 373 N.C. 134, 145, 833 S.E.2d 779, 786 (2019) ("A trial court has the benefit of being able to assess the credibility of witnesses, weigh and resolve any conflicts in the evidence, and find the facts, all of which are owed great deference by this Court.").

¶ 33 Lastly, as discussed in further detail below, the officers were not required to prove Defendant's window tint was in violation of N.C. Gen. Stat. § 20-12—reasonable suspicion only required Officer Meyer to reasonably believe Defendant was violating the law.

3. Finding of Fact 8

¶ 34 Finding of fact 8 provides:

> 8. The vehicle did not immediately stop but continued to drive north on North 8th Street for a block which drew Meyer's attention given there was no traffic upon or cars parked alongside Campbell Street and thus multiple opportunities for the vehicle to stop before it actually did[.]

¶ 35 Defendant argues there is "incontrovertible video evidence from [Officer

Meyer's body camera that] shows her statements are false." He further argues the body camera footage shows "at least five parked cars which would have prevented [Defendant] from pulling over." We reject this argument for two reasons. First, Defendant did not attempt to impeach Officer Meyer's testimony that there were no cars parked on the block where Defendant pulled over, although Defendant had ample opportunity to do so on cross examination. *See State v. Call*, 349 N.C. 382, 411, 508 S.E.2d 496, 514 (1998) (citation omitted) ("A witness may properly be cross-examined on any matter relevant to any issue in the case, including credibility. Moreover, a witness may be impeached on cross-examination . . . ."). Second, Defendant did not attempt to admit video evidence of the stop until after the trial court ruled on the legality of the stop. Instead, the body camera footage upon which Defendant relies was admitted during the *voir dire* hearing on the *search* of the vehicle.

¶ 36 The state prosecutor and Officer Meyer had the following exchange regarding Defendant's "slow stop":

> [Officer Meyer]: I got behind the vehicle as he was driving straight past me. I was immediately behind him, and I got behind the vehicle. I believe we only went about one block and he went to a stop sign at I believe it was 8th and Campbell.
>
> As soon as he made the turn to go north onto North 8th Street, I immediately turned on my emergency equipment to include my siren and my lights. And I attempted to pull

> the vehicle over, which he actually seemed to take, in my opinion, a longer time than normal as there was nobody on the road for him to have to accommodate.
>
> [State prosecutor]: Do you have a sense of how long it took him?
>
> [Officer Meyer]: I would just say it was longer than what would be normal in those conditions where there was nobody there and no cars on the side of the street to deal with. It was only a block. But considering it was night, nobody there, and I was behind him for at least two blocks before he pulled over, he knew I was there.

¶ 37 Officer Meyer's testimony constitutes competent evidence supporting finding of fact 8. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

4. Finding of Fact 10

¶ 38 Finding of fact 10 provides:

> 10. [D]efendant (later determined to be the sole occupant of the vehicle) only rolled his driver's side window down two or three inches to talk with Meyer–a fact which drew Meyer's attention. Meyer was able to observe and identify . . . Defendant through the partially lowered side window[.]

¶ 39 Defendant argues Officer Meyer "was able to observe and identify [him] through the partially lowered driver side window, not just through the open portion."

¶ 40 As discussed in Section A.2., there is evidence to support the finding that Officer Meyer could in fact see Defendant through the window tint when standing in front of the driver side window. She also testified she "couldn't really see him very well because the window was only down about two to three inches." The video exhibit

of Officer Meyer's body camera footage captures Officer Meyer asking Defendant for his name through the opening in the window, and Defendant properly identifying himself. Although Officer Meyer admitted she could not see well through the opening in the window, there is evidence showing she "observe[d] and identif[ied] Defendant through the partially lowered side window." Therefore, finding of fact 10 is supported by competent evidence and binding on appeal. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

5. Finding of Fact 15

¶ 41 Finding of fact 15 provides: "Mitchell advised Meyer that [D]efendant needed to be pulled from the vehicle and frisked due to [D]efendant's recent firearm offenses coupled with the delayed stop of the automobile[.]"

¶ 42 Defendant argues there is no competent evidence that the officers' frisk of his person was based in part on the delayed stop of his vehicle. We disagree.

¶ 43 Corporal Mitchell testified he "notified Officer Meyer that [Defendant] needed to be pulled and frisked because he [has] a [recent] history of firearms charges," and because Officer Meyer noted Defendant was slow to stop his vehicle. This testimony is competent evidence which supports finding of fact 15. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

6. Finding of Fact 16

¶ 44 Finding of fact 16 provides: "[Deputy] McMahon advised Meyer that

[D]efendant had very recent firearm charges[.]" Defendant asserts "competent evidence does not support the word 'very,'" in finding of fact 16. We disagree.

¶ 45 When asked on direct examination "what information was conveyed to [her] by [Deputy] McMahon about [D]efendant," Officer Meyer responded "[t]hat [Defendant] had *very* recent firearm charges." (Emphasis added). It is true that moments later Officer Meyer again testified Deputy McMahon told her Defendant had "recent firearm charges." Similarly, Corporal Mitchell testified Defendant was frisked due to his "fairly recent" firearm charges. Because there is competent evidence to support the finding Defendant "had very recent firearm charges," finding of fact 16 must be stand. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

7. Finding of Fact 17

¶ 46 Finding of fact 17 provides:

> Mitchell, who was also a part of the Mobile Field Force, spoke with [D]efendant, who Mitchell knew through numerous, personal, prior encounters and was familiar that [D]efendant had multiple, prior firearm and drug-related charges in the past[.]

¶ 47 Defendant contends "no competent evidence" supports the finding "that Mitchell's alleged knowledge of [Defendant's] prior charges was related to personal prior encounters."

¶ 48 Corporal Mitchell testified as follows:

> Like I said earlier, I worked in housing for approximately

> four years. [Defendant] and his family used to live in the Creekwood community. I had several interactions with [Defendant] and his brother and family throughout my time working with the housing task force. I also have prior knowledge that [Defendant] has–had and has multiple fire charges–firearm charges and drug-related charges in the past.

¶ 49 Contrary to Defendant's contention, the trial court did not find Corporal Mitchell's knowledge of Defendant's prior charges arose from his personal encounters with Defendant. Rather, finding of fact 17 demonstrates Corporal Mitchell had several personal encounters with Defendant, and Corporal Mitchell had prior knowledge from an unknown source that Defendant had multiple firearm and drug charges in the past. Thus, we conclude finding of fact 17 is supported by competent evidence. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

8. Finding of Fact 18

¶ 50 Finding of fact 18 provides:

> [Deputy] McMahon was aware that [D]efendant, prior to becoming a convicted felon, possessed a concealed handgun permit and possessed a firearm on each occasion that [Deputy] McMahon had encountered [D]efendant including an arrest of [D]efendant involving a firearm[.]

¶ 51 Deputy McMahon testified he "knew that [D]efendant had previously had a concealed handgun permit prior to becoming a felon. [Defendant] at that time with the permit always—every time I had seen him—possessed a firearm." He further testified he was "present for one of [Defendant's] arrests with the firearm." Therefore,

finding of fact 18 is supported by competent evidence and is binding on appeal. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

9. Findings of Fact 19 and 20

¶ 52 Findings of fact 19 and 20 provide:

> 19. The officers repeatedly asked [D]efendant to unlock the vehicle and step out of the vehicle. Defendant initially declined to reply or respond and remained seated with his seatbelt fastened. The driver's door was unlocked, the driver's door opened, and officers repeatedly instructed [D]efendant to exit the vehicle. Defendant did not comply and instead continually asked the reason for being asked to step out of the vehicle[.]
>
> 20. Owing to [D]efendant's continuing non-compliance, Meyer and [Deputy] McMahon physically removed [D]efendant from the vehicle and [D]efendant resisted his extraction. Once removed, [D]efendant became compliant[.]

¶ 53 Defendant maintains there is no competent evidence that the officers asked Defendant to unlock the vehicle nor is there evidence of his "non-compliance" regarding the officers' stop or that he resisted the officers' removing him from his vehicle. Defendant bases his assertion that there is no evidence he was asked to unlock his vehicle on "the incontrovertible video exhibits."

¶ 54 Officer Meyer testified "[i]t took multiple orders for [Defendant] to actually unlock the door, at which point the door was unlocked. We opened the door and asked him to exit the vehicle." Counsel for defense did not cross examine Officer Meyer regarding the door, nor did he attempt to impeach her testimony on the issue.

Furthermore, Corporal Mitchell, Deputy McMahon, and Officer Meyer each testified as to Defendant's resistance or non-compliance, which led to him being physically removed from the vehicle.

¶ 55 Although there may be conflicts between the testimony and the video evidence, the inconsistencies were for the trial court to resolve. *See Malone*, 373 N.C. at 145, 833 S.E.2d at 786. Thus, we conclude there was competent evidence to support findings of fact 19 and 20. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682; *see also Fernandez*, 346 N.C. at 11, 484 S.E.2d at 357 ("If there is a conflict between the State's evidence and defendant's evidence on material facts, it is the duty of the trial court to resolve the conflict and such resolution will not be disturbed on appeal.").

10. Finding of Fact 21

¶ 56 Finding of fact 21 provides:

> Mitchell had, on a prior occasion, arrested [D]efendant removing him from a vehicle and described [D]efendant's behavior and demeanor on that earlier occasion as compliant and unlike the behavior and demeanor defendant exhibited on this occasion.

¶ 57 Defendant argues this finding of fact "is an exaggeration of the officer's testimony . . . ." We disagree.

¶ 58 Corporal Mitchell testified as follows:

> [Defendant] was asked to exit the vehicle. He was very hesitant, didn't want to come out of the vehicle, kept asking why he was stopped. This raised my suspicions because I

> have arrested [Defendant] out of a vehicle before and he was compliant; a little mouthy, but nothing to the extent that it was this last stop–to that stop.

¶ 59 Corporal Mitchell's testimony shows he previously arrested Defendant, removed Defendant from his vehicle, and Defendant "was compliant" throughout the previous encounter. Although Corporal Mitchell did not refer to Defendant's behavior during the April 2020 encounter as "noncompliant," it can be reasonably inferred Defendant acted less "compliant" with officers during this stop since Corporal Mitchell testified Defendant was hesitant to step out of the vehicle, he kept asking why he was stopped, and he was "mouthy" to the officers. Thus, we conclude there is competent evidence to support finding of fact 21. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

11. Finding of Fact 22

¶ 60 Finding of fact 22 provides:

> Based on [D]efendant's failure to immediately stop when Meyer activated her emergency equipment, his reluctance to roll down the driver's side window, the window tinting affecting the officer's ability(ies) to see inside the vehicle, [D]efendant's refusal to answer the question regarding his delayed stop, [D]efendant's demeanor on this occasion differing from that displayed to Mitchell on an earlier occasion, and the officers' personal familiarity with [D]efendant–including his history of gun charges and proclivity to possess firearms, the officers believed [D]efendant was presently armed, dangerous, and posed a threat or risk to their safety.

¶ 61 In contesting finding of fact 22, Defendant reiterates many of his previous arguments, including findings regarding "the time of the stop, the window as a safety shield, the officers' abilities to see inside the window, and the alleged change in [Defendant's] demeanor as 'mouthy' and mouthier, as well as prior firearms charges." In addition to these arguments, Defendant maintains he did not "refus[e] to answer the question regarding his delayed stop."

¶ 62 Regarding Defendant's "proclivity to possess firearms," the testimony revealed Defendant previously possessed a concealed handgun permit prior to obtaining a felony conviction. Deputy McMahon testified that each time he saw Defendant during the time he had his permit, Defendant possessed a firearm. Deputy McMahon further testified he was present during one of Defendant's previous "arrests with the firearm." Hence, this finding is supported by competent evidence." *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682.

¶ 63 As discussed above, there is competent evidence to support findings of Officer Meyer's description of the stop as "slow," the window tinting affecting Officer Meyer's ability to see inside the vehicle, the difference in Defendant's behavior at Officer Meyer's April 2020 stop compared to Corporal Mitchell's previous stop, and Defendant's history of gun charges. As to Defendant's refusal to answer the question regarding his delayed stop, Officer Meyer testified Defendant did not respond when she asked him "why he didn't immediately pull over when [she] activated [her]

emergency equipment." Additionally, Officer Meyer's body camera video, which was admitted into evidence without objection, shows Officer Meyer asking Defendant if "there is a reason [he] did not pull over right away after [she] lit [him] up?" Defendant did not answer this question. Thus, these findings in finding of fact 22 are "supported by competent evidence" and are therefore "conclusive on appeal." *See Buchanan*, 353 N.C. at 336, 543 S.E.2d at 826. Nevertheless, we conclude the question of whether the officers' belief that Defendant was armed and dangerous was reasonable is a conclusion of law and review it as such in Section B.2. *See State v. Campola*, 258 N.C. App. 292, 298, 812 S.E.2d 681, 687 (2018) ("If the trial court labels as a finding of fact what is in substance a conclusion of law, we review that 'finding' *de novo*.").

12. Findings of Fact 23 and 24

¶ 64 Findings of fact 23 and 24 provide:

> 23. Immediately upon . . . [D]efendant being removed from the vehicle, Mitchell leaned into the driver's compartment and conducted a brief, weapons frisk/protective search of the lungeable [sic] areas of [D]efendant's vehicle without [D]efendant's consent[.]
>
> 24. On top of ice in a red Solo cup in the center console of [D]efendant's vehicle, Mitchell found what appeared to him, based on his training and experience, to be the remnants of a marijuana cigarette commonly referred to as a "roach," and relayed this information to the officers present. The odor of marijuana was not apparent to the officers in either the vehicle or upon [D]efendant's person[.]

¶ 65 Defendant argues finding of fact 23 is erroneous because his "search was not

brief and it did not constitute a weapons frisk of the lungeable [sic] areas." Additionally, he argues finding of fact 24 is not supported by competent evidence because Corporal Mitchell did "not testify to being trained to identify marijuana, only to his nonspecific experience with drugs." Because we conclude below the initial search by the officers was unconstitutional, we decline to consider the sufficiency of the evidentiary support for findings 23 and 24, which relate to the initial search of Defendant's vehicle.

B. Challenged Conclusions of Law

¶ 66 Next, Defendant challenges eleven of the trial court's twelve conclusions of law.

1. Conclusion of Law 2: Seizure of Defendant's Vehicle

¶ 67 The relevant portion of conclusion of law 2 provides: "In the totality of the circumstances, Officer Meyer had reasonable and articulable suspicion to stop [D]efendant's vehicle for a violation of the window tint law under [N.C. Gen. Sta.] § 20-127 based upon her training and experience."

¶ 68 Defendant challenges conclusion of law 2 by contending the stop of his vehicle constituted an unreasonable investigatory stop, and therefore, the trial court erred in denying Defendant's motion to suppress the seizure of his vehicle. Defendant's argument is premised upon the following: (1) there was no evidence presented that Officer Meyer received training in enforcing window tint violations; (2) there was not a second officer in her vehicle who shared the same reasonable suspicion at the time

of the stop; (3) there was no evidence presented that Officer Meyer had prior experience in stopping a vehicle for a window tint observation, taking a measurement, and correctly suspecting a window-tint violation on any occasion; (4) the video evidence and testimony reviewed by the trial court do not show window tint dark enough to warrant a stop; (5) Officer Meyer testified that on a recent prior occasion, she was able to identify Defendant through the car window as it drove past her; and (6) there is no competent evidence that Defendant's tint was in fact illegal. For the following reasons, we disagree.

¶ 69 The Fourth Amendment, as applied to the states through the Due Process Clause of the Fourteenth Amendment, protects the "right of the people . . . against unreasonable searches and seizures." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 69 (1994) (citing *Mapp v. Ohio,* 367 U.S. 643, 655, 81 S. Ct. 1684, 1691, 6 L. Ed. 2d 1081, 1090 (1961)); *see also* U.S. Const. amend. IV. "It applies to seizures of the person, including brief investigatory detentions such as those involved in the stopping of a vehicle." *Watkins*, 337 N.C. at 441, 446 S.E.2d at 69–70 (quoting *Reid v. Georgia,* 448 U.S. 438, 440, 100 S. Ct. 2752, 2753–54, 65 L. Ed. 2d 890, 893 (1980)). To be constitutional, "an investigatory stop must be justified by a 'reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.'" *Id.* at 441, 446 S.E.2d at 70 (quoting *Brown v. Texas*, 443 U.S. 47, 51, 99 S. Ct. 2637, 2641, 61 L. Ed. 2d 357, 362 (1979)).

¶ 70 "In determining whether [there is] reasonable suspicion to make an investigatory stop" the trial "court must consider the totality of the circumstances." *Id.* at 441, 446 S.E.2d at 70 (citations and quotation marks omitted); *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 167 (2012). Specifically, an investigatory stop is constitutional where there is "something more than an unparticularized suspicion or hunch," based upon "specific and articulable facts, as well as the rational inferences from those facts . . . ." *Watkins*, 337 N.C. at 441–42, 446 S.E.2d at 70 (citation and quotation marks omitted). "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *Williams*, 366 N.C. at 116, 726 S.E.2d at 167 (citations and quotation marks omitted). "[R]easonable suspicion can [even] arise from an officer's mistake of law, so long as the mistake is reasonable." *State v. Amator*, 2022-NCCOA-293, ¶ 13 (citing *Heien v. North Carolina*, 574 U.S. 54, 61, 135 S. Ct. 530, 536, 190 L. Ed. 2d 475, 482 (2014)).

¶ 71 As discussed above, findings of fact 4 and 6 as well as the finding that Officer Meyer served as a patrol officer for several years are "supported by competent evidence" and are thus "conclusive on appeal." *See Buchanan*, 353 N.C. at 336, 543 S.E.2d at 826. The findings in turn support the conclusion that Officer Meyer had a reasonable and articulable suspicion to stop Defendant's vehicle for a violation of the

window tint law under N.C. Gen. Stat. § 20-127. Officer Meyer's opinion that Defendant's tint was illegal, previously formed in the daytime, is the type of inference or deduction that might elude a lay person but could create reasonable suspicion in the mind of an experienced law enforcement officer, particularly an experienced night officer like Officer Meyer. *See Williams*, 366 N.C. at 116, 726 S.E.2d at 167. Having formed an opinion of the illegality of Defendant's tinting based on multiple observations, these facts go beyond an inchoate suspicion or hunch and provide a particularized and objective basis for suspecting Defendant of involvement in criminal activity. *See Watkins*, 337 N.C. at 441–42, 446 S.E.2d at 70.

¶ 72 Regarding Defendant's assertion that there was no competent evidence tending to show the tint was illegal, Officer Meyer testified she "checked the window tint" on the driver's window, and the total light transmission of the tinted window measured thirty-two percent. As noted above, Officer Meyer was not required to prove the tint was in fact illegal—she was only required to possess a reasonable belief the tint was illegal. *See State v. Amator*, 2022-NCCOA-293, ¶ 9 (rejecting the defendant's argument there was insufficient evidence that he violated a state statute requiring registration stickers be affixed to license plates and concluding the officer had reasonable suspicion to warrant a traffic stop); *see also State v. Walton*, 277 N.C. App. 154, 2021-NCCOA-149, ¶ 20 (concluding the officer had reasonable suspicion to initiate a traffic stop based in part on his belief that the defendant's tinted windows

violated the window tinting law).

¶ 73 Accordingly, the trial court's findings of fact support its conclusion that, in the totality of the circumstances, Officer Meyer had a reasonable and articulable suspicion to stop Defendant's vehicle based on her belief the window tint violated N.C. Gen. Stat. § 20-127. *See Stanley*, 175 N.C. App. at 174, 622 S.E.2d at 682; *Fernandez,* 346 N.C. at 11, 484 S.E.2d at 357.

2. Finding of Fact 22 and Conclusions of Law 3 through 8 and 10: Weapons Frisk of Defendant and His Vehicle

¶ 74 Defendant next challenges the trial court's finding of fact 22 and conclusions of law 3 through 8, and 10, arguing Officer Meyer did not have "a reasonable belief, based on specific and articulable facts, taken together with the rational inferences from those facts, that [Defendant] was both dangerous and might gain immediate control of weapons, sufficient to justify a weapons frisk."

¶ 75 Before we reach the issue of whether the officers could have reasonably believed Defendant was armed and dangerous, thereby justifying their initial weapons frisks, we first consider the constitutionality of the officers' orders for Defendant to exit the vehicle. It is well-established an officer may ask a driver to step out of the vehicle during a traffic stop even when there is no "objective observable facts to support a suspicion that criminal activity [is] afoot." *Pennsylvania v. Mimms*, 434 U.S. 106, 108, 98 S. Ct. 330, 332, 54 L. Ed. 2d 331, 335 (1977); *see also State v.*

Bullock, 370 N.C. 256, 261–62, 805 S.E.2d 671, 676 (2017). "Asking a stopped driver to step out of his or her car improves an officer's ability to observe the driver's movements and is justified by officer safety." *Bullock*, 370 N.C. App. at 262, 805 S.E.2d at 676. This "*de minimis*" intrusion on a driver's personal liberties is justified by the "legitimate [and weighty] concerns for the officer's safety." *See Mimms*, 434 at 111, 98 S. Ct. at 333, 54 L. Ed. 2d at 337.

¶ 76 In the instant case, Defendant's dark windows prevented the officers from observing Defendant's movements inside the vehicle. The officers' requests for Defendant to exit the vehicle were warranted as a safety measure. *See Bullock*, 370 N.C. App. at 262, 805 S.E.2d at 676. Therefore, the requests for Defendant to step out of the vehicle was lawful. *See Mimms*, 434 U.S. at 108, 98 S. Ct. at 331, 54 L. Ed. 2d at 335.

¶ 77 Having concluded the officers lawfully commanded Defendant to exit the vehicle, we turn to the legal basis for the initial search of the vehicle. Here, the officers made multiple requests for Defendant to step out of the vehicle after he failed to produce a driver's license. In response, Defendant repeatedly asked why he was requested to exit the vehicle for a traffic stop, to which the officers did not respond. Defendant failed to respond to their commands, and Deputy McMahon ultimately reached into the vehicle to unbuckle Defendant's seatbelt. Deputy McMahon and Officer Meyer pulled Defendant out of the vehicle from his seat. At no point before

the officers' protective search of Defendant's person or his vehicle did the officers inform Defendant that he was under arrest, although Officer Meyer told Defendant when he was brought to the rear of the vehicle, "now you're going to get your hands into cuffs because you keep bugging me."

¶ 78 According to the magistrate's order and indictment, Defendant was arrested for, *inter alia*, resisting, delaying, and obstructing Officer Meyer by "refusing lawful verbal commands to exit the vehicle for a person/vehicle frisk." Nonetheless, the officers' testimonies and the footage from the body camera do not show the officers informing Defendant he was under arrest until *after* the search of his vehicle. *See* N.C. Gen. Stat. § 15A-401(c)(2)(b) (2021) (requiring a law enforcement officer "to [i]nform the arrested person that he is under arrest"). The charging documents indicate a sequence of events that is contrary to the testimony received at the hearing that could most certainly affect the analysis of the constitutionality of the search. However, neither party contends that the initial search was based on probable cause or that the search was incident to arrest, so we need not consider these issues. Furthermore, we need not consider the legal effect of the officers' failure to inform Defendant of his arrest for resisting an officer, pursuant to N.C. Gen. Stat. § 15A-401(c)(2)(b), as this issue was not raised on appeal. *See* N.C. R. App. P. 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.").

¶ 79 We next consider whether the officers possessed reasonable suspicion that Defendant was armed and dangerous such that their initial search of his vehicle was lawful. One exception to the Fourth Amendment's prohibition against warrantless searches was recognized in *Terry v. Ohio*, 392 U.S at 28–29, 88 S. Ct. at 1883–84, 20 L. Ed. 2d at 910 (holding the Fourth Amendment requires a brief, investigatory stop to be supported by reasonable suspicion). In addition to the *Terry* stop,

> [t]he United States Supreme Court has approved the search of the passenger compartment of a vehicle, even after the subject is removed from the vehicle, when the officer has an objectively reasonable and articulable belief that the suspect is dangerous. *Michigan v. Long*, 463 U.S. 1032, 1051, 77 L. Ed. 2d 1201, 1221, 103 S. Ct. 3469 (1983). An officer may search "the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, . . . if the police officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer in believing that *the suspect is dangerous and the suspect may gain immediate control of weapons*."

State v. Minor, 132 N.C. App. 478, 481, 512 S.E.2d 483, 485 (1999) (quoting *Long*, 463 U.S. at 1049, 103 S. Ct. at 3481, 77 L. Ed. 2d at 1220) (quotation marks omitted).

¶ 80 In determining whether there is reasonable suspicion to believe a defendant is armed and dangerous, relevant factors include, but are not limited to: posturing or hand movement by the defendant to obstruct the officer's view of on item on his person, *State v. Sutton*, 232 N.C. App. 667, 683, 754 S.E.2d 464, 474 (2014); turning

of the defendant's body, or blading, to conceal a weapon, *State v. Malachi*, 264 N.C. App. 233, 237–38, 825 S.E.2d 666, 670 (2019); a defendant's refusal to answer when asked if he is armed and his subsequent flee from the search, *State v. Shearin*, 170 N.C. App. 222, 228, 612 S.E.2d 371, 377, (2005); seeing a weapon in plain view inside the vehicle, *Long*, 463 U.S. at 1050, 103 S. Ct. at 3482, 77 L. Ed. 2d at 1220; observing a bulge in the pocket of a defendant, *State v. Pulliam*, 139 N.C. App. 437, 441, 533 S.E.2d 280, 283 (2000); using an unusual object to cover a passenger's lap, *State v. Hudson*, 103 N.C. App. 708, 718, 407 S.E.2d 583, 588 (1991); and witnessing "clearly furtive" gestures by a defendant, *State v. Blackwelder*, 34 N.C. App. 352, 357, 238 S.E.2d 190, 193 (1977). It is insufficient that a law enforcement officer has reason to suspect a defendant possesses and conceals a weapon on their person—there must also be behavior on the part of the defendant "giving rise to suspicion the defendant may be dangerous." *State v. Duncan*, 272 N.C. App. 341, 349, 846 S.E.2d 315, 322 (2020).

¶ 81 In this case, multiple officers testified, and the trial court made findings, concerning "articulable facts" on which the officers based their reasonable beliefs that Defendant was armed and dangerous: Defendant was stopped at approximately 12:32 a.m.; Defendant was slow to pull over his vehicle; Defendant's history of possessing firearms, including with a concealed handgun permit; officers could not see through Defendant's dark, tinted windows; Defendant rolled his driver window down only two

to three inches when Officer Meyer approached his window; each time one of the officers had encountered Defendant in the past, Defendant had been armed; and Defendant did not comply with the officers' requests to exit the vehicle nor did he respond to their questions.

¶ 82 After Defendant was lawfully removed from the vehicle, Defendant's dark, partially rolled up windows could no longer serve as a valid justification to search Defendant's vehicle or to believe he was armed and dangerous. *See Long*, 463 U.S. at 1051, 103 S. Ct. at 3469, 77 L. Ed. 2d at 1221. Similarly, Defendant's "proclivity to possess firearms," where he possessed a valid concealed firearm permit, does not, standing alone, support the trial court's conclusion the officers had reason to believe Defendant was armed *and dangerous* at the time of the stop. *See Minor*, 132 N.C. App. at 481, 512 S.E.2d at 485.

¶ 83 The testimony and the officers' admitted body camera footage show three officers came to the scene to assist Officer Meyer within one minute of her stopping Defendant for a window tint violation—approximately thirty minutes after the Wilmington Police Department's policy, temporarily prohibiting traffic stops—had been lifted. The assisting officers knew Defendant by name, despite Defendant's failure to provide identification; knew he had a recent firearm charge; and knew he had "drug-related charges in the past." The recent firearm charge apparently resulted in Defendant's conviction for possession of a firearm by a felon. Corporal

Mitchell testified he knew where Defendant and his family used to live, and that he had "several interactions" with Defendant and his family. Corporal Mitchell's testimony relating to his prior dealings with Defendant did not suggest Defendant was dangerous, nor does the record as a whole indicate Defendant was potentially violent or dangerous during the 28 April 2020 stop or had a history of being violent or dangerous. *See State v. Johnson*, 378 N.C. 236, 2021-NCSC-85, ¶ 18 (concluding the officer had a reasonable suspicion to believe the defendant was armed and dangerous where he was pulled over late at night in a high-crime area, acted nervous, appeared to obstruct the officer's view of the center console, and had a criminal history with a "trend in violent crime").

¶ 84 We cannot conclude the circumstances in this case, considered in their totality, warranted the officers to reasonably believe Defendant was armed and dangerous based on the findings Defendant: (1) was pulled over at 12:32 a.m.; (2) was known to have been convicted of illegally carrying a firearm one time in the past; (3) previously held and used a valid concealed carry permit; was slightly slow to pull over; (4) was not entirely compliant with the officers' orders to exit the vehicle where Defendant repeatedly asked, without being answered by officers, the reason for their request; and (5) was compliant with officers after existing the vehicle. Rather, the officers acted solely on an "unparticularized suspicion or hunch" that Defendant was carrying a firearm, *see Watkins*, 337 N.C. at 441–42, 446 S.E.2d at 70, stemming from their

knowledge of Defendant's prior offense and his past propensity to carry a firearm with a permit—not "an articulable and objectively reasonable belief" that Defendant was concealing a firearm at the time of this stop. *See Long*, 463 U.S. at, 1051, 103 S. Ct. 3482, 77 L. Ed. 2d at 1221. Even if the officers had reasonable suspicion to believe Defendant was possessing and concealing a firearm on his person or within his reach in the vehicle, this belief was not coupled with an action by Defendant that would justify a reason to believe he was dangerous. *See Duncan*, 272 N.C. App. 341, 349, 846 S.E.2d 315, 322; *Minor*, 132 N.C. App. at 481, 512 S.E.2d at 485. Moreover, Defendant was handcuffed with four officers present and approximately three officers surrounding him at all relevant times during the frisk of the vehicle; therefore, Defendant could not "gain immediate control" of any weapon that was inside the vehicle. *See Minor*, 132 N.C. App. at 481, 512 S.E.2d at 485; *Long*, 463 U.S. at 1049, 103 S. Ct. at 3481, 77 L. Ed. 2d at 1220; *see also State v. Braxton*, 90 N.C. 204, 209, 368 S.E.2d 56, 59 (1988) (holding the totality of the circumstances did not reasonably warrant an officer's belief that the defendant was dangerous and could gain control of weapons where the officer had no knowledge or information the defendant had contraband in his vehicle nor did the defendant have access to the vehicle).

¶ 85 Accordingly, we hold the trial court erred in denying Defendant's motion to suppress. The evidence seized from Defendant's vehicle should have been excluded from the evidence before the trial court. *See Wong Sun v. United States*, 371 U.S.

471, 485, 83 S. Ct. 407, 416, 9 L. Ed. 2d 441, 454 (1963) ("The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion."). Because we reverse the Order below, we need not consider Defendant's remaining arguments concerning the duration of the stop, and whether probable cause existed to arrest Defendant and perform a search incident to arrest.

VI. Conclusion

¶ 86 For the reasons stated above, we hold the trial court erred in denying Defendant's motion to suppress evidence seized pursuant to a traffic stop and subsequent to the search of his vehicle. Accordingly, we reverse the Order and remand with instructions to enter an order allowing Defendant's motion to suppress. *See Minor*, 132 N.C. App. at 483, 512 S.E.2d at 486.

REVERSED AND REMANDED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).