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IN THE COURT OF APPEALS OF NORTH CAROLINA

2023-NCCOA-12

No. COA22-347

Filed 17 January 2023

Rutherford County, Nos. 19 CRS 50950, 20 CRS 0092, 20 CRS 0093

STATE OF NORTH CAROLINA

v.

LARRY TIMOTHY ABRAMS, Defendant.

Appeal by defendant from judgment entered 4 June 2021 by Judge Daniel A. Kuehnert in Rutherford County Superior Court. Heard in the Court of Appeals 29 November 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Jeanne Hill Washburn, for the State.

Jarvis John Edgerton, IV and Alicia Gaddy Vega for Defendant-Appellant.

CARPENTER, Judge.

¶ 1

On appeal, Larry Timothy Abrams (“Defendant”) challenges the trial court’s denial of his motion to suppress evidence obtained during a frisk of his person. Defendant argues the stopping officer had no basis to reasonably believe Defendant was armed and presently dangerous at the time of the pat-down. Defendant further argues the officer’s pat-down, in which he pulled up Defendant’s pant leg, exceeded

the permissible scope of a *Terry* frisk. After careful review, we find no error. Accordingly, we affirm the trial court’s order, denying Defendant’s motion to suppress.

I. Factual & Procedural Background

¶ 2 On 3 February 2020, a Rutherford County grand jury indicted Defendant on the charge of possession of cocaine with intent to manufacture, sell, or deliver the Schedule II controlled substance pursuant to N.C. Gen. Stat. § 90-95(a)(1), under file number 20 CRS 0092. On the same date, an ancillary true bill of indictment was returned for attaining the status of habitual felon pursuant to N.C. Gen. Stat. § 14-7.1, under file number 20 CRS 0093. On 9 March 2020, a Rutherford County grand jury indicted Defendant for possession of cocaine base with intent to manufacture, sell, or deliver the Schedule II controlled substance pursuant to N.C. Gen. Stat. § 90-95(a)(1), under file number 19 CRS 50950.

¶ 3 On 18 March 2021, Defendant filed a motion to suppress, in which he argued, *inter alia*, “the search of [his] person and [his] vehicle [were] done in violation of the Fourth Amendment of the United States [Constitution] and Article I, § 20 of the North Carolina Constitution.” As a result, Defendant contended any and all evidence obtained as a result of the search of his person and vehicle should be suppressed.

¶ 4 On 2 June 2021, the trial court conducted a hearing to consider Defendant’s motion to suppress. At the hearing, the State offered testimony from Corporal Jamar

Logan (“Officer Logan”) of the Rutherford County Sheriff’s Office. Officer Logan’s testimony tended to show the following: On 1 April 2019, Officer Logan held the position of sergeant over the Spindale Police Department’s Narcotics Division. On that day, Officer Logan and several other law enforcement officers were headed to Defendant’s residence on Ledbetter Road to execute a search warrant on the residence and on Defendant. Although Officer Logan did not specifically testify as to the factual basis that established probable cause for the search warrant, he testified that he believed Defendant “[m]ore than likely resided [in] and sold narcotics out of the residence.” The officers drove multiple vehicles to the residence; at least two of the vehicles were marked and one was unmarked.

¶ 5

As Officer Logan and the accompanying officers approached the residence, they passed Defendant, who was driving a vehicle in which a woman and a child were passengers. Officer Logan testified Defendant was going to turn into his residence but drove past the driveway after he saw the marked patrol cars. At that point, Officer Logan turned his vehicle around to follow Defendant’s vehicle, and the officers initiated their blue lights and sirens.

¶ 6

Defendant was “traveling at a high rate of speed” and went “left of center”—or over the double center lines—“more than once.” Officer Logan observed “a lot of movement inside the vehicle,” including Defendant bending down toward the floorboard of his vehicle. After the officers’ blue lights were activated, Defendant

drove about a half mile, then turned right onto Shenandoah Drive before pulling over and stopping. When Defendant came to a stop, he continued to reach down toward the floorboard.

¶ 7 The officers, including Officer Logan, approached Defendant's vehicle and "gave him a couple of commands to exit the vehicle." Defendant did not initially respond to the officers' commands, but ultimately exited the vehicle. As Defendant exited, Officer Logan had his weapon drawn for "officer safety" due to Defendant reaching down in his vehicle. According to Officer Logan, he was concerned because the officers "[didn't] know if [Defendant] was reaching for a gun or anything like that"

¶ 8 Officer Logan detained Defendant, placed him in handcuffs, and patted him down. Defendant was wearing sweatpants and calf-length socks. Officer Logan described the pat-down of Defendant's leg as follows:

As we patted [Defendant] down, we got to his leg area, and we got to his sock, and you hear like a little baggie sound, which apparently was some sort of a narcotic, which you know from the feel and texture. At the time, I pulled his pants leg up[,] and there was a baggie sticking out"

¶ 9 When asked about the feel and texture of narcotics, Officer Logan testified:

So basically, just working in narcotics as long as I have, I have encountered different types and forms of crack cocaine, which has been large amounts, small amounts. Smaller amounts are -- feels like little pieces of rock. Based on the information I had on him prior to the stop, I was told

that he had a larger amount, which would be like the size of a cookie, like a large cookie. *And it was kind of broke up and had that rock texture.* (Emphasis added).

Officer Logan asserted he could feel the rock-like texture through the sock as he checked Defendant's leg for weapons.

¶ 10 Based on Officer Logan's training and experience, he opined the object he felt under Defendant's sock was a baggie containing crack cocaine. Officer Logan then lifted Defendant's pant leg and observed a baggie sticking out from Defendant's sock, which contained a substance. Based on his training and experience, Officer Logan continued to believe the substance was crack cocaine after removing the baggie from the sock and observing its contents. Officer Logan also found money and a smoking pipe on Defendant's person. After the search, Officer Logan notified Defendant of the search warrant; Officer Logan did not testify whether the search warrant was served on Defendant.

¶ 11 In arguing for denial of the motion at the suppression hearing, the State asserted it was "a clear case of a stop and then a Terry frisk." The State did not argue the search of Defendant's person was conducted pursuant to a valid search warrant, nor did the State attempt to admit a copy of the search warrant into evidence.

¶ 12 At the conclusion of the hearing, the trial court denied Defendant's motion, concluding that under "the totality of the circumstances[, including], the efforts to serve a warrant, [D]efendant getting ready to pull into the residence and then not, . .

. crossing a double yellow . . . and then the movement, the pat down [of Defendant] was reasonable.” The trial court did not enter a written suppression order, although it indicated to counsel that it intended to do so.

¶ 13 Following a jury trial on 3 June 2021, the jury returned a verdict, finding Defendant guilty of possession of cocaine with intent to sell or deliver. Defendant pled guilty to attaining the status of habitual felon and also pled guilty to the possession charge under file number 19 CRS 0093. Defendant expressly reserved his right to appeal the suppression order at the sentencing hearing and in the plea agreement. *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 the plea negotiations are finalized or he will waive the appeal of right provisions of the statute.”); *see also* N.C. Gen. Stat. § 15A-979(b) (2021).

II. Jurisdiction

¶ 14 This Court has jurisdiction to address Defendant’s appeal pursuant to N.C. Gen. Stat. § 7A-27(b) (2021) and N.C. Gen. Stat. § 15A-1444(a) (2021).

III. Issue

¶ 15 The sole issue before this Court is whether the trial court erred in denying Defendant’s motion to suppress evidence obtained pursuant to a frisk of his person during a traffic stop.

IV. Standard of Review

¶ 16 This Court utilizes a two-part standard of review in considering a trial court’s denial of a motion to suppress: we consider “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) (citation omitted). We review the trial court’s conclusions of law *de novo* on appeal. *State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008).

V. Issue Preservation

¶ 17 At the outset, we consider whether Defendant preserved his right to appeal his motion to suppress. “[A] trial court’s evidentiary ruling on a pretrial motion is not sufficient to preserve the issue of admissibility for appeal unless a defendant renews the objection during trial.” *State v. Oglesby*, 361 N.C. 550, 554, 648 S.E.2d 819, 821 (2007) (citations omitted and emphasis removed).

¶ 18 Here, counsel for Defendant indicated she “object[ed] to the search of [D]efendant,” at the point where Officer Logan began to testify regarding the frisk. Therefore, Defendant renewed his objection at trial. *See Oglesby*, 361 N.C. at 554, 648 S.E.2d at 821; *see also State v. Parker*, 277 N.C. App. 531, 2021-NCCOA-217, ¶ 16 (concluding the defendant properly preserved his objection to his motion to suppress where counsel for defendant advised she would be objecting to testimony concerning the search of the defendant’s vehicle and did object). Defendant

subsequently gave written notice of appeal from the trial court’s judgment; thus, Defendant properly preserved his right to appeal from the suppression order. *See* N.C. Gen. Stat. § 15A-979(b) (“An order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction . . .”).

VI. Analysis

¶ 19 On appeal, Defendant does not challenge the legality of the traffic stop, or the officers’ requests for Defendant to exit his vehicle. Rather, Defendant maintains the trial court erred by denying his motion to suppress evidence obtained during the frisk of his person because it was unconstitutional and exceeded the permissible scope of a *Terry* frisk. The State argues that “competent evidence supports the [trial court’s] conclusion that Officer Logan had a right to conduct a “Terry frisk,” and that the pat-down was lawfully performed. After careful review of the record and the parties’ arguments, we agree with the State.

A. Sufficiency of the Trial Court’s Oral Conclusion of Law

¶ 20 In ruling on a defendant’s motion to suppress in superior court, the trial “judge must set forth in the record his findings of facts and conclusions of law.” N.C. Gen. Stat. § 15A-977(f) (2021); *see also State v. Williams*, 267 N.C. App. 485, 489, 833 S.E.2d 223, 226 (2019). “Although the statute’s directive is in the imperative form, only a material conflict in the evidence—one that potentially affects the outcome of the suppression motion—must be resolved by explicit factual findings that show the

basis for the trial court’s ruling.” *State v. Bartlett*, 368 N.C. 309, 312, 776 S.E.2d 672, 674 (2015) (citations omitted). “If there is not a material conflict in the evidence, it is not reversible error to fail to make . . . findings because we can determine the propriety of the ruling on the undisputed facts which the evidence shows.” *State v. Lovin*, 339 N.C. 695, 706, 454 S.E.2d 229, 235 (1995) (citation omitted).

In evaluating a trial court’s denial of a motion to suppress when the facts are not disputed and the trial court did not make specific findings of fact either orally or in writing, we infer the findings from the trial court’s decision and conduct a *de novo* assessment of whether those findings support the ultimate legal conclusion reached by the trial court.

State v. Nicholson, 371 N.C. 284, 288, 813 S.E.2d 840, 843 (2018) (emphasis added).

¶ 21 Here, the only evidence presented at the suppression hearing was the unrefuted testimony of Officer Logan; thus, there is no material conflict in the evidence. *See Bartlett*, 368 N.C. at 312, 776 S.E.2d at 674. The trial court made no explicit findings of fact and made one conclusion of law, in which it concluded the search and pat-down were based on reasonable suspicion. Hence, this Court must consider whether the trial court properly reached its ultimate conclusion of law to find the pat-down of Defendant was reasonable and its implicit conclusion that Officer Logan reasonably believed Defendant was armed and dangerous. *See Biber*, 365 N.C. at 168, 712 S.E.2d at 879 (explaining the trial court implicitly concluded that the officers had probable cause to arrest the defendant based on its conclusion

of law “that none of [the] defendant’s Constitutional rights were violated”).

B. Armed & Presently Dangerous

¶ 22 In his first argument, Defendant contends the trial court erred in concluding Officer Logan had reasonable suspicion to warrant frisking Defendant. Specifically, Defendant challenges the trial court’s conclusion that the frisk of his person was reasonable on the grounds: (1) “Defendant was peacefully detained and handcuffed prior to the challenged pat down search for officer safety”; (2) Officer Logan did not testify as to any “commonly cited indicators” to warrant a frisk for officer safety, including “furtive movements”; and (3) Officer Logan’s belief Defendant sold narcotics stemmed solely from Defendant’s prior criminal activity.

¶ 23 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) (quoting U.S. Const. amend. IV); *see also* U.S. Const. amend. XIV. The Fourth Amendment “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 (citation omitted).

¶ 24 “A warrantless search of a person is *per se* unreasonable unless it falls within a recognized exception to the warrant requirement.” *State v. Romano*, 369 N.C. 678, 685, 800 S.E.2d 644, 649 (2017) (citations omitted and emphasis added). One

exception to the warrant requirement was recognized by the Supreme Court of the United States in *Terry v. Ohio* and was thereafter adopted by North Carolina Appellate Courts. 392 U.S. 1, 30, 88 S. Ct. 1868, 1884, 20 L. Ed. 2d 889, 911 (1968); see *State v. Peck*, 305 N.C. 734, 740–41, 291 S.E.2d 637, 641 (1982); *State v. Harris*, 95 N.C. App. 691, 696, 384 S.E.2d 50, 52–53 (1989). In *Terry*, the Court concluded that under the Fourth Amendment, “there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual . . .” *Id.* at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909. Probable cause to arrest is not required for a *Terry* frisk. *Id.* at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909. “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Id.* at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909.

¶ 25 Here, the following pertinent findings of fact can be inferred from Officer Logan’s testimony: (1) Officer Logan attempted to serve and execute a search warrant on Defendant and Defendant’s residence; (2) Defendant was bending and “reaching down” multiple times while driving and as officers approached his vehicle during the stop; (3) based on Officer Logan’s training and experience, a suspect’s bending and reaching down can indicate the suspect is “reaching for a gun”; (4) Defendant crossed

the double center line of a two-lane road more than once; (5) Defendant drove about a half mile after the officers activated their blue lights and sirens; (6) Defendant was driving at a high rate of speed; (7) Officer Logan had his weapon drawn as he requested that Defendant exit the vehicle; (8) the officers made several commands for Defendant to exit his vehicle, and Defendant ultimately complied with the request; (9) once outside the vehicle, Defendant was detained, handcuffed, and frisked for officer safety; and (10) the frisk of Defendant's person was not conducted pursuant to a search warrant.

¶ 26 Defendant, without citing legal authority, challenges the frisk of his person on the ground he “was peacefully detained and handcuffed” before Officer Logan performed his pat-down of Defendant. Because Defendant has not provided support for these arguments, we consider them abandoned. *See* N.C. R. App. P. 28(b)(6) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”).

¶ 27 Defendant also asserts that Officer Logan did not observe any behavior by Defendant to warrant the *Terry* frisk nor did Officer Logan testify to seeing “any furtive movements.” We disagree.

¶ 28 In *State v. Hamilton*, this Court held the trial court did not err in concluding the officer had reasonable grounds to believe the defendant could be armed and dangerous based on the defendant’s hand “reach[ing] toward his left side”

immediately prior to the defendant exiting the vehicle at the officer's request. 125 N.C. App. 396, 401, 481 S.E.2d 98, 101, *disc. rev. denied*, 345 N.C. 757, 485 S.E.2d 302 (1997). The officer did not testify the movement was "furtive," but explained the gesture lead him to believe the defendant "was reaching for a weapon." *Id.* at 398, 481 S.E.2d at 99.

¶ 29 Similar to the defendant in *Hamilton* who was reaching toward his side, Defendant was bending down and reaching toward the floorboard while he was driving and as the officers approached his vehicle during the traffic stop. Moreover, Defendant demonstrated evasive actions by not turning into his residence after seeing marked patrol vehicles, driving at a high rate of speed, driving for about a half mile after the officers initiated their blue lights and sirens, and not promptly complying with the officers' requests to exit the vehicle—even where Officer Logan had his weapon drawn while making the commands. Under the circumstances, a reasonably prudent officer would be justified in believing Defendant had a weapon and was dangerous. *See id.* at 401, 481 S.E.2d at 101; *see also Terry*, 392 U.S. 27, 88 S. Ct. 1883, 20 L. Ed. 2d 909.

¶ 30 In considering the evidence presented by Officer Logan objectively and in its totality, we conclude the testimony was sufficient to support the trial court's ultimate conclusion of law that Officer Logan possessed a reasonable and articulable suspicion that Defendant was armed and presently dangerous. *See Barnard*, 362 N.C. at 247,

658 S.E.2d at 643; *Nicholson*, 371 N.C. at 288, 813 S.E.2d at 843; *see also Hamilton*, 125 N.C. App. at 401, 481 S.E.2d at 101.

C. “Plain Feel” Doctrine

¶ 31 In his second argument, Defendant asserts Officer Logan exceeded the scope of a *Terry* frisk by pulling up Defendant’s pant leg after feeling a baggie containing a substance in Defendant’s sock area. Defendant further asserts this case is indistinguishable from *Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993). We disagree.

¶ 32 “Under the ‘plain feel’ doctrine[,] if a police officer lawfully pats down a suspect’s outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect’s privacy beyond that already authorized by the officer’s search for weapons.” *State v. Robinson*, 189 N.C. App. 454, 459, 658 S.E.2d 501, 505 (2008) (citing *Minn. v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed. 2d 334). “[I]n the context of the ‘plain view’ exception[,] the term ‘immediately apparent’ is ‘satisfied if the police have probable cause to believe that what they have come upon is evidence of criminal conduct.’” *State v. Wilson*, 112 N.C. App. 777, 782, 437 S.E.2d 387, 389–90 (1993) (citation omitted). “If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed.” *Dickerson*, 508 U.S. at 373, 113 S. Ct. at 2136, 124 L. Ed. 2d at 344 (citation omitted).

¶ 33

We consider Defendant’s contention that the facts of his case are indistinguishable from those of *Minnesota v. Dickerson*. In *Dickerson*, officers stopped their patrol vehicle in an alleyway and ordered a suspect “to stop and submit to a patdown search” due to his behavior and his leaving a building known for narcotics trafficking. 508 U.S. at 369, 113 S. Ct. at 2133, 124 L. Ed. 2d at 342. At trial, the officer who conducted the frisk testified: “As I pat-searched the front of his body, I felt a lump, a small lump, in the front pocket. *I examined it with my fingers and it slid* and it felt to be a lump of crack cocaine in cellophane.” *Id.* at 369, 113 S. Ct. at 2133, 124 L. Ed. 2d at 341 (emphasis added). The Court held the officer “overstepped the bounds of the ‘strictly circumscribed’ search for weapons allowed under *Terry*” by continuing to explore the defendant’s pocket where the officer already knew that there was no weapon and that “the incriminating character of the object was not immediately apparent to him.” *Id.* at 378–79, 113 S. Ct. at 2138–39, 124 L. Ed. 2d at 347–48.

¶ 34

We do not find *Dickerson* to be on point; rather, we conclude our Court’s case of *State v. Wilson* is analogous to the instant case. 112 N.C. App. 777, 437 S.E.2d 387 (1993). In *Wilson*, our Court compared the case to *Dickerson*. *Id.* at 780–81, 437 S.E.2d at 398–89. Our Court concluded *Dickerson* was distinguishable, reasoning that there was no testimony that the officer “manipulated the contents of [the] defendant’s pocket or that he performed a search that was not permitted under

Terry.” *Id.* at 781, 437 S.E.2d at 389. Additionally, the officer had probable cause under the totality of the circumstances given that he was investigating an alleged drug deal, which he had experience doing in his seven years of service. *Id.* at 782–83, 437 S.E.2d at 390.

¶ 35

Here, Officer Logan testified as follows regarding the pat-down:

As we patted him down, we got to his leg area, and we got to his sock, and you hear like a little baggie sound, which apparently was some sort of a narcotic, which you know from the feel and texture. At the time, I pulled his pants leg up and there was a baggie sticking out that contained crack cocaine.

Based on his training and experience, Officer Logan opined the substance was crack cocaine after hearing the baggie as he touched it over Defendant’s clothing and feeling the “rock texture” of the contents.

¶ 36

In considering Officer Logan’s testimony, he was patting down Defendant’s outer clothing, and specifically his sweatpants, when Officer Logan felt and heard the plastic baggie containing a substance. Based on his training and experience, the identity of the object and substance was “immediately apparent” to Officer Logan as “crack cocaine,” considering the “feel and [rock-like] texture” of the substance in the baggie. *See Robinson*, 189 N.C. App. at 459, 658 S.E.2d at 505. Unlike the officer in *Dickerson*, Officer Logan confirmed he did not have to manipulate the baggie to form the opinion it contained crack cocaine. *See Dickerson*, 508 U.S. at 369, 113 S. Ct. at

2133, 124 L. Ed. 2d at 342. Like the officer in *Wilson*, Officer Logan had probable cause to believe the small baggie concealed under Defendant's sock contained an illegal substance, given his nine years of law enforcement experience at the time of the search and service in the narcotics unit for over a year. *See Wilson*, 112 N.C. App. at 782, 437 S.E.2d at 389–90. Therefore, we hold Officer Logan acted within the bounds of a lawful *Terry* frisk in patting down Defendant. *See Robinson*, 189 N.C. App. at 459, 658 S.E.2d at 505; *Dickerson*, 508 U.S. at 379, 113 S. Ct. at 2139, 124 L. Ed. at 348.

VII. Conclusion

¶ 37

For the reasons discussed above, the trial court did not err in concluding the limited *Terry* frisk of Defendant's person was valid and reasonable under the totality of the circumstances. Accordingly, we affirm the trial court's denial of Defendant's motion to suppress evidence obtained pursuant to the pat-down.

AFFIRMED.

Judges TYSON and GRIFFIN concur.

Report per Rule 30(e).