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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-644

Filed 07 March 2023

Wayne County, No. 19 CRS 50199-200

STATE OF NORTH CAROLINA

v.

TYANNA SHARDAE MORRISON, Defendant.

Appeal by Defendant from order entered 18 January 2022 by Judge William W. Bland in Wayne County Superior Court. Heard in the Court of Appeals 24 January 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Erin Hukka, for the State.*

*BJK Legal, by Benjamin J. Kull, for Defendant.*

GRIFFIN, Judge.

Defendant Tyanna Shardae Morrison appeals from the trial court's order denying her motion to suppress. Defendant contends the trial court erred in denying her motion because she was seized in violation of the Fourth Amendment and the seizure was not supported by reasonable, articulable suspicion. Defendant also asserts that, even if the seizure was supported by reasonable suspicion, the trial court

failed to make the necessary findings of fact and conclusions of law to support its denial of Defendant's motion to suppress. We hold the trial court properly denied Defendant's motion to suppress because a Fourth Amendment seizure did not occur and therefore decline to address Defendant's contentions regarding reasonable, articulable suspicion as they are without merit.

### **I. Factual and Procedural Background**

On 14 January 2019, Corporal Michael Rivers of the Goldsboro Police Department received a radio dispatch that two male individuals had just run from the Slocumb Mini Mart towards the area of Day Circle. Corporal Rivers responded to the scene where he observed two individuals, one in dark multi-colored jeans, running toward Day Circle. Corporal Rivers lost sight of the individuals, parked his marked patrol car, and began canvassing the area on foot looking for the suspect he observed in the dark multi-colored jeans. Corporal Rivers was in uniform and armed with his AR-15 service rifle, service handgun, and taser.

While walking around the area, Corporal Rivers observed Defendant, who was wearing dark multi-colored jeans, in the parking lot. Corporal Rivers called Defendant over. Defendant and Corporal Rivers began walking toward each other. Corporal Rivers asked Defendant where she was coming from and if she had just been running. Defendant explained she had just walked out of an apartment building and had not been running. During their interaction, Corporal Rivers smelled the odor of marijuana. Defendant turned and began to walk away from Corporal Rivers.

Corporal Rivers called Defendant back over and asked Defendant if she was in possession of marijuana or if she had been smoking. Defendant denied being in possession but admitted she had just smoked. Corporal Rivers then detained Defendant and performed a search which led to her arrest.

On 8 September 2020, Defendant was indicted on four counts relating to her 14 January 2019 arrest, which included: possession of cocaine; possession with intent to sell and deliver marijuana; altering, destroying, or stealing criminal evidence; and possession of drug paraphernalia. On 24 November 2020, Defendant filed a motion to suppress. On 11 May 2021 and 24 June 2021, Defendant's motion came on for hearing in Wayne County Superior Court before the Honorable William W. Bland. On 18 January 2022, the trial court entered an order denying the motion to suppress and, on 19 January 2022, Defendant entered an *Alford* plea, pleading guilty to all four counts and reserving her right to appeal the judgment. Defendant was sentenced to five to fifteen months imprisonment, suspended for twelve months of supervised probation. Defendant gave oral notice of appeal from the denial of her motion to suppress.

## **II. Standard of Review**

We review a trial court's denial of a motion to suppress to determine only whether the trial court's findings of fact are supported by competent evidence and whether those factual findings support the conclusions of law. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). Findings of fact which are supported by

competent evidence are binding on appeal. *Id.* The trial court's conclusions of law are reviewed de novo. *State v. Edwards*, 185 N.C. App. 701, 702, 649 S.E.2d 646, 648 (2007).

### **III. Analysis**

Defendant contends the trial court erred in denying her motion to suppress because a Fourth Amendment seizure occurred. Specifically, Defendant argues the trial court erred in denying her motion because (A) when considering the totality of the circumstances, a Fourth Amendment seizure occurred, and the court only concluded otherwise because (B) its Fourth Amendment analysis failed to give proper consideration to the relevant circumstances. We disagree.

#### **A. Totality of the Circumstances**

Defendant contends the trial court erred in denying Defendant's motion to suppress because, when considering the totality of the circumstances, a Fourth Amendment seizure occurred when Corporal Rivers called Defendant over in the parking lot, as a reasonable person in Defendant's situation would not have felt free to ignore the summoning of a uniformed police officer armed with an AR-15, service handgun, and taser.

The Fourth Amendment to the United States Constitution and the Constitution of North Carolina alike guarantee citizens the right to be secure in their person against unreasonable search and seizure. U.S. Const. amend. IV; N.C. Const. Art. I, § 20. A seizure, as defined by the Fourth Amendment, occurs when law

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enforcement restrains the liberty of a citizen by physical force or show of authority. *State v. Eagle*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 879 S.E.2d 377, 383 (2022) (citing *Terry v. Ohio*, 392 U.S. 1, 20 (1968)). We recognize that not every interaction between a citizen and law enforcement can equate to a seizure. *State v. Steele*, 277 N.C. App. 124, 133, 858 S.E.2d 325, 333 (2021) (citing *State v. Isenhour*, 194 N.C. App. 539, 542, 670 S.E.2d 264, 267 (2008)) (“[O]fficers do not violate the Fourth Amendment merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen.” (internal marks and citation omitted)). We are instructed to use the test laid out by our Supreme Court in *State v. Brooks*: “whether under the totality of the circumstances a reasonable person would feel that he was not free to decline the officers’ request or otherwise terminate the encounter.” 337 N.C. 132, 142, 446 S.E.2d 579, 586 (1994) (citations omitted). In applying this totality of the circumstances test, relevant factors should be considered including:

the number of officers present, whether the officer displayed a weapon, the officer’s words and tone of voice, any physical contact between the officer and the individual, whether the officer retained the individual’s identification or property, the location of the encounter, and whether the officer blocked the individual’s path.

*State v. Icard*, 363 N.C. 303, 309, 677 S.E.2d 822, 827 (2009). Consequently, “[w]hat constitutes a seizure ‘[varies], not only with the particular police conduct at issue, but also with the setting in which the conduct occurs.’” *Steele*, 277 N.C. App. at 134, 858 S.E.2d at 333 (quoting *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988)).

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In the instant case, Corporal Rivers testified he was armed and in uniform at the time of his encounter with Defendant. Further, Corporal Rivers' body camera footage, which was introduced into evidence, depicted the following:

- At 19:45:24, Defendant came into view, wearing multi-colored jeans—matching the description of the individual Corporal Rivers saw running from the Slocumb Mini Mart.
- At 19:45:29, Corporal Rivers called out to Defendant saying: “Hey man, come here.” Defendant turned to Corporal Rivers and the two began walking toward each other.
- At 19:45:37, Corporal Rivers asked: “Where you coming from?” After some unintelligible back and forth, Defendant indicated she had just walked out of an apartment building. Corporal Rivers asked Defendant if she had been running to which she responded she had not. Corporal Rivers then said: “No. Okay.”
- At 19:45:47, Defendant turned and walked away from Corporal Rivers. Corporal Rivers also turned away from Defendant.

Defendant argues she was seized—in the parking lot—when Corporal Rivers called out to her. However, a seizure occurs when an individual feels he is not free to decline an officers' request *or otherwise terminate the encounter*. *See Brooks*, 337 N.C. at 142, 446 S.E.2d at 586. Corporal Rivers was in uniform and armed when he summoned Defendant in the parking lot. However, Corporal Rivers confronted Defendant in a

public parking lot without making physical contact. Further, Corporal Rivers did not request, collect, or retain Defendant's identification or property, nor block her path in any way. Most notably, at 19:45:47, Defendant turned and began to walk away from Corporal Rivers. Defendant felt free to, and did in fact, terminate the encounter with Corporal Rivers and therefore was not seized under the Fourth Amendment.

Because the evidence above is sufficient to support the trial court's findings and conclusions that, considering the totality of the circumstances, Defendant was not seized under the Fourth Amendment, the trial court did not err in denying her motion to suppress.

#### **B. Proper Consideration to Relevant Circumstances**

Defendant contends the trial court, after considering the totality of the circumstances, only concluded Defendant was seized because its Fourth Amendment analysis failed to give proper consideration to the relevant circumstances.

The United States Supreme Court has held: "a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." *Florida v. Bostick*, 501 U.S. 429, 439 (1991); *see also Brooks*, 337 N.C. at 142, 446 S.E.2d at 586. As noted above, our Supreme Court in *Icard* indicated the relevant circumstances or factors to be considered by the trial court in making its determination. *See discussion supra* III.A. (citing *Icard*, 363 N.C. at 309, 677 S.E.2d at 827).

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Here, the trial court made findings of fact concerning the relevant circumstances surrounding Defendant's encounter with Corporal Rivers finding:

4. [Corporal] Rivers got out of his patrol vehicle, removed his AR-15 rifle from the trunk of his vehicle and began to walk around . . . [Corporal] Rivers was wearing 'black [battle dress uniform]' emblazoned with the word 'POLICE' on both the front and back sides of his vest and badges on his sleeves: [Corporal] Rivers described the markings on his uniform as 'Police 360.' [Corporal] Rivers also had his service handgun and a taser device on his service belt . . . Other officers were in the vicinity, but [Corporal] Rivers walked alone as he looked around the area of the buildings.

5. [. . .] The AR-15 being carried by [Corporal] Rivers was pointed at the ground in what [Corporal] Rivers described as a 'low ready' position. [Corporal] Rivers, in a voice loud enough to be heard, but not excessively loud, called out to the person in the multicolored jeans, 'Hey man, come here.'

. . .

8. [Corporal] Rivers and [Defendant] had a brief discussion while [Defendant] walked toward him regarding whether [Defendant] had been running through the field behind Day Circle recently earlier in the evening. [Defendant] denied having been running and, in response to [Corporal] Rivers' question—'Where were you at?['—indicated that she had been in a nearby apartment area. 'You won't just running?,' asked [Corporal] Rivers. 'No!' said [Defendant]. [Corporal] Rivers responded, 'No? Ok.' [Defendant], having come close to [Corporal] Rivers (though there was no physical contact initiated or attempted), turned and walked away. [Corporal] Rivers turned and moved away from [Defendant].

These findings indicate both the court's recognition and consideration of the relevant



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circumstances including: the location of the encounter, the number of officers present, the fact that Corporal Rivers was armed and in uniform, Corporal Rivers' words and tone of voice, and the lack of physical contact between Corporal Rivers and Defendant.

Additionally, in Conclusion of Law 3, the court again illustrates its consideration of the relevant factors it identified in the findings above stating:

3. No Fourth Amendment seizure occurred:

Pursuant to the principles stated . . . the facts above as well as in other Fourth Amendment cases, the interactions between [Corporal] Rivers and [Defendant] did not constitute a seizure under the Fourth Amendment to the United States Constitution. There was no physical contact whatsoever. The verbal interaction beginning with 'Hey man, come here' followed about eight seconds later with 'Where are you coming from?' and concluding within 20 seconds with 'No? OK.' was permissible police interaction with the public. The citizen who voluntarily walked toward the officer felt 'free to leave' and was 'free to leave,' and the citizen was not restricted from leaving in any way. In fact, the citizen freely left the interaction as and after [Corporal] Rivers concluded the verbal interaction with 'No? OK.' The officer made reasonable statements and asked permissible and reasonable questions, appropriate to the safety concerns of his patrol and investigation.

These findings of fact and conclusion of law show the trial court's examination of the relevant factors in considering the totality of the circumstances. Because the trial court properly considered the relevant factors when conducting its Fourth Amendment analysis, the trial court did not err in denying Defendant's motion to suppress.

## **IV. Conclusion**

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We hold Defendant was not seized under the Fourth Amendment and affirm the trial court's order denying Defendant's motion to suppress.

AFFIRMED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).