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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-885

Filed 21 May 2024

Davidson County, No. 19 CRS 50195

STATE OF NORTH CAROLINA,

v.

PATRICK O'NEILL COCHRAN, Defendant.

Appeal by Defendant from judgments entered 23 March 2022 by Judge Susan E. Bray in Davidson County Superior Court. Heard in the Court of Appeals 7 June 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General T. Hill Davis, III, for the State.

Caryn Strickland for defendant-appellant.

MURPHY, Judge.

Defendant moved at trial to suppress evidence on the basis of law enforcement's alleged violation of the Fourth Amendment. However, on appeal, he challenges the denial of the motion on both Fourth and Fifth Amendment grounds. Defendant did not preserve his Fifth Amendment arguments for appeal. Furthermore, the Fourth Amendment's prohibition on prolonged traffic stops under

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Rodriguez v. United States only applies if officers lack a reasonable suspicion justifying the extension of the stop. *Rodriguez v. United States*, 575 U.S. 348 (2015). Here, as a reasonable suspicion sufficient to justify the extension of the traffic stop existed, no reversible error occurred.

BACKGROUND

This appeal arises from a judgment finding Defendant, Patrick O'Neill Cochran, guilty of (1) possession with intent to sell or deliver heroin and (2) trafficking in opiates by unlawfully possessing more than 14 grams but less than 28 grams of opiates. These charges arose from a traffic stop conducted as part of an ongoing drug investigation on 2 January 2019.

Prior to 2 January 2019, the Davidson County Sheriff's narcotics unit, composed of Lieutenant Mike Burns and Deputies Brennan Smith, Christopher Bryant, and Allen Pearce, received information from two confidential informants about suspected drug activity by Defendant. The informants told the narcotics unit officers that Defendant drove a Toyota RAV4 and that alleged drug transactions occurred in the Dollar General parking lot near Defendant's residence at 370 Tamworth Drive in Clemmons.

Upon receiving these tips about Defendant's activity, the narcotics unit surveilled Defendant's residence and his activities for approximately 40 hours. Lieutenant Pearce, an experienced narcotics officer, testified that he validated the

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information received from the informants during this 40-hour surveillance period. Following the surveillance period, the narcotics unit officers executed an operation to retrieve the suspected narcotics exchanged by Defendant in the Dollar General parking lot. Part of this operation involved Sergeant Soles patrolling the relevant area in a marked vehicle on the evening of 2 January 2019, where he planned to conduct a traffic stop if he observed any traffic violation by Defendant.

Additionally, narcotics officers “leap-frog[ged]” Defendant in unmarked vehicles as he drove from his residence to the Dollar General parking lot with his girlfriend on 2 January 2019. During this leap-frogging, the narcotics officers observed Defendant pull into the Dollar General parking lot, while another car pulled in beside him. A man exited the car and got into Defendant’s vehicle. One of the narcotics officers testified this interaction was consistent with a drug transaction based on the unit’s 40-hour surveillance of Defendant.

After Defendant left the Dollar General parking lot, he was pulled over by Sergeant Soles for speeding, neglecting to use a turn signal, and cutting through a gas station parking lot to avoid a traffic light. Sergeant Soles activated his blue lights and parked his vehicle directly behind Defendant’s, which was pulled into a parking spot. While Sergeant Soles asked Defendant for his license, he observed the man from the Dollar General parking lot in Defendant’s backseat reach around his waistband, prompting him to ask the passenger to keep his hands visible. Defendant

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was taken to the patrol car, where his identification was verified. Defendant told Soles that he had picked up the man at the Dollar General and was dropping him off down the road. Soles wrote Defendant a warning ticket. When Defendant asked if he was free to leave, he was told that “it’s just a warning, not a ticket.”

After the warning ticket was issued, the nearby narcotics officers arrived on the scene. Defendant consented to a vehicle search. After nothing was found in the vehicle and about 22 minutes into the stop, Defendant, Defendant’s girlfriend, and the passenger were handcuffed. A recording of the stop reflected that officers made statements such as “we’re going to find drugs before we leave here” and “we can do this all day long” during the stop. Sergeant Soles also testified that he could not say whether anyone had made a threat to strip search Defendant, instead stating, “I don’t recall anybody in particular making that comment. I’m not saying it wasn’t made. I just don’t recall anybody making that statement.” At some point during the stop, officers told Defendant’s girlfriend that she “needed to be honest.” In response, she indicated that the man from the Dollar General parking lot was hiding something. Officers subsequently asked the man to give them what he had, and he handed over a packet of heroin.

After securing the packet of heroin, Lieutenant Pearce explained the nature of the investigation and gave Defendant the option of becoming an informant or having a search warrant executed on his residence. Defendant agreed to cooperate and

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confessed that he had participated in a drug transaction in the Dollar General parking lot. He then rode with officers to his residence, where he took them to a safe containing 24.07 grams of heroin. Testimony from Sergeant Soles, Lieutenant Pearce, and Lieutenant Bryant indicated that *Miranda* warnings were not given at any point during the stop. Testimony also reveals that Defendant was not handcuffed while he rode with officers to his residence. Defendant was arrested about a week after the stop because he did not cooperate with the narcotics unit as an informant.

After his arrest, Defendant filed a motion to suppress the evidence obtained during the traffic stop and thereafter at his residence. He argued both that the prolonged continuation of the traffic stop after the warning ticket was issued and his interrogation while he was in handcuffs amounted to violations of the Fourth Amendment rendering all evidence obtained inadmissible. The trial court denied his motion after a pretrial hearing, concluding that Defendant was not under arrest on the evening of the stop and that the stop was not unlawfully prolonged past the issuing of the warning ticket because officers had reasonable articulable suspicion as part of their ongoing drug investigation.

Defendant was convicted by a jury on both counts. Defendant now appeals, arguing that the trial court erred in denying his motion to suppress the evidence.

ANALYSIS

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Defendant argues the trial court erred in (A) denying his motion to suppress evidence obtained as a result of his confession during the stop pursuant to the Fifth Amendment and (B) denying his motion to suppress in light of what he characterizes as law enforcement's impermissibly prolonged traffic stop. "When considering on appeal a motion to suppress evidence, we review the trial court's factual findings for clear error and its legal conclusions de novo." *State v. Reed*, 373 N.C. 498, 507 (2020). "This requires us to examine whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *Id.* (marks omitted).

A. Preservation

At the outset, we note that Defendant and the State disagree as to which of Defendant's arguments were preserved for appeal. The alleged basis for the preservation of Defendant's arguments is his motion to suppress. The motion reads as follows:

Now comes the Defendant in the above styled case, through counsel and files this his Motion to Suppress Statement and shows to the Court as follows:

1. The Defendant is charged with violation of the North Carolina Controlled Substances Act, specifically, Trafficking in Schedule II substance.
2. That on or about [2 January] 2019 in Davidson County, North Carolina officer J.W. Soles of the Davidson County Sheriff's Department initiated a traffic stop on the vehicle the Defendant was driving in the vicinity of the

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intersection of Highway 150 and Frye Bridge Road for failure to use a turn signal.

3. During the aforesaid traffic stop, Deputy Soles activated his blue lights and placed his patrol vehicle directly behind the Defendant's vehicle. Defendant stopped his vehicle facing a side of a gas station.

4. During the traffic stop, Deputy observed no other alleged wrongdoing, and observed no other nervousness, evasiveness, or suspicious behavior on the part of the Defendant.

5. That 13 minutes after initiating the traffic stop, Deputy Soles issued the Defendant a warning ticket for the infraction.

6. That the Defendant immediately asked Deputy Soles if he was free to leave.

7. Deputy Soles made no response to the Defendant's inquiry, did not make any attempt to move his patrol vehicle, and left his blue lights activated. It was physically impossible for the Defendant to move his vehicle.

8. Despite concluding the purpose of the traffic stop, Deputy Soles continued to detain and question the Defendant, repeatedly telling him to "hang tight" for over twenty minutes.

9. During the ensuing period after the issuance of the warning ticket, other Vice and Narcotics officers came onto the scene and became verbally aggressive with the Defendant, repeatedly making statements that "somebody has got drugs" "we can do this all day long", and "we're going to find drugs before we leave here".

10. That after finding drugs on the person of a passenger, the Defendant was placed in handcuffs and further interrogated by Deputy Soles and the other vice officers.

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11. At no time during the traffic stop and the continued detention of the Defendant was he advised of his Miranda rights.

12. After continued interrogation of the Defendant, the Defendant informed the officers that there were drugs in his residence.

13. Defendant shows that the officers continued detention of the Defendant after the purpose of the traffic stop had been achieved, and the continued interrogation while the Defendant was in handcuffs was illegal and served to violate the rights of the [D]efendant under Article I Section 20 Constitution of the State of North Carolina and under Fourth Amendment to the Constitution of the United States, and that any evidence obtained thereby, should be suppressed by this Court, as provided by law, and ruled inadmissible in any trial of the charges hereinbefore set forth.

WHEREFORE, Defendant prays the Court for the following relief:

1. That this Court inquire into this manner and issue its Order suppressing any evidence seized in this matter and rule the same inadmissible upon a trial of the charges set out herein.

2. The District Attorney of Davidson County, Davidson County Criminal Superior Court, 22nd Judicial District, be ordered to show cause on a day certain why the prayers of the Defendant should not be granted.

As to preservation, it is well established in this jurisdiction that, “where a theory argued on appeal was not raised before the trial court, the law does not permit parties to swap horses between courts in order to get a better mount” on appeal. *State*

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v. Augustine, 359 N.C. 709, 721 (2005). In the context of appeals from motions to suppress, we have applied this rule to hold that “a criminal defendant is not entitled to advance a particular theory in the course of challenging the denial of a suppression motion on appeal when the same theory was not advanced in the court below.” *State v. Hernandez*, 227 N.C. App. 601, 608 (2013). Furthermore, plain error review is unavailable where a Defendant does not preserve a constitutional suppression argument at trial, as the failure to raise such an argument below denies the State the opportunity to develop the record in light of the issues it can expect to be salient on appeal. *State v. Miller*, 371 N.C. 266, 270 (2018) (marks and citations omitted) (“When a defendant does not move to suppress, . . . the State does not get the opportunity to develop a record pertaining to the defendant’s . . . claims. . . . To allow plain error review in a case like this one[] . . . would penalize the government for failing to introduce evidence on probable cause for arrest or other matters bearing on the Fourth Amendment claim when defendant’s failure to raise an objection before or during trial seemed to make such a showing unnecessary.”).

Here, Defendant raised all arguments in the motion to suppress under the Fourth Amendment of the United States Constitution and Article I, Section 20 of the North Carolina Constitution. The range of Fifth Amendment issues Defendant purports to raise on appeal, including his *Miranda* arguments, are therefore unpreserved, *Hernandez*, 227 N.C. App. at 608, and plain error review is likewise

unavailable. *Miller*, 371 N.C. at 270. Accordingly, we only evaluate the merits of Defendant's Fourth Amendment argument.

B. Prolonged Stop

Defendant argues that the evidence arising from the traffic stop should be suppressed because the traffic stop was unlawfully prolonged in violation of the Fourth Amendment under *Rodriguez v. United States*. *Rodriguez*, 575 U.S. at 354. Under *Rodriguez*, the appropriate length of a stop by law enforcement is dictated by the purpose of the stop:

A seizure for a traffic violation justifies a police investigation of that violation. “[A] relatively brief encounter,” a routine traffic stop is “more analogous to a so-called ‘*Terry* stop’ . . . than to a formal arrest.” *Knowles v. Iowa*, 525 U.S. 113, 117 (1998) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984), in turn citing *Terry v. Ohio*, 392 U.S. 1 (1968)). See also *Arizona v. Johnson*, 555 U.S. 323, 330 (2009). Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s “mission”—to address the traffic violation that warranted the stop, *Caballes*, 543 U.S., at 407. and attend to related safety concerns[.] See also *United States v. Sharpe*, 470 U.S. 675, 685 (1985); *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion) (“The scope of the detention must be carefully tailored to its underlying justification.”). Because addressing the infraction is the purpose of the stop, it may “last no longer than is necessary to effectuate th[at] purpose.” *Ibid.* See also *Caballes*, 543 U.S., at 407. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. See *Sharpe*, 470 U.S., at 686 (in determining the reasonable duration of a stop, “it [is] appropriate to

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examine whether the police diligently pursued [the] investigation”).

Id. Put differently, a law enforcement officer may not, consistent with the Fourth Amendment of the United States Constitution, take measures in pursuit of an investigative ends unrelated to a stop if those measures “prolong” the stop unless a “reasonable suspicion of criminal activity justifie[s] detaining [the defendant] beyond completion of the traffic infraction investigation.” *Id.* at 357-58; *see also State v. Castillo*, 247 N.C. App. 327, 334, *disc. rev. denied*, 369 N.C. 40 (2016) (emphasis in original) (marks omitted) (“In reviewing the guidance from *Rodriguez*, it is clear that a traffic stop may not be unnecessarily extended, *absent the reasonable suspicion ordinarily demanded to justify detaining an individual.*”). This prohibition includes measures that only “incrementally” extend the duration of the stop. *Rodriguez*, 575 U.S. at 357.

Here, reviewing the issue de novo, *see Castillo*, 247 N.C. App. at 334, reasonable suspicion did exist to continue Defendant’s stop. Law enforcement had obtained two tips from confidential informants concerning Defendant’s alleged drug activity, and officers observing Defendant had witnessed him engaging in behavior that, despite perhaps not *definitively* appearing to constitute a drug deal, was consistent with one. Given that “[t]he standard [of reasonable suspicion] is satisfied by ‘some minimal level of objective justification[.]’” we are convinced under these facts that reasonable suspicion did exist here. *State v. Styles*, 362 N.C. 412, 414 (2008)

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(quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). Thus, the trial court did not err in holding Defendant's stop was lawful under *Rodriguez*.

CONCLUSION

Defendant did not preserve his arguments under the Fifth Amendment for appeal; and, as officers had a reasonable suspicion to extend Defendant's traffic stop, the stop was not violative of *Rodriguez*. Defendant has failed to demonstrate reversible error in his convictions or judgment thereon.

APPEAL DISMISSED IN PART; NO ERROR IN PART.

Judges TYSON and STADING concur.

Report per Rule 30(e).