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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-699

Filed 18 June 2024

Mecklenburg County, Nos. 19CRS246495, 246499

STATE OF NORTH CAROLINA

v.

JOHNATHAN POTTS

Appeal by Defendant from judgment entered 9 February 2023 by Judge David Strickland in Mecklenburg County Superior Court. Heard in the Court of Appeals 3 April 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Terence Steed and Special Deputy Attorney General I. Faison Hicks, for the State-Appellee.

Ellis & Winters LLP, by Michelle A. Liguori, for Defendant-Appellant.

COLLINS, Judge.

Defendant Johnathan Potts appeals from a judgment entered upon a jury verdict finding him guilty of trafficking in cocaine by possession and trafficking in cocaine by transportation. Defendant argues that the trial court plainly erred by denying his motion to suppress evidence and erred by denying his motion to dismiss

the trafficking in cocaine by transportation charge. We hold that Defendant received a fair trial free from error.

I. Background

At approximately 9:00 PM on 3 December 2019, Officer William Buie and several other law enforcement officers were driving an unmarked white van through the parking lot of a Fast Stop convenience store in Mecklenburg County. Buie observed a white sedan that was “backed in on the far side of the lot away from where other vehicles typically park.” As the van approached the sedan, Buie observed two males in the front two seats of the sedan. The van parked next to the sedan, and Buie exited the van with his flashlight set to strobe and shining towards the sedan’s occupants. Buie saw what he believed to be marijuana and a large sum of United States currency in the front passenger’s lap and ordered the occupants to show their hands. However, “upon saying that and them observing [Buie’s] presence, . . . the vehicle fled. It fled onto Rozzelles Ferry taking a right, inbound Rozzelles Ferry Road.” A nearby officer in a separate vehicle observed the sedan “speed off on Rozzelles Ferry, with no headlights on, traveling at a high rate of speed,” and attempted to follow the sedan.

Buie and the other officers located the sedan parked in a driveway in a nearby neighborhood within two minutes after the sedan fled the Fast Stop parking lot. Buie again exited the van and approached the sedan, which at that point was unoccupied. Buie saw Defendant peek his head out from behind a nearby shed and immediately

begin to run. Buie chased Defendant, ordering him to show his hands and to get on the ground. Defendant eventually fell to the ground and Buie placed him in handcuffs for resisting, delaying, or obstructing an officer. Buie searched Defendant incident to his arrest and discovered the keys to the sedan and a bag of white powder that was later confirmed to be 29.3 grams of cocaine. Officers searched the sedan and discovered “cash money broken down into smaller denominations,” marijuana, and Defendant’s cell phone.

Defendant was later indicted for trafficking in cocaine by possession and trafficking in cocaine by transportation. Defendant filed a motion to suppress “all evidence obtained” from Buie’s search, which the trial court denied. Defendant then proceeded to trial, where a jury found him guilty of both charges. Defendant gave oral notice of appeal.

II. Discussion

A. Motion to Suppress

Defendant first argues that the trial court plainly erred by denying his motion to suppress evidence obtained from a search incident to his arrest.

1. Preservation and Standard of Review

“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1). “A defendant cannot rely

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on his pretrial motion to suppress to preserve an issue for appeal.” *State v. Golphin*, 352 N.C. 364, 463, 533 S.E.2d 168, 232 (2000) (citation omitted). “[T]he defendant must make an objection at the point during the trial when the State attempts to introduce the evidence.” *Id.* (citation omitted).

In criminal cases, an issue that was not preserved for appeal “nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.” N.C. R. App. P. 10(a)(4). “For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial.” *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted). “To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty.” *Id.* (quotation marks and citations omitted).

Here, Defendant failed to object at trial to the admission of the evidence that was the subject of his motion to suppress and therefore failed to preserve the issue for appellate review. *See Golphin*, 352 N.C. at 463, 533 S.E.2d at 232. However, Defendant specifically and distinctly contends that the error amounts to plain error. Thus, we review the trial court’s denial of Defendant’s motion to suppress evidence for plain error. *See Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334.

“In reviewing a motion to suppress evidence, this Court examines whether the trial court’s findings of fact are supported by competent evidence and whether those

findings support the conclusions of law.” *State v. Alvarez*, 385 N.C. 431, 433, 894 S.E.2d 737, 738 (2023) (citation omitted). “Conclusions of law are reviewed de novo.” *Id.* (citation omitted). “The crucial inquiry for this Court is admissibility and whether the ultimate ruling was supported by the evidence.” *State v. Austin*, 320 N.C. 276, 290, 357 S.E.2d 641, 650 (1987). Thus, “[a] correct decision of a lower court will not be disturbed on review simply because an insufficient or superfluous reason is assigned.” *Id.*

2. Analysis

Defendant argues that the evidence he moved to suppress was obtained in violation of the Fourth Amendment.

“The Fourth Amendment to the United States Constitution and Article I of the North Carolina Constitution protect the rights of people to be secure from unreasonable searches and seizures.” *State v. Romano*, 369 N.C. 678, 685, 800 S.E.2d 644, 649 (2017) (citing U.S. Const. amend. IV and N.C. Const. art. I, § 20). “A warrantless arrest is lawful if based upon probable cause and permitted by state law.” *State v. Mills*, 104 N.C. App. 724, 728, 411 S.E.2d 193, 195 (1991) (citations omitted). An officer “may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense . . . in the officer’s presence.” N.C. Gen. Stat. § 15A-401(b)(1) (2019). “Probable cause exists where the facts and circumstances within [the officers’] knowledge and of which they had reasonable trustworthy information [are] sufficient in themselves to warrant a man of reasonable

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caution in the belief that an offense has been or is being committed.” *State v. Downing*, 169 N.C. App. 790, 795, 613 S.E.2d 35, 39 (2005) (quotation marks and citation omitted). “The existence of probable cause is a commonsense, practical question that should be answered using a totality-of-the-circumstances approach.” *State v. McKinney*, 361 N.C. 53, 62, 647 S.E.2d 868, 874 (2006) (quotation marks and citations omitted).

In its order denying Defendant’s motion to suppress evidence, the trial court found, in relevant part:

1. On or about December 3, 2019, Officer Buie, along with other members of the Crime Reduction Unit of the Charlotte Mecklenburg Police Department were on patrol in the Freedom Division of Mecklenburg County. . . . Approximately 9pm, the unit entered Rozzelle’s Ferry Road and drove into the Fast Stop parking lot for routine patrol. . . .
2. Upon the entry of the van into the parking lot, Officer Buie noticed a white [sedan] parked front facing out in a far parking space in the rear area of the parking lot. He saw two males in the vehicle as the van drove nearer to the white sedan. The van stopped in a parallel parking space to the sedan approximately 2-5 feet away Officer Buie stepped out of the van in a quick manner and approached the sedan while saying “show me your hands” or words to that effect. . . . After maybe 4-5 seconds the white sedan sped off away from the officers who had exited the van. . . .
3. Another officer saw a white sedan exit the parking lot at a high rate of speed with its headlights off and he was able to follow the vehicle until it turned onto [a side street]. This information [w]as conveyed over the radio to the other officers
4. The van with Officer Buie riding inside drove onto [the

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side street] and saw a white [sedan] parked in a driveway. This occurred within 2 minutes from the time of the sedan fleeing from the parking lot of the Fast Stop. . . . Officer Buie did not see any person inside the vehicle but then when scanning the area around the car and house noticed an individual behind a shed. Officer Buie was able to see that the individual was an African American male with dreadlocks and wearing a white shirt with dark sleeves by utilizing his flashlight to illuminate the area. The individual began to run, and Office[r] Buie gave chase while shouting “let me see your hands” or words to that effect. . . . After a few seconds the individual fell to the ground either by accident or to cease the chase and Officer Buie secured the individual (now defendant) and the investigation proceeded.

Defendant challenges the trial court’s finding that four to five seconds elapsed before the sedan fled the parking lot. Defendant also challenges the trial court’s finding that “Buie secured [Defendant] and the investigation proceeded.” The record evidence, including officers’ body camera footage and testimony, supports these challenged findings of fact.

North Carolina law provides that “[a]ny person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.” N.C. Gen. Stat. § 20-140(b) (2019).

Here, when Buie entered the Fast Stop parking lot, he noticed a white sedan “backed in on the far side of the lot away from where other vehicles typically park.” As Buie approached the sedan, it “fled onto Rozzelles Ferry taking a right.” Another officer saw the sedan “speed off on Rozzelles Ferry, with no headlights on, traveling

at a high rate of speed” and conveyed this information over the radio. Upon locating the sedan parked in a driveway less than two minutes later, Buie noticed Defendant behind a nearby shed. Thus, the facts and circumstances that Buie personally witnessed, together with the reasonable trustworthy information conveyed to him over radio warranted the belief that Defendant had committed the offense of reckless driving. Accordingly, Buie’s pursuit of and attempt to seize Defendant was supported by probable cause. *See Downing*, 169 N.C. App. at 795, 613 S.E.2d at 39.

Because Buie’s pursuit and subsequent arrest of Defendant was supported by probable cause, the evidence Defendant moved to suppress was lawfully obtained. Accordingly, the trial court did not err, much less plainly err, by denying Defendant’s motion to suppress evidence.

Defendant argues that, if this Court concludes that the denial of his motion to suppress evidence was error, but not plain error, then he received ineffective assistance of counsel. However, the trial court did not err by denying Defendant’s motion to suppress evidence. Accordingly, Defendant cannot show that there is a reasonable probability that, but for counsel’s failure to renew his objection, the result of the trial would have been different. *See State v. Waring*, 364 N.C. 443, 502, 701 S.E.2d 615, 652 (2010) (“To make a successful ineffective assistance of counsel claim, a defendant must show that . . . there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” (quotation marks and citations omitted)).

B. Motion to Dismiss

Defendant finally argues that the trial court erred by denying his motion to dismiss the charge of trafficking in cocaine by transportation because the State presented no evidence that Defendant transported cocaine for trafficking purposes.

1. Standard of Review

We review de novo a trial court's denial of a motion to dismiss for insufficient evidence. *State v. Chavis*, 278 N.C. App. 482, 485, 863 S.E.2d 225, 228 (2021). "In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator." *State v. Chekanow*, 370 N.C. 488, 492, 809 S.E.2d 546, 549 (2018) (quotation marks and citation omitted). "Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *Id.* (citation omitted). All evidence is considered "in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *Id.* at 492, 809 S.E.2d at 549-50 (citation omitted).

2. Analysis

To survive a motion to dismiss a charge of trafficking in cocaine by transportation, the State must present substantial evidence that (1) the defendant knowingly transported cocaine, and that (2) the amount transported was 28 grams or more. *See State v. Johnson*, 217 N.C. App. 605, 608, 720 S.E.2d 441, 443 (2011); N.C. Gen. Stat. § 90-95(h)(3) (2019). "Transportation is defined as any real carrying about

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or movement from one place to another.” *State v. Manning*, 139 N.C. App. 454, 467, 534 S.E.2d 219, 227 (2000) (quotation marks and citation omitted). “[T]he type of movement required for transportation to have occurred is a ‘substantial movement.’” *State v. Greenidge*, 102 N.C. App. 447, 450, 402 S.E.2d 639, 640 (1991). “The requirement for a ‘substantial movement’ . . . requires a consideration of all the circumstances surrounding the movement[,]” including “the purpose of the movement and the characteristics of the areas from which and to which the contraband is moved.” *Id.* at 451, 402 S.E.2d at 641 (emphasis omitted).

Here, the State presented evidence that Buie approached a white sedan occupied by at least two males in the Fast Stop parking lot. Buie saw what he believed to be marijuana and a large sum of United States currency in the front passenger’s lap before the sedan fled the parking lot. Minutes later, Buie located the sedan in a nearby neighborhood and discovered Defendant behind a shed near the sedan. Buie chased, arrested, and searched Defendant. The search produced the keys to the sedan and a plastic bag containing what was later determined to be 29.3 grams of cocaine. After Defendant’s arrest, officers returned to the sedan and discovered marijuana, a large amount of cash broken down into small denominations, and Defendant’s phone.

This evidence, viewed in the light most favorable to the State, is adequate to persuade a rational juror that Defendant moved 28 grams or more of cocaine from one place to another. Furthermore, the circumstances surrounding the movement

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are adequate to persuade a rational juror that the movement was a “substantial movement” so as to constitute transportation. *See Greenidge*, 102 N.C. App. at 450-51, 402 S.E.2d at 640-41. Accordingly, the trial court properly denied Defendant’s motion to dismiss the charge of trafficking in cocaine by transportation. *See Chekanow*, 370 N.C. at 492, 809 S.E.2d at 549.

III. Conclusion

For the foregoing reasons, Defendant received a fair trial free from error.

NO ERROR.

Chief Judge DILLON and Judge WOOD concur.

Report per Rule 30(e).