

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1025

Filed 2 July 2024

Rutherford County, No. 21CRS000006

STATE OF NORTH CAROLINA

v.

ASHLEY MICHELE WHITE

Appeal by Defendant from judgment entered 20 February 2023 by Judge J. Thomas Davis in Rutherford County Superior Court. Heard in the Court of Appeals 30 April 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Phillip H. Liles, for the State-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi Reiner, for Defendant-Appellant.

COLLINS, Judge.

Defendant Ashley Michele White appeals from judgment entered upon her guilty plea for possession of methamphetamine. Defendant argues that the trial court lacked jurisdiction to revoke her probation, which was imposed pursuant to a conditional discharge, and that the trial court erred by denying her motion to

suppress evidence. Because the trial court failed to make the required findings of fact to revoke Defendant's probation, the judgment entered upon her guilty plea is vacated and remanded. However, the trial court's denial of Defendant's motion to suppress is affirmed.

I. Background

On 31 May 2020, Road Patrol Sergeant Mike Messer noticed a black car because its "windows were very dark." Messer checked the car's registration and discovered that the registration had been expired for more than a year, which prompted Messer to initiate a traffic stop. Defendant was one of two passengers in the car and was seated on the car's front bench seat between the driver and the other passenger. Messer observed that all three occupants were "very, very nervous," and that there was "what appeared to be paraphernalia" – a syringe with no needle – on the passenger floorboard. Messer left the car to "run everybody's information." When he returned to the car, he saw a small handgun on the dash that had not been there before. Messer "took possession of the handgun," and "asked the driver permission to search due to the weapons and paraphernalia."

All three occupants exited the car. Defendant asked to leave the scene to use the bathroom, but Messer denied the request. Messer searched the driver and the other passenger, both male, and found syringes in the passenger's pocket. Messer requested assistance from a female officer to search Defendant; Road Patrol Corporal Angela Justice arrived within ten minutes. Justice searched Defendant and felt

STATE V. WHITE

Opinion of the Court

something crinkle in Defendant's bra. Justice retrieved a plastic bag containing what was later confirmed to be methamphetamine.

Defendant was indicted for possession of methamphetamine. She moved to suppress "all items seized from her person," arguing that the plastic bag containing methamphetamine was obtained from an unconstitutional search. The trial court heard testimony from Messer and Justice and denied the motion, concluding that Defendant's search was supported by probable cause and that it was conducted "in a reasonable and expeditious manner."

Defendant entered a plea arrangement with the State, agreeing to plead guilty to possession of methamphetamine in exchange for a conditional discharge pursuant to N.C. Gen. Stat. § 90-96 and retaining her right to appeal the denial of her motion to suppress. The trial court accepted the plea arrangement and entered a conditional discharge order on 12 January 2022, placing Defendant on supervised probation for 12 months.

On 7 December 2022, the State filed a probation violation report alleging that Defendant had violated her probation on multiple occasions between February and October 2022. A return hearing on the conditional discharge was scheduled for 14 December 2022 but was continued to 20 February 2023. At the 20 February hearing, Defendant admitted the violations in the probation violation report. The trial court entered final judgment upon her plea of guilty to possession of methamphetamine. The trial court sentenced Defendant to a prison term of six to 17 months, suspended

the sentence, and placed Defendant on supervised probation for 24 months. Defendant gave oral notice of appeal.

II. Discussion

A. Trial Court Jurisdiction

Defendant argues, and the State concedes, that the trial court lacked authority to revoke her probation and enter judgment against her because her probationary term had expired, and the trial court failed to make findings of fact that were required by N.C. Gen. Stat. § 15A-1344(f).

Whether a trial court has the authority to revoke a defendant's probation after the defendant's probationary term has expired is a jurisdictional question, which we review de novo. *State v. Geter*, 383 N.C. 484, 488-89, 881 S.E.2d 209, 213 (2022).

Generally, a trial court is without jurisdiction to revoke a defendant's probation "after the expiration of the period of probation except as provided in G.S. 15A-1344(f)." *State v. Camp*, 299 N.C. 524, 527, 263 S.E.2d 592, 594 (1980) (citations omitted). Section 15A-1344(f) provides that a trial court may revoke probation after the probationary period expires if all of the following apply:

- (1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.
- (2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation.
- (3) The court finds for good cause shown and stated that

the probation should be extended, modified, or revoked.

N.C. Gen. Stat. § 15A-1344(f) (2023).

The requirements of N.C. Gen. Stat. § 15A-1344(f) apply to probation imposed pursuant to a conditional discharge under N.C. Gen. Stat. § 90-96. *State v. Burns*, 171 N.C. App. 759, 760-61, 615 S.E.2d 347, 348-49 (2005). Thus, to revoke a defendant's probation imposed pursuant to a conditional discharge after the probationary period has expired, "the trial court must first make a finding that the defendant did violate a condition of [their] probation." *State v. Morgan*, 372 N.C. 609, 617, 831 S.E.2d 254, 259 (2019). "After making such a finding, trial courts are then required by subsection (f)(3) to make an additional finding of 'good cause shown and stated' to justify the revocation of probation even though the defendant's probationary term has expired." *Id.* (emphasis omitted). These findings "must actually be made by the trial court and such a finding cannot simply be inferred from the record." *Id.* at 616, 831 S.E.2d at 259 (citation omitted).

Here, Defendant was placed on probation pursuant to a conditional discharge on 12 January 2022. Defendant's probationary period expired on 12 January 2023. The State filed a written violation report on 7 December 2022, alleging that Defendant had violated conditions of her probation on multiple occasions between February and October 2022. Defendant admitted the violations at the violation hearing on 20 February 2023. The trial court then entered judgment against Defendant, based on her guilty plea. However, the trial court did not expressly find

that Defendant had violated her probation, or that good cause was shown and stated that the probation should be revoked. Because the trial court failed to make the findings required by N.C. Gen. Stat. § 15A-1344(f), the trial court was without jurisdiction to revoke her probation and enter judgment upon her guilty plea. *See id.*

However, we are unable to say that the record lacks sufficient evidence that would allow the trial court to make the required findings on remand. Accordingly, the matter is remanded to the trial court to determine whether the evidence supports the required findings, and if so, to make those findings in compliance with N.C. Gen. Stat. § 15A-1344(f). *See id.* at 618, 831 S.E.2d at 260 (remanding for further findings where the Court was “unable to say from [its] review of the record that no evidence exists” to support the required findings).

B. Motion to Suppress

Defendant argues that the trial court erred by denying her motion to suppress because the evidence was obtained from an unconstitutional search of her person.

“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 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 search of a person is per se unreasonable unless it falls within a recognized exception to the warrant requirement.” *Id.* (citations omitted). However, “[a] warrantless search is lawful if probable cause exists to search and the exigencies of the situation make search without a warrant necessary.” *State v. Degraphenreed*, 261 N.C. App. 235, 240, 820 S.E.2d 331, 335 (2018) (citation omitted).

“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 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, 637 S.E.2d 868, 874 (2006) (quotation marks and citations omitted). Additionally, “[e]xigent circumstances sufficient to make search without a warrant necessary include, but are not limited to, the probable destruction or disappearance of a controlled substance.” *State v. Nowell*, 144 N.C. App. 636, 643, 550 S.E.2d 807, 812 (2001) (citations omitted). “A determination of whether exigent circumstances are present must be based on the totality of the circumstances.” *Id.* (quotation marks and citation omitted).

Here, the trial court found:

On May 31, 2020, Sergeant Messer with Spindale Police Department was on routine patrol around 10:11 a.m. He noticed a vehicle with dark windows . . . that raised his suspicion. He ran the tag. The tag came back expired, he believes, more than a year. He executed a stop on the vehicle. Upon initial approach to the vehicle, male driver, male passenger, female center passenger on a bench seat in the front of a four-door sedan.

He noticed a syringe with no needle on the passenger floorboard. [Messer] got the information from the occupants of the vehicle, went back to -- brought their info, their information. Upon his second trip back to the car, he saw he a hand gun, small hand gun, on the dash of the vehicle. At this point, he took possession of the weapon and asked the occupants to step out. The policy of the Spindale Police Department was that a female officer needed to search females. . . . That female officer arrived within less than 10 minutes.

The -- Officer Messer testified that he noticed that the passengers were nervous. And he recalls and noticed that the female passenger was visibly shaking, visibly pregnant.

. . . .

Officer Justice testified that she received a call for assistance to help search a female. She arrived at the scene, noticed the three people. She put gloves on, asked the female, who turns out to be the defendant in this case, if she had anything on her. As she began her search from the head to the toes, on the side -- left side of the female, she heard and noticed a crinkly sound or feeling. Officer Justice asked defendant what that was. There was no audible response. Officer Justice told the female she would retrieve whatever it was. Officer Justice noted that -- noticed that the defendant was visibly upset, was visibly pregnant, and was complaining that she was on the way to the hospital.

These unchallenged findings are supported by competent record evidence and support a conclusion that Messer had probable cause to search Defendant. The syringe, which Messer believed to be paraphernalia, was located on the front passenger-side floorboard of the vehicle within reach and proximity of Defendant. Thus, Messer had reason to believe that Defendant also possessed a controlled substance. *See State v. Holmes*, 109 N.C. App. 615, 621-22, 428 S.E.2d 277, 280-81 (1993) (holding that presence of drug paraphernalia constitutes probable cause to search for controlled substances). Furthermore, the trial court's findings and evidence presented at the suppression hearing support the existence of exigent circumstances. Messer suspected that Defendant possessed a controlled substance, and Defendant asked to leave the scene to use the bathroom. Thus, Messer had reason to believe that Defendant would destroy or dispose of the controlled substance if she possessed it. *See Nowell*, 144 N.C. App. at 643, 550 S.E.2d at 812.

Based on the totality of these circumstances, probable cause and exigent circumstances existed to render the warrantless search of Defendant's person reasonable. Accordingly, the trial court properly denied Defendant's motion to suppress.

III. Conclusion

Because the trial court failed to make the findings required by statute to revoke Defendant's probation after the probationary period had expired, the judgment is vacated and remanded to the trial court. However, the denial of Defendant's motion

STATE V. WHITE

Opinion of the Court

to suppress is affirmed.

VACATED AND REMANDED IN PART; AFFIRMED IN PART.

Judges STROUD and WOOD concur.

Report per Rule 30(e).