

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-1093

Filed 15 October 2024

McDowell County, Nos. 22 CRS 50313-50315

STATE OF NORTH CAROLINA

v.

OMAR MAURICE TATE, Defendant.

Appeal by Defendant from judgments entered 12 January 2023 by Judge J. Thomas Davis in McDowell County Superior Court. Heard in the Court of Appeals 13 August 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General J.D. Prather, for the State.

Stephen D. Fuller for Defendant.

GRIFFIN, Judge.

Defendant Omar Maurice Tate appeals from the trial court's order denying his motion to suppress evidence. Defendant contends the trial court erred in denying his motion as the search incident to arrest was unlawful. We hold the motion to suppress was properly denied.

I. Factual and Procedural Background

STATE V. TATE

Opinion of the Court

On 8 March 2022, Lieutenant Donald K. Hensley, an officer of the McDowell County Sheriff's Office, made a traffic stop on an all-terrain vehicle for operating on the roadway. Lt. Hensley observed a man wearing a backpack on an ATV drive down the left side of Highway 70 with two wheels on the highway and the other two wheels off the highway. All four tires of the ATV came onto the road as the Defendant attempted to pass a guardrail. After this observation, Lt. Hensley activated his blue light, pulled up next to the Defendant, and instructed him not to drive on the highway. Defendant stated he was not operating the ATV on the roadway. Lt. Hensley then stopped Defendant and asked him for his license. Defendant did not have his license; however, he provided his name and date of birth.

Lt. Hensley requested a warrant check from McDowell Communications. While waiting to hear from McDowell Communications, Lt. Hensley saw a "lower" of an AR-15 rifle in the front basket on the ATV. The "selector switch" on the rifle "lower" had three rotating positions including a fully automatic position. Lt. Hensley requested McDowell Communications check to see if the serial number on the rifle "lower" came back as stolen.

Lt. Hensley then asked Defendant about the rifle "lower," and Defendant stated he found it on the shoulder of the road. Based on his prior experience with Defendant, Lt. Hensley believed him to be a felon and therefore knew possession of the "lower" was a crime. Lt. Hensley specifically asked Defendant if he was a felon

STATE V. TATE

Opinion of the Court

and Defendant stated he had served time for prior drug charges.

At this point, Detective Hicks approached Defendant and Lt. Hensley. Detective Hicks signaled to Lt. Hensley the Defendant had an outstanding warrant for his arrest. Lt. Hensley asked Defendant to get off the ATV. The officers removed Defendant's backpack and placed him in handcuffs. The officers placed the backpack on the ATV seat which was within about a foot of the officers and Defendant. Lt. Hensley then patted down Defendant and found a "charging handle" for an AR-15 rifle in Defendant's front sweatshirt pocket.

Lt. Hensley then picked up Defendant's backpack and felt a large metal box inside. Lt. Hensley opened the backpack and removed the unlocked metal box which was a safe in the shape of a book. Lt. Hensley then opened the metal box and observed what he believed to be illegal narcotics and several black digital scales. Lt. Hensley held up a bag with a white rock-like substance inside for Detective Hicks to see. Detective Hicks then placed Defendant in the back of his patrol car and observed the contents of the metal box.

Following Defendant's arrest, the sheriff's department obtained a warrant to search Defendant's home property. The department's application for the warrant relied on the search at issue as cause for the warrant. After the warrant was executed, Defendant was indicted for trafficking illegal drugs.

Prior to trial, Defendant moved to suppress the evidence obtained from the backpack, and the trial court denied Defendant's motion to suppress. The trial court

concluded Lt. Hensley had probable cause to search Defendant's backpack and the metal box contained therein for additional AR-15 parts and for officer safety incident to arrest. Defendant timely appealed.

II. Analysis

Defendant contends the trial court erred when it denied his motion to suppress the evidence because the search violated his rights under both the Fourth Amendment and Article I, Section 20 of the North Carolina Constitution. Specifically, Defendant argues the trial court applied the wrong legal test when reaching the conclusion that the search did not violate his rights. We disagree.

When reviewing the trial court's order on a motion to suppress we determine "whether the trial court's underlying findings of fact are supported by competent evidence and whether those factual findings in turn support the trial court's ultimate conclusions of law." *State v. Julius*, 385 N.C. 331, 336, 892 S.E.2d 854, 859 (2023) (quoting *State v. Parisi*, 372 N.C. 639, 649, 831 S.E.2d 236 (2019)). Competent evidence is that which "a reasonable mind might accept as adequate to support the finding." *State v. Ashworth*, 248 N.C. App. 649, 651, 790 S.E.2d 173, 176 (2016) (citation and internal marks omitted). On appeal, findings of fact not challenged "are deemed to be supported by competent evidence and are binding on appeal." *Id.* at 336, 892 S.E.2d at 859 (citations omitted). "The trial court's conclusions of law are reviewed de novo." *Id.* (cleaned up).

The Fourth Amendment of the United States Constitution protects citizens

STATE V. TATE

Opinion of the Court

from unreasonable government intrusions and warrantless searches. *U.S. v. Chadwick*, 433 U.S. 1, 7 (1977). Nonetheless, “[i]t is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment.” *U.S. v. Robinson*, 414 U.S. 218, 224 (1973). The State bears the burden of showing a search is within an exception to the warrant requirement. *Julius*, 385 N.C. at 336, 892 S.E.2d at 859.

If an officer has probable cause to arrest an individual, officers may search “the arrestee’s person and the area within his immediate control” without a warrant if “an arrestee is within reaching distance of the vehicle or it is reasonable to believe the vehicle contains evidence of the offense of arrest.” *Arizona v. Gant*, 556 U.S. 332, 339, 346 (2009) (cleaned up); *see also State v. Julius*, 385 N.C. 331, 337, 892 S.E.2d 854, 859 (2023) (“When an individual is lawfully arrested, officers may search the arrestee’s person and the area within his immediate control without first obtaining a warrant.”) (citation and internal marks omitted). Where the searches legality rests upon the second rationale for the exception, “investigators [must] have a reasonable and articulable basis to believe that evidence of the offense of arrest might be found in a suspect’s vehicle after the occupants have been removed and secured[.]” *State v. Mbacke*, 365 N.C. 403, 409–10, 721 S.E.2d 218, 221 (2012); *see also Gant*, 556 U.S. at 347 (“If there is probable cause to believe a vehicle contains evidence of criminal activity, *United States v. Ross*, 456 U.S. 798, 820–21 (1982), authorizes a search of any area of the vehicle in which the evidence might be found.”) (internal citation

STATE V. TATE

Opinion of the Court

cleaned up). When conducting said search, law enforcement is authorized to search a defendant's vehicle as well as containers therein. *New York v. Belton*, 453 U.S. 454, 460–61 (1981). In contrast, where there “is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply.” *Gant*, 556 U.S. at 339; *see also Julius*, 385 N.C. at 337, 892 S.E.2d at 860 (“Vital to the proper application of this exception is the ‘possibility that an arrestee could reach into the area that law enforcement officers seek to search.’” (citation omitted)).

Defendant contends the trial court “failed to apply the correct legal test to determine the lawfulness of the search incident to arrest: whether the State showed a possibility of [Defendant] reaching into the bag when Lt. Hensley searched inside it.”

Here, the trial court entered the following findings of fact and conclusions of law:

1. On March 8, 2022 Lt. Hensley and Detective Hicks were in the area of a church in the Eastern part of McDowell County in regard to an abandoned vehicle behind a church with individuals resting in it. Upon a completion of that investigation Lt. Hensley was traveling East on Hwy. 70, a public street or highway, in the direction of Burke County but within McDowell County. Lt. Hensley noted an ATV (All Terrain Vehicle) being driven by [Defendant] down the left side of Highway 70 also in an Easterly direction with two of the four wheels being driven along the fog line of the highway, with the other two wheels off the highway. When [Defendant] came upon a guardrail, he then drove all of the ATV in the Westbound

STATE V. TATE

Opinion of the Court

lane of the highway, but in an Easterly direction.

...

3. As a result, Lt. Hensley had a reasonable suspicion that [Defendant] was violating numerous motor vehicle laws []. Based on this suspicion Lt. Hensley activated his blue light and pulled up beside [Defendant] and instructed [Defendant] not to drive on the highway. [Defendant] then denied he was driving on the highway, so Lt. Hensley then stopped [Defendant] with the intent to give him a warning ticket.

4. Upon stopping [Defendant], Lt. Hensley approached [Defendant] who was on the ATV and noted the lower section of an AR-15 rifle in plain view in the basket of the ATV. Lt. Hensley at the time was familiar with [Defendant] and was aware that [Defendant] was a convicted felon. Lt. Hensley upon noting the lower portion of the AR-15 rifle, knew it to be the lower receiver, the frame of an AR-15, consisting of the buttstock and trigger and equipped with the illegal and unlawful mechanisms to fire the completed weapon as an illegal automatic rifle (machine gun). Furthermore, Lt. Hensley knew the lower portion of the AR-15 rifle in and of itself constituted a firearm for the conviction of [Defendant] for possessing a firearm as a convicted felon. As a result, Lt. Hensley at this time formed and had probable cause to arrest [Defendant] for possession of an illegal machine gun, and possession of a firearm by felon, and this determination was made within the original scope and purpose of the stop of [Defendant].

5. [Defendant] did not have his driver's license with him, however Lt. Hensley was able to get sufficient information from [Defendant] to radio in to have dispatch determine if there were any outstanding warrants against [Defendant]. Within a few seconds of calling in the information but prior to getting the results, Detective Hicks approached [Defendant] and Lt. Hensley, and gave Lt. Hensley a sign indicating to Lt. Hensley there were

STATE V. TATE

Opinion of the Court

outstandings warrants against [Defendant] and that [Defendant] needed to be handcuffed. Detective Hicks and Lt. Hensley then asked [Defendant] to get off the ATV. They did this to place [Defendant] under arrest. Upon the [Defendant] getting off the ATV the officers removed his backpack off his back, and placed handcuffs on [Defendant]. Incident to the arrest and with the consent of [Defendant] Lt. Hensley searched [Defendant] and located another part of the AR-15 rifle, being the T-shaped charging handle, in the pocket of [Defendant]'s hoodie.

6. Lt. Hensley then felt the backpack that was on [Defendant] but removed incident to his arrest. Upon feeling the backpack Lt. Hensley noted he felt a metal box within the backpack that was large enough to hold additional parts of an Ar-15 rifle. Upon searching the unlocked backpack and opening the unlocked metal box therein, Lt. Hensley found what he believed to be illegal narcotics which resulted in [Defendant]'s drug charges.

7. Lt. Hensley had probable cause to search [Defendant]'s backpack incident to the arrest in the articulable reasonable belief that it contained additional parts to an AR-15 rifle making up additional evidence for the arrest of [Defendant]. Lt. Hensley was lawfully able to search the backpack and metal box for officer safety incident to [Defendant]'s arrest as well.

8. T[he court] further concludes as a matter of law that [Defendant]'s Federal and State Constitutional and statutory rights were not violated as a result of the search of [Defendant]'s backpack and the metal box located therein, and [Defendant]'s motion should be denied. In addition, the Court concludes that Lt. Hensley did not deviate from the scope and purpose of [Defendant]'s stop until he located the lower section of the AR-15 thereby lawfully allowing him to expand and continue the scope and purpose of the stop.

As Defendant does not challenge the findings of fact, only the conclusion of law that

STATE V. TATE

Opinion of the Court

the search was lawful under the search-incident-to-arrest exception, we review the trial court's conclusion of law de novo.

In *State v. Mbacke*, our Supreme Court addressed whether a search of a defendant's vehicle incident to his arrest for carrying a concealed weapon violated his Fourth Amendment right against unreasonable searches and seizures. *Mbacke*, 365 N.C. at 403–04, 721 S.E.2d at 219. There, law enforcement officers approached the defendant sitting in a vehicle outside of a residence after reports of a shooting at the residence the night before. *Id.* at 404–05, 721 S.E.2d at 219. The officers directed the defendant to exit the vehicle, after which he admitted to concealing a handgun in his waistband. *Id.* After securing the defendant and placing him in a patrol car, officers searched the defendant's vehicle and discovered 993.8 grams of cocaine beneath the driver's seat. *Id.* at 405, 721 S.E.2d at 219. The defendant unsuccessfully moved to suppress the cocaine. *Id.* In holding the search to be a valid search-incident-to-arrest because "it was reasonable to believe additional evidence of the offense of arrest could be found in defendant's vehicle[.]" our Supreme Court explained that generally when a court is confronted with a firearms related offense, they have "inferred that the offense, by its nature, ordinarily makes it reasonable to believe the defendant's car will contain evidence of that offense, so that searching a defendant's car incident to an arrest for a weapons offense is almost always consistent with the Fourth Amendment." *Id.* at 410, 721 S.E.2d at 222.

Like the officer in *Mbacke*, Lt. Hensley searched Defendant's backpack and the

STATE V. TATE

Opinion of the Court

container therein for the purpose of finding “additional evidence of the offense of arrest.” *Id.* Considering the firearm was disassembled and in multiple pieces, it was reasonable for Lt. Hensley to believe Defendant’s backpack contained other pieces of the firearm or another firearm all together. *See Mbacke*, 365 N.C. at 410–11, 721 S.E.2d at 222–23 (collecting search-incident-to-arrest cases where law enforcement sought further evidence of firearm-related offenses). In fact, Lt. Hensley specifically searched Defendant’s bag looking for the other pieces of the firearm that could have fit within the bag and box. Also, Lt. Hensley searched Defendant’s backpack contemporaneously with Defendant being placed under arrest. *See Julius*, 385 N.C. at 338, 892 S.E.2d at 860 (“[T]his Court has stated that a search may occur prior to the arrest of an individual only if the arrest ‘is made contemporaneously with the search.’” (quoting *State v. Brooks*, 337 N.C. 132, 145, 446 S.E.2d 579, 587 (1994))).

Moreover, and contrary to Defendant’s argument, Lt. Hensley testified that Defendant was only a foot to a foot-and-a-half away from the ATV and from the bag when it was being searched. Specifically, Lt. Hensley stated the bag was within Defendant’s arm reach – a fact necessary to justify a search-incident-to-arrest under *Gant*. *Gant*, 556 U.S. at 339. This testimony was before the trial court when it ruled on Defendant’s motion and was referenced in findings 5 and 7. Thus, we cannot conclude the trial court applied the wrong legal test.

While cognizant of the fact that an arrest for an illegally possessed weapon is not *ipso facto* authorization for law enforcement officers to search a vehicle or bag,

Mbacke, 365 N.C. at 411, 721 S.E.2d at 223, we hold the facts here sufficient to bring this search within the holding of *Gant* authorizing searches-incident-to-arrests for the purpose of investigating the offense of arrest. Accordingly, the trial court properly denied Defendant's motion to suppress.

III. Conclusion

For the aforementioned reasons, we hold Defendant's motion to suppress was properly denied by the trial court.

AFFIRMED.

Judges STROUD and GORE concur.

Report per Rule 30(e).