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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-67

Filed 19 November 2024

Mecklenburg County, Nos. 21 CRS 213031, 21 CRS 213033-34

STATE OF NORTH CAROLINA

v.

JERMELL STURDIVANT

Appeal by the State from order entered 8 June 2023 by Judge Reggie E. McKnight in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 November 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Robert C. Ennis, for the State.*

*Foster Law Offices, PLLC, by Mark P. Foster, Jr., for defendant-appellee.*

PER CURIAM.

Defendant Jermell Sturdivant was indicted for various drug crimes based on a large quantity of fentanyl found by law enforcement officers during a search of Defendant's vehicle during a traffic stop. The trial court granted Defendant's motion to suppress evidence seized from his person, vehicle, and cellphone during the stop. For the reasoning below, we reverse the order of the trial court and remand the

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matter for further proceedings.

I. Background

The evidence tended to show as follows: On 8 August 2022, officers followed Defendant, who was driving from a house known to be the residence of an illegal supplier of fentanyl, for about five minutes. During the drive, one of the officers who was trained to detect marijuana odor saw Defendant smoking. The officer smelled what he thought was burnt marijuana.

After Defendant parked his vehicle in a public parking lot and walked into a restaurant, the officer approached Defendant's car and detected a "strong odor of marijuana[.]" He looked through the window of Defendant's vehicle and saw items that looked like marijuana cigars, and a Glock 19 handgun with a high-capacity magazine. Based on this evidence, officers detained Defendant and searched his vehicle, whereupon they discovered a large quantity of fentanyl. He was indicted for several drug crimes based on the items discovered during the stop and search.

Prior to trial, Defendant filed a motion to suppress all evidence obtained as a result of the arrest and searches by the police, which he alleged were unlawful for lack of reasonable suspicion to detain him or probable cause to search his person and vehicle. The trial court granted the motion. The State appeals.

II. Analysis

Findings made by the trial court are binding on appeal if supported by competent evidence. *State v. Parisi*, 372 N.C. 639, 649 (2019). Whether those

findings are sufficient to create probable cause is a legal question which we review de novo. *State v. Woolard*, 385 N.C. 560, 570 (2023).

Here, the trial court found that the officer smelled what he thought was illegal marijuana and saw what he thought were marijuana cigars. Based on the trial court's determination that illegal marijuana may smell and look similar to legal industrial hemp, the mere smell and sight of what could be marijuana alone is not enough to give an officer probable cause to justify a search.

However, recently, a panel of our Court concluded that “despite the liberalization of laws regarding possession of industrial hemp, and even if marijuana and industrial hemp smell and look the same,” an officer has probable cause to search a vehicle “based upon the officer’s reasonable belief that the substance he smelled and saw in the vehicle was marijuana.” *State v. Little*, 905 S.E.2d 907, 918 (N.C. Ct. App. 2024). That is, though an officer’s belief that what a defendant possessed smelled and looked like marijuana would not alone be sufficient to *convict* the defendant of a crime, this belief is legally sufficient to give the officer probable cause that the defendant was committing a crime. *Id.* at 917–18 (“Probable cause [does] not require their belief that the substance was illegal marijuana to be correct or more likely true than false.’”).

Based on our holding in *Little*, we conclude that the findings of the trial court that the officer smelled and saw what he believed to be marijuana were sufficient to create probable cause to justify the officer’s search. Accordingly, we reverse the trial

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court's order granting Defendant's motion to suppress and remand the matter for further proceedings.

REVERSED AND REMANDED.

Panel consisting of Chief Judge DILLON and Judges HAMPSON and CARPENTER.

Report per Rule 30(e).