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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-331

Filed 3 December 2024

Mecklenburg County, Nos. 21CRS210084, 21CRS210086–87, 21CRS210095

STATE OF NORTH CAROLINA

v.

JASON LAMONTH ANTHONY, Defendant.

Appeal by defendant from judgment entered 12 September 2023 by Judge Sarah E. Kirby-Turner in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 October 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Grace R. Linthicum, for the State-appellee.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for defendant-appellant.*

GORE, Judge.

Defendant, Jason Lamonth Anthony, was indicted by a grand jury for possession of a schedule I controlled substance, possession of drug paraphernalia, possession with intent to sell or deliver a controlled substance, and for resisting a public officer. Defendant filed a motion to suppress evidence, and the trial court

entered an order denying that motion. Defendant then pled guilty to all charges while reserving his right to appeal the denial of his motion to suppress pursuant to a plea arrangement. The trial court consolidated all of defendant's offenses and imposed a suspended sentence of 8–19 months' imprisonment with 24 months of supervised probation. Defendant made an oral notice of appeal in open court.

Defendant appeals from a final judgment of the Superior Court, Mecklenburg County. This Court has jurisdiction to hear and decide defendant's appeal pursuant to N.C.G.S. §§ 7A-27(b)(4) and 15A-979(b). Defendant presents one issue for review—whether the trial court erred by denying his motion to suppress on grounds that the *Terry* frisk was unconstitutional. Upon review, we affirm the trial court's judgment.

“The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated[.]” U.S. Const. Amend. IV. This mandate is applicable to the states through the Fourteenth Amendment, *see Mapp v. Ohio*, 367 U.S. 643 (1961), and the North Carolina Constitution provides similar protection, N.C. Const. art. I, § 20. Generally, “[a]cts which constitute ‘seizures’ of a person for Fourth Amendment purposes may . . . be divided into two categories: (1) arrests and (2) investigatory stops.” *State v. Milien*, 144 N.C. App. 335, 339 (2001).

“In *Terry v. Ohio*, the United States Supreme Court held the Fourth Amendment requires that a brief investigatory stop of an individual be supported by reasonable suspicion.” *State v. Johnson*, 246 N.C. App. 677, 686 (2016) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). “Pursuant to *Terry*, [an officer's] frisk of [a] defendant

may only be justified by two independent criteria.” *Id.* “First, in order to conduct an investigatory detention—a “*Terry* stop”—in the first place, the police must have reasonable suspicion ‘that criminal activity may be afoot.’ ” *Id.* (quoting *Terry*, 392 U.S. at 30). “Second, the police must also have reasonable suspicion that the persons with whom they are dealing may be armed and presently dangerous in order to justify a carefully limited search—a ‘*Terry* frisk’—of the outer clothing of such persons in an attempt to discover weapons which might be used to assault them.” *Id.* (cleaned up) (quoting *Terry*, 392 U.S. at 30–31). “The law has become well established that *Terry* principles apply to routine traffic stops.” *Id.*

Appellate review of a trial court’s denial of a motion to suppress is strictly limited to determining whether the trial judge’s underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge’s ultimate conclusions of law. . . . Conclusions of law are reviewed de novo and are subject to full review.

*State v. Tripp*, 381 N.C. 617, 625 (2022) (cleaned up). “In determining whether the *Terry* standard is met, we must consider [defendant’s] actions in light of the totality of the circumstances.” *State v. Butler*, 331 N.C. 227, 233 (1992) (citation omitted).

In this case, officers observed defendant at a residence under surveillance for drug and weapons offenses, and driving a vehicle belonging to Koji Stewart—who was the subject of a federal narcotics investigation. Officer Banham saw, based on his training and experience, what he reasonably believed to be a hand-to-hand drug

transaction between defendant and another individual. Only 40 minutes passed between the drug transaction Officer Banham had witnessed and defendant's departure from the residence in Koji Stewart's vehicle.

Once Officers Epolito and Shue made visual contact with defendant's vehicle, they observed the "tag light was out, and that the vehicle had a broken right taillight that was emitting white light." They initiated a traffic stop. *See* N.C.G.S. § 20-129(d) (2023) ("Required lighting equipment of vehicles"). As both officers approached defendant, they noted his "nervous behaviors" were "above and beyond" what they considered to be typical in a traffic stop. Epolito observed "an open container of liquor" in the backseat of defendant's vehicle. *See* N.C.G.S. § 20-138.7 ("Transporting an open container of alcoholic beverage"). Shue asked defendant "why he was so nervous," to which defendant "explained his shaking was due to drinking alcohol, which Shue found to be not credible." "This Court has recognized that facts giving rise to a reasonable suspicion include nervousness, sweating, failing to make eye contact, and conflicting statements." *State v. Johnson*, 246 N.C. App. 677, 690 (2016) (cleaned up).

Based on her training and experience, Shue believed defendant to be potentially armed and asked him to step out of the vehicle. "Firearms are tools of the trade for individuals involved in the illegal distribution of drugs[.]" *Tripp*, 381 N.C. at 633, and "officers may draw on their own experience and specialized training to make inferences from, and deductions about, the cumulative information available to

them that might well elude an untrained person[.]” *Id.* at 632–33. Shue asked defendant multiple times to step out of the vehicle. Defendant initially refused, but eventually relented.

Shue testified once defendant exited the vehicle, defendant “tensed his arms” before suddenly reaching for his “waistband area.” Shue believed, based on her training and experience, that defendant may have been reaching for a firearm concealed at that location. *See State v. Johnson*, 246 N.C. App. 677, 692 (2016) (“[P]olice officers are often required to make immediate, context-dependent judgments based on their training.”). A “struggle ensued,” while officers restrained defendant on the ground to prevent potential injury. Because of this struggle, defendant was *placed under arrest* for resisting, delaying, or obstructing an officer. *See* N.C.G.S. § 15A-401(b)(1) (2023) (“An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense[.]”).

“An officer may conduct a warrantless search incident to a lawful arrest.” *State v. Mills*, 104 N.C. App. 724, 728 (1991) (citation omitted). “Under this exception, . . . an officer may conduct a warrantless search of the arrestee’s person and the area within the arrestee’s immediate control.” *State v. Logner*, 148 N.C. App. 135, 139 (2001). Here, a search incident to arrest uncovered 29.11 grams of suspected crack cocaine in defendant’s pocket, 3.2 grams of suspected MDMA, and a large amount of U.S. currency—totaling \$14,490.00.

Based on the totality of the circumstances, Officer Shue had a reasonable, articulable suspicion defendant was presently armed and dangerous when she stopped defendant's vehicle and attempted to perform a weapons frisk. *See Butler*, 331 N.C. at 234 (1992) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)) ("In concluding that defendant, as a person reasonably suspected of involvement in drug traffic, might be armed, [officers] w[ere] entitled to formulate 'common-sense conclusions' about 'the modes or patterns of operation of certain kinds of lawbreakers.'").

Defendant's subsequent arrest for resisting a public officer lends additional support for the constitutionality of the weapons frisk. *See State v. Bullock*, 370 N.C. 256, 257 (2017) (cleaned up) ("[T]he duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop unless reasonable suspicion of another crime arose before that mission was completed."). The trial court's findings of fact are supported by competent evidence in the record—and the trial court's findings in turn support its conclusion of law that the search was lawful.

For the foregoing reasons, and in light of the totality of the circumstances, the trial court properly denied defendant's motion to suppress. The judgment is affirmed.

AFFIRMED

Judges TYSON and FLOOD concur.

STATE V. ANTHONY

*Opinion of the Court*

Report per Rule 30(e).