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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-167

Filed 19 February 2025

Bladen County, Nos. 16 CRS 51564, 19 CRS 368-69

STATE OF NORTH CAROLINA

v.

AFRICA ZACHARIAH SHIPMAN

Appeal by defendant from judgment entered 2 December 2022 by Judge Tiffany Peguise-Powers in Bladen County Superior Court. Heard in the Court of Appeals 14 January 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Heidi M. Williams, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda Zimmer, for defendant-appellant.

DILLON, Chief Judge.

Defendant Africa Zachariah Shipman was convicted of three felonies, including murder. On appeal, he contests the denial of his motion to suppress evidence, namely statements he made to an investigator and information discovered during a search of his cell phone. Upon review, we discern no reversible error.

STATE V. SHIPMAN

Opinion of the Court

I. Background

The State's evidence tends to show the following: On the night of 15 October 2016, Defendant and his friends planned to rob a local drug dealer. However, the drug dealer was shot and killed during the attempted robbery. One of Defendant's accomplices was also shot and later died at a hospital from the wound. In any event, all of the accomplices, except for Defendant, fled the scene in a getaway car.

The trial court's findings of fact from Defendant's suppression hearing show the following:¹ The next day, on 16 October 2016, law enforcement found Defendant in possession of the getaway car at a carwash. Defendant and another man were standing beside the car when a police sergeant arrived. The sergeant observed a large amount of blood in the backseat of the car. He also observed a bottle of peroxide and a cleaning solution on the trunk of the car. He explained to Defendant and his companion that they were in possession of a vehicle that was of interest in an ongoing investigation.

The sergeant directed both men sit on the curb while he waited on the lead investigator who was investigating the previous night's shooting. The sergeant, however, did not handcuff either man. He neither told the men they were free to go nor told them they were not free to go. While waiting for the investigator, Defendant's

¹ "Findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. Buchanan*, 353 N.C. 332, 336 (2001) (cleaned up). Here, the trial court's findings of fact are all supported by competent evidence and, thus, are conclusive.

STATE V. SHIPMAN

Opinion of the Court

companion went to a nearby store and purchased a beverage.

When the investigator arrived, he informed Defendant that he was investigating the drug dealer's murder from the night before. Defendant told the investigator that he was there gathering information himself about the murder. Defendant agreed to talk to the investigator in the investigator's car. Before getting in the investigator's car, Defendant emptied his pockets at the investigator's request, for the purpose of ensuring officer safety. While emptying his pockets, Defendant produced a cell phone.

Defendant signed a consent form allowing the investigator to seize and search his cell phone. At no point was Defendant handcuffed. The investigator did not advise Defendant of his *Miranda* rights.

During their conversation, Defendant told the investigator that he knew nothing about the previous night's murder, that he was not aware the car had blood in it, that he borrowed the car in exchange for cleaning it and filling it with gasoline, and that he had been at home the night before at the time of the murder because he was subject to a curfew based on his probation. After they talked, Defendant was allowed to leave on his own. (Defendant's companion had also already left.)

Defendant was later charged with one count of first-degree murder, one count of attempted robbery with a dangerous weapon, and one count of possession of a firearm by a felon. During a pre-trial hearing, Defendant moved to suppress the evidence found from the search of his cell phone and the statements he made at the

carwash. The trial court denied Defendant's motion.²

Defendant was convicted by a jury of all three charges, and the trial court entered judgment consistent with the jury's verdicts. The trial court sentenced Defendant to life without parole for the murder conviction and consecutive sentences of 111 to 146 months for the attempted robbery conviction and 28 to 43 months for the possession of a firearm conviction. Defendant appeals.

II. Analysis

As a preliminary matter, we note Defendant's contention that the trial court's oral ruling is insufficient for full appellate review.³ We disagree. While an order with written findings is the "better practice[,]" findings *can* be made orally. *See State v. Barlett*, 368 N.C. 309, 312 (2015). Further, when ruling on a motion to suppress, the trial court is required to make explicit factual findings regarding *material conflicts* in the evidence. *See id.* Here, the trial court made such findings orally at the suppression hearing. *Cf. State v. Jordan*, 385 N.C. 753, 754–55 (2024) (remanding for findings where the trial court did not clearly identify findings of fact and provided mere recitations of the evidence presented at the suppression hearing). Accordingly, the oral ruling here is sufficient for our full appellate review.

A. Standard of Review

² At the suppression hearing, Defendant also moved to suppress the vehicle that was seized at the carwash, which was also denied. However, Defendant does not present any argument on appeal regarding the vehicle seizure.

³ Though the trial court instructed the State to draw up a written order, it appears the State failed to do so.

When reviewing the denial of a motion to suppress, we consider “whether competent evidence supports the trial court’s findings of fact and whether the findings of fact support the conclusions of law.” *State v. Biber*, 365 N.C. 162, 167–68 (2011). “Conclusions of law are reviewed de novo[.]” *Id.* at 168.

B. Alleged Constitutional Violations

Defendant argues the trial court erred in denying his motion to suppress evidence. Specifically, he argues that the evidence must be suppressed as fruit of the poisonous tree, asserting that he was subject to an unlawful seizure without reasonable suspicion (in violation of the Fourth Amendment) and an unlawful custodial interrogation (in violation of the Fifth Amendment). For the reasoning below, we disagree.

1. *Fourth Amendment Analysis*

First, Defendant contends he was subjected to an unlawful seizure, in violation of the Fourth Amendment.

“An individual is seized by a police officer and is thus within the protection of the Fourth Amendment when the officer’s conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.” *State v. Icard*, 363 N.C. 303, 308 (2009) (cleaned up). In deciding whether there was a seizure, we consider “whether a reasonable person would feel free to decline the officer’s request or otherwise terminate the encounter by examining the totality of circumstances.” *Id.*

STATE V. SHIPMAN

Opinion of the Court

A consensual encounter with police is not a seizure and, thus, does not trigger Fourth Amendment scrutiny. *See Florida v. Bostick*, 501 U.S. 429, 434 (1991). “Law enforcement officers do not violate the Fourth Amendment’s prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen.” *United States v. Drayton*, 536 U.S. 194, 200 (2002). However, under our totality of the circumstances analysis,

additional circumstances may reveal that the individual is not participating consensually but instead has submitted to the officer’s authority. Relevant circumstances include, but are not limited to, the number of officers present, whether the officer displayed a weapon, the officer’s words and tone of voice, any physical contact between the officer and the individual, whether the officer retained the individual’s identification or property, the location of the encounter, and whether the officer blocked the individual’s path.

Icard, 363 N.C. at 309. Here, the totality of the circumstances leads us to conclude that Defendant was not seized.

We note that Defendant points us to several cases where our Court and our Supreme Court held that a defendant was seized. *See id.* at 304; *State v. Moua*, 289 N.C. App. 678, 683 (2023); *State v. Eagle*, 286 N.C. App. 80, 81 (2022); *State v. Steele*, 277 N.C. App. 124, 124 (2021). But in each of those cases, the encounter between the police and the defendant occurred at nighttime. *See Icard*, 363 N.C. at 304; *Moua*, 289 N.C. App. at 679; *Eagle*, 286 N.C. App. at 81; *Steele*, 277 N.C. App. at 124. Here,

STATE V. SHIPMAN

Opinion of the Court

this encounter occurred in a public place during broad daylight hours. *See Eagle*, 286 N.C. App. at 93 (noting that the seized defendant “otherwise might have felt free to ignore [the police officer] in a sunlit, crowded location”). And in all of those cases, the defendant was inside a car when the police initiated the encounter; and the police exercised their authority to pull over the defendant. *See Icard*, 386 N.C. at 310 (officer activated blue lights); *Moua*, 289 N.C. App. at 690 (officer activated blue lights and unlocked and opened the car door through the window); *Eagle*, 286 N.C. App. at 81 (officer activated blue lights); *Steele*, 277 N.C. App. at 135 (officer employed authoritative hand gestures).

The present case is more analogous to *State v. Campbell*, 359 N.C. 644, 663 (2005), where our Supreme Court concluded that a defendant was not seized when an officer pulled in behind the defendant, the officer did not activate the patrol car’s blue lights, and the defendant had already exited the car when the officer approached him.

Here, though the police sergeant initiated the encounter at the carwash and the officers were armed and in uniform, we conclude that this was not enough to constitute a seizure. Additionally, Defendant and his companion’s identifications were promptly returned to both men, and they were never handcuffed. Nothing in the record indicates that law enforcement personnel’s words or tones of voice were anything other than polite throughout the encounter. Defendant argues the police sergeant prevented or made it difficult for Defendant to back out of the carwash bay when he pulled in behind him. However, nothing in the record indicates whether the

STATE V. SHIPMAN

Opinion of the Court

sergeant's car actually blocked the car's exit.

Defendant argues he passively acquiesced to the police's show of authority when he sat next to the sergeant's patrol car while waiting on the investigator to arrive at the carwash. *See Brendlin v. California*, 551 U.S. 249, 255 (2007) (noting an individual can submit to law enforcement's authority in the form of passive acquiescence). However, Defendant stated that he was also seeking information about the murder, indicating that he waited on the investigator's arrival voluntarily to learn more information for himself, not because he felt that he could not leave. This is a case where police approached and asked questions in a public place to a willing individual. Defendant's desire to learn details about the murder indicates this was a reciprocal, consensual encounter.

There was a physical touching here when the investigator patted down Defendant before Defendant entered the investigator's car. However, this pat down was conducted for officer safety purposes because someone previously pulled a knife on the investigator during an encounter in his car. And though Defendant sat in the investigator's car to discuss the case, the conversation occurred in the car to facilitate the investigator's notetaking on his laptop, and Defendant was not handcuffed during the conversation. And, at the end of the conversation with the investigator, Defendant was allowed to leave.

We are especially persuaded that Defendant was not seized by the fact that Defendant's companion left during the encounter to obtain a beverage from a nearby

store without any adverse consequences.

Even assuming *arguendo* that Defendant gave consent to search his cell phone during an illegal detention, *see Florida v. Royer*, 460 U.S. 491, 507–08 (1983) (holding that consent given during an illegal detention is tainted and the search is invalidated), the cell phone would not need to be suppressed because the investigator also obtained valid search warrants to search Defendant’s cell phone (based on the fact that Defendant was in possession of the getaway car the day after the shooting). *See State v. McKinney*, 361 N.C. 53, 58 (2006) (“[T]he independent source rule provides that evidence obtained illegally should not be suppressed if it is later acquired pursuant to a constitutionally valid search or seizure.”).

Accordingly, the trial court did not err in concluding that Defendant’s Fourth Amendment rights were not violated.

2. Fifth Amendment Analysis

Second, Defendant argues that he was subjected to a custodial interrogation without receiving *Miranda* warnings, in violation of the Fifth Amendment.

“The relevant inquiry under *Miranda* is more narrow than the broad ‘free to leave’ test employed to determine whether a person has been seized within the meaning of the Fourth Amendment.” *State v. Richardson*, 385 N.C. 101, 180 (2023). “A *Miranda* warning is only required, however, when an individual is subjected to a custodial interrogation.” *State v. Hammonds*, 370 N.C. 158, 162 (2017). Thus, we must determine whether Defendant was subjected to a custodial interrogation.

STATE V. SHIPMAN

Opinion of the Court

When determining whether a defendant was subjected to a custodial interrogation, we consider the totality of the circumstances. *See id.* “Two discrete inquiries are essential to this determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.” *Id.* (cleaned up).

Circumstances which may be considered include the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning, as well as whether there was a police officer standing guard at the door or locked doors, whether the defendant was told he was not under arrest, and whether law enforcement officers raised their voices, threatened the defendant, or made promises to him. Regardless of which of these or other circumstances apply in a particular case, no single fact controls under the *Miranda* analysis.

Richardson, 385 N.C. at 180 (cleaned up).

Given the totality of the circumstances, we conclude Defendant was not subjected to a custodial interrogation. Here, Defendant voluntarily sat in the investigator’s car (in a public place during daylight hours), Defendant was not restrained, there is no indication in the record that the car doors were locked, and Defendant was released at the end of the conversation. While it was a relatively long conversation (lasting between thirty and forty-five minutes), it appears this was a reciprocal, mutually beneficial conversation for the investigator and Defendant, as

STATE V. SHIPMAN

Opinion of the Court

Defendant had expressed an interest in learning details about the murder.

Based on the totality of the circumstances, this was not an environment that presented the same “inherently coercive pressures” as the station house questioning which constituted a custodial interrogation in *Miranda*. See *Howes v. Field*, 565 U.S. 499, 509 (2012). Thus, the trial court did not err in concluding that Defendant’s Fifth Amendment rights were not violated.

III. Conclusion

We conclude Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges WOOD and MURRY concur.

Report per Rule 30(e).