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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-825

Filed 21 May 2025

Columbus County, No. 21CRS052284-230; 21CRS052285-230

STATE OF NORTH CAROLINA

v.

LINDSEY MIQUEL HAWKINS

Appeal by Defendant from an order entered 29 July 2022 by Judge J. Stanley Carmical in Columbus County Superior Court. Heard in the Court of Appeals 9 April 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Katherine M. McCraw, for the State.*

*BJK Legal, by Benjamin J. Kull, for the Defendant.*

WOOD, Judge.

Lindsey Miquel Hawkins (“Defendant”) appeals from an order denying his motion to suppress evidence seized during a traffic stop. On appeal, Defendant raises one issue, whether the traffic stop was unconstitutional because the supervising officer failed to obtain the requisite approval for the checkpoint where Defendant was

stopped. After careful review of the record, we affirm the trial court's order.

### **I. Factual and Procedural Background**

On 24 September 2021, Sergeant James Norris ("Sergeant Norris") of the Columbus County Sheriff's Office established and supervised a traffic checkpoint. Defendant was stopped at this checkpoint, his vehicle was searched, and that search yielded evidence resulting in charges for trafficking in cocaine, possession with intent to sell and/or deliver marijuana, and maintaining a vehicle for keeping and/or selling a controlled substance.

On 6 June 2022, Defendant filed a motion to suppress the evidence. A hearing on the motion to suppress was held on 18 July 2022. The trial court heard testimony from Sergeant Norris and received into evidence Columbus County Sheriff Office's policy for establishing checkpoints as well as the Checking Station Report from 24 September 2021.

On 16 July 2022, the trial court denied the motion to suppress evidence finding that the checkpoint at issue "does pass constitutional muster."

On 13 November 2023, Defendant entered an *Alford* plea to one count of trafficking in cocaine and the State dismissed all other charges. As noted in the plea agreement, Defendant retained his right to appeal the denial of his motion to suppress. The trial court entered judgment the same day and imposed a sentence of thirty-five to fifty-one months of incarceration. The trial court noted, "[t]he defendant also indicates that he's appealing the denial of his motion to suppress that was heard

at an earlier setting of court.” However, Defendant did not give oral notice of appeal in open court after entry of judgment as required by N.C. R. App. P. 4.

On 12 November 2024, Defendant filed a Petition for Writ of Certiorari to this Court.

## **II. Analysis**

### **A. Writ of Certiorari**

The procedural rules for providing notice of appeal state,

Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by:

- (1) giving oral notice of appeal at trial, or
- (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order or within fourteen days after a ruling on a motion for appropriate relief made during the fourteen-day period following entry of the judgment or order. Appeals from district court to superior court are governed by N.C.G.S. §§ 15A-1431 and -1432.

N.C. R. App. P. Rule 4(a) (2025).

Here, it is uncontested that Defendant failed to give formal oral or written notice of appeal consistent with N.C. R. App. P. Rule 4(a). Recognizing this failure, Defendant filed a Petition for Writ of Certiorari to this Court on 12 November 2024.

“This Court may issue a writ of certiorari in appropriate circumstances . . . to

permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action.” *State v. Thorne*, 279 N.C. App. 655, 659, 865 S.E.2d 768, 771 (2021) (cleaned up).

The record makes clear that Defendant desired to appeal the judgment and provided both the trial court and the State with notice of his intent to appeal. It is uncontested that Defendant retained his right to appeal the denial of his motion to suppress as part of his written plea agreement prior to his *Alford* plea. In addition, during the sentencing hearing, the trial court noted, “[t]he defendant also indicates that he’s appealing the denial of his motion to suppress that was heard at an earlier setting of court.” Neither the trial court nor the State misunderstood Defendant’s request. The State was clearly on notice of the appeal, did not file a Motion to Dismiss or otherwise object to such an appeal. In our discretion, we grant Defendant’s petition for writ of certiorari to consider the substantive issue on appeal.

### **B. Standard of Review**

This Court reviews the denial of a motion to suppress to determine

whether competent evidence supports the trial court’s findings of fact and whether the findings of fact support the conclusions of law. However, when, as here, the trial court’s findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal. Conclusions of law are reviewed *de novo* and are subject to full review. Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.

*State v. Biber*, 365 N.C. 162, 167–68, 712 S.E.2d 874, 878 (2011) (cleaned up).

Defendant does not challenge any of the twenty-one findings of fact as supported by the evidence. Therefore, all findings of fact are binding on appeal.

### **C. Constitutional Review of the Checkpoint**

On appeal, Defendant raises two related issues: (1) whether the checkpoint set up on 24 September 2021 was unconstitutional under the Fourth Amendment because Sergeant Norris failed to obtain the requisite approval for establishing it, and (2) if the record does not establish failure to obtain requisite approval, whether the issue should be remanded to the trial court for further findings of fact. After a thorough review of the record we determine that the checkpoint complied with the Fourth Amendment and was therefore Constitutional.

Defendant's sole argument relative to the checkpoint is Sergeant Norris' alleged failure to obtain requisite approval for the checkpoint. Defendant concedes all other aspects of the checkpoint pass Constitutional muster.

In addressing the constitutionality of a checkpoint, the Supreme Court has instructed that reviewing courts must first consider the primary pragmatic purpose of a challenged checking station. *City of Indianapolis v. Edmond*, 531 U.S. 32, 38, 121 S.Ct. 447, 452, 148 L.Ed.2d 333, 341 (2000). The State presented competent evidence in the form of officer testimony and written forms submitted that the primary purpose of the checkpoint was to check for license and registration compliance. Both the United States Supreme Court and North Carolina Courts have upheld the constitutionality of checkpoints designed to check for license and vehicle

registration violations. *Edmond*, 531 U.S. at 37–38, 121 S.Ct. at 452, 148 L.Ed.2d at 341; *State v. Mitchell*, 358 N.C. 63, 592 S.E.2d 543 (2004); *State v. Tarlton*, 146 N.C. App. 417, 553 S.E.2d 50 (2001). The trial court recorded uncontroverted findings concerning the primary pragmatic purpose in findings of fact 5 through 7, and Defendant does not contest that a primary pragmatic purpose was met.

Once we determine an adequate primary pragmatic purpose exists, we turn our attention to determine the reasonableness of the checking station under the Fourth Amendment. *Edmond*, 531 U.S. at 47, 121 S.Ct. at 457, 148 L.Ed. 2d at 347; *Illinois v. Lidster*, 540 U.S. 419, 426, 124 S.Ct. 885, 890, 157 L.Ed.2d 843, 852 (2004). “To determine whether a seizure at a checkpoint is reasonable requires a balancing of the public’s interest and an individual’s privacy interest.” *State v. Rose*, 170 N.C. App. 284, 293, 612 S.E.2d 336, 342 (2005). Defendant contends that a checkpoint cannot be reasonable if it does not accord with the requirements set forth by the Sheriff. Further Defendant notes that “courts have consistently required restrictions on the discretion of the officers conducting the checkpoint to ensure that the intrusion on individual liberty is no greater than is necessary to achieve the checkpoint’s objectives.” *State v. Veazy*, 191 N.C. App. 181, 192-93, 662 S.E.2d 682, 690-91 (2008). Defendant argues that if the Sheriff’s policies are not followed then the Sheriff does not retain the necessary restrictions on his officers to make the checkpoint reasonable. While Defendant presents a plausible argument that the Sheriff’s policies are to be followed, a thorough review of the record facts before us indicate the

requisite policies were followed as written.

The Columbus County Sheriff's Office General Order on Checking Stations states, in pertinent part:

III. Definitions

...

B. Checkpoint Coordinator: A supervisor or senior deputy who is the on-site person with overall responsibility for the checkpoint. The Checkpoint Coordinator determines the checkpoint location, duration, need to deviate from the standard pattern of stopping vehicles, and briefs the participating deputies/officers. In the absence of an on-site supervisor, the Checkpoint Coordinator will be the senior deputy on-site.

...

IV. Procedure

A. Standards for all checking stations

...

2. The Checkpoint Coordinator shall obtain approval from the on-shift supervisor, or from a higher-ranking supervisor prior to establishing a checkpoint, and include the approving supervisor's name on the Checkpoint Report Form.

Defendant contends that "the checkpoint was not constitutionally 'reasonable'" because Sergeant Norris, as the checking station coordinator, had not obtained authorization from a higher-ranking supervisor, and therefore conducted "the checkpoint as a matter of his own personal discretion and without obtaining the

approval required by the Policy.” Defendant’s argument is not supported by the plain language of the policy.

“It is a bedrock rule of statutory interpretation that if the statutory language is clear and unambiguous, the court eschews statutory construction in favor of giving the words their plain and definite meaning.” *Belmont Ass’n v. Farwig*, 381 N.C. 306, 313, 873 S.E.2d 486, 490 (2022) (cleaned up).

Nowhere in the policy does it state that the check point coordinator cannot be the on-shift supervisor. Rather, the policy simply states, “the Checkpoint Coordinator shall obtain approval from the on-shift supervisor, *or* from a higher-ranking supervisor.” The policy does not explicitly address the situation of an on-shift supervisor taking the role of checkpoint coordinator. Sergeant Norris stated he was “the sergeant over patrol,” was in a supervisory position, and had over a decade of experience. During both direct and cross examination, he testified he was the “officer in charge” as well as the checkpoint coordinator. During cross examination he testified,

Q. Now, I know you said that you were the officer in charge; is that correct?

A. Yes.

Q. All right. Would you have also been the checkpoint coordinator?

A. Yeah.

This uncontroverted testimony demonstrates that the on-shift supervisor Sergeant



STATE V. HAWKINS

*Opinion of the Court*

Norris both authorized the checkpoint and acted as the checkpoint coordinator in adherence to the policy. Sheriffs most certainly are free to create policy explicitly prohibiting on-shift supervisors from actively participating in checkpoints. However, The Columbus County Sheriff's Office General Order pertaining to Checking Stations does not restrict on-shift supervisors in this manner. Further, there are multiple reasons a Sheriff may find it beneficial to have an on-shift supervising officer present when multiple officers are engaged at a checkpoint.

Additionally, our Supreme Court has held "the absence [ ] of any focus on an issue dealing with supervisory permission and written guidelines indicates that these issues do not merit a constitutionally mandated reversal in a roadblock case . . . ." *State v. Mitchell*, 358 N.C. 63, 68, 592 S.E.2d 543, 546 (2004). The only issue Defendant raises is whether the check point was unconstitutional under the Fourth Amendment because Sergeant Norris allegedly failed to obtain the requisite approval for establishing it. Because Sergeant Norris complied with the permission policies at issue, Defendant has failed to put forth arguments sufficient to merit a constitutionally mandated reversal.

Sergeant Norris did not violate the Columbus County Sheriff Office's policy in conducting the checkpoint. Defendant concedes all other aspects of the checkpoint were constitutional, and the trial court made numerous uncontested findings of fact that support the court's denial of the Motion to Suppress. Thus, we affirm the trial court's order.

### **III. Conclusion**

For the foregoing reasons, we conclude the trial court made findings of fact sufficient to support its conclusions of law that Sergeant Norris did not violate the Columbus County Sheriff Office's policy in conducting the checkpoint and that the checkpoint was constitutional. Therefore, we affirm the trial court's order denying the motion to suppress.

AFFIRM.

Judge ARROWOOD concurs.

Judge FREEMAN concurs in part and dissents in part by separate opinion.

FREEMAN, Judge, concurring in part and dissenting in part.

I concur in the majority’s reasoning and conclusion as to the merits of the case. However, the majority correctly notes defendant did not give proper notice of appeal after entry of the judgment. Considering this jurisdictional defect, defendant’s petition for writ of certiorari must establish both probable error and extraordinary circumstances for this Court to review the merits of his appeal. As defendant’s petition fails to establish either, this Court should deny the petition and dismiss his appeal. Because I would not reach the merits of this case, I respectfully dissent from the majority’s decision to grant the writ of certiorari.

A criminal defendant may appeal from a “judgment or order of a superior or district court” by either oral or written notice of appeal following entry of the judgment. N.C. R. App. P. 4(a)(1)–(2). “By statute, a criminal defendant seeking review of the denial of a motion to suppress must appeal the judgment of conviction, not merely the suppression order.” *State v. Wilkes*, 256 N.C. App. 385, 387 (2017). “A failure on the part of the appealing party to comply with Rule 4 deprives this Court of jurisdiction to consider his or her appeal.” *State v. Hughes*, 210 N.C. App. 482, 484 (2011).

Here, defendant pleaded guilty to one count of trafficking in cocaine. Pursuant to his plea agreement, defendant preserved the right to appeal the denial of his

motion to suppress. However, defendant did not submit a notice of appeal after the judgment was entered. Accordingly, we do not have jurisdiction to consider his appeal. Nonetheless, this Court may issue the writ of certiorari “in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure take timely action[.]” N.C. R. App. P. 21(a)(1).

Our Supreme Court recently stated:

The procedure governing writs of certiorari is found in Rule 21 of the Rules of Appellate Procedure. But Rule 21 does not prevent the court of appeals from issuing writs or have any bearing upon the decision as to whether a writ of certiorari should be issued. Instead, the decision to issue a writ is governed solely by statute any by common law.

*Cryan v. Nat’l Council of Young Men’s Christian Ass’ns of U.S.*, 384 N.C. 569, 572 (2023) (cleaned up).

Our General Assembly has provided that this Court may issue the writ of certiorari subject to “statute or rule of the Supreme Court, or, in the absence of statute or rule, according to the practice and procedure of common law.” N.C.G.S. § 7A-32(c) (2023). Though we may exercise our discretion in granting the writ of certiorari, it is “to be issued only for good or sufficient cause shown, and it is not one to which the moving party is entitled to as a matter of right.” *Womble v. Moncure Mill & Gin Co.*, 194 N.C. 577, 579 (1927). “A writ of certiorari is not intended as a substitute for a notice of appeal because such a practice would render meaningless the rules

governing the time and manner of noticing appeals.” *State v. Ricks*, 378 N.C. 737, 741 (2021) (citations omitted).

Thus, to determine whether this Court should issue the writ of certiorari, we must apply the following two-factor test:

First, a writ of certiorari should issue *only* if the petitioner can show merit or that error was probably committed below. This step weighs the likelihood that there was some error of law in the case.

Second, a writ of certiorari should issue *only* if there are extraordinary circumstances to justify it. We require extraordinary circumstances because a writ of certiorari is not intended as a substitute for notice of appeal. If court issued writs of certiorari solely on the showing of some error below, it would render meaningless the rules governing the time and manner of noticing appeals.

There is no fixed list of extraordinary circumstances that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or wide-reaching issues of justice and liberty at stake.

*Cryan*, 384 N.C. at 572–73 (cleaned up) (emphasis added).

Here, defendant’s petition for writ of certiorari indicates that defendant identified “meritorious substantive arguments,” but directs this Court to review his accompanying brief instead of demonstrating probable error on the face of the petition. As we do not possess jurisdiction until the writ is issued, “a *petition* for the writ must show merit or that error was probably committed below,” *State v. Grundler*, 251 N.C. 177, 189 (1959) (emphasis added), and defendant’s reference to the brief is

therefore insufficient. Further, defendant's petition makes no showing of any "extraordinary circumstances" that would justify issuing the writ of certiorari. Accordingly, defendant's petition failed both steps of the two-factor test to determine whether issuance of the writ of certiorari is appropriate.

Rather than meaningfully address whether defendant's petition passes muster, the majority appears to follow a per se rule that the writ shall issue where a criminal defendant fails to properly notice an appeal despite his or her clear intent to do so. Though I understand the temptation of this sympathetic approach, a "writ of certiorari is not intended as a substitute for a notice of appeal," *Ricks*, 378 N.C. at 741, nor is it a writ "to which the moving party is entitled to as a matter of right," *Womble*, 194 N.C. at 579, and our preferences cannot trump Supreme Court precedent. I therefore respectfully dissent from the majority's decision to reach the merits of defendant's asserted appeal.