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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1032

Filed 2 September 2026

Columbus County, Nos. 22CR051314-230, 22CR051315-230, 22CR051316-230,
22CR051317-230

STATE OF NORTH CAROLINA

v.

JOHNATHAN TERRILLE JORDAN

Appeal by defendant from judgments entered 25 September 2024 by Judge Tiffany Peguise-Powers in Columbus County Superior Court. Heard in the Court of Appeals 11 August 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Alexandra Farrell, for the State.

Clarke Martin Law, by Clarke S. Martin, for the defendant-appellant.

TYSON, Judge.

Johnathan Terrille Jordan (“Defendant”) appeals from judgments entered upon a jury’s verdicts of guilty of trafficking heroin by possession, trafficking heroin by transportation, trafficking opioid by possession, trafficking opioid by transportation, and possession of drug paraphernalia. He argues the trial court committed plain

error in denying his motion to suppress due to lack of probable cause to search Defendant's vehicle. Defendant also argues the trial court erred in failing to make findings of fact and conclusions of law to support its denial of the motion to suppress. Finally, Defendant argues he received ineffective assistance of counsel for counsel's failure to object to the admission of evidence, which was the subject of the motion to suppress. We discern no error.

I. Background

Columbus County Sheriff's Detective Michael Kellihan observed a blue Lincoln Town Car automobile with tinted windows cross the center line several times on 7 June 2022. Detective Kellihan conducted a traffic stop and encountered Defendant, the driver and sole occupant of the vehicle. Defendant rolled down the driver's side window as Detective Kellihan approached. Through the window, Detective Kellihan observed a green, leafy substance in the vehicle's center console and smelled the odor of marijuana.

Detective Kellihan's instructed Defendant to exit the vehicle and conducted a pat-down search. During the search, a Crown Royal whiskey bottle bag fell out of Defendant's clothing. Defendant admitted the bag contained cocaine, heroin, pills, and fentanyl. Detective Kellihan found baggies containing various substances inside the Crown Royal bag, as well as numerous pills, digital scales, empty plastic baggies, and two cell phones. Lab analysis confirmed some of the substances seized from Defendant contained more than 4 grams of heroin and more than 28 grams of

oxycodone.

Defendant moved to suppress the evidence seized during the traffic stop and asserted the State lacked reasonable suspicion for the stop. The State asked the court to summarily deny the motion as untimely.

The court held a pretrial suppression hearing. During the hearing, Detective Kellihan testified about his observations leading up to the traffic stop. Detective Kellihan saw the vehicle cross the center line “several times,” and the vehicle’s windows were tinted to the degree he could not see any occupants. Detective Kellihan did not have a tint meter at the time of the stop to verify whether the windows complied with the legal limit. Because Defendant challenged only whether reasonable suspicion existed for the stop, the State elicited no testimony from Detective Kellihan about what had occurred during the stop.

The trial court denied the motion to suppress without making explicit findings of fact or conclusions of law. At trial, the State introduced the evidence seized during the traffic stop without objection from Defendant.

The jury convicted Defendant of trafficking heroin by possession, trafficking heroin by transportation, trafficking opioid by possession, trafficking opioid by transportation, and of possession of drug paraphernalia. Defendant was sentenced as a prior record level II offender with 2 prior record level points to 225 to 282 months for trafficking opioid by possession and 225 to 282 months for trafficking opioid by transportation, the sentences to be served concurrently. Defendant was sentenced to

a 120-day sentence for the drug paraphernalia conviction to be served consecutively to the trafficking convictions. The trial court arrested judgment on the trafficking heroin by possession and trafficking heroin by transportation convictions. Defendant appeals.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2025).

III. Issues

Defendant argues the trial court erred in denying his motion to suppress and failed to make findings of fact or conclusions of law to support that ruling. Defendant also argues he received ineffective assistance of counsel (“IAC”).

IV. Motion to Suppress

A. Standard of Review

This Court’s review of a trial court’s denial of a motion to suppress is generally “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.” *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (citations omitted). Defendant failed to renew his objection to the evidence and statements obtained pursuant to the traffic stop. The denial of the motion to suppress was not preserved for appellate review.

When a suppression issue is not preserved, this Court may still conduct plain error review. *State v. Miller*, 371 N.C. 266, 272, 814 S.E.2d 81, 85 (2018). Plain error review requires the defendant show “a fundamental error occurred at trial[,] . . . the error had a ‘probable impact’ on the outcome, meaning that ‘absent the error, the jury probably would have returned a different verdict[,]’ . . . [and] the error is an ‘exceptional case’ that warrants plain error review, typically by showing that the error seriously affects ‘the fairness, integrity or public reputation of judicial proceedings.’” *State v. Reber*, 386 N.C. 153, 158, 900 S.E.2d 781, 786 (2024) (citing *State v. Lawrence*, 365 N.C. 506, 518-19, 723 S.E.2d 326 (2012)).

B. Analysis

The trial court properly denied Defendant’s motion to suppress after testimony Defendant’s vehicle had crossed the center line multiple times. Defendant’s motion challenged only the existence of reasonable suspicion for the initial stop.

North Carolina courts have deemed the reasonable suspicion standard satisfied to support a stop when an officer observes a traffic violation, such as a vehicle crossing the center line. *See State v. Styles*, 362 N.C. 412, 417, 665 S.E.2d 438, 441 (2008) (stating “observation of [the] defendant’s traffic violation gave [the officer] the required reasonable suspicion to stop [the] defendant’s vehicle”); *State v. Sutton*, 259 N.C. App. 891, 893, 817 S.E.2d 211, 213 (noting constitutionality of traffic stop “[w]here a vehicle actually crosses over the double yellow lines in the center of a road, even once, and even without endangering any other drivers”), *disc. rev. denied*, 371

N.C. 478, 818 S.E.2d 275 (2018). Here, Detective Kellihan testified he initiated a traffic stop after he had observed Defendant's vehicle cross the center line of the highway "several times."

In the motion to suppress, Defendant had cited caselaw indicating reasonable suspicion may not always exist when a vehicle crosses the line dividing two lanes of travel in the same direction. (R pp. 23–29 (*citing*, among other cases, *State v. Derbyshire*, 228 N.C. App. 670, 745 S.E.2d 886 (2013), *disc. rev. denied*, 367 N.C. 289, 753 S.E.2d 785 (2014))

We are bound by our Supreme Court's opinion in *Styles* and our Court's opinion in *Sutton*. Detective Kellihan testified Defendant's vehicle had veered into a lane of oncoming traffic. Defendant cites caselaw which leaves no doubt about the constitutionality of the traffic stop and acknowledges "our appellate courts have consistently held that reasonable suspicion to initiate the stop exists" when a traffic violation is substantiated by officer testimony.

1. Legal Hemp and Illegal Marijuana

Rather than concede the trial court properly denied Defendant's motion to suppress on the ground presented below, Defendant now contends the trial court should have suppressed the evidence on another ground. Defendant challenges the existence of probable cause to search Defendant's vehicle after the stop and asserts Detective Kellihan could not distinguish between the smell or appearance of legal hemp and illegal marijuana.

Defendant failed to preserve this argument by omitting it from his motion to suppress (R pp. 23–29). *See State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982) (“[A] constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal.”) (citations omitted). Defendant now relies exclusively on trial testimony elicited after the trial court had ruled on Defendant’s motion to suppress. This Court need not consider Defendant’s novel argument. Testimony during the suppression hearing concerned only events leading up to the stop.

Defendant’s previous failure to make the argument results in a complete waiver of any appellate review, rather than opening the door to plain error review. *See Miller*, 371 N.C. at 270, 814 S.E.2d at 83–84 (“Without a fully developed record, an appellate court simply lacks the information necessary to assess the merits of a defendant’s plain error arguments. “[W]here a theory argued on appeal was not raised before the trial court, the law does not permit parties to swap horses between courts in order to get a better mount” on appeal. *State v. Sharpe*, 344 N.C. 190, 194, 473 S.E.2d 3, 5 (1996) (citations and quotation marks omitted).

Presuming, without deciding, Defendant had preserved this issue for appellate review, he is not entitled to relief. Detective Kellihan smelled and observed the marijuana in plain view. Our Supreme Court recently examined the Industrial Hemp Act and probable cause of a *Terry* stop in *State v. Rowdy*, 389 N.C. 631, ___, 929 S.E.2d 324, 333 (2026) and also reaffirmed the totality of the circumstances applies to

determine if probable cause justified a warrantless search of a vehicle where law enforcement officers detected the odor of marijuana. *See State v. Dobson*, 389 N.C. 542, __, 929 S.E.2d 315, 318 (2026); *State v. Schiene*, __ N.C. __, __ S.E.2d __, No. 305PA24 (N.C. Aug. 14, 2026).

In *Rowdy*, officers investigating a traffic stop smelled what they believed was marijuana, based on their training and experience. *Rowdy*, 389 N.C. at __, 929 S.E.2d at 333. Officers identified a “blunt” containing what they believed to be marijuana in the front pocket of the defendant’s shirt. *Id.* The defendant did not state the “blunt” contained hemp. The Court held “A person of reasonable caution, when discovering a blunt that he believed to be illegal marijuana, could believe that it was contraband or evidence of a crime, particularly when the defendant does not claim it is legal hemp.” *Id.*

Here, Defendant did not identify the leafy substance Detective Kellihan observed on the console as hemp. The discovery of the green leafy substance in plain view and the smell of marijuana exceeded the factual situation in *Rowdy* and gave Detective Kellihan reasonable suspicion to search the car. *Id.*

2. Rule 2

In the alternative, Defendant asks this Court to invoke Rule 2 of the Rules of Appellate Procedure to review the trial court’s denial of his motion to suppress. (Def’s Br. p. 7) Rule 2 allows this Court to suspend the requirements of the Rules of Appellate Procedure, such as preservation of Rule 10, “[t]o prevent manifest injustice

to a party.” N.C. R. App. P. 2. The North Carolina Supreme Court has explained “Rule 2 must be applied cautiously” and is only to be utilized “in exceptional circumstances.” *State v. Hart*, 361 N.C. 309, 315, 644 S.E.2d 201, 205 (2007) (citation omitted).

This Court has declined to apply Rule 2 when a defendant sought to raise an unpreserved constitutional challenge not brought *via* a motion to suppress. *State v. Corrothers*, 295 N.C. App. 192, 196-97, 905 S.E.2d 237, 241–42 (2024).

Here, Defendant has identified no “exceptional circumstances” to justify invoking Rule 2. The Court declines to review this issue because this case does not present “exceptional circumstances” warranting such review and as held above Defendant is not entitled to relief.

The trial court correctly concluded reasonable suspicion supported the stop, and Defendant’s argument fails as a matter of procedure and substance.

V. Findings of Fact/Conclusions of Law

Defendant next asserts the trial court failed to comply with the “mandatory” duty under N.C. Gen. Stat. § 15A–977(f) (2025) to set forth findings of fact and conclusions of law when ruling upon his motion to suppress. In support of this argument, Defendant has relied upon *State v. Williams*, 215 N.C. App. 412, 715 S.E.2d 553 (2011), abrogated by the Supreme Court of North Carolina in *State v. Bartlett*, 368 N.C. 309, 312, 776 S.E.2d 672, 674 (2015). Contrary to Defendant’s assertion, N.C. Gen. Stat. § 15A–977(f) (2025) imposes no categorical, mandatory duty, despite its “directive . . . in the imperative form.” *Bartlett*, 368 N.C. at 312, 776

S.E.2d at 674. A material conflict in the evidence is “one that potentially affects the outcome of the suppression motion.” *Id.*

Here, the record reflects no material conflicts in the evidence. During the suppression hearing, Defendant attempted to cast doubt on the location of Detective Kellihan’s vehicle at the time he had observed Defendant’s traffic violations. (T1 pp. 18–44) Whether Detective Kellihan had observed Defendant’s vehicle from behind him or while traveling in another lane, reasonable suspicion for the stop existed either way. *State v. Smith*, 300 N.C. App. 125, 917 S.E.2d 514, 2025 WL 1949538, at *2 (2025) (unpublished) (noting the legal analysis remains the same “whether the police were following defendant for the short period of time prior to pulling him over” or “whether they saw the unlit car tag from their original distance or right after defendant made a left turn into the neighborhood”).

Defendant fares no better in suggesting conclusions of law are always required. Defendant cites *State v. McFarland*, 234 N.C. App. 274, 284, 758 S.E.2d 457, 465 (2014), for the proposition “[f]ailure to make conclusions of law is never justified.”

The Supreme Court of North Carolina has not always required explicit conclusions of law from trial courts in their rulings on motions to suppress. For example, when a trial court “conclude[ed] that none of [the] defendant’s constitutional rights [had been] violated,” the Supreme Court of North Carolina viewed that statement as an “implicit[] conclu[sion] that the officers had probable cause to arrest [the] defendant.” *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 879 (2011).

Here, although the trial court's ruling does not contain explicit conclusions of law, its apparent conclusion reasonable suspicion supported the stop, the only issue Defendant challenged at the time, may be inferred from the result. Additionally, remand for the entry of findings of fact and conclusions of law would serve no purpose given Defendant appears to have abandoned the basis for suppression he presented to the trial court. Defendant maintains the trial court deprived him of "meaningful appellate review of the decision."

Defendant does not appear to seek review of the only decision the trial court made with respect to his motion to suppress: reasonable suspicion supported the initial stop of Defendant's vehicle. Instead, Defendant improperly presents a new argument on appeal, to purportedly challenge a decision the trial court could have made only if Defendant had argued such a basis for suppression. Remand ordinarily could clarify the trial court's reasoning, but it should not provide Defendant with another bite of the pomegranate. Remand for an explicit conclusion of law stating reasonable suspicion supported the stop of Defendant's vehicle would not serve any purpose. Under these circumstances, Defendant's request is denied.

Defendant alternatively seeks relief under Rule 2 of the Rules of Appellate Procedure and asks this Court to review the trial court's failure to make explicit findings of fact and conclusions of law. Defendant again identifies no circumstances to render this case exceptional.

This Court does not appear to have considered whether a trial court's supposed

failure to comply with N.C. Gen. Stat. § 15A-977(f) could ever justify the application of Rule 2. This Court has invoked Rule 2 when a defendant failed to file an affidavit in support of his motion to suppress, a requirement under a different subsection of the same statute. *State v. McQueen*, 324 N.C. 118, 128, 377 S.E.2d 38, 44 (1989). Defendant here faces a far less harsh result; the trial court's non-compliance, if any, deprived Defendant of an explicit conclusion reasonable suspicion supported the stop of his vehicle. Defendant acknowledges caselaw amply supports the legality of the stop on the basis he challenged. Given this explicit conclusion is irrelevant to Defendant's arguments on appeal, no manifest injustice is presented in this case.

The trial court implicitly concluded reasonable suspicion existed, and no findings of fact are necessary under the circumstances. Defendant's argument is overruled.

VI. Ineffective Assistance of Counsel

Defendant claims his counsel provided ineffective assistance due to failure to object to the admission of evidence Defendant had sought to suppress, resulting in a less favorable standard of review. (Def's Br. pp. 19–21) Defendant does seek review of the trial court's rejection of the argument in his motion to suppress, asserting Detective Kellihan lacked reasonable suspicion for the stop.

A. Standard of Review

A defendant must satisfy the two-pronged test announced by the Supreme Court of the United States in *Strickland v. Washington*, in order to show IAC. 466

U.S. 668, 80 L. Ed. 2d 674 (1984). The test in *Strickland* for a defendant to show IAC has been adopted by the Supreme Court of North Carolina for state constitutional purposes. *State v. Braswell*, 312 N.C. 553, 324 S.E.2d 241 (1985).

Defendant “must show that his counsel’s conduct fell below an objective standard of reasonableness.” *Id.* at 561-62, 324 S.E.2d at 248 (citing *Strickland*, 466 U.S. at 687-8, 80 L. Ed. 2d at 693).

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable.

Id.

When reviewing an IAC claim, “this Court engages in a presumption that trial counsel’s representation is within the boundaries of acceptable professional conduct.” *State v. Roache*, 358 N.C. 243, 280, 595 S.E.2d 381, 406 (2004) (citation omitted). “We ordinarily do not consider it to be the function of an appellate court to second-guess counsel’s tactical decisions[.]” *State v. Lowery*, 318 N.C. 54, 68, 347 S.E.2d 729, 739 (1986).

Our Courts have rejected IAC claims based on counsel’s failure to object to

evidence deemed admissible on appeal. *See State v. Frazier*, 142 N.C. App. 361, 368, 542 S.E.2d 682, 687 (2001) (“A counsel’s failure to object to evidence which is in fact admissible does not amount to deficient representation.”); *State v. Lee*, 348 N.C. 474, 492, 501 S.E.2d 334, 345 (1998) (“Since we concluded that this evidence was admissible, the defense attorney’s failure to object to it cannot constitute ineffective assistance.”).

Defendant did not meet his burden to demonstrate IAC when Defendant effectively abandoned the issue his trial counsel purportedly failed to preserve. Defendant’s argument is overruled.

VII. Conclusion

The trial court properly denied Defendant’s motion to suppress evidence, despite the better practice, to make findings of fact or conclusions of law where no material conflicts exist in the evidence. Defendant was not prejudiced by his counsel’s failure to object to the admission of evidence; therefore, his IAC claim fails. *It is so ordered.*

NO ERROR.

Judges HAMPSON and STADING concur.

Report per Rule 30(e)