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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-151

Filed 21 October 2026

Edgecombe County, Nos. 22CR278066-320, 22CR703129-320, 23CR000300-320

STATE OF NORTH CAROLINA

v.

SHIGREGGERNAL SIQUANN HIGGS

Appeal by defendant from order entered 31 January 2024 by Judge Seth H. Edwards in Edgecombe County Superior Court. Heard in the Court of Appeals 15 September 2026.

W. Michael Spivey for defendant-appellant.

Attorney General Jeff Jackson, by Special Deputy Attorney General Christopher J. Stipes, for the State.

FREEMAN, Judge.

Defendant appeals from the trial court's order denying his motion to suppress. On appeal, defendant argues the trial court plainly erred by denying his motion to suppress the evidence obtained by a warrantless seizure and search of his vehicle. After careful review, we conclude that defendant received a fair trial free from plain error.

I. Factual and Procedural Background

On 25 August 2022, around 11:00 to 11:15 A.M., Officer Spruill and Officer Harris of the Edgecombe County Sheriff's Office were sitting in their patrol vehicles in a parking lot beside East Grand Avenue in Rocky Mount, North Carolina.¹ While sitting in the parking lot, both officers observed a silver Chevrolet Camaro drive in front of them with the driver side window down. The vehicle was about twenty yards from the officers with nothing obstructing their line of sight. At the motion to suppress hearing, Officer Harris testified that Defendant "was moving his thumb in a manner he could have been sending a text message." Officer Spruill observed defendant with a phone in his right hand and his left hand on the steering wheel. Officer Spruill then pulled the vehicle over.

As Officer Spruill approached the window of the vehicle, he smelled the odor of marijuana. Officer Spruill introduced himself to defendant and explained the reason for pulling him over was for texting and driving. Defendant responded by saying he was changing his music. Officer Spruill then began to ask about the marijuana smell, but defendant interrupted and stated, "I just got done smoking." Officer Harris also smelled the odor of marijuana coming from the vehicle as he approached. Officer Spruill then had defendant step out of the vehicle and detained him so that he could conduct a search of the vehicle. Defendant told Officer Spruill that there was a little

¹ Due to the ranks of the Harris and Spruill being inconsistent in the record, we will refer to them both as officers.

bit of marijuana in a bookbag in the backseat of the vehicle. Officer Spruill searched the backpack and found marijuana, a scale, cash, and defendant's identification card. Officer Harris searched the rest of the vehicle and found a handgun under the driver's seat.

Defendant was subsequently charged with intent to sell and deliver marijuana, possession of more than one and one half ounces of marijuana, driving while license revoked, texting while driving, and carrying a concealed gun after prior conviction for carrying concealed gun. On 13 November 2023, defendant filed a motion to suppress the evidence obtained during the search of his vehicle, arguing the officers lacked reasonable suspicion to justify the stop. On 31 January 2024, the trial court denied the motion. At trial, defendant did not object to the introduction of the evidence obtained from the search. On 25 June 2024, defendant was found guilty of all charges except for texting while driving. Defendant timely appealed.

II. Jurisdiction

Because this Court has jurisdiction over "any final judgment of a superior court, other than one based on a plea of nolo contendere," we have jurisdiction over defendant's appeal. N.C.G.S. §§ 7A-27(b)(1), 15A-1444(a) (2025).

III. Standard of Review

"The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Highsmith*, 285 N.C. App.

198, 203 (2022) (quoting *State v. Faulk*, 256 N.C. App. 255, 262 (2017)). If a defendant does not challenge certain findings of fact, those findings are presumed to be supported by competent evidence and therefore are binding on appeal. *State v. Forte*, 257 N.C. App. 505, 512 (2018). “If the trial court erred [in denying the defendant’s motion to suppress], we then determine whether that error ‘had a probable impact on the jury’s finding that the defendant was guilty.’” *State v. Walters*, 286 N.C. App. 746, 753 (2022) (quoting *State v. Lawrence*, 365 N.C. 506, 518 (2012)). If the “defendant failed to object at trial, our standard of review of the admission of the challenged evidence is for plain error.” *State v. Dalton*, 274 N.C. App. 48, 51 (2020).

IV. Discussion

Defendant argues the trial court committed plain error by denying his motion to suppress the evidence obtained during the search of his vehicle. Specifically, defendant argues that under the totality of the circumstances the officers lacked a reasonable, articulable suspicion to stop his vehicle for texting while driving in violation of N.C.G.S. § 20-137.4A. Defendant did not object to the introduction of the evidence from the traffic stop at trial. Accordingly, we review for plain error. N.C. R. App. P. 10(a).

Our Supreme Court has explained that plain error “should be ‘applied cautiously and only in the exceptional case,’ that it is reserved for ‘grave error which amounts to a denial of a fundamental right of the accused,’ and that it focuses on error that has ‘resulted in a miscarriage of justice’ or the denial of a ‘fair trial.’” *State*

v. Reber, 386 N.C. 153, 158 (2024) (quoting *Lawrence*, 365 N.C. at 516–17). Under plain error review, the defendant must show (1) “a fundamental error occurred at trial,” (2) “the error had a ‘probable impact’ on the outcome,” and (3) the error is an “exceptional case” that “seriously affects the ‘fairness, integrity, or public reputation of the judicial proceedings.’” *Id.* (citing *Lawrence*, 365 N.C. at 518). This test examines “all the evidence except for the challenged evidence and asks whether, in light of that remaining evidence, the jury probably would have done something different.” *Id.* at 162. “[T]his standard—showing that a jury probably would have reached a different result—requires a showing that the outcome is significantly more likely than not.” *Id.* at 159 (emphasis omitted). “An event will probably occur if it is almost certainly the expected outcome.” *Id.* (cleaned up).

“The Fourth Amendment to the United States Constitution as well as Article I, Section 20 of the North Carolina Constitution guarantee the right of people to be secure in their person and property, and free from unreasonable searches.” *State v. Heien*, 226 N.C. App. 280, 286 (2013). Traffic stops are typically reviewed under the *Terry v. Ohio* framework. 392 U.S. 1 (1968). Under the *Terry* framework, a “traffic stop is permitted if the officer has a ‘reasonable, articulable suspicion that criminal activity is afoot.’” *Dalton*, 274 N.C. App. at 52 (quoting *State v. Styles*, 362 N.C. 412, 414 (2008)). An officer may stop a motorist if the officer has a reasonable suspicion that criminal activity is afoot or if the motorist commits a violation in their presence. *Heien*, 226 N.C. App. at 286.

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“To meet the reasonable suspicion standard, it is enough for the officer to *reasonably believe* that a driver has violated the law.” *State v. Johnson*, 370 N.C. 32, 38 (2017). In deciding whether an officer had a justified reasonable suspicion, this Court must consider the totality of the circumstances. *Styles*, 362 N.C. at 414. “The only requirement is a minimal level of objective justification, something more than an ‘unparticularized suspicion or hunch.’” *Dalton*, 274 N.C. App. at 52 (quoting *State v. Watkins*, 337 N.C. 437, 442 (1994)). Even if the conduct may have an innocent explanation, that alone does not defeat the officer’s reasonable suspicion. *State v. George*, 292 N.C. App. 606, 613 (2024).

Our statutes prohibit certain types of cell phone use while driving, specifically texting while driving. Section 20-137.4A states:

(a) Offense. - It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to:

(1) Manually enter multiple letters or text in the device as a means of communicating with another person; or

(2) Read any email or text message transmitted to the device or stored within the device, provided that this prohibition shall not apply to any name or number stored in the device nor to any caller identification information.

. . . .

(b) Exceptions. - The provisions of this section shall not apply to:

(1) The operator of a vehicle that is lawfully parked or stopped.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of factory-installed or aftermarket global positioning systems (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system.

(4) The use of voice operated technology.

N.C.G.S. § 20-137.4A (2023).

Defendant argues that the totality of the circumstances did not give rise to a reasonable suspicion of a statutory violation, because the specific acts observed by the officers were insufficient to justify the stop. Defendant argues that because nearly any cell phone use requires moving a thumb, an officer merely observing him holding a phone near his face and moving his thumb is insufficient, without more, to rise to a level of reasonable suspicion. Further, defendant argues that nothing in the officers' testimony rises to the level of an objectively, reasonable, articulable suspicion that defendant was texting rather than engaging in a lawful use of his phone. We disagree.

A. Findings of Fact

In its order denying defendant's motion to suppress, the trial court made the following findings of fact:

1. That on the morning of August 25, 2022, between 11:00-11:15 a.m. Deputies Wade Spruill and Rashawn Harris were sitting stationary in their patrol vehicles in parking lot within the city limits of Rocky Mount.

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2. That both deputies were sitting in their respective vehicles, which were facing East Grand Avenue.
3. That silver Chevrolet Camaro drove in front of them on East Grand Avenue, and the driver's side window was down.
4. That the Chevrolet Camaro drove approximately 20 yards in front of the deputies, and there was nothing between the deputies and the vehicle.
5. That Deputy Harris saw the driver holding the cellular phone and moving his thumb repeatedly, as if in texting manner.
6. That Deputy Harris observed the driver's behavior for approximately 10 seconds and mentioned to Deputy Spruill that the driver was texting and driving.
7. That when Deputy Spruill observed the driver, the window was down, and the driver was looking at cellular phone.
8. That based upon the officers' observations, the deputies believed the driver to be violating N.C.G.S. 20-137.4A, Unlawful use of mobile telephone for text messaging or electronic mail.
9. That both deputies pulled out in an effort to perform traffic stop of the driver of the Chevrolet Camaro, and Deputy Spruill was first able to successfully stop the vehicle in the parking lot of the nearby Family Dollar.

Defendant argues that the officers could not point to facts “that articulated more than unparticularized suspicion or hunch.” Specifically, defendant argues that the trial court’s finding of fact five— “[t]hat [Officer] Harris saw [defendant] holding his cellular phone and moving his thumb repeatedly, as if in a texting manner”—is unsupported by the evidence. We fail to see how this finding is unsupported by the

evidence. Officer Harris testified on cross-examination at the motion to suppress hearing that “he was moving his thumb in a manner he could have been sending a text message.” This was not a mere hunch. Officer Harris testified he saw defendant with his window rolled down, from an unobstructed view, roughly twenty yards away operating a cell phone in a manner that is consistent with a violation of the statute for roughly ten seconds. Therefore, looking at the entirety of Officer Harris’ testimony, finding of fact five was supported by competent evidence. Defendant does not challenge the remaining findings of fact; therefore, those findings are binding on appeal.

B. Conclusion of Law

Defendant argues that the trial court’s findings of fact do not support its conclusion of law.

Conclusion of law one states that “the stop of the Defendant’s vehicle was based upon reasonable suspicion of a violation of N.C.G.S. 20-137.4A, Unlawful use of mobile telephone for text messaging or electronic mail.”

We conclude that the findings of fact support that the officers had a reasonable, articulable suspicion of texting while driving. The trial court found that two officers assigned to the traffic enforcement unit independently observed defendant using a cell phone while driving. Officer Harris specifically observed defendant moving his thumb repeatedly in a manner that is consistent with texting. Officer Harris perceived this for roughly ten seconds from roughly twenty yards away with nothing

interfering with his view. Officer Spruill also observed defendant through an open window looking at his phone while driving. Both officers, based on their observations and experience in traffic enforcement, reasonably believed defendant was violating the statute. These observations constitute more than a mere hunch, as they are specific observations by trained law enforcement officers who identified the conduct as consistent with a statutory violation.

Defendant argues that what the officers observed could have been lawful behavior such as changing the music or using GPS. While this is possible, it does not defeat the reasonableness of the officers' suspicion. As we stated in *Dalton*, "just because a person may be using a wireless telephone while operating a motor vehicle for a valid purpose does not, *ipso facto*, negate the reasonable suspicion that the person is using the device for a prohibited use." 273 N.C. App. at 55.

Defendant's attempt to distinguish the case before us from *Dalton* is not convincing. In *Dalton*, an officer saw a vehicle cross in front of him with a glow inside the vehicle. *Id.* at 53. The officer then pulled out behind the defendant and followed him for a short period. *Id.* The officer confirmed the glow was a cellphone in the defendant's hand and proceeded to pull over the defendant under the belief he was operating a cell phone while driving. *Id.* at 53–54. We held the officer had a reasonable suspicion to pull the defendant over for violating the statute. *Id.* at 55. Defendant tries to distinguish *Dalton* by reasoning that here defendant was not followed and observed for an extended time or that there were "additional indicia of

criminal activity beyond the officers' bare observation of [defendant's] use of a cell phone."

However, as we stressed in *Dalton*, "requiring a law enforcement officer to confirm the specific use of the mobile device as a precondition to making an investigatory stop would be essentially requiring proof beyond a reasonable doubt." *Id.* at 54. Further, we stated that "[w]hile reasonable suspicion is more than a mere hunch, it is surely a much less demanding standard than proof beyond a reasonable doubt." *Id.* As discussed above, there were several factors here that allowed two trained law enforcement officers to independently have a reasonable suspicion that defendant was committing a statutory violation.

Further, defendant relies on *State v. Fields* to argue that there must be something more than the observation of lawful conduct for that observation to give rise to a reasonable suspicion. Defendant's reliance is misplaced. In *Fields*, this Court held that the defendant weaving in his lane, without any other articulable facts, was insufficient to support a reasonable suspicion that the defendant was driving under the influence. 195 N.C. App. 740, 746 (2009). We emphasized how the detective did not observe the defendant violating the law nor were there any circumstances giving rise to a reasonable suspicion. *Id.* By contrast, here, the officers observed more than innocent conduct, as their independent observations of defendant operating his phone with his thumb for a sustained period establishes specific facts that pointed directly to a statutory violation.

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We hold that the trial court's findings of fact were sufficient to support the conclusion that the officers had a reasonable suspicion that defendant was violating N.C.G.S. § 20-137.4A. Therefore, the trial court did not err, much less plainly err, by denying defendant's motion to suppress.

V. Conclusion

For the foregoing reasons, we hold that the trial court did not plainly err in denying defendant's motion to suppress.

NO PLAIN ERROR.

Judges ZACHARY and FLOOD concur.

Report per Rule 30(e).