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NO. COA11-776
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 09CRS244523-24

ANTONIO MARCQUELL JACKSON,
Defendant.

Appeal by defendant from judgment entered 14 February 2011
by Judge Anderson Cromer in Superior Court, Mecklenburg County.
Heard in the Court of Appeals 16 November 2011.

*Attorney General Roy A. Cooper, III, by Associate Attorney
General J. Rick Brown, for the State.*

Michele Goldman, for defendant-appellant.

STROUD, Judge.

Defendant appeals the trial court's denial of his motion to
suppress. For the following reasons, we remand for further
findings of fact.

I. Background

On or about 10 May 2010, defendant was indicted for
possession with intent to sell or deliver a controlled substance

and possession of drug paraphernalia. On 3 September 2010, defendant filed a motion to suppress requesting suppression of "any and all physical evidence seized from the Defendant by the police" because "such evidence was obtained as the result of an illegal and unconstitutional seizure of the Defendant." On 4 November 2010, the trial court denied the motion to suppress, making the following findings of fact in open court:

[t]hat Officer Brad Dunn with the Charlotte-Mecklenburg Police Department has been an employee of that department for the last five years and has worked the North Tryon corridor, was working with Officer Allman in a saturation patrol shift.

That while engaged in that employment he noticed a vehicle being driven by the defendant on North Tryon Street.

That they also observed the front passenger in that vehicle not wearing a seat belt.

That they engaged in a traffic stop of the defendant.

That he pulled off in the KFC parking lot.

That Officer Dunn approached the driver and asked him for his driver's license and registration.

And Officer Allman approached the passenger to get his information.

That they took the personal information from the two occupants of the vehicle back to their patrol car which they determined that the passenger had a record for drugs.

That Officer Dunn then reproached [sic] the vehicle on the driver's side.

Officer Allman approached on the other side, the passenger side, and he did so trying to get the defendant's consent for a

search.

That he asked the defendant if he would step out of the vehicle and upon doing so he noticed that the defendant barely opened the door so that he could slide through the door sideways.

And upon doing so in plain view he observed a baggie of what he believed to be a paraphernalia bag containing a substance which he later thought was cocaine inside of it, crack cocaine.

That as soon as the defendant exited his car he put him in handcuffs, asked for permission to search his person, and did so search his person.

That this restraint of the occupant of the vehicle's liberty this Court views to be a minimal intrusion flow[ing] from the lawful stop of the vehicle.

That the officer in asking the passenger to get out of the vehicle asked so for the purposes of his own safety and to prevent coercion when he is trying to get permission to obtain the search of the person of the driver.

The trial court concluded "that there was no constitutional violation of the defendant's rights and that any intrusion on the defendant's personal liberty is minimum and does not constitute a serious intrusion on his personal rights" and denied defendant's motion to suppress. On or about 14 February 2011, defendant pled guilty to the two charges against him. Defendant appeals the denial of his motion to suppress.

II. Standard of Review

It is well established that the standard of review to determine whether a

trial court properly denied a motion to suppress is whether the trial court's findings of fact are supported by the evidence and whether the findings of fact support the conclusions of law. The trial court's conclusions of law are reviewed *de novo* and must be legally correct. Additionally, findings of fact to which defendant failed to assign error are binding on appeal.

State v. Williams, ___ N.C. App. ___, ___, 703 S.E.2d 905, 907, *disc. review denied*, 365 N.C. 188, 707 S.E.2d 237 (2011) (citations, quotation marks, and brackets omitted).

III. Passenger of Vehicle

The trial court found "[t]hat the officer in asking the passenger to get out of the vehicle asked so for the purposes of his own safety and to prevent coercion when he is trying to get permission to obtain the search of the person of the driver." Defendant now argues that "[t]his finding is not supported by substantial evidence [as] . . . [t]here was no testimony concerning the removal of the passenger." The State concedes "that this finding is not supported by any substantial evidence." After a thorough review of the record and transcript, we too agree with defendant that "this finding lacks the support of substantial evidence in the record [and] it cannot be used to support the trial court's conclusions of law." Thus, we will not consider this finding of fact in determining

whether the trial court properly denied defendant's motion to dismiss.

IV. Lawful Scope of Investigation

Defendant next argues that his constitutional rights "were violated when an initially lawful traffic stop was extended beyond the original justification for the stop" when "[n]o facts existed to transform the detention into a consensual encounter" and "Dunn had no reasonable, articulable suspicion to support the extension." Thus, defendant does not contest the legality of the original stop by Officer Dunn but instead argues that he had no reason to extend the traffic stop beyond its original purpose into a search for drugs.

This Court has stated that

[g]enerally, the scope of the detention must be carefully tailored to its underlying justification. Once the original purpose of the stop has been addressed, in order to justify further delay, there must be grounds which provide the detaining officer with additional reasonable and articulable suspicion or the encounter must have become consensual. Where no grounds for a reasonable and articulable suspicion exist and where the encounter has not become consensual, a detainee's extended seizure is unconstitutional.

State v. Jackson, 199 N.C. App. 236, 241-42, 681 S.E.2d 492, 496 (2009) (citations and quotation marks omitted).

The State contends that "Defendant's argument is flawed in several respects" citing officer safety, the reasonable time for a traffic stop and what an officer may do during that time, and the plain view doctrine. However, the trial court did not find as fact that Officer Dunn asked defendant to get out of the car for officer safety, as a reasonable part of the initial traffic stop or due to the plain view doctrine; the only finding of fact which addresses Officer Dunn's reasoning for further detaining defendant beyond the scope of the original traffic stop is the finding of fact regarding *the passenger* which we have already determined is not supported by the evidence. The trial court's findings of fact fail to address the reason for Officer Dunn's detention of defendant after "the original purpose of the stop[,] " *see id.*, 199 N.C. App. at 242, 681 S.E.2d at 496, -- the passenger's failure to wear a seatbelt -- had been addressed or for his request that defendant get out of the car. The findings of fact also fail to indicate that either defendant or the passenger consented to a search. The insufficiency of the trial court's findings of fact is further demonstrated by the fact that after the trial court had orally stated the findings of fact and its conclusion, defendant's attorney stated, "Your Honor, may I be heard for the purpose of the record for

additional Findings of Fact?" to which the trial court initially responded, "No sir, you cannot." The trial court later permitted defendant's counsel to offer for the record recommended additional findings of fact. Without findings of fact which are sufficient to address the legal issues raised, we are unable to review the trial court's determination. Even if the "intrusion" upon defendant was "minimal[,] " as the trial court concluded, still there must be a justification for the intrusion. See *id.*, 199 N.C. App. at 241-42, 681 S.E.2d at 496. We are unable to determine whether that justification for the additional detention was, as noted by the State, officer safety, as a reasonable part of a legal stop, plain view of the contraband or for another legal reason. Accordingly, we must remand.

V. Conclusion

For the foregoing reasons, we remand for further findings of fact and conclusions of law based upon the appropriate findings of fact.

REMANDED.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).