IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-876

No. COA22-201

Filed 20 December 2022

Haywood County, No. 19CRS052240

STATE OF NORTH CAROLINA

v.

BROOKE STITES BUSHYHEAD, Defendant.

Appeal by Defendant from judgment entered 27 May 2021 by Judge Bradley B. Letts in Haywood County Superior Court. Heard in the Court of Appeals 5 October 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney G. Mark Teague, for the State.

Gilda C. Rodriguez for Defendant.

GRIFFIN, Judge.

¶ 1 Defendant Brooke Stites Bushyhead appeals from a judgment entered upon a jury's verdict finding her guilty of trafficking by possession and transportation of methamphetamine. Defendant argues the trial court erred in denying her motion to suppress because several findings were not supported by competent evidence, and the detectives' requests to search were not supported by reasonable suspicion. Defendant

also argues the trial court abused its discretion in denying defense counsel's motion to recuse or by failing to refer the motion to a different judge. After review, we conclude that Defendant received a fair trial, free from error.

I. Factual and Procedural Background

¶ 2 On 21 October 2019, Defendant was indicted for trafficking by possession and transportation of methamphetamine, maintaining a vehicle for controlled substances, and having attained the status of habitual felon. Prior to trial, the maintaining a vehicle for controlled substances and having attained the status of habitual felon charges were both voluntarily dismissed.

¶ 3 On 24 May 2021, Defendant's case came for trial in Haywood County Superior Court. At the start of the trial, Defendant filed a motion to suppress evidence alleged to have been obtained without a search warrant. The trial court denied the motion.

¶ 4 The evidence at trial tended to show that on 26 July 2019, Detective Michael Reagan was conducting surveillance in the Red Fox Loop neighborhood, a high drug area, around 4:00 p.m. when he saw Defendant and an unidentified passenger in a Toyota Celica. Detective Reagan saw Defendant pull into a residence, stay for approximately five minutes, then go to another residence. Since Detective Reagan was not in uniform and in an unmarked car, he was unable to conduct a traffic stop on Defendant at that time and could not find another officer in the area to conduct a stop. Detective Reagan discontinued following the vehicle driven by Defendant.

¶ 5 Later that evening, the same Toyota Celica passed Detective Reagan, who observed there were "no tag lights illuminating the rear of the vehicle." Detective Reagan notified Deputy Robertson, who was in the area, and then stopped the vehicle for the light violation. Thereafter, Detective Reagan arrived at the scene. Deputy Robertson asked for a driver's license, the car's registration, and proof of insurance then returned to her patrol vehicle to verify the documents. Meanwhile, Detective Reagan asked both Defendant and the passenger for consent to search the vehicle and they consented. Both Defendant and the passenger were asked out of the vehicle and Detective Reagan performed a *Terry* frisk on the passenger. Deputy Robertson returned the documents, then obtained consent to frisk Defendant. While frisking Defendant, Deputy Robertson found Suboxone strips and pills, marijuana, and methamphetamine in Defendant's bra. Defendant was placed under arrest.

¶ 6 At trial, the jury found Defendant guilty of trafficking by possession and transportation of methamphetamine. Accordingly, Defendant was sentenced to two consecutive terms of 70 to 93 months imprisonment. Defendant appealed in open court.

II. Analysis

¶ 7 Defendant argues the trial court erred in denying her motion to suppress because not only were several findings not supported by competent evidence, but neither Detective Reagan nor Deputy Robertson's requests to search were supported

by reasonable suspicion. Defendant further argues the trial court abused its discretion in denying defense counsel's motion to recuse or by failing to refer the motion to a different judge. We address each argument.

A. Motion to Suppress

¶ 8 Our review of a trial court's denial of a motion to suppress is "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence . . . 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). Where the findings of fact are supported by competent evidence, they will be binding on appeal even if the evidence is conflicting. *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001).

¶ 9 However, "[t]he trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000). Further, "'a trial court's conclusions of law regarding whether the officer had reasonable suspicion [or probable cause] to detain a defendant [are] reviewable *de novo*.'" *State v. Young*, 148 N.C. App. 462, 466, 559 S.E.2d 814, 818 (2002) (quoting *State v. Kincaid*, 147 N.C. App. 94, 97, 555 S.E.2d 294, 297 (2001)).

¶ 10 Defendant argues findings of fact 11, 12, 14, and 17 are all unsupported by competent evidence to support a conclusion that the searches were legal.

¶ 11 Defendant first challenges the portion of finding of fact 11(i) which states, "Detective Reagan explained to the Court . . . he observed *them* bouncing from house-to-house earlier in the day in a high drug area, he had personal knowledge of *their* historical involvement in the drug trade in Haywood County. . . ." Defendant argues this finding—which included the words "them" and "their"—is a serious misstatement of the evidence because Detective Reagan testified he could not identify the passenger during his earlier afternoon surveillance.

¶ 12 This finding, however, is supported by competent evidence from Detective Reagan's testimony: "I observed earlier in the day, *them* bouncing house to house in a high drug area and *their* histories, my prior knowledge of *them*. . . ." (Emphasis added). Further, finding 11(e) clarifies Detective Reagan was unable to identify the passenger. Therefore, finding 11(i) is supported by competent evidence.

¶ 13 Next, Defendant references finding of fact 12, arguing the trial court failed to include Deputy Robertson's testimony in which she stated she "gave all the information back and asked for consent [to search]." Defendant argues this fact was significant because "it represented a conclusion to the investigation of the stated purpose of the traffic stop." Although Defendant argues the trial court omitted a significant piece of evidence, the findings indicate that at the time Deputy Robertson returned to give all the information back, Detective Reagan "had already gained consent to search the vehicle." Further, a reading of findings 12(e) and 15 together

indicate that Deputy Robertson returned Defendant's documents to her upon return. We discern no issue with this finding.

¶ 14 Defendant also challenges finding of fact 14(b) where the trial court stated, "Defendant changed her story and said that Mark Farmer fixed her brake lights." However, the evidence at trial tends to show Defendant first testified she fixed her break lights before asserting Mark Farmer fixed the lights:

> A: And I was confused about why I got stopped because I just fixed the taillights a couple days before that.
>
> [. . .]
>
> A: Because I thought it was funny because I I just checked all the lights and replaced the brake lights[.]
>
> [. . .]
>
> Q: So it's your testimony that you had just fixed your brake light?
>
> A: Two days before, yeah. I had – let me think – Mark – well, Farmer. Farmer fixed the things.

Here, the evidence supports the trial court's finding.

¶ 15 Further, Defendant contests the portion of finding of fact 14(b) where the trial court found Defendant's testimony was "laced with profanity." The trial testimony, however, reveals Defendant utilized the "f" word in multiple responses. Although

Defendant in some responses may have been recounting her responses at the scene, the evidence supports the trial court's finding.

¶ 16 Finally, Defendant also argues the portions of finding of fact 17, which state, "Defendant viewed this hearing as a farce, a joke, and a humorous exercise;" "Defendant's story changed during her testimony and, accordingly, her testimony is not believable;" and "the evidence in this case tends to substantially indicate that Defendant is a habitual drug user and seller involved in the unlawful drug trade here in Haywood County;" are all unsupported by competent evidence.

¶ 17 This finding is supported by competent evidence. As mentioned above, Defendant's testimony was laced with profanity which could indicate she viewed the hearing as a joke. The trial court's finding that Defendant changed her testimony rendering it not believable is supported by the fact that Defendant claimed the stop took thirty minutes while it only actually took nineteen and that her testimony as to who was the registered owner of the car was contradicted. These findings are supported by Defendant's testimony stating "we had been arguing at least on the side of the road for a good like 30, 35, 40 minutes, something like that." Likewise, Defendant testified she was the owner of the car and it was titled in her name. Contrary evidence presented at trial shows the vehicle was registered to Anthony Stricker. Finally, the portion of the finding which states the evidence tends to suggest Defendant is a habitual drug user and seller is supported by Detective Reagan's

testimony that he would describe Defendant as "a dealer and a user" and Defendant's testimony that she is an addict.

¶ 18 Each of the findings Defendant contests is supported by competent evidence and these findings are binding on appeal. Defendant's challenges fail.

B. Vehicle Search & *Terry* Frisk

¶ 19 Defendant next argues there was "[n]o reasonable, articulable suspicion to ask for consent to search the car and, thereby, *Terry* frisk the driver and passenger." Alternatively, Defendant argues her consent to search was obtained involuntarily by Deputy Robertson because once Deputy Robertson returned the requested documents, the stop had concluded, the search was unrelated to the stop, and the search of Defendant was also unsupported by reasonable, articulable suspicion. We disagree.

¶ 20 Both our federal and state constitutions grant citizens the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; N.C. Const. art. I, § 20. Under these provisions, courts have utilized the reasonable suspicion standard to review traffic stops and searches that accompany them. *State v. Johnson*, 378 N.C. 236, 2021-NCSC-85, ¶ 16; *State v. Otto*, 366 N.C. 134, 137, 726 S.E.2d 824, 827 (2012) (citations omitted). Under the reasonable suspicion standard, the stop or search must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio,* 392

U.S. 1, 21 (1968) (citations omitted). In assessing whether reasonable suspicion existed, courts are required to consider "the totality of the circumstances[,]" but only need a "minimal level of objective justification, something more than an unparticularized suspicion or hunch." *Otto*, 366 N.C. at 137, 726 S.E.2d at 827 (citations and internal quotations omitted).

¶ 21 An officer's request to search a vehicle that is unrelated to the initial purpose of the traffic stop must be supported by a "reasonable articulable suspicion of additional criminal activity." *State v. Parker*, 183 N.C. App. 1, 9, 644 S.E.2d 235, 241–42 (2007). Further, as a safety precaution, an officer "may conduct an external frisk of the detained person if the officer has reason to believe the detainee is armed and potentially dangerous." *State v. Johnson*, 279 N.C. App. 475, 2021-NCCOA-501, ¶ 24 (citations omitted). However, officers may not impermissibly extend the duration of a stop. *See id.* ¶ 22 (citing *State v. Bullock*, 370 N.C. 256, 262, 805 S.E.2d 671, 676 (2017)).

¶ 22 Defendant likens this case to *State v. Johnson*, 279 N.C. App. 475, 2021-NCCOA-501. In *Johnson*, the defendant was stopped for a seatbelt infraction. Upon being stopped, the officer immediately asked him to get out of his vehicle and requested consent to search the defendant. *Id.* ¶ ¶ 2–3. The officer never conducted an external pat down of the defendant but, upon initiating the search, the officer reached into the defendant's sweatshirt and pants pocket and found a wrapper with

what the officer believed contained cocaine. *Id.* ¶ 3. The trial court denied the defendant's motion to suppress the cocaine, and the defendant subsequently entered guilty pleas to the charges. *Id.* ¶ 9. On appeal, this Court reversed the trial court's denial of the motion to suppress, reasoning "the request to search and the full search of [the d]efendant in this case was not related to the mission of the stop and wholly unsupported by any reasonable, articulable suspicion of other criminal activity afoot beyond the seatbelt infraction for which [the officer] initially stopped [the d]efendant." *Id.* ¶ 33.

¶ 23 Here, the purpose of the traffic stop was for a tag light infraction. The accompanying request to search the car and Defendant were unrelated to the traffic stop. However, unlike in *Johnson*, Detective Reagan articulated multiple reasons for requesting Defendant's consent to search the car, leading to the search of Defendant. Detective Reagan knew and previously interacted with Defendant to the extent he was aware she was a drug user and dealer of illegal drugs. Detective Reagan further testified that he observed the red Toyota Celica that Defendant was driving in the Red Fox Loop neighborhood "jumping" between residences, a behavior that Detective Reagan recognized, based on his training and experience, as indicative of illegal drug dealing. Based on Detective Reagan's previous knowledge of Defendant, and Defendant's behavior earlier in the day we hold that there was a reasonable articulable suspicion of additional criminal activity justifying the request to search

Defendant's vehicle and Defendant, which were both consented to.

¶ 24 Defendant's argument that Deputy Robertson impermissibly searched her is meritless. Deputy Robertson was coming back to return Defendant's documents and began assisting Detective Reagan in his search of Defendant and the passenger. This search was permissible based on Defendant's consent and Detective Reagan's observations. Thus, the stop was not impermissibly extended by Deputy Robertson's search, and Defendant's consent to the search was not involuntarily given.

C. Recusal

¶ 25 This Court will review the denial of a motion to recuse for abuse of discretion. *State v. Inman*, 39 N.C. App. 366, 369, 249 S.E.2d 884, 886 (1979). An "[a]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

¶ 26 Defendant argues the trial court erred in failing to recuse himself or refer the recusal motion to another judge.

¶ 27 Under N.C. Gen Stat. § 15A-1223(b), upon a motion by the defendant, a judge must recuse himself from presiding over a criminal trial if he is prejudiced against the defendant or if he is for any reason "unable to perform the duties required of him in an impartial manner." N.C. Gen Stat. § 15A-1223(b) (2021). The defendant must make the motion to disqualify in writing and it "must be accompanied by one or more

affidavits setting forth facts relied upon to show the grounds for disqualification." N.C. Gen Stat. § 15A-1223(c) (2021). Additionally, unless good cause is shown, the motion must be filed no less than five days before the case is called for trial. N.C. Gen Stat. § 15A-1223(d) (2021). Under this statute, "[g]ood cause includes the discovery of facts constituting grounds for disqualification less than five days before the case is called for trial." *Id.*

¶ 28 Here, Defendant acknowledges her noncompliance with the statute. Defendant failed to make her motion in writing or include with it any affidavits setting forth grounds for disqualification. Further, Defendant did not move for disqualification more than five days before the start of the trial and failed to show good cause. Because the record is void of any evidence of a written motion or affidavits, the motion was not made more than five days before trial, and there is no showing of good cause, this Court is constrained to hold the trial court did not abuse its discretion in denying Defendant's motion.

III. Conclusion

Based on the foregoing reasons, we conclude that Defendant received a fair trial, free from error.

NO ERROR.

Judges WOOD and JACKSON concur.

Report per Rule 30(e).