UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4315

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAVORIS STRONG,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Cameron McGowan Currie, Senior District Judge. (0:18-cr-00621-CMC-1)

Submitted: February 22, 2022 Decided: June 9, 2022

Before GREGORY, Chief Judge, MOTZ, Circuit Judge, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Aimee Zmroczek, A.J.Z. LAW FIRM, LLC, Columbia, South Carolina, for Appellant. M. Rhett DeHart, Acting United States Attorney, Kathleen M. Stoughton, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

PER CURIAM:

Javoris Strong appeals his conviction pursuant to a conditional guilty plea to being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). In his plea agreement, Strong reserved the right to appeal the denial of his motion to suppress. Because we find that the district court properly denied Strong's motion to suppress evidence, we affirm.

The facts presented are as follows. After hearing loud music coming from a vehicle parked at a convenience store, the officers approached the vehicle to investigate a potential violation of the city's noise ordinance. The officer who made contact with the driver explained that he approached the vehicle due to the loud music, and he asked the driver for his identification. This officer detected an odor of marijuana and asked the driver if he had smoked marijuana. The driver admitted that he had done so earlier in the day. The officer asked the driver to step out of the vehicle.

At the same time, another officer approached the passenger side of the vehicle and explained to Strong, who was the passenger, that they engaged the vehicle due to the loud music, and asked for his identification. While this officer ran the occupants' licenses, a third officer stepped up to the passenger side. This officer, who heard the driver admit to having used marijuana and saw the driver being removed from the vehicle, asked Strong if he had anything illegal on him. Strong stated that he did and, when asked, Strong admitted having a gun. The officer then directed Strong to exit the vehicle. After frisking Strong, the officer recovered the gun from the front pocket of Strong's sweatshirt. Strong was arrested for unlawful carrying of a firearm.

Strong was subsequently charged with being a felon in possession of a firearm. He moved to suppress evidence of the firearm, contending that the officers lacked reasonable suspicion to stop him and that the officers impermissibly extended the scope and duration of the stop.

"When reviewing a district court's ruling on a motion to suppress, this [c]ourt reviews conclusions of law de novo and underlying factual findings for clear error." *United States v. Fall*, 955 F.3d 363, 369-70 (4th Cir.), *cert. denied*, 141 S. Ct. 310 (2020) (alterations and internal quotation marks omitted). "If, as here, the district court denied the motion to suppress, this [c]ourt construes the evidence in the light most favorable to the government." *Id.* (alterations and internal quotation marks omitted). "When reviewing factual findings for clear error, [this court] particularly defer[s] to a district court's credibility determinations, for it is the role of the district court to observe witnesses and weigh their credibility during a pre-trial motion to suppress." *United States v. Palmer*, 820 F.3d 640, 653 (4th Cir. 2016) (internal quotation marks omitted). Reversal is not warranted unless this court is "left with the definite and firm conviction that a mistake has been committed." *United States v. Crawford*, 734 F.3d 339, 342 (4th Cir. 2013) (internal quotation marks omitted).

"The Fourth Amendment permits an officer to make an investigative detention or stop only if supported 'by a reasonable and articulable suspicion that the person seized is engaged in criminal activity.'" *United States v. Foster*, 634 F.3d 243, 246 (4th Cir. 2011) (quoting *Reid v. Georgia*, 448 U.S. 438, 440 (1980)). Here, the officers testified that they heard loud music and conducted an investigative detention based on their belief that the

vehicle's occupants were violating the city noise ordinance. We discern no clear error by the district court in determining that the officers had reasonable suspicion to initiate the investigative detention of the subject vehicle.

Upon approaching the vehicle and detecting the odor of marijuana, the officers then had reason to believe that the vehicle contained illegal substances; therefore, at that point, probable cause had developed for the officers to search the vehicle for illegal substances. *See United States v. Scheetz*, 293 F.3d 175, 184 (4th Cir. 2002) (holding that an officer detecting the smell of marijuana from a properly stopped vehicle has probable cause to search the vehicle for illegal substances). To effect the search of the vehicle, the officers reasonably requested that the occupants exit the vehicle. *See United States v. Sakyi*, 160 F.3d 164, 169 (4th Cir. 1998) (holding that, when an officer has reasonable suspicion that illegal drugs are in a vehicle, the officer may order the occupants of the vehicle out of the car and conduct a pat-down search for officer safety). Prior to removing Strong from the vehicle, the officer asked Strong if he had anything illegal on him. Although disputed by Strong, we conclude that the district court did not err in ruling that this was a reasonable question, posed in the interest of officer safety, and that it was not outside the scope of the detention. *See United States v. Buzzard*, 1 F.4th 198, 203-04 (4th Cir. 2021) (holding that asking whether there is "anything illegal in the vehicle" during traffic stop relates to officer safety and is not outside the scope of the traffic stop). Moreover, because Strong was not in custody at the time of this inquiry, the question was not subject to the dictates of *Miranda v. Arizona*, 384 U.S. 436 (1966). *See Berkemer v. McCarty*, 468 U.S. 420, 440 (1984) (holding that a temporary detention based on reasonable suspicion does not amount to

"custody" such that *Miranda* warnings must be issued prior to asking questions); *see also New York v. Quarles*, 467 U.S. 649 (1984) (holding that "questions reasonably prompted by a concern for the public safety" or officer safety need not be preceded by *Miranda* warnings).

Once Strong responded to this inquiry by admitting having a gun, the officer was then further justified in removing Strong from the vehicle and searching Strong's person to recover the gun. *See United States v. Robinson*, 846 F.3d 694, 699-700 (4th Cir. 2017) (holding that an "officer can frisk a validly stopped person if the officer reasonably believes that the person is 'armed and dangerous'").

Upon review and for these reasons, we discern no error in the district court's determination that Strong's Fourth Amendment rights were not violated at any time during this encounter and, on that basis, denying Strong's motion to suppress. Accordingly, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED