An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-751

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v. Richmond County
Nos. 99 CRS 8727
MARVIN LEE CRUMP 01 CRS 291

Appeal by defendant from judgment entered 21 February 2001 by Judge Preston Cornelius in Superior Court, Richmond County. Heard in the Court of Appeals 17 April 2002.

Attorney General Roy Cooper, by Assistant Attorney General Kimberly P. Hunt, for the State.

George E. Crump, III, for the defendant-appellant.

WYNN, Judge.

Following conviction on the offenses of possession of cocaine and being an habitual felon, Marvin Lee Crump challenges on appeal the trial court's denial of his motions to suppress evidence and dismiss the habitual felon indictment. We find no error.

Early in the morning on 22 October 1999, Officers Robert Burdick and Ray Polentz of the Rockingham Police Department responded to a call of a breaking and entering at the Economy Motel in Rockingham. Upon discovering a broken motel room window, the officers knocked on the room's door and announced their presence as police officers. They heard women screaming in the room and what

sounded like people wrestling. When no one responded to their persistent knocks, the officers kicked the door open and entered the room.

Inside the room, the officers found defendant sitting on the edge of the bed with no shirt on and his pants about half-way down his legs. The also saw Larry Wright coming out of the bathroom and two women on the opposite side of the bed from defendant. While Officer Polentz detained and searched Wright, Officer Burdick instructed defendant to lie on the floor face down, patted him for weapons, found a hard object in his right front pants pocket and believed it was a knife. Upon reaching into defendant's pocket to remove the object, Officer Burdick pulled out a roll of money; at the same time, a small cellophane bag later determined to contain crack cocaine fell out of defendant's pocket.

Following denial of defendant's motion to suppress the cocaine evidence found in his pocket, the trial court adjudged him guilty of possession of cocaine under N.C. Gen. Stat. § 90-95(a)(3) (1999) and being an habitual felon under N.C. Gen. Stat. § 14-7.1 (1999). Defendant appeals.

Defendant first argues that the trial court erred by failing to find that the search by Officer Burdick was unconstitutional.

> The scope of appellate review of a ruling upon a motion to suppress is "strictly 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." An

> appellate court accords great deference to the trial court's ruling on a motion to suppress because the trial court is entrusted with the duty to hear testimony (thereby observing the demeanor of the witnesses) and to weigh and resolve any conflicts in the evidence.

State v. Johnston, 115 N.C. App. 711, 713, 446 S.E.2d 135, 137 (1994) (internal citations omitted).

In this case, the trial court found that:

> (1) On October 22, 1999, Officer Burdick, accompanied by Officer Polentz did go to the Economy Motel in response to a complaint of a breaking or entering. Arriving there they were sent to an annex and there did see a room which had a broken window. As they approached the door of this room, they did hear sounds described as wrestling and screaming by ladies. That they did knock on the door, announce themselves as police and directed the occupants to open the door. They continued to hear screaming and wrestling. They again announced themselves as police and directed the occupants to open the door some two or three times. The screaming continued throughout.
>
> (2) After the final announcement and request or direction to open the door, Officer Polentz kicked the door in and both officers entered. Officer Burdick there did observe the Defendant in this matter, Marvin Crump, seated on the edge of a bed. That as the Defendant was there seated, his pants were located somewhere between his knees and his thighs. Otherwise he was wearing underwear and no shirt.
>
> (3) Also within the room were two ladies seated on the other side of the bed on which Mr. Crump was seated. An individual by the name of Larry Wright, who is the subject of other criminal charges pending before this Court, was observed standing near or coming from a bathroom. Upon entry of the room, Officer Polentz did go directly to and did detain Larry Wright. Officer Polentz observed in the bathroom a plastic bag floating on top of water in the toilet, seized that and there

> found two objects which he identified as suspected crack/cocaine.
>
> (4) Officer Burdick, upon entering the room directed the Defendant, Marvin Crump, to lie on the floor and did thereafter pat down the Defendant Crump. That as he patted down the pants of the Defendant, he felt an object in the right front pocket which he described as hard, the size approximately three inches long by three-quarter inches wide. There has been no testimony of any weapons having been observed at any time prior to the entry of this room.
>
> (5) Officer Burdick placed his hand in the right front pocket of Defendant Crump and removed the hard object which he determined to be a number of dollar bills in varying denominations totalling $266 folded in such a manner as to constitute a size which the Court finds to be approximately three inches long by one-half or three-quarter inches thick or wide.
>
> (6) As Officer Burdick removed this from the pants pocket of the Defendant, a small plastic bag or portion of a bag containing what was later identified or determined by the officer to be crack/cocaine fell from the Defendant Crump's pocket.
>
> (7) The officers did not witness any fight between these individuals, Marvin Crump or Larry Wright. The Defendant Crump did not try to flee the scene and made no threatening gestures towards the officers.

Defendant does not specifically challenge any of these findings, *see State v. Watkins*, 337 N.C. 437, 438, 446 S.E.2d 67, 68 (1994) (trial court's findings of fact are not reviewable when not excepted to on appeal), and a careful review of the record reveals that these findings are supported by competent evidence, rendering them conclusively binding on appeal. *See Johnston*. Based on these findings, the trial court concluded:

> that it was reasonable for Officer Burdick to pat down or frisk the Defendant Crump as he was entering a motel room after having heard screaming and sounds of wrestling or fighting and at that point he had no idea what the intentions of the Defendant Crump or Mr. Wright were, nor exactly what had been occurring prior thereto.

Additionally, the trial court concluded:

> that no violations of Defendant Crump's Constitutional rights, state or federal, occurred and that the seizure of the small bag containing alleged crack/cocaine occurred solely because it came out of the pocket with the hard object later determined to be a significant number of folded bills of U.S. currency.

The Fourth Amendment protects persons against *unreasonable* searches and seizures, *see* U.S. Const. amend. IV, and is applicable to the states via the Fourteenth Amendment. *See* U.S. Const. amend. XIV; *see also* N.C. Const. art. I, § 20. "[T]he central inquiry under the Fourth Amendment [is] the reasonableness in all the circumstances of the particular governmental intrusion of a citizen's personal security." *Terry v. Ohio*, 392 U.S. 1, 19, 20 L. Ed. 2d 889, 904 (1968).

"Thus, if the totality of circumstances affords an officer reasonable grounds to believe that criminal activity may be afoot, he may temporarily detain the suspect[.]" *State v. Streeter*, 283 N.C. 203, 210, 195 S.E.2d 502, 507 (1973). Furthermore, if the officer's personal observations after the detention "confirm his apprehension that criminal activity may be afoot and indicate that the [detainee] may be armed, [the officer] may then frisk [the detainee] as a matter of self-protection." *Id.* Based on the facts

before us, we uphold the trial court's conclusions that Officer Burdick's search of defendant was reasonable in light of the totality of the circumstances, and that the search did not violate defendant's state or federal constitutional rights. As the trial court's findings of fact support its conclusions of law, defendant's first two assignments of error are without merit.

Defendant also argues that the trial court erred in denying his motion to dismiss the habitual felon indictment on the grounds that the Habitual Felon Act is unconstitutional. However, defendant cites no authority in support of this contention, thereby abandoning this assignment of error. *See* N.C.R. App. P. 28(b)(6) (2002). Furthermore, as defendant recognizes in his brief, our courts have consistently upheld the constitutionality of the Habitual Felon Act. *See, e.g., State v. Todd*, 313 N.C. 110, 326 S.E.2d 249 (1985); *State v. Wilson*, 139 N.C. App. 544, 533 S.E.2d 865, *appeal dismissed and disc. review denied*, 353 N.C. 279, 546 S.E.2d 395 (2000). This assignment of error is without merit.

No error.

Judges McCULLOUGH and BIGGS concur.

Report per Rule 30(e).