

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-370

NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2007

STATE OF NORTH CAROLINA

v.

Henderson County  
Nos. 05 CRS 3981  
06 CRS 239

HENRY ALONZO HUTCHINSON

Appeal by defendant from judgments entered 6 June 2006 by Judge James U. Doyles in Henderson County Superior Court. Heard in the Court of Appeals 30 November 2007.

*Attorney General Roy Cooper, by Assistant Attorney General Derrick C. Meitz, for the State.*  
*Nancy R. Gaines, for defendant-appellant.*

TYSON, Judge.

Henry Alonzo Hutchinson ("defendant") appeals from judgments entered after a jury found him to be guilty of possession of a schedule II controlled substance pursuant to N.C. Gen. Stat. § 90-95(A) (3) and being an habitual felon pursuant to N.C. Gen. Stat. § 14-7.1. We dismiss defendant's appeal.

#### I. Background

The State's evidence tended to show Hendersonville Police Officer Richard Arell ("Officer Arell") was on foot patrol in the area of Seventh Avenue and Robinson Terrace on 1 August 2003. Officer Arell was approached by a woman who complained her son,

Scott Arias, was using her other son's pickup truck without permission. The woman gave Officer Arell a description of the vehicle, a red 1997 Chevrolet pickup truck. In turn, Officer Arell made a formal report to dispatch for other officers to be on the lookout for the truck.

Hendersonville Police Officer Christopher Gordon ("Officer Gordon") was on patrol in the Green Meadows Community when he heard the report on the truck. A short time later, Officer Gordon noticed a truck matching the vehicle's description. Officer Gordon called Officer Arell and stated he had possibly located the pickup truck. Officer Gordon parked nearby, waited for backup assistance to arrive, and watched the vehicle.

While he was waiting, he observed a black male enter the passenger side of the truck, which started heading in his direction. Officer Gordon followed the truck and initiated a stop. Officer Gordon turned on his "takedown lights" and his spotlight so he could see inside the vehicle. As soon as the truck stopped, he noticed the passenger lean forward for an unknown reason and the passenger door opened. Officer Gordon was concerned the passenger was attempting to flee. Officer Gordon quickly stopped his car, jumped out, and ran to the passenger side of the truck. Officer Gordon drew his taser and ordered the passenger, who was later identified as defendant, not to move. Defendant was holding a piece of cloth or paper towel and was rolling it in his hand. Officer Gordon observed something drop from defendant's hands.

Once backup arrived, Officer Gordon took the defendant into custody.

With defendant in custody, Officer Gordon retrieved the articles defendant had dropped onto the ground. Officer Gordon picked up what appeared to be four rocks of crack cocaine and a small bag of marijuana. Defendant was subsequently searched and officers retrieved what appeared to be another rock of crack cocaine from defendant's right front pants pocket. The evidence recovered was confirmed to be .7 grams of cocaine.

On 31 October 2005, defendant was indicted for possession of a schedule II controlled substance. On 30 January 2006, defendant was indicted for being an habitual felon. At the close of the State's evidence, defendant moved to dismiss all the charges against him. Defendant did not testify or offer any evidence on his behalf. Defendant's motion to dismiss was denied. On 6 June 2006, a jury found defendant to be guilty of possession of a schedule II controlled substance and attaining the status of an habitual felon. The trial court sentenced defendant to an active term of 107 to 138 months imprisonment. Defendant appeals.

## II. Issue

Defendant argues the trial court erred by admitting evidence seized during the search in violation of his rights under the Fourth Amendment to the United States Constitution.

## III. Evidence Seized During Traffic Stop

Defendant's sole argument on appeal asserts the trial court erred by failing *sua sponte* to exclude evidence seized in violation

of his constitutional rights. Defendant contends the officers did not have probable cause to arrest him, and that any incriminating evidence was obtained through the search incident to his illegal arrest, tainted and inadmissible.

We decline to review defendant's argument because he failed to move to suppress this evidence at trial. "A motion to suppress made before or during trial is required to properly preserve for appeal an objection to the admissibility of evidence." *State v. Howie*, 153 N.C. App. 801, 802, 571 S.E.2d 245, 246 (2002), *cert. denied*, 357 N.C. 167, 581 S.E.2d 64 (2003). N.C. Gen. Stat. § 15A-974 (2005) provides for suppression of evidence if its exclusion "is required by the Constitution of the United States or the Constitution of the State of North Carolina."

"The *exclusive method* of challenging the admissibility of evidence upon the grounds specified in G.S. 15A-974 is a motion to suppress evidence which complies with the procedural requirements of G.S. 15A-971 *et seq.*" *State v. Conard*, 54 N.C. App. 243, 244-45, 282 S.E.2d 501, 503 (1981) (emphasis supplied) (internal citations omitted). "The burden is on the defendant to demonstrate that he has made his motion to suppress in compliance with the procedural requirements of G.S. 15A-971 *et seq.*; failure to carry that burden waives the right to challenge evidence on constitutional grounds." *Id.* at 245, 282 S.E.2d at 503 (citing *State v. Drakeford*, 37 N.C. App. 340, 246 S.E.2d 55 (1978)). Defendant failed to move to suppress the evidence in question and

waived his argument that the trial court should have excluded the evidence *ex mero moto*.

IV. Conclusion

Defendant failed to move to suppress the evidence obtained from his arrest at trial and his argument challenging the evidence being improperly admitted due to the search being unconstitutional is waived. Defendant's appeal is dismissed.

Dismissed.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).