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NO. COA10-363

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

IN THE MATTER OF:
S.M.D.

Mecklenburg County
No. 09 JB 242

Appeal by juvenile from order entered 2 December 2009 by Judge Hugh Lewis in Mecklenburg County District Court. Heard in the Court of Appeals 30 September 2010.

Roy Cooper, Attorney General, by LaToya B. Powell, Assistant Attorney General, for the State.

Mercedes O. Chut, for juvenile.

THIGPEN, Judge.

In 2009, S.M.D.¹ punched and kicked two law enforcement officers as the officers were attempting to place her in the backseat of a patrol vehicle. The trial court adjudicated S.M.D. delinquent on two petitions of assault against a government official under N.C. Gen. Stat. § 14-33(c)(4) (2009). On appeal,

¹Rules 3.1 and 9 of our Rules of Appellate Procedure provide that in juvenile cases, such as this one, if the pleadings or filings on appeal are not subject to redaction, then the following notice must appear: "FILED PURSUANT TO RULE [3(b)(1)] [3.1(b)] [4(e)]; SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION." N.C.R. App. P. 3.1(b), 9(a). Here, neither the transcript nor the record on appeal contain this notice as required by these rules. Protecting the identity of a juvenile on appeal is paramount. The Court notes that in the future this notice should appear on the first page of the pleading or filing directly under the title. *Id.*

S.M.D. argues that the trial court erred by denying her motion to suppress and her motion to dismiss the assault petitions.

After review, we conclude that the officers were justified in taking temporary physical custody of S.M.D., because the officers had a reasonable basis to believe that S.M.D. was an "undisciplined juvenile" under Chapter 7B of our General Statutes. Since the trial court did not err in denying S.M.D.'s motion to suppress and her motion to dismiss, we affirm the assault adjudications against S.M.D.

I. BACKGROUND

On 2 August 2009 between 7:00 p.m. and 7:30 p.m., Officer Jose Campos of the Charlotte-Mecklenburg Police Department observed S.M.D. standing beside a gas station near the intersection of Eastway Drive and Central Avenue in Charlotte, North Carolina. Officer Campos noticed S.M.D., a young female, during his regular patrol of Eastway Division. Officer Campos described this area at the hearing as a "high-crime area" known for drug-dealing, prostitution, and robberies. The previous day, Officer Campos had seen S.M.D. at the same location.

S.M.D. walked back and forth on Eastway Drive, and when two Hispanic males passed by, S.M.D. stopped them to talk. The males walked away after a brief exchange, and S.M.D. headed toward a nearby bus stop. This interaction led Officer Campos to believe that S.M.D. may be a runaway or a prostitute, and he called Officer Sara McAteer on the radio to request assistance for a female he suspected of engaging in prostitution. Officer Campos parked his

car near the bus station and approached S.M.D. At this time, Officer Campos had no intention of arresting S.M.D.

Officer Campos approached S.M.D. and asked for her information. S.M.D. replied that she did not have to answer any questions because she was fourteen years old. Officer Campos asked S.M.D. again for her name and birth date. S.M.D. gave her name but refused to provide her date of birth; S.M.D. repeated that she did not need to answer any questions because she was fourteen years old. When Officer Campos asked for S.M.D.'s address, S.M.D. replied, "That's none of your f***ing business." When Officer Campos further pressed S.M.D. for her mother's information, she became more upset.

Officer McAteer arrived on the scene during this exchange; and Sergeant Cardaci, the officers' superior who happened to be in the area, also parked his patrol car across the street to observe the situation. As Officer McAteer approached the bus station, Officer McAteer heard S.M.D. say, "I'm fourteen-f***ing-years old. I ain't doing s**t[.]" S.M.D. then walked away heading down Central Avenue toward Trinity Apartments.

Officer Campos, Officer McAteer, and Sergeant Cardaci discussed the situation briefly at the bus station before following S.M.D. The officers observed S.M.D. standing on a second floor balcony in Trinity Apartments overlooking Central Avenue. The officers asked a female at Trinity Apartments whether she knew S.M.D., and the female replied that S.M.D. did not live in the building but a friend of S.M.D.'s did. The officers proceeded to

the second floor balcony where S.M.D. was standing. When they asked S.M.D. again what she was doing, S.M.D. responded that she was visiting some friends in the building. S.M.D. indicated that her friends lived in apartment 209, and Officer McAteer knocked on the door to confirm S.M.D.'s assertion. No one in the apartment answered. The officers then kept pressing S.M.D. to give them her birth date and address, but S.M.D. refused to comply. Finally, Sergeant Cardaci asked S.M.D. where she lived, and he told S.M.D. that if she did not provide them with information, they would call the Department of Social Services. S.M.D. pointed across the street to indicate that she lived in a neighboring apartment complex. When the officers asked S.M.D. what her address was, she said that she did not know since she had only been living there for two months. Sergeant Cardaci instructed Officer McAteer and Officer Campos to put S.M.D. in the back of a patrol car to take her home.

As the officers escorted S.M.D. back to where the police cruisers were parked, S.M.D. began walking at a very quick pace. As S.M.D. walked past the police vehicles, the officers told her to stop. S.M.D. kept walking and told the officers that "she was walking home and [they could] follow her" if they were so inclined. Officer Campos ran up to S.M.D. and grabbed her left wrist to take her back to the patrol car. S.M.D. flailed her arms, hitting Officer Campos in the head with her purse. Officer McAteer bear-hugged S.M.D. to keep her from hitting Officer Campos, and when

S.M.D. continued to resist, Officer McAteer and S.M.D. fell to the ground.

The officers attempted to restrain S.M.D. as she continued to punch, kick, and yell profanities. After Officer Campos and Officer McAteer succeeded in restraining S.M.D. on the ground, Sergeant Cardaci placed handcuffs on S.M.D. to prevent her from further attempting to hit the officers. During the struggle, S.M.D. hit Officer Campos many times and kicked him once in the thigh. As the officers tried to place S.M.D. in the car, S.M.D. kicked Officer McAteer several times in the leg. Once in the car, S.M.D. "proceeded to kick the door, bang her head against the shield, [and] just started yelling, cursing, just being completely irate." Shortly after S.M.D. was placed in the police cruiser, S.M.D.'s mother arrived, and S.M.D. was released when her mother verified S.M.D.'s name, address, and date of birth. Officer Cardaci explained to S.M.D.'s mother that the officers suspected her of engaging in prostitution.

Two juvenile petitions for misdemeanor assault against a government official were filed against S.M.D. on 21 September 2009. One petition alleged an assault against Officer Campos and one petition alleged an assault against Officer McAteer.² On 23 November 2009, S.M.D. filed a motion to suppress the stop and

²When the record on appeal was filed, the record contained only the petition alleging an assault against Officer Campos. On 30 August 2010, S.M.D. filed a motion to amend the record on appeal to include the petition alleging an assault against Officer McAteer. The motion was allowed on 11 October 2010, and therefore both petitions are properly before this Court in this appeal.

seizure. In the motion, S.M.D. contended that the officers lacked reasonable suspicion to conduct the investigatory stop and argued that the officers did not have probable cause thereafter to detain her.

The motion to suppress and the petitions came on for hearing on 30 November 2009. Following a *voir dire* examination of Officer Campos, the trial court denied S.M.D.'s motion to suppress:

THE COURT: The officer sees a young lady who has positioned herself beside a grocery store/convenience store in what is considered by the officer to be an area where they have a lot of incidences. A term has been used high-crime area, but I will indicate that based on what I have heard him speak from his own experience being the officer that there's a lot of illegal activity in that area. This young lady has positioned herself in the same location two days in a row. Her acts during the process would -- has created an articulable suspicion that she was either placing herself into harms way or possibly engaging in unlawful activity. That gave the officer articulable, reasonable suspicion to stop the young lady and talk to her. When she started informing him that it was "none of his f***ing business" as to what she was doing, etcetera, or her name, what have you, that heightened the situation giving him the ability to further investigate once it was determined that she was under the age of majority or under the age of sixteen and also created a requirement that he perform one of his duties of making sure that the juvenile was safe. The mere fact of attempting to either take the young lady back to her parents, her residence, or whoever had custody of her, or deliver her into the hands of DSS is not an arrest.

Furthermore, I would deem under *Tiver vs. Bostic*, 452 et seq. 912 out of the North -- by the Western District of North Carolina there has been nothing that creates an issue that would be a bar from hearing the remainder of the case relating to assault on a government

official because even if we were to establish that there was an illegal restraint, then the individual can only use such force as is reasonably appear [sic] necessary to prevent the unlawful restraint, we haven't gotten there yet.

After all the evidence was presented, the trial court adjudicated S.M.D. as delinquent on both petitions of assault against a government official and placed S.M.D. on probation. S.M.D. filed a timely notice of appeal to this Court on 7 December 2009.

II. ANALYSIS

S.M.D. raises two arguments on appeal: (1) the trial court erred by denying the motion to suppress, because the officers lacked reasonable suspicion to conduct an investigatory stop and S.M.D. used reasonable force to resist her unlawful detainment; and (2) the trial court erred by denying the motion to dismiss the assault petitions against S.M.D., because S.M.D. used reasonable force while resisting an unlawful seizure.

We agree that the officers lacked reasonable suspicion to place S.M.D. in the backseat of the cruiser under *Terry*. However, in this case, a strict *Terry* analysis is not appropriate, because the record shows that the officers were not detaining S.M.D. in order to determine whether a crime was "afoot." Rather, the officers were merely attempting to take her home after she was observed two consecutive days on the street and the officers discovered she was a minor. Chapter 7B of our General Statutes provides law enforcement personnel with the authority to take temporary physical custody of a juvenile in these sorts of circumstances, and S.M.D. had no right to resist the officers'

lawful attempt to return her to her mother. Accordingly, we affirm the adjudications.

A. Standard of Review

Our "review of a trial court's denial of a motion to suppress in a criminal proceeding is strictly limited to a determination of whether the court's findings are supported by competent evidence, even if the evidence is conflicting, and in turn, whether those findings support the court's conclusions of law." *In re Pittman*, 149 N.C. App. 756, 762, 561 S.E.2d 560, 565 (2002). Conclusions of law are binding on appeal if they are supported by the findings of fact. *State v. West*, 119 N.C. App. 562, 565, 459 S.E.2d 55, 57 (1995). "[A] trial court's conclusions of law regarding whether [an] officer had reasonable suspicion [or probable cause] to detain a defendant is reviewable *de novo*." *State v. Wilson*, 155 N.C. App. 89, 93-94, 574 S.E.2d 93, 97 (2002) (citation omitted) (alteration in original).

B. Reasonable Suspicion and Chapter 7B

"[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." *United States v. Sokolow*, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 10 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889 (1968)). We must ascertain whether "[t]he stop [is] based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious

officer, guided by his experience and training." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994). "The only requirement is a minimal level of objective justification, something more than an 'unparticularized suspicion or hunch.'" *Id.* at 442, 446 S.E.2d at 70 (quoting *Sokolow*, 490 U.S. at 7, 104 L. Ed. 2d at 10).

"An encounter between a law enforcement officer and a citizen does not implicate the Fourth Amendment's prohibition against unreasonable searches and seizures in the absence of a 'seizure' of the person." *State v. Williams*, __ N.C. App. __, __, 686 S.E.2d 905, 907 (2009) (citing *Florida v. Royer*, 460 U.S. 491, 498, 75 L. Ed. 2d 229, 236 (1983) ("If there is no detention - no seizure within the meaning of the Fourth Amendment - then no constitutional rights have been infringed.")), *disc. review denied*, 363 N.C. 859, 695 S.E.2d 450 (2010). Law enforcement officers may "pose questions, ask for identification, and request consent to search luggage - provided they do not induce cooperation by coercive means." *United States v. Drayton*, 536 U.S. 194, 201, 153 L. Ed. 2d 242, 251 (2002). "[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required." *Florida v. Bostick*, 501 U.S. 429, 434, 115 L. Ed. 2d 389, 398 (1991).

Applying these principles to the case *sub judice*, the record shows that Officer Campos, Officer McAteer, and Sergeant Cardaci properly followed the requirements of *Terry*. Officer Campos, upon

seeing S.M.D. on the sidewalk and talking to two passing males, approached S.M.D. at the bus stop. His intent was only to ask her some questions after having seen her in the same area the previous day. When Officer Campos began asking S.M.D. to provide her name, birth date, address, etc., S.M.D. was not seized within the context of the Fourth Amendment, because Officer Campos was entitled to ask these questions and S.M.D. was free to leave. Indeed, when Officer McAteer arrived, S.M.D. exercised her rights by refusing to further answer Officer Campos's questions and leaving the bus station. The officers properly let S.M.D. leave the bus station without incident.

At this point, once S.M.D. refused to answer Officer Campos's questions and walked away, the officers lacked justification to investigate further under *Terry*, because there existed no reasonable suspicion that a crime was "afoot." However, under section 7B-1900, "[a] juvenile may be taken into temporary custody without a court order . . . [b]y a law enforcement officer or a juvenile court counselor if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile." N.C. Gen. Stat. § 7B-1900(2) (2009). "Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained." *Id.* An "undisciplined juvenile" is "[a] juvenile who, while less than 16 years of age but at least 6 years of age, . . . has run away from home for a period of more than 24 hours[.]" N.C. Gen. Stat. § 7B-1501(27) (a) (2009).

Here, S.M.D. informed the officers that she was fourteen, and when she was pressed about her residence, she remained elusive. S.M.D. claimed to lack knowledge regarding her address, and she clearly did not live in Trinity Apartments where the officers approached her a second time. Since Officer Campos had observed S.M.D. on the street twice in a twenty-four hour period, it was reasonable for him to conclude that S.M.D. may have run away from home. Moreover, it was reasonable for Sergeant Cardaci to order Officer McAteer and Officer Campos to escort her home. Because the officers were entitled to take physical custody under section 7B-1900 under these circumstances, S.M.D. was not entitled to resist when the officers placed their hands on her to place her in the patrol car.

It follows under this analysis that S.M.D.'s arguments on appeal are misplaced. S.M.D.'s status as a juvenile granted the officers the right to intervene in this case, and *Terry* is not necessary to provide the basis for the officers' physical detainment. The trial court therefore properly concluded that the officers had the authority to detain S.M.D. for the purpose of returning her home. These arguments are overruled.

III. CONCLUSION

The officers in this case acted properly under *Terry*. Since the officers were entitled to take temporary physical custody of S.M.D. under Chapter 7B, S.M.D. was not entitled to resist the officers as they attempted to place her in the patrol car. Thus, the trial court did not err by adjudicating S.M.D. as delinquent on

both petitions of assault against a government official, and the adjudications are

Affirmed.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).