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NO. COA13-434
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v. Alamance County
Nos. 11 CRS 055533
KENNETH MITCHELL BRINCEFIELD 12 CRS 000173

Appeal by defendant from judgment entered 4 December 2012 by Judge Henry W. Hight, Jr. in Alamance County Superior Court. Heard in the Court of Appeals 18 November 2013.

Roy Cooper, Attorney General, by John P. Barkley, Assistant Attorney General, for the State.

A. Wayne Harrison, for defendant-appellant.

MARTIN, Chief Judge.

Defendant Kenneth Mitchell Brincefield appeals from the judgment entered after he pled guilty to possession of a firearm by a felon and having attained habitual felon status. Defendant contends the trial court erred by denying his motion to suppress. We affirm.

At about 2:30 a.m. on 4 September 2011, Patrol Officer Dana Mitchell was dispatched to a night club in Burlington, North

Carolina to help clear a crowd from the club's parking lot after the club closed. Driving with his car windows down, Officer Mitchell could hear a loud disturbance from a quarter of a mile away as he approached the club.

Officer Mitchell arrived at the club at the same time as several other patrol cars. As he pulled into the parking lot, Officer Mitchell heard a gunshot fired from a nearby grassy area, which was full of cars and a crowd of about 200 to 300 people who were running and yelling. Several fleeing people told Officer Mitchell that the shooter was "a light-skinned black male, wearing a yellow shirt." Officer Mitchell "began actively looking for a light-skinned . . . black male wearing a yellow shirt in the area where the gunshots came from," and then saw defendant, who matched the description, standing near a truck in the grassy area. Officer Mitchell approached defendant and recognized him from prior encounters, so he had defendant put his hands on the truck. When Officer Mitchell began to do a frisk of defendant, the officer felt a small handgun in defendant's right front pocket. Officer Mitchell asked defendant what was in his pocket and defendant told him, "I've got a gun." After removing the gun, Officer Mitchell placed defendant in handcuffs. The gun's magazine was loaded.

Defendant filed a motion to suppress evidence seized as a result of the search. The trial court orally denied the motion after a hearing in December 2012, and signed a written order concluding the same on 5 December 2012. After the denial of the motion to suppress, defendant pled guilty to possession of a firearm by a felon and having attained habitual felon status, and the trial court sentenced him to 101 to 131 months imprisonment. Defendant appealed.

In his sole argument on appeal, defendant contends the trial court erred by denying his motion to suppress in light of *Florida v. J.L.*, 529 U.S. 266, 146 L. Ed. 2d 254 (2000). We disagree.

"In reviewing the trial court's order following a motion to suppress, [appellate courts] are bound by the trial court's findings of fact if such findings are supported by competent evidence in the record; but the conclusions of law are fully reviewable on appeal." *State v. Smith*, 346 N.C. 794, 797, 488 S.E.2d 210, 212 (1997). "Accordingly, we review the trial court's pertinent findings of fact to determine whether they are supported by competent evidence from the record, and we review whether its conclusions of law are proper and reflect[] a correct application of [law] to the facts found." *State v.*

Waring, 364 N.C. 443, 470, 701 S.E.2d 615, 633 (2010) (alterations in original) (internal quotation marks omitted), *cert. denied*, ___ U.S. ___, 181 L. Ed. 2d 53 (2011).

“\[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] lack[s] probable cause” *State v. Hudgins*, 195 N.C. App. 430, 433, 672 S.E.2d 717, 719 (2009) (first alteration and omission in original) (quoting *United States v. Sokolow*, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 10 (1989)). “If upon detaining the individual, the officer’s personal observations confirm that criminal activity may be afoot and suggest that the person detained may be armed, the officer may frisk him as a matter of self-protection.” *State v. Rinck*, 303 N.C. 551, 559, 280 S.E.2d 912, 919 (1981) (citing *Terry v. Ohio*, 392 U.S. 1, 30-31, 20 L. Ed. 2d 889, 911 (1968)).

In evaluating whether an officer had a reasonable articulable suspicion to stop and detain a defendant:

A court must consider the totality of the circumstances--the whole picture in determining whether a reasonable suspicion to make an investigatory stop exists. The stop must be 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. The only requirement is a minimal level of objective justification, something more than an unparticularized suspicion or hunch.

State v. Campbell, 359 N.C. 644, 664, 617 S.E.2d 1, 14 (2005) (citations and internal quotation marks omitted), *cert. denied*, 547 U.S. 1073, 164 L. Ed. 2d 523 (2006). Police officers responding to a "swiftly developing situation" are permitted to frisk a defendant for weapons, so long as the search is "strictly limited to [a] determination of whether that defendant [is] armed." *State v. Harris*, 95 N.C. App. 691, 697, 384 S.E.2d 50, 53 (1989), *aff'd per curiam*, 326 N.C. 588, 391 S.E.2d 187 (1990).

In the present case, defendant does not challenge the trial court's findings of fact in its written order denying defendant's motion to suppress. Therefore, the only issue before us is whether the trial court's findings of fact support its conclusions of law and whether its conclusions represent a correct application of the law.

Thus, defendant's argument is dependent upon his position that this case is controlled by *Florida v. J.L.*, but we find that case to be distinguishable. The officers in *J.L.* were investigating an anonymous tip that a person had a gun, see

J.L., 529 U.S. at 268, 146 L. Ed. 2d at 259, not responding to a developing situation. Unlike the officers in *J.L.*, Officer Mitchell was dispatched to help quell an ongoing disturbance, and heard a gunshot when he arrived on the scene. As the trial court found, fleeing witnesses described the alleged shooter to Officer Mitchell, and he observed that defendant matched the description. Officer Mitchell also recognized defendant from prior encounters. Officer Mitchell then frisked defendant and discovered the gun. Under these circumstances, the combination of the statements of fleeing witnesses and Officer Mitchell's own observations support the trial court's conclusion that the officer had reasonable suspicion to briefly detain and frisk defendant for weapons.

Affirmed.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).