NO. COA14-515
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

STATE OF NORTH CAROLINA

v. Craven County
No. 11 CRS 54426

WALTER J. BRYANT, JR.

Appeal by defendant from judgment entered 19 November 2013 by Judge Arnold O. Jones, II in Craven County Superior Court. Heard in the Court of Appeals 23 September 2014.

Attorney General Roy Cooper, by Special Deputy Attorney Jay L. Osborne, for the State.

Ryan McKaig for defendant.

HUNTER, Robert C., Judge.

Defendant Walter Bryant appeals the judgment entered upon his *Alford* plea to possession of cocaine, possession of drug paraphernalia, and attaining the status of a habitual felon. On appeal, defendant argues that the trial court erred by: (1) denying his motion to suppress because the police officers impermissibly expanded the scope of defendant's stop; and (2)

accepting defendant's *Alford* plea by failing to ascertain the type and nature of defendant's medications.

After careful review, we affirm.

Background

The State's evidence at the hearing on defendant's motion to suppress tended to establish the following: On 19 October 2011, around 12:25 a.m., Officer Nicholas Rhodes ("Officer Rhodes"), a three-year police officer with the New Bern Police Department, was on routine patrol. On a street with minimal lighting, he saw defendant riding a bicycle without a headlight on the street. Officer Rhodes turned his patrol car around, turned on his blue lights, and initiated a traffic stop. After telling defendant that he needed to have a headlight on the bike, Officer Rhodes asked him for identification, which defendant provided. Officer Rhodes testified that he was not familiar with defendant before stopping him. While Officer Rhodes called communications to check for outstanding warrants, New Bern Police Officer Laura Heckman ("Officer Heckman") arrived on the scene. Officer Heckman was familiar with both defendant and his twin brother. She claimed that, in the past, defendant had provided false names to police officers.

Officer Rhodes asked defendant a series of routine questions including inquiries as to why he was out at that time of night and where he was going. While talking with him, Officer Rhodes testified that defendant's "level of anxiety start[ed] to rise," defendant was unable to finish his words and sentences to the point where he became unable to carry on a normal conversation, and defendant began "pat[ting]" and "rub[bing]" his pockets. Based on his training and experience, Officer Rhodes felt that defendant's behavior of touching and rubbing his pocket indicated that he had some type of contraband on him. Moreover, due to his concern for officer safety, Officer Rhodes asked defendant whether he had any weapons on him. Defendant replied "no"; however, defendant attempted to reach inside one of his pockets immediately after being asked. Officer Rhodes grabbed his hand and, after letting go, asked again whether defendant had any weapons. Defendant admitted that he had a box cutter in his pocket. Believing that defendant could have more weapons on him, Officer Rhodes patted defendant down. In his coat pocket, Officer Rhodes felt something "long in nature" and asked defendant to take it out of his pocket. Defendant complied, and the object was a pen. Officer Rhodes continued to pat defendant down and claimed that

defendant was still acting "nervous." Again, defendant attempted to put his hand back inside his coat pocket. Officer Rhodes put defendant in handcuffs and explained to him that he was not under arrest but that the handcuffs were necessary for his safety. Officer Rhodes felt something "straight" in defendant's pocket, so he reached inside and took it out. The object was a "push rod," a metal object commonly used to clean out crack pipes.

At this point, Officer Rhodes asked if defendant had any drugs on him. Defendant told him, "Yeah. I just bought a rock." After telling him which pocket the rock was in, Officer Rhodes pulled out a piece of rock cocaine. Officer Rhodes claimed that defendant was in handcuffs approximately 20-30 seconds.

The matter came on for trial on 18 November 2013. Defendant made a motion to suppress the evidence, claiming that it was the product of an unconstitutional search and seizure. On the second day of the hearing, defendant failed to show up to court on time. When he did finally show up, defendant provided the following reasons why he was late:

> Your Honor, I'm making—I'm walking. I can't walk fast, and with my mother, she's sick, and I'm on medication and they make me slow and slurry—I take my medication that's why I

> am slurry now, because I'm on dilantin (sp) high blood pressure and blood thinner I take my medicines [sic] every morning that's why I'm out of breath now. Short of breath. And I didn't know it was that early, your honor, if you can let me go this right here. I'm here. I'm sorry.

The trial court continued with the hearing on defendant's motion.

Based on defendant's nervousness, inability to complete sentences, and "touching" of his pockets, the trial court concluded that officers had reasonable suspicion to further detain defendant after the purpose for the initial stop was complete. Furthermore, the trial court determined that, based on his reasonable belief that defendant was armed, Officer Rhodes was authorized to pat defendant down to check for weapons. Thus, the trial court held that the initial seizure, continued detainment, and patdown search were constitutional and denied defendant's motion to suppress. Defendant entered an *Alford* plea and preserved his right to appeal the denial of his motion to suppress.

Prior to accepting defendant's plea, the trial court engaged in the N.C. Gen. Stat. § 15A-1022(a) inquiry to ensure that defendant's plea was voluntary and was the product of an

informed choice. The following colloquy took place in regards to whether defendant was on drugs or alcohol:

> [THE TRIAL COURT]: Are you now under the influence of alcohol, drugs, narcotics, medicines, pills or any other substances?
>
> [DEFENDANT]: My medicines, your Honor.
>
> (Off-record discussion, defendant-attorney.)
>
> [THE TRIAL COURT]: I know you said this morning you take some medications, other than your prescribed medications, anything else?
>
> [DEFENDANT]: No, sir.
>
> [THE TRIAL COURT]: These prescribed medications, do they affect your ability to understand me?
>
> [DEFENSE COUNSEL]: Can you understand the judge?
>
> [DEFENDANT]: Yes, sir, I understand you, sir.
>
> [DEFENSE COUNSEL]: He has the medications here if the Court would be interested.
>
> [THE TRIAL COURT]: As long as I'm understanding they don't affect his ability to understand what's going on. I understand people are prescribed medication, but do they affect your ability to understand process what's going on?
>
> [DEFENSE COUNSEL]: Do you understand what's going on?
>
> [DEFENDANT]: Yes, sir. Yes, sir.

After conducting the rest of the inquiry, the trial court accepted defendant's *Alford* plea for felonious possession of a controlled substance, possession of drug paraphernalia, and attaining habitual felon status. The trial court sentenced defendant to a minimum term of 87 months to a maximum term of 114 months imprisonment. Defendant appeals.

Arguments

Defendant is not challenging the initial basis for his stop on appeal; instead, he contends that the prolonged seizure and search exceeded the scope of the initial stop and was unreasonable. Specifically, defendant alleges that officers did not have sufficient facts to justify prolonging the *Terry* stop. We disagree.

Our review of a trial court's denial of 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." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). "The trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

Here, although Officer Rhodes initially stopped defendant because he did not have a light on his bike at night, a requirement under section 20-129(e), he expanded the scope of the stop by asking defendant questions unrelated to the traffic infraction and conducting a patdown search. Thus, each component of the seizure that occurred after the initial stop, including the prolonged detention, patdown search, and use of handcuffs, must be examined for reasonableness to satisfy the Fourth Amendment.

With regard to determining the reasonableness of the scope of a *Terry* stop, this Court has noted:

> Generally, the scope of the detention must be carefully tailored to its underlying justification. To expand the scope of a lawful detention, an officer must have reasonable suspicion, based on specific and articulable facts, that criminal activity is afoot. The specific and articuable facts, and the rational inferences drawn from them, are to be viewed through the eyes of a reasonable, cautious officer, guided by his experience and training. In determining whether the further detention was reasonable, the court must consider the totality of the circumstances.

State v. Hernandez, 170 N.C. App. 299, 308, 612 S.E.2d 420, 426 (2005) (internal quotation marks and citations omitted).

In support of his decision to prolong defendant's detention, Officer Rhodes cited defendant's extreme nervousness

that resulted in him being unable to complete words or sentences or carry on a normal conversation. "Although our Supreme Court previously has stated nervousness can be a factor in determining whether reasonable suspicion exists, our Supreme Court has never said nervousness alone is sufficient to determine whether reasonable suspicion exists when looking at the totality of the circumstances." *State v. Myles*, 188 N.C. App. 42, 50, 654 S.E.2d 757-58, *aff'd per curiam*, 362 N.C. 344, 661 S.E.2d 732 (2008). Thus, the issue is whether there were sufficient other factors in conjunction with defendant's nervousness to justify the prolonged detention.

Here, specific articulable facts supporting a reasonable suspicion of criminal activity existed to justify the continued detention of defendant. Defendant did not exhibit an ordinary level of nervousness; instead, he was so nervous that he was unable to finish words or sentences. As the trial court found, "[t]he reactions of the defendant are not consistent with being stopped for just driving a bicycle." Furthermore, during the routine questioning as to whether he had any contraband on him, defendant repeatedly "pat[ted] his pockets" and "continuously rub[bed] his right pocket." Officer Rhodes testified that, based on his training and experience, "people will pat or touch

pockets . . . [because] there's something there they don't want [him] to see." Finally, after being asked whether he had any weapons, defendant attempted to reach inside one of his pockets. Officer Rhodes had reasonable suspicion, based on his experience and training, that defendant had contraband on him based on defendant's conduct during the stop and "the rational inferences from those facts." *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 167 (2012). Accordingly, under the totality of the circumstances, Officer Rhodes had reasonable, articulable suspicion to expand the scope of the seizure and further detain defendant to determine whether he had any contraband on him.

Furthermore, Officer Rhodes was justified in patting defendant down to check for weapons based on Officer Rhodes's reasonable belief that defendant was armed. With regard to frisking a defendant for a weapon during a *Terry* stop, our Court has noted:

> In determining the reasonableness of a weapons frisk, we are guided by the Terry standard, adopted by our Supreme Court in State v. Peck, 305 N.C. 734, 291 S.E.2d 637 (1982), and must resolve whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Accordingly, the officer need not be absolutely certain that the individual is armed. Rather, the officer is entitled to formulate common-sense conclusions about the

> modes or patterns of operation of certain kinds of lawbreakers in reasoning that an individual may be armed.

State v. King, 206 N.C. App. 585, 589, 696 S.E.2d 913, 915 (2010). Here, not only did defendant attempt to reach into one of his pockets, but he also admitted that he had a box cutter in his pocket. When viewed from the "common-sense," *id.*, perspective of law enforcement, Officer Rhodes was justified in patting defendant down to look for additional weapons. In sum, the evidence shows that: (1) defendant continued to act extremely nervous during the entire encounter with law enforcement; (2) he repeatedly touched his pockets; (3) defendant tried to reach inside a pocket even after Officer Rhodes had told him not to do so; and (4) defendant admitted having a weapon on him. In totality, these circumstances supported the trial court's conclusion that Officer Rhodes had reasonable grounds to frisk defendant during the *Terry* stop.

Finally, with regard to Officer Rhodes's use of handcuffs during the stop, "when conducting investigative stops, police officers are authorized to take such steps as are reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop." *State v. Campbell*, 188 N.C. App. 701, 708-09, 656 S.E.2d 721, 727 (2008). Here,

after Officer Rhodes told defendant not to reach into his pocket for a second time, defendant again tried to put his hand back inside his coat pocket. Believing he was reaching for a weapon, Officer Rhodes placed defendant in handcuffs while he continued to pat him down. Thus, Officer Rhodes was authorized to place defendant in handcuffs to protect his personal safety because Officer Rhodes reasonably believed that defendant may have had another weapon on him and that defendant was trying to gain access to it.

In sum, Officer Rhodes was justified in detaining defendant and expanding the scope of the initial seizure based on his reasonable, articulable suspicion that defendant had contraband on him. Furthermore, Officer Rhodes was authorized to frisk defendant based on defendant's admission that he had a weapon on him and the fact that defendant attempted to reach inside his pocket after Officer Rhodes instructed him not to do so. Finally, the act of handcuffing defendant was not unreasonable but, instead, was done to protect officer safety and maintain status quo. Therefore, the crack cocaine and metal push-rod found were not obtained in violation of defendant's Fourth Amendment rights, and the trial court properly denied his motion to suppress.

Next, defendant contends that the trial court erred in accepting his *Alford* plea. Specifically, he argues that the effect of his prescription medications and their influence on him was evident to the trial court. Accordingly, defendant alleges that the trial court could not have determined whether the plea was the result of a knowing, intelligent, and voluntary waiver of his rights when it failed to inquire further as to defendant's prescription medications. We disagree.

Initially, we must address whether defendant has the right to appeal the trial court's acceptance of his *Alford* plea. This Court has noted that:

> A defendant's right to appeal a conviction is purely statutory. A defendant who has entered a plea of guilty is not entitled to appellate review as a matter of right, unless the defendant is appealing sentencing issues or the denial of a motion to suppress, or the defendant has made an unsuccessful motion to withdraw the guilty plea. Thus, a defendant does not have an appeal as a matter of right to challenge the trial court's acceptance of his guilty plea as knowing and voluntary absent a denial of a motion to withdraw that plea.

State v. Santos, 210 N.C. App. 448, 450, 708 S.E.2d 208, 210 (2011). Therefore, since defendant is not appealing the denial of a motion to withdraw his plea, he is not entitled to an appeal of right regarding his plea. However, he has filed a

petition for writ of certiorari, which we grant, to address defendant's argument on appeal regarding the trial court's inquiry pursuant to section 15A-1022(a).[1]

"A defendant's plea must be made voluntarily, intelligently and understandingly." *State v. McNeill*, 158 N.C. App. 96, 103, 580 S.E.2d 27, 31 (2003). Although defendant initially complained that his prescription medications made him late for court, short of breath, and "slow and slurry," he specifically and steadfastly denied that they interfered with his ability to know what was going on. There is nothing in the record suggesting that defendant's state of mind was so impaired or altered that his plea could not have been the product of an informed or voluntary choice. In contrast, defendant, when asked directly by the trial court, claimed that he understood the judge and what was "going on" during the hearing. Therefore, the trial court did not err in accepting his *Alford* plea.

Conclusion

Because Officer Rhodes had reasonable suspicion that criminal activity was afoot, he was justified in expanding the scope of defendant's seizure. Furthermore, Officer Rhodes had a

[1] Since we are granting defendant's petition, we deny the State's motion to dismiss.

reasonable belief that defendant may have had a weapon on him in addition to the box cutter; therefore, he was authorized to frisk defendant and place him in handcuffs after defendant refused to stop reaching into his pocket. Finally, although defendant admitted that he was on medications at the time he entered his *Alford* plea, the trial court did not err in accepting it because there was nothing to suggest that his plea was not the product of an informed and voluntary choice.

AFFIRMED.

Judges DILLON and DAVIS concur.

Report per Rule 30(e).