IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA13-1204-2

Filed: 18 August 2015

Guilford County, No. 12CRS74220

STATE OF NORTH CAROLINA

v.

CURTIS MARIO BENTON, Defendant.

Appeal by Defendant from order entered 25 April 2013 by Judge Ronald E. Spivey and judgment entered 15 May 2013 by Judge David L. Hall in Guilford County Superior Court. Heard in the Court of Appeals 19 February 2014. By unpublished opinion entered 3 June 2014, a unanimous panel of this Court reversed in part the order entered and vacated in part the judgment. *State v. Benton*, ___ N.C. App. ___, 762 S.E.2d 1, 2014, N.C. App. LEXIS 596 (2014) (unpublished). By order entered 11 June 2015, the Supreme Court vacated the decision of this Court and "remanded to [this] court for reconsideration in light of" its holding in the companion case, *State v. Jackson*, ___ N.C. ___, ___ S.E.2d ___, 2015 N.C. LEXIS 446 (N.C., June 11, 2015). *State v. Benton*, ___ N.C. ___, 772 S.E.2d 238, 2015 N.C. LEXIS 445 (N.C., June 11, 2015).

Attorney General Roy Cooper, by Assistant Attorney General Derrick C. Mertz, for the State.

Mark L. Hayes for Defendant.

DILLON, Judge.

This case comes to us on remand from the Supreme Court of North Carolina, which reversed this Court's prior decision, for the purpose of considering the issues raised in Defendant's original appeal based on its holding in the companion case of *State v. Jackson*, ___ N.C. ___, ___ S.E.2d ___, 2015 N.C. LEXIS 446 (N.C., June 11, 2015).

Jackson and the present case arose from the same event. Mr. Jackson and Mr. Benton were stopped and searched by a police officer; and, based on items seized during that search, Mr. Jackson was indicted for possession of a firearm by a felon, possession of a firearm with an altered serial number, and conspiracy to possess with intent to sell or deliver marijuana. *Id.* *1. In his case, Mr. Jackson moved to suppress evidence obtained as a result of the stop, which was denied by the trial court. *Id.* On appeal, this Court by a 2-1 vote reversed the trial court's denial of Mr. Jackson's motion to suppress based on the lack of reasonable suspicion for the officer to conduct the stop and search. *State v. Jackson*, ___ N.C. App. ___, ___, 758 S.E.2d 39, 45-46 (2014). In reversing this holding, our Supreme Court determined that the unchallenged findings of fact "create reasonable suspicion to justify the initial investigatory stop of [Mr. Jackson]," noting that in addition to Mr. Jackson's and Mr. Benton's presence in "a high crime or high drug area," they also were "in a specific

location known for hand-to-hand drug transactions that had been the site of many narcotics investigations; [Messrs. Jackson] and Benton split up and walked in opposite directions upon seeing a marked police vehicle approach; they came back very near to the same location once the patrol car passed; and they walked apart a second time upon seeing [the officer's] return." *Jackson*, 2015 N.C. LEXIS 446 *9-10.

Here, Defendant Benton's charges were based on evidence obtained as a result of the same stop and search circumstances, as analyzed in *Jackson*. *Benton*, 2015 N.C. LEXIS 445 *1. Defendant Benton filed a motion to suppress similar to that filed by Mr. Jackson in *Jackson* and the trial court denied this motion based on findings similar to those made by the trial court in *Jackson*, concluding that there was reasonable suspicion for the officer to stop and search Defendant Benton. *Id.*[1] While reserving his right to appeal the denial of his motion to suppress, Defendant Benton pleaded guilty to possession with intent to sell or deliver marijuana and to possession of marijuana on the premises of a local confinement facility. *Id.* *1. On appeal, this Court, in reversing the trial court's denial of Defendant Benton's motion to suppress and vacating his convictions, held that "we are bound by our decision in *Jackson*, where this Court, by a 2-1 vote, held that [the officer's] investigatory stop was

[1]Specifically, the trial court found, *inter alia,* that Officer Brown was on patrol in a high crime and high drug activity area; when Officer Brown initially observed Defendant and the other person (Mr. Jackson) they split up when his police car came into view; upon coming back to the same place, Officer Brown observed that the two persons "had reassembled at approximately the same location in front of the store"; and when they observed Officer Brown a second time they reacted again by separating and walking in opposite directions.

invalid[,]" noting that even though Defendant Benton and "Mr. Jackson were ultimately *searched* by different officers, they were both initially *stopped* by the same officer, at the same time, under the same circumstances." *Id.* *3 (emphasis in original).

On remand, we consider the arguments of Defendant. First, Defendant argues that reasonable suspicion did not exist to justify the stop. Specifically, Defendant points out that the trial court found that he was not stopped by Officer Brown, who stopped Mr. Jackson, but rather by a second officer, Officer Estes, who arrived on the scene in response to a radio call by Officer Brown. However, the order clearly finds the same essential facts as found by the trial court in *Jackson* that led Officer Brown to develop his suspicion, facts which our Supreme Court held in *Jackson* were sufficient to constitute reasonable suspicion. The trial court further found that Officer Estes came to the scene to assist in response to a call made by the Officer Brown. Therefore, even though the trial court found that it was Officer Estes who actually ordered Defendant to stop,[2] we hold that the unchallenged findings – especially those concerning what Officer Brown observed – set forth "a particularized and objective basis for suspecting . . . [Defendant] of breaking the law." *Heien v.*

[2]Defendant argues, and there is evidence in the record to support, that he was already subject to a stop by Officer Brown when Officer Estes arrived on the scene. However, to the extent that the trial court erred in finding that Officer Estes – and not Officer Brown – was the officer who stopped Defendant, we hold that the error is not reversible. Indeed, if it was Officer Brown who made the stop, the trial court's conclusion that reasonable suspicion was present does not change based on our Supreme Court's opinion in *Jackson*.

North Carolina, 574 U.S. ___, ___, 135 S. Ct. 530, 536, 190 L. Ed.2d 475 (2014) (internal marks omitted). Accordingly, we hold that reasonable suspicion existed to stop Defendant.

Defendant also argues that his case involves an additional issue not present in *Jackson*, namely that Officer Estes did not have probable cause to arrest him. He points out that the illegal drugs were not discovered on him until after his arrest. However, we hold that the trial court's conclusion that there was probable cause to arrest Defendant was supported by the unchallenged findings contained in the order. We note that the arrest was not for his possession of the drugs which were later found but rather for violating Section 18-46 of the Greensboro Code of Ordinances, which makes it unlawful to loiter for the purpose of engaging in drug-related activity. Specifically, the trial court based its conclusion on its findings that Defendant was acting in a manner to raise a reasonable suspicion that he was engaging in drug-related activity, *see* Greensboro, N.C., Code of Ordinances ch. 18, art. III, § 18-46(b)(4) (2012); that Defendant walked away from the scene upon the "approach or appearance of a law-enforcement officer," *see id.* § 18-46(b)(6); that Defendant was "at a location frequented by persons who use, possess, or sell drugs," *see id.* § 18-46(b)(7); and that the scent of unburnt marijuana was emanating from Defendant's person. Accordingly, Defendant's argument is overruled.

Based on the similarity of the circumstances and facts of this case with *Jackson*, the unchallenged findings[3] made by the trial court, and our Supreme Court's opinion in *Jackson*, upon reconsideration we affirm the trial court's denial of Defendant's motion to suppress.

AFFIRMED.

Judges BRYANT and STEPHENS concur.

Report per Rule 30(e).

[3]In his brief before this Court, Defendant challenged several findings made by the trial court. However, none of the challenged findings are essential to support the trial court's conclusions.