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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-177

Filed: 4 October 2016

Jackson County, No. 14 CRS 50527

STATE OF NORTH CAROLINA

v.

BILLY EUGENE BRADLEY

Appeal by defendant from judgment entered 17 September 2015 by Judge Bradley B. Letts in Jackson County Superior Court. Heard in the Court of Appeals 25 August 2016.

*Attorney General Roy Cooper, by Assistant Attorney General Shawn Maier, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for defendant.*

DIETZ, Judge.

Defendant Billy Bradley appeals two drug convictions after law enforcement found a mobile methamphetamine lab in a truck in which he was a passenger. On appeal, Bradley argues that he received ineffective assistance of counsel because his trial counsel did not move to suppress the drug evidence.

As explained below, we reject Bradley's argument because his encounter with law enforcement was consensual and, in view of all of the circumstances surrounding

the incident, a reasonable person would have believed he was free to terminate the encounter at any time. Accordingly, we reject Bradley's ineffective assistance of counsel argument and find no error in the trial court's judgment.

### **Facts and Procedural History**

On 22 April 2014, Sergeant Moore approached a truck in a public parking lot while investigating a report that the driver and passenger of the truck were engaged in suspicious, potentially criminal activity. It was roughly 8:30 p.m. and getting dark outside.

As he approached the truck, Sergeant Moore saw a man exit a nearby store and walk up to the driver's side of the truck. The officer asked the man for his name and ID. The man seemed nervous but complied. He identified himself as Benjamin Parrish and presented his driver's license. There was a passenger seated in the truck, and Sergeant Moore asked Parrish who his passenger was. Parrish responded that the man was his wife's friend.

Sergeant Moore then approached the passenger side of the truck. He recognized the passenger to be Defendant Billy Bradley. Sergeant Moore requested Bradley's ID, and Bradley gave it to the officer. Sergeant Moore then ran a warrant check on both Bradley and Parrish using his handheld radio.

Sergeant Moore had encountered Bradley before and recalled that Bradley had been carrying a knife on that occasion. With this concern in mind, as dispatch was

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running the warrant check, Sergeant Moore asked if Bradley would step out of the truck for a weapons search. Bradley complied and Sergeant Moore patted Bradley down but did not find any weapons.

The results from the warrant check came back and revealed no active warrants for either Bradley or Parrish. Sergeant Moore told the men they were free to go, but neither man made any immediate effort to leave. Sergeant Moore then asked for consent to search the truck. Parrish declined to give consent, and Sergeant Moore thanked the men for their time.

At this point, Bradley asked Sergeant Moore to return his license. Sergeant Moore indicated that the license was on top of a toolbox in the back of the truck. He had placed it there to free his hands while he conducted the weapons search. Because it was “dusky dark” outside and difficult to see “well with [just] the naked eye,” Sergeant Moore shined his flashlight on the place where the license was located in the back of the truck.

Bradley retrieved his license. As Bradley prepared to get back into the passenger side of the truck, Sergeant Moore shined his flashlight inside of the vehicle and saw an illegal firecracker laying on the floorboard. Sergeant Moore informed Parrish and Bradley that he was seizing the truck because of the firecracker, but told the men they were still free to leave.

Sergeant Moore then obtained and executed a search warrant for the truck. The search revealed a clandestine “shake-and-bake” methamphetamine lab located in the bed of the truck and additional items for the production of methamphetamine dispersed throughout both the bed and cab of the truck.

On 1 December 2014, the State indicted Bradley on three counts of trafficking methamphetamine and one count each of manufacturing methamphetamine, conspiracy to manufacture methamphetamine, and possession of a methamphetamine precursor. A jury found Bradley guilty of conspiracy to manufacture methamphetamine and possession of a methamphetamine precursor. Bradley timely appealed.

### **Analysis**

Bradley argues on appeal that he received ineffective assistance of counsel because his trial counsel did not move to suppress the methamphetamine lab evidence as the fruits of an unconstitutional search and seizure. As explained below, we reject Bradley’s argument.

“To prevail on a claim of ineffective assistance of counsel, a defendant must first show that his counsel’s performance was deficient and then that counsel’s deficient performance prejudiced his defense.” *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). This Court has held that trial counsel’s failure to file a meritorious motion to suppress

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that would have resulted in exclusion of the State’s key evidence satisfies both prongs of the *Strickland* test. *See State v. Canty*, 224 N.C. App. 514, 520–21, 736 S.E.2d 532, 537 (2012). Thus, the central question in this case is whether Bradley would have prevailed had he moved to suppress the evidence obtained by Sergeant Moore.

The Fourth Amendment prohibits the government from conducting “unreasonable searches and seizures.” U.S. Const. amend. IV; *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). “[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions.” *Florida v. Bostick*, 501 U.S. 429, 434 (1991). “[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to examine the individual’s identification, and request consent to search his or her [effects]—as long as the police do not convey a message that compliance with their requests is required.” *Id.* at 434–35 (citations omitted). This type of consensual encounter becomes a seizure under the Fourth Amendment only if “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave or otherwise terminate the encounter.” *State v. Icard*, 363 N.C. 303, 309, 677 S.E.2d 822, 826 (2009).

Here, the record indicates that the encounter was consensual. Sergeant Moore approached the truck on foot, did not block the truck’s exit route, and did not take any action that indicated the occupants of the truck were compelled to comply with

his requests. The officer asked Bradley for ID, and Bradley voluntarily complied. Nothing in the record suggests that a reasonable person would have believed he or she was unable to end this consensual encounter and leave at any time.

Indeed, when Bradley asked for his license back, the officer provided it to him. And, when Sergeant Moore asked to search the car in which Bradley was a passenger, the driver said “no.” All of these facts indicate that, under the totality of circumstances here, both suspects understood the encounter was consensual and that they did not need to comply with Sergeant Moore’s requests.

Accordingly, there was no unreasonable seizure and thus no Fourth Amendment violation. This, in turn, means Bradley has not met his burden under *Strickland* to show that his counsel was ineffective in failing to move to suppress, or that, but for that deficient performance, the outcome of his case would have been different.<sup>1</sup>

### **Conclusion**

For the reasons set out above, we find no error in the trial court’s judgment.

NO ERROR.

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<sup>1</sup> Bradley cites a number of cases in which an officer stops a vehicle and then prolongs the stop to ask questions while still in possession of the suspect’s ID. These cases are distinguishable because the encounter in this case was consensual—not the result of a traffic stop—and thus Bradley was not required to turn over his license. Bradley did so voluntarily, and the record indicates that, once Bradley requested that the officer return his license, the officer promptly did so.

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Judges HUNTER, JR. and McCULLOUGH concur.

Report per Rule 30(e).