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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-198

Filed: 20 September 2016

Forsyth County, No. 14 CRS 57803

STATE OF NORTH CAROLINA,

v.

KEENAN DENZEL MCGUIRE, Defendant.

Appeal by Defendant from an order entered 3 June 2015 by Judge Edwin G. Wilson, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 25 August 2016.

*Attorney General Roy Cooper, by Assistant Attorney General Michael Bulleri, for the State.*

*Geeta N. Kapur, for Defendant-Appellant.*

HUNTER, JR., Robert N., Judge.

Keenan Denzel McGuire (“Defendant”) appeals following an order denying his motion to suppress. After the trial court denied Defendant’s motion to suppress, Defendant pled guilty to robbery with a dangerous weapon and assault with a dangerous weapon. Thereafter, the trial court sentenced Defendant to 51 to 74 months imprisonment. On appeal, Defendant contends the trial court committed

error in making its findings of fact, conclusions of law, and in denying his motion to suppress. We disagree and affirm the trial court.

### **I. Factual and Procedural History**

On 6 October 2014, a Forsyth County grand jury indicted Defendant for robbery with a dangerous weapon and assault with a dangerous weapon. On 26 May 2015, Defendant filed a motion to suppress. The trial court heard the parties on the matter and denied the motion to suppress on 1 June 2015. Immediately, Defendant pled guilty to both charges. The trial court sentenced Defendant to 51 to 74 months imprisonment. Defendant timely entered his notice of appeal. The trial court reduced its findings of fact and conclusions of law in a written order on 3 June 2015. The State's evidence, consisting of the testimony of three officers, tended to show the following.

At approximately 2:00 a.m. on 7 August 2014, a Black man wearing a black hoodie sweatshirt, dark colored pants, and black sneakers, walked into a BP gas station in Winston Salem, North Carolina. He pointed a pistol at Mr. Solomon Ahimie, the clerk at the gas station counter. The man struck Ahimie in the head with the pistol, took money from the counter, and left the store.

About the same time, Lieutenant B. W. Dobey, of the Winston Salem Police Department, drove his patrol car just north of the gas station. After the dispatcher called him about the robbery, Lt. Dobey drove to gas station area. Lt. Dobey checked

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the area surrounding the gas station by car. A K-9 officer tracked the suspect's scent on the ground. The K-9 officer followed a scent from behind the gas station towards a foot path in the woods, and found a discarded black hoodie sweatshirt along the path.

Lt. Dobey turned his car onto Holland Street, a nearby roadway, and saw Defendant walking away from him on the east side of the street. Lt. Dobey drove slowly behind Defendant with his blue lights and siren off, "stopped in the middle of the road," and got out of his patrol car. Seconds later, Corporal K.J. Shay, of the Winston Salem Police Department, parked in front of Defendant and Cpl. Shay exited his patrol car. Cpl. Shay and Lt. Dobey approached Defendant from opposite ends and Defendant turned towards Lt. Dobey. Lt. Dobey asked Defendant, "Hey, man. Can I talk to you for a second?" Neither of the officers drew their weapons, Tasers, or batons.

Cpl. Shay asked Defendant if he had any weapons on him. Defendant replied, "No. You can check me," and put his hands in the air. Cpl. Shay frisked Defendant and felt money in Defendant's pockets and socks. Cpl. Shay asked Defendant if he was previously at the BP station and Defendant said, "no." Cpl. Shay asked for consent to search Defendant and Defendant said, "Go ahead," and raised his arms in the air. Cpl. Shay frisked Defendant and found \$33.00 in Defendant's left sock,

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\$120.00 in Defendant's right sock, \$220.00 in his left shorts pocket, and \$0.00 in Defendant's wallet, totaling \$373.00.

Defendant said he stashed the money in pockets and items of clothing, "In case I get robbed." Defendant said he was walking down the street at 2:00 a.m. after leaving his mother's house, although he was previously walking towards his mother's house. Defendant explained he was on his way to a friend's house where he planned to buy a PlayStation 3 video game console. Cpl. Shay asked Defendant how much money he had on him and Defendant replied "about \$150[.00], maybe [\$]200[.00]." Officers noted Defendant had \$373.00 on him. When asked about the source of his money, Defendant explained he did not work but got the money from his mother. Cpl. Shay asked if Defendant's mother would say the same thing if he were to call her; Defendant said his mother was not at home, he did not know her phone number, and he had her number in his cell phone but he could not look it up because his phone was not working. At this time, Cpl. Shay noticed Defendant had fresh scratches on his legs. Five minutes later, the K-9 tracked the ground scent to the area where Defendant stood.

Defendant was "very talkative," and talked about his firearm permit and showed the officers a receipt in his wallet for a 9mm Beretta pistol he purchased at a pawn store. Then, officers brought Ahimie from the gas station to conduct a show up. When Ahimie arrived, Defendant "took a big sigh . . . lowered his head . . . [and] his

legs visibly [started] shaking.” Ahimie was unable to identify Defendant as the robber.

Cpl. Shay went to the BP gas station and reviewed the surveillance video. He noticed the gun used in the robbery was a 9mm Beretta pistol. He also noticed the robber had shoes that matched Defendant’s. Cpl. Shay returned to Defendant and asked “if he would be willing to voluntarily come down to the police department to give a more formal interview about his involvement.” Defendant was “very cooperative, and he said that he was willing to come down.” Defendant seemed “more than eager” and said “he wanted to clear his name.” Cpl. Shay told Defendant he was “free to leave if he declined” to go with the officers and Cpl. Shay would drive him “wherever he wanted to go.” Defendant agreed to go to the police station and rode in the back of Cpl. Shay’s car without handcuffs or restraints.

Cpl. Shay took Defendant to an interview room, and explained to Defendant the doors automatically locked in the secure area after 3:00 a.m., but demonstrated the doors were not locked from the inside. Cpl. Shay offered Defendant a soda or chips and Defendant asked for water. Officers interviewed Defendant and he subsequently confessed to robbing the BP gas station.

After losing the suppression hearing, and pleading guilty, Defendant timely entered his notice of appeal.

## **II. Standard of Review**

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 conclusion 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).

### **III. Analysis**

Defendant contends the trial court committed error in making its findings of fact, conclusions of law, and in denying his motion to suppress. We disagree and affirm the trial court. The findings of fact and conclusions of law at issue are as follows:

#### **FINDINGS OF FACT**

14. All of the actions suggest that this encounter was essentially consensual. . . .

18. However, the Court finds that this was actually a consensual encounter and search. . . .

30. Corp. Shay then returned to Holland Street and asked the Defendant about going to the Public Safety Center (PSC) for an interview. At this point, the Defendant was told that he was free to leave and he was told numerous times that he was free to leave. . . .

34. The Defendant was never in handcuffs or restrained in any way from the beginning of the encounter on Holland Street through the time of the interview. . . .

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CONCLUSIONS OF LAW

1. Lt. Dobey and Corp. Shay's encounter with the Defendant on Holland Street was a consensual encounter.
  
2. Corp. Shay's search of the Defendant's person in which money was found in the Defendant's pants and socks was a consent search. Therefore, there was no violation of the Defendant's rights under the United States Constitution or the North Carolina Constitution. . . .
  
4. The Defendant was not in custody at the time of his interview with law enforcement. Therefore, law enforcement was not required to read the Defendant his Miranda Rights and there was no violation of the Defendant's rights under the United States Constitution or the North Carolina Constitution.

The Fourth Amendment protects the "right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures . . . and no Warrants shall issue, but upon probable cause . . ." U.S. Const. amend. IV. Our State Constitution protects these same rights by prohibiting general warrants under N.C. Const. art. I, section 20.

The United States Supreme Court has held the following:

[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.

*Florida v. Royer*, 460 U.S. 491, 497 (1983) (citations omitted). Law enforcement officers may "pose questions, ask for identification, and request consent to search . .

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. provided they do not induce cooperation by coercive means.” *State v. Williams*, 201 N.C. App. 566, 569, 686 S.E.2d 905, 907 (2009) (quoting *U.S. v. Drayton*, 536 U.S. 194, 201 (2002)).

“A reviewing court determines whether a reasonable person would feel free to decline the officer’s request or otherwise terminate the encounter by examining the totality of [the] circumstances.” *State v. Icard*, 363 N.C. 303, 308, 677 S.E.2d 822, 826 (2009) (citing *Florida v. Bostick*, 501 U.S. 429, 436–37 (1991)) (citation omitted). A reasonable person would not feel at liberty to ignore the police and go about his business if there is physical force or, *inter alia*, the “threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance . . . might be compelled.” *U.S. v. Mendenhall*, 446 U.S. 544, 554–55 (1999); *See also Williams*, 201 N.C. App. at 569, 686 S.E.2d at 907.

Here, the record shows Defendant stopped walking and voluntarily spoke to officers. He raised his arms and allowed officer to pat him down. He engaged in conversation and was “very talkative” when the officers asked him questions. He volunteered information about a 9mm Beretta pistol he purchased and showed officers a receipt for the firearm. Defendant was never handcuffed or restrained during the investigation. There is no evidence to suggest officers made a show of force, brandished firearms or other weapons, or otherwise insinuated Defendant’s



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compliance was required. After officers told Defendant he was free to leave and offered him a ride home, he eagerly agreed to ride to the police station for an interview because he wanted to “clear his name.” At the police station, Cpl. Shay explained the doors automatically locked after 3:00 a.m., but demonstrated the doors were unlocked from the inside, where he was seated with Defendant.

Reviewing the totality of the circumstances surrounding the evidence at issue, it is apparent a reasonable person would have felt free to leave at any point during the investigation. After careful review of the record, we hold the trial court’s findings of fact are supported by competent evidence and the findings of fact support the trial court’s conclusions of law. We hold the trial court did not commit error in denying Defendant’s motion to suppress.

**IV. Conclusion**

For the foregoing reasons we affirm the trial court.

AFFIRMED.

Judges McCULLOUGH and DIETZ concur.

Report per Rule 30(e).