IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1363

Filed: 21 August 2018

Chowan County, No. 13 CRS 050583

STATE OF NORTH CAROLINA

v.

SHERROD LAMARR SANDERLIN

Appeal by defendant from judgment entered 18 July 2017 by Judge J. Carlton Cole in Chowan County Superior Court. Heard in the Court of Appeals 9 August 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Andrew O. Furuseth, for the State.

Franklin E. Wells, Jr. for defendant-appellant.

TYSON, Judge.

Sherrod Lamarr Sanderlin ("Defendant") appeals from the trial court's denial of his motion to suppress evidence and from the trial court's judgment entered subsequent to Defendant's *Alford* plea. We affirm.

I. Background

On the evening of 7 November 2013, Chowan County Sheriff's Deputies McArthur and Holland attempted to serve an arrest warrant on Timothy White, purportedly located at 1023 Badham Road, Apartment A. The deputies were unable to locate the address of 1023 Badham Road, so they went to the apartment building at 1013 Badham Road. The deputies were unable to identify which unit was Apartment A, so Deputy McArthur approached a group of three men standing on private property in front of the building located at 1013 Badham Road.

Deputy McArthur asked the men where Apartment A was located, and they pointed to an apartment near them. Deputy McArthur then stated he wanted to speak with Timothy White. The three men did not respond to him at first, then Defendant stated he did not know where White was. Deputy McArthur testified that after this statement, Defendant began acting nervous, being loud, and yelling. Defendant kept his hands in his pockets. Deputy McArthur thought Defendant was looking for some means of escape. Deputy McArthur testified he suspected Defendant was, in fact, Timothy White.

Deputy McArthur asked for Defendant's identification. Defendant refused. Deputy McArthur asked Defendant for his name, which he also refused to give. Deputy McArthur testified Defendant continued yelling and "excitedly speaking." Defendant eventually stated he knew why they were looking for White. Defendant also stated that White was twenty-two years old and Defendant was thirty-one.

Defendant continued to refuse requests to produce identification. Deputy McArthur observed a forty-ounce beer in Defendant's pocket and detected the odor of alcohol around Defendant's person. Deputy McArthur believed Defendant was "somewhat intoxicated." Deputy McArthur told Defendant that because of his intoxicated state and his "disruptive manner," Defendant was at risk for arrest if he did not calm down. Deputy McArthur testified that because Defendant "looked so much like" White, and due to the way Defendant was acting, "his nervousness, his excited speech, his intoxication, what [Deputy McArthur] believed to be false information [Defendant] had been providing[,]" he placed Defendant under arrest. During the arrest, Defendant struck Deputy McArthur in the head three times.

Defendant was charged with assault on a government official and resisting a public officer. After being convicted in district court, where he represented himself, Defendant appealed to superior court and was appointed counsel. Defendant filed a motion to suppress, which was denied. Defendant entered an *Alford* plea to misdemeanor assault on a government official. The plea bargain agreement dropped the charge for resisting a public officer and preserved Defendant's right to appeal the denial of the motion to suppress.

Defendant was sentenced to 150 days imprisonment, suspended for 12 months of supervised probation, to be transferred to unsupervised probation upon the completion of eight days of custody with the sheriff.

II. Jurisdiction

"An order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty." N.C. Gen. Stat. § 15A-979(b) (2017). Defendant gave oral notice of appeal:

> TRIAL COURT: Also, Madame Clerk, let the record reflect that the defendant preserves his right to appeal the Court's ruling on the motion to suppress. You can still do it if you choose but you don't have to. But the record will be clear that in the event that you all decide you want to do that, you can.
>
> MR. CROWE: Yes, sir. He would like to do that.

Even if Defendant's notice to appeal was insufficient, it is clear from the record that Defendant intended to appeal, and the trial court entered appellate entries. Presuming any deficiency in notice exists, Defendant's petition for writ of certiorari pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure is granted in part. N.C. R. App. P. 21(a)(1) ("The writ of certiorari may be issued in appropriate circumstances . . . to permit review . . . when the right to prosecute an appeal has been lost by failure to take timely action[.]"); *see also* N.C. Gen. Stat. § 15A-979(b).

III. Issues

Defendant argues the trial court erred by denying his motion to suppress evidence, which resulted from an illegal, warrantless arrest. Defendant argues the trial court also erred when it entered judgment on Defendant's *Alford* plea without establishing a sufficient factual basis exists to support the plea.

IV. Motion to Suppress

A. Standard of Review

"The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011). "The trial court's findings of fact regarding a motion to suppress are conclusive and binding on appeal if supported by competent evidence." *State v. Edwards*, 185 N.C. App. 701, 702, 649 S.E.2d 646, 648 (citations and quotation marks omitted), *disc. review denied*, 362 N.C. 89, 656 S.E.2d 281 (2007). Conclusions of law are reviewed *de novo*. *Id.*

B. Probable Cause

The trial court made fourteen findings of fact and the following two conclusions of law:

> 1. That there was sufficient probable cause for arrest of the defendant based on the investigator's contact with the defendant.
>
> 2. There were no violations of State or Federal law.

Absent an arrest warrant, an officer must have probable cause to support an arrest. *State v. Joe*, 222 N.C. App. 206, 211, 730 S.E.2d 779, 782 (2012). "Probable cause refers to those facts and circumstances within an officer's knowledge and of which he had reasonably trust-worthy information which are sufficient to warrant a

prudent man in believing that the suspect had committed or was committing an offense." *State v. Williams*, 314 N.C. 337, 343, 333 S.E.2d 708, 713 (1985).

When Deputy McArthur first approached Defendant, it was to determine the location of Apartment A. Deputy McArthur gave no indication the initial encounter was anything but consensual. The State's attorney stated it was "a voluntary encounter at [that] point." While Deputy McArthur may have thought it was "very odd" the individuals he encountered on private property outside the apartment complex did not immediately respond to his statement he wanted to speak with Timothy White, they were under no obligation to do so. "If the encounter was consensual, Defendant was at liberty 'to disregard the police and go about his business.'" *State v. Sinclair*, 191 N.C. App. 485, 489, 663 S.E.2d 866, 870 (2008) (quoting *Florida v. Bostick*, 501 U.S. 429, 434, 115 L. Ed. 2d 389, 398 (1991)).

A stop for the purpose of ascertaining a person's identity constitutes a seizure of that person, which affords Fourth Amendment protections. *State v. Lynch*, 94 N.C. App. 330, 333, 380 S.E.2d 397, 399 (1989) (citing *Brown v. Texas*, 443 U.S. 47, 61 L. Ed. 2d 357 (1979)). In order to detain an individual, the police must have reasonable suspicion of criminal activity. *Id.* The deputies initially went to the area with an arrest warrant seeking Timothy White. Defendant's nervous behavior after his response, standing alone, is not enough to give rise to reasonable suspicion. *State v. Myles*, 188 N.C. App. 42, 50, 654 S.E.2d 752, 757 (2008) ("The single fact that Croon

appeared very nervous, while being questioned by a police officer, is not enough to rise to a reasonable suspicion that criminal activity was afoot." (citation and quotation marks omitted)). As long as the encounter remained consensual, Defendant was "free to ignore" Deputy McArthur's request for Defendant's assistance and identification. *State v. White*, 214 N.C. App. 471, 478, 712 S.E.2d 921, 927 (2011).

Deputy McArthur became concerned about Defendant's intoxication and warned Defendant that he was at risk for arrest because of his intoxication and behavior. A person is guilty of a misdemeanor when he is (1) intoxicated, (2) in a public place, and (3) disruptive. N.C. Gen. Stat. § 14-444 (2017). Such disruption may be caused in five different ways, including "cursing or shouting at or otherwise rudely insulting others." *Id.* A "public place" when concerning misdemeanor public intoxication is "a place which is open to the public, whether it is publicly or privately owned." N.C. Gen. Stat. § 14-443(3) (2017).

In *State v. Cooke*, deputy sheriffs responded to a call of a man yelling outside of a Red Carpet Inn, "a motel which also has some efficiency apartments." 49 N.C. App. 384, 387, 271 S.E.2d 561, 563 (1980). Upon arrival, the deputies observed the defendant standing in the parking lot shouting "God is alive," "God is in heaven" and some other words that the deputies said sounded like a foreign language. *Id.* The deputies smelled the odor of alcohol on the defendant, and testified his eyes appeared to be "wild and glassy looking." *Id.* The deputies arrested the defendant. *Id.*

On appeal, the defendant argued his conduct was not in violation of N.C. Gen. Stat. § 14-444, the deputies did not have probable cause to arrest him, his arrest was illegal, and all charges should be dropped. *Id.* This Court held that while the defendant's conduct was not in violation of N.C. Gen. Stat. § 14-444 and the charge should be dismissed, "the complaint received by the officers, combined with the conduct they observed, gave them reasonable grounds to suspect that defendant was in violation of the statute and that they therefore had probable cause to make the arrest." *Id.* at 390, 271 S.E.2d at 565.

In this case, Deputy McArthur stated Defendant was in possession of alcohol and was "somewhat intoxicated." While it is not readily apparent where in the apartment complex Defendant and the other men were standing, the area was open to the public, as Deputy McArthur was able to directly approach Defendant. *See* N.C. Gen. Stat. § 14-443(3). It is unclear from Deputy McArthur's testimony whether Defendant was shouting at him or others, or just being loud in general. Nevertheless, like the defendant in *Cooke*, Defendant's conduct and public intoxication created reasonable grounds for Deputy McArthur to suspect Defendant was in violation of N.C. Gen. Stat. § 14-443(3), giving him probable cause to arrest Defendant. *State v. Cooke*, 49 N.C. App. at 390, 271 S.E.2d at 565.

V. *Alford* Plea

Defendant is not entitled to appellate review of his *Alford* plea as a matter of right, but may petition for review by writ of certiorari. N.C. Gen. Stat. § 15A-1444(e) (2017). Defendant has also asked for this Court to review this issue through his petition for writ of certiorari.

"A writ of *certiorari* is an extraordinary remedial writ[.]" *State v. Roux*, 263 N.C. 149, 153, 139 S.E.2d 189, 192 (1964) (citation omitted). "*Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown." *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citation omitted), *cert. denied*, 362 U.S. 917, 4 L. Ed. 2d 738 (1960).

"The decision concerning whether to issue a writ of certiorari is discretionary, and thus, the Court of Appeals may choose to grant such a writ to review . . . issues that are meritorious but not [for issues] for which a defendant has failed to show good or sufficient cause." *State v. Ross*, 369 N.C. 393, 400, 794 S.E.2d 289, 293 (2016) (citation omitted). Based upon our review of the record, we deny Defendant's petition for writ of certiorari on this issue.

A judge may not accept a guilty plea without first determining that a factual basis for the defendant entering the plea exists. N.C. Gen. Stat. § 15A-1022(c) (2017).

> This determination may be based upon information including but not limited to:
> (1) A statement of the facts by the prosecutor.
> (2) A written statement of the defendant.
> (3) An examination of the presentence report.
> (4) Sworn testimony, which may include reliable hearsay.

(5) A statement of facts by the defense counsel.

Id. This list is not exhaustive and a judge may consider other information in making his determination. *State v. Dickens*, 299 N.C. 76, 79, 261 S.E.2d 183, 185-86 (1980). "Moreover, 'a written statement of the defendant' ordinarily consists of [a] defendant's written answers to the questions contained in a document entitled 'Transcript of Plea.'" *Id.*

The record on appeal contains "an abundance of information" to constitute a factual basis for Defendant's guilty plea. *Id.* at 82, 261 S.E.2d at 187. The record contains Defendant's "Transcript of Plea," wherein Defendant indicated he was making an *Alford* plea, and was aware he would "be treated as guilty" whether or not he actually was guilty. The record also contains Defendant's appealed convictions in the district court of both assault of a government official and resisting a public officer. *See id.*

Further, Defendant never objected to whether a factual basis did not exist to support the plea. *See State v. Kimble*, 141 N.C. App. 144, 147, 539 S.E.2d 342, 344-45 (2000), *disc. rev. denied*, 353 N.C. 391, 548 S.E.2d 150 (2001). In fact, after pleading guilty Defendant stated that he "[a]ppreciate[d] the opportunity to work something out."

Defendant's petition for writ of certiorari failed to show good and sufficient cause to review. *Ross*, 369 N.C. at 400, 794 S.E.2d at 293. In our discretion, we deny Defendant's petition on this issue.

VI. Conclusion

Defendant's consumption of alcohol, possession of an open container, and conduct in a public area created reasonable grounds to support a finding of probable cause for arrest. *See Cooke*, 49 N.C. App. at 390, 271 S.E.2d at 565. The trial court did not err in denying Defendant's motion to suppress.

Defendant's petition for writ of certiorari does not contain good or sufficient cause to review the trial court's acceptance of Defendant's *Alford* plea. We deny Defendant's petition for this issue. The trial court's ruling and judgment entered upon Defendant's plea is affirmed. *It is so ordered.*

AFFIRMED.

Judges DIETZ and BERGER concur.

Report per Rule 30(e).