IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-89

Filed: 2 October 2018

Guilford County, Nos. 14 CRS 92852; 15 CRS 23057

STATE OF NORTH CAROLINA

v.

SHEA DEPAUL ROUSSEAU

Appeal by Defendant from order entered 12 April 2017 by Judge Angela B. Puckett, and judgment entered 1 August 2017 by Judge James K. Roberson, in Superior Court, Guilford County. Heard in the Court of Appeals 20 August 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Barry H. Bloch, for the State.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for Defendant.

McGEE, Chief Judge.

I. Factual and Procedural Background

Shea DePaul Rousseau ("Defendant") was convicted of possession of cocaine on 27 July 2017, and entered a plea of having attained habitual felon status on that same date. Defendant's convictions were consolidated, and he received an active sentence of thirty-five to fifty-four months.

Defendant's appeal is based on his argument that the trial court erred in denying his pretrial motion to suppress. Officer Aaron Robbins ("Officer Robbins") of the High Point Police Department testified at Defendant's 22 March 2017 suppression hearing. Officer Robbins testified that he was working on 25 November 2014 when he responded to a call and took a report from Bernard Collie ("Mr. Collie"), the on-duty pharmacist at a Greensboro CVS Pharmacy ("CVS"). Officer Robbins was informed by Mr. Collie that someone (the "person") had dropped off a suspicious prescription for 120 oxycodone pills at the CVS drive-thru the prior day, 24 November 2014. At the time the prescription was dropped off, the CVS technician informed the person that the prescription would have to be verified, and the person left. After Mr. Collie examined the prescription, he called Dr. Dwight Williams ("Dr. Williams"), the doctor who purportedly wrote the prescription. Dr. Williams told Mr. Collie he had not written the prescription, and the prescription was not valid. Though Officer Robbins observed the CVS for some period of time on 25 November 2014, no one attempted to pick up the oxycodone pills on that date.

Officer Robbins was working at approximately 9:30 a.m. the following day, 26 November 2014, when a CVS technician, Ms. Foster, called 911 to report that "two black males with dreads in a red Acura in the drive-thru [were] attempting to obtain the 120 oxycodone pills." Ms. Foster stated that "she would stall [the suspects] until [Officer Robbins] arrive[d]." Officer Robbins testified that, as he "pulled in the front

parking lot of the CVS, Ms. Foster, our caller to 9-1-1, came out the front door of the business and pointed at the back of the business." Officer Robbins drove to the rear of the CVS "where the drive-thru window [was] located[,]" and saw "a red Chevy Malibu [(the "Chevy")] in the drive-thru occupied by two black males." Officer Robbins observed that the driver of the Chevy "had dreads" but the passenger did not. Officer Robbins then "activated [his] blue lights and pulled up to the front of the vehicle." There is no dispute that Defendant, later identified as the driver of the Chevy, was detained by Officer Robbins the moment Officer Robbins activated his "blue lights." When asked to expressly state the differences in the description given him by the 911 dispatcher and what he observed, Officer Robbins stated that the 911 dispatcher informed him that the caller had

> reported two black males . . . with dreads in a red Acura in the drive-thru. When I arrived I found a red Chevy Malibu in the drive-thru. So, the makes of the vehicles were slightly different and that the driver of the vehicle had dreads but the passenger did not have dreads.

Defendant filed a motion to suppress on 11 May 2015, which was heard on 22 March 2017. Defendant argued in relevant part that Officer Robbins did not have a reasonable articulable suspicion to conduct an investigatory stop of Defendant based upon the evidence presented at the hearing. The trial court denied Defendant's motion to suppress by order entered 12 April 2017, and Defendant was found guilty by a jury on 27 July 2017. Defendant appeals.

II. Analysis

In Defendant's sole argument, he contends the "trial court should have allowed [Defendant's] motion to suppress because a report of two men with dreadlocks in a red Acura is not substantially similar to one man with dreadlocks and one man without dreadlocks in a red Chevy Malibu." We disagree.

Initially, Defendant fails to make a proper argument on appeal. "In evaluating the denial of a motion to suppress, the reviewing court must determine 'whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law.'" *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012) (citations omitted). Although Defendant includes this standard of review in his brief, Defendant does not challenge the trial court's findings of fact, and does not argue that the trial court's findings fail to support its conclusions of law. *Id.* Defendant's argument ignores the standard of review, and simply contends that the evidence was insufficient to support Officer Robbins' *Terry* stop.[1] This failure to argue that the trial court's findings fail to support its conclusions and ruling constitute abandonment of Defendant's argument on appeal. N.C. R. App. P. 28(b)(6). Even had Defendant properly argued this issue on appeal, we would still affirm the trial court's order and find no error.

[1] *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889 (1968).

Defendant contends Officer Rollins did not have a reasonable suspicion that Defendant was engaged in criminal activity when he detained Defendant. The standard required for a police officer to stop and briefly detain a suspect to investigate suspected criminal activity is well established:

> Under *Terry* and subsequent cases, a traffic stop is permitted if the officer has a "reasonable, articulable suspicion that criminal activity is afoot."
>
> Reasonable suspicion is a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." The standard is satisfied by "'some minimal level of objective justification.'" This Court requires that "[t]he stop . . . be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." Moreover, "[a] court must consider 'the totality of the circumstances—the whole picture' in determining whether a reasonable suspicion" exists.

State v. Styles, 362 N.C. 412, 414, 665 S.E.2d 438, 439–40 (2008) (citations omitted).

Defendant, by mainly focusing on the facts that Defendant's passenger did not have dreadlocks, and that the red car Defendant was driving was a Chevrolet, not an Acura, fails to consider "the totality of the circumstances" surrounding the stop. Considering the totality of the circumstances – including reasonable inferences – the following evidence was presented at the suppression hearing: Officer Robbins was informed on 25 November 2017 that someone had recently attempted to fill a suspicious prescription for 120 oxycodone pills at the CVS drive-thru; that person was

told he would have to return later to retrieve the prescription, so he left; Mr. Collie called Dr. Williams and confirmed that the prescription had been forged; two men returned to the CVS drive-thru and attempted to pick up the 120 oxycodone pills requested in the forged prescription; Ms. Foster, the technician working the drive-thru window, called 911 because it is illegal to attempt to obtain oxycodone by a forged prescription; Ms. Foster described the car in the drive-thru as a red Acura, and the occupants of the car as two African-American men with "dreads;" Ms. Foster told the 911 dispatcher that she would stall and keep the two men waiting in the drive-thru until police arrived; this information was relayed to Officer Robbins, who drove to the CVS with the purpose of detaining the men and investigating them for the crime of attempting to obtain oxycodone by use of a forged prescription; when Officer Robbins arrived at the CVS, a woman in a CVS uniform came out of the front of the CVS and directed Officer Robbins to the back of the CVS where the drive-thru window was located; because Officer Robbins had been to the CVS the previous day to take a report concerning the forged prescription, and had observed the drive-thru for part of that day, Officer Robbins would have known the location of the drive-thru window relative to the front of the CVS; Officer Robbins could have made – and did make – a reasonable inference that the CVS employee was informing him that efforts to stall the two men had succeeded, and that they were still waiting at the drive-thru window – or that they were, at least, located at the rear of the building on the CVS premises;

when Officer Robbins drove around the CVS to the drive-thru, he observed a red car containing two African-American men waiting at the drive-thru window; Defendant, who was the driver – and thus the person closest to the drive-thru window, as well as the person who would have been communicating with Ms. Foster concerning the prescription – had dreadlocks; an officer in Officer Robbins' position would likely have known that drive-thru windows often do not provide the employee working the window with more than a partial view of an automobile stopped at the window, and often do not provide the employee with a clear view of anyone other than the driver – who will be closest to the employee and will be the person directly communicating with that employee.

Based upon these facts and permissible inferences, we hold that the trial court did not err in denying Defendant's motion to dismiss based upon Defendant's argument that Officer Robbins lacked a reasonable suspicion to detain Defendant for purposes of a *Terry* stop. A reasonable officer in Officer Robbins' position, considering the totality of the circumstances, including all the relevant facts and permissible inferences, could have formed a reasonable and articulable suspicion that Defendant was engaged in criminal activity at the time of the stop. *Styles*, 362 N.C. at 414, 665 S.E.2d at 439–40. We stress that our analysis is fact specific and that, in an alternate factual context, the differences between the make of a car and the hairstyle of a

passenger, as related by a witness calling 911, could potentially prevent a stop from being justified.

Although Defendant has failed to argue that the trial court's findings were insufficient to support its conclusions and ruling that Officer Robbins' stop of Defendant was supported by a reasonable articulable suspicion that criminal activity was afoot, we nonetheless hold that the trial court's unchallenged findings of fact were sufficient to support the trial court's conclusions and ruling in this regard. *Williams*, 366 N.C. at 114, 726 S.E.2d at 165. We therefore affirm the trial court's denial of Defendant's motion to dismiss, and find no error in Defendant's conviction.

NO ERROR.

Judges CALABRIA and DIETZ concur.

Report per Rule 30(e).