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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1146

Filed: 6 August 2019

Guilford County, No. 17 CRS 78147

STATE OF NORTH CAROLINA

v.

MICHAEL RASHARD THOMPSON

Appeal by defendant from judgment entered 11 June 2018 by Judge Susan E. Bray in Guilford County Superior Court. Heard in the Court of Appeals 11 April 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Nicholas W. Yates, for the State.*

*Stephen G. Driggers for defendant.*

DIETZ, Judge.

After a lengthy investigation, law enforcement obtained a warrant to search Defendant Michael Rashard Thompson on suspicion of trafficking heroin. Thompson was in a car when officers located him, and he ignored the officers' instructions to raise his hands. Instead, Thompson reached around to his backside and began "messaging" with his pants and the area around him.

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Suspecting that Thompson had hidden a weapon or contraband down the back of his pants, two officers took Thompson to a private room in his residence and conducted a strip search. When the officers examined Thompson's clenched buttocks, they saw the tip of a plastic bag sticking out. The officers ultimately recovered two plastic baggies with heroin from Thompson's buttocks.

Thompson challenges the trial court's denial of his motion to suppress that evidence, arguing that the strip search was unreasonable under the circumstances. We disagree. The trial court's findings, which are supported by the record, demonstrate that the officers' conduct was entirely reasonable under the circumstances and consistent with our precedent governing similar strip searches. We therefore affirm the trial court's judgment.

**Facts and Procedural History**

In the summer of 2017, law enforcement conducted a lengthy investigation of a suspected heroin dealer in Guilford County. The investigation included controlled buys through a confidential informant, trash pulls at a targeted residence, and, ultimately, officers identifying Defendant Michael Rashard Thompson as the suspected heroin dealer. With this information, the officers obtained a search warrant covering Thompson himself, the residence, and any vehicles associated with Thompson or the residence. The warrant authorized a search for various items including "[c]ontrolled substances, namely heroin."

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On 19 June 2017, law enforcement executed the search warrant at Thompson's residence. When the officers arrived, Thompson was leaving the residence in a car. Detective Murphy, one of the officers involved in the search, ordered Thompson to stop and put his hands up. Thompson did not comply. Instead, he reached around toward his backside and began "messing with his pants, clothing, the door, in the seat, something behind him the entire time to the point where [the officers] actually had to walk up to the vehicle, open up the door, and remove him from the vehicle because he refused to cooperate." One officer described Thompson's activity inside the car as "almost like a fox that got into the chicken coop and he went kind of crazy inside the car."

Because of Thompson's unusual behavior, Detective Murphy became concerned that Thompson might be "getting ready to retrieve a weapon" or that he was attempting "either the destruction or concealing of contraband." Detective Murphy testified that, in his years of law enforcement experience, individuals often "conceal items about their person" and that he has recovered "[e]verything from jewelry to an actual handgun to lots of narcotics" from "within the body cavity."

Inside the residence, officers found a substance that appeared to be heroin, various drug paraphernalia, packaging materials, and cash. Because of Thompson's unusual behavior reaching behind his backside and "messing" with the rear of his

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pants, Detective Murphy decided to conduct a “more thorough search of [Thompson’s] person by removing his clothing.”

Detective Murphy and a second male officer took Thompson to a bedroom and “told him that we were going to be doing a strip search, removing his clothing.” No one else was present in the room during the search. Once Detective Murphy instructed Thompson to lower his pants, Thompson did so, but he refused to remove his boxer shorts. Detective Murphy then pulled down Thompson’s boxers and observed that Thompson had his buttocks clenched as if he “didn’t want something to fall out.”

Detective Murphy asked Thompson to spread his buttocks and Thompson refused. Murphy then saw a piece of plastic sticking out from between Thompson’s buttocks. Murphy “reached down with a gloved hand, pulled the plastic, and approximately three grams of heroin was tied up in the corner of a piece of plastic.” When Murphy pulled out the first piece of plastic, he then saw another piece of plastic sticking out. Murphy “[r]eached up there, pulled it out and there was another bag of heroin from – retrieved from his buttocks.”

On 11 September 2017, the State indicted Thompson for trafficking in heroin by possession, trafficking in heroin by transportation, possession with intent to sell or deliver heroin, and maintaining a dwelling place for keeping or selling heroin.

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Thompson moved to suppress the evidence obtained from the search of his buttocks, but the trial court denied the motion.

On 11 June 2018, Thompson pleaded guilty to the charges. Consistent with his plea agreement, the trial court consolidated Thompson's convictions and sentenced him to 70 to 93 months in prison. Thompson's plea agreement reserved the right to appeal the trial court's denial of his motion to suppress and Thompson expressed his intent to appeal that issue. In addition, after entry of final judgment, Thompson's counsel asked for appointment of appellate counsel and the trial court made appellate entries in the record. But, for reasons not apparent from the record, Thompson did not actually give notice of appeal at any point after the trial court entered judgment.

Thompson petitioned for a writ of certiorari, acknowledging that his failure to timely give notice of appeal from the final judgment renders this appeal jurisdictionally defective. In our discretion, we allow that petition and reach the merits of the appeal. N.C. R. App. P. 21(a)(1).

**Analysis**

Thompson argues that the trial court erred by denying his motion to suppress the evidence obtained from the search of his buttocks. He contends that the search exceeded the scope of the warrant and was not reasonable under the circumstances. We reject this argument.

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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 conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982).

"[T]he Fourth Amendment precludes only those intrusions into privacy of the body which are unreasonable under the circumstances." *State v. Norman*, 100 N.C. App. 660, 663, 397 S.E.2d 647, 649 (1990). Although a strip search is a serious invasion of personal privacy, this type of search can be reasonable in appropriate circumstances. *State v. Johnson*, 143 N.C. App. 307, 312, 547 S.E.2d 445, 449 (2001). Courts evaluating the reasonableness of a strip search should consider the scope of the intrusion, the manner in which the strip search was conducted, the justification for the search, and the location where the search took place, including whether that location minimized the humiliation that can result from this type of intrusive search. *State v. Battle*, 202 N.C. App. 376, 402, 688 S.E.2d 805, 824 (2010).

In *Johnson*, this Court held that a strip search of the defendant was reasonable under the circumstances and within the scope of the search warrant where a warrant "was executed for the express purpose of procuring controlled substances likely to be found on the premises or on the persons described in the warrant," "such substances could be readily concealed on the person so that they would not be found without a

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strip search,” and “the search was conducted in a reasonable manner” with the male defendant “taken into his bedroom and searched by two male officers.” 143 N.C. App. 312–13, 547 S.E.2d at 449–50. Additionally, this Court noted that when the defendant removed his clothes, “the officers observed plastic protruding from the defendant.” *Id.* at 313, 547 S.E.2d at 450. We held that, “in balancing the need for the search in this case against the defendant’s personal rights,” the strip search “did not exceed the scope of the warrant and was conducted in a reasonable manner.” *Id.*

Here, the terms of the search warrant authorized the officers to search Thompson’s person for “[c]ontrolled substances, namely heroin.” Detective Murphy testified that when he arrived to execute the warrant, he ordered Thompson to put his hands up, but Thompson did not cooperate, instead turning and leaning toward his backside and “messing” with the back of his pants in a manner that made Detective Murphy believe Thompson was either reaching for a weapon or trying to hide contraband down the back of his pants.

Detective Murphy testified that, in his experience, individuals often hide contraband in private areas including their buttocks and that he has recovered various items including “lots of narcotics” hidden in private areas of suspects’ bodies. Murphy stated he decided to conduct a strip search because Thompson was “listed on the search warrant,” “the search of the residence had yielded very little of what we were looking for . . . [a]nd we knew that he was capable of much more than that,” and

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“most importantly, would be his movements in the vehicle as if you were hiding something from me.” Murphy further testified that he and a second male officer took Thompson to a private location to conduct the search. They removed Thompson’s handcuffs so that Thompson would be free to remove his own clothes. When they examined Thompson’s clenched buttocks, the officers saw a piece of plastic bag partially visible and sticking out. After Detective Murphy grabbed that piece of plastic and removed a small bag, a second piece from another bag became visible. Both plastic bags contained heroin.

This search was justified both by the terms of the warrant and by the officers’ observations of Thompson’s suspicious movements, which reasonably suggested to the officers that Thompson may have hidden something down the backside of his pants. By taking Thompson into a private room with only two male officers present and asking Thompson to remove his own clothes, the officers conducted the search in the least intrusive manner possible. Additionally, pieces of the plastic bags recovered from Thompson’s buttocks were sticking out and visible to Detective Murphy despite Thompson’s efforts to conceal them by clenching his buttocks, and those plastic bags resembled similar bags recovered from the residence in an earlier trash pull during the investigation.

The trial court made extensive findings of fact documenting this and other evidence supporting the reasonableness of the search. Based on its findings, the trial



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court concluded that “[t]he intrusive search of Thompson’s body . . . was reasonable and appropriate under the totality of the circumstances,” “it did not exceed the scope of the search authorized by the search warrant,” and “the manner in which it was undertaken appropriately took into account [Thompson’s] privacy concerns.” The trial court’s findings are supported by the record and those findings support its conclusions. Simply put, “the warrant in this case authorized a search of defendant for illegal drugs, and it was not unreasonable under the totality of the circumstances to conduct a strip search.” *Johnson*, 143 N.C. App. at 313, 547 S.E.2d at 449–50.

Thompson also contends that *Johnson* is distinguishable because the search warrant in that case authorized a search of the defendant’s person for drugs, but the search warrant in this case “did not state that such persons keep narcotics on their person or offer any other justification for a body cavity search of Mr. Thompson for narcotics.” Instead, Thompson argues, the search warrant only authorized the search of his person for “firearms, ammunition and other weapons.”

This argument is flatly contradicted by the search warrant itself, which authorizes law enforcement to search Thompson’s “person” for items including “[c]ontrolled substances, namely heroin.” Thus, as in *Johnson*, the warrant and surrounding circumstances in this case permitted law enforcement to conduct a reasonable search of the defendant’s buttocks in a private location after observing

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Thompson possibly hide contraband down the backside of his pants. Accordingly, the trial court properly denied Thompson's motion to suppress.

**Conclusion**

We affirm the trial court's judgment.

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).