IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-990

Filed: 16 June 2020

Moore County, No. 17 CRS 50775, 661

STATE OF NORTH CAROLINA

v.

GURELLE DEMAR WYATT

Appeal by Defendant from order entered 29 March 2019 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 28 April 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Jonathan J. Evans, for the State.

Wake Forest University School of Law Appellate Advocacy Clinic, by John J. Korzen, for Defendant.

COLLINS, Judge.

Defendant Gurelle Demar Wyatt appeals the trial court's order denying his motion to suppress evidence seized from his person. Defendant contends that the search violated his right to be free from unreasonable searches because the search amounted to a roadside strip search and the law enforcement officers lacked exigent circumstances to justify conducting the search. Defendant further argues that even

if a strip search was permissible, the search was unreasonable under the circumstances. For the reasons stated below, we affirm the denial of Defendant's motion to suppress.

I. Background

Around 12:15 a.m. on 17 March 2017, law enforcement officers from the Pinehurst Police Department stopped Defendant at a law enforcement checkpoint on Highway 5. While pulled over on the shoulder of the road, an officer detected the smell of marijuana coming from Defendant's car so he instructed Defendant to step out of the car.

As Defendant exited his car, the officer noticed the smell of marijuana also emanated strongly from Defendant's person. Consequently, the officer walked Defendant approximately 10 feet away from the paved roadway and placed Defendant between the back of Defendant's car and the front of a parked patrol car, which had its headlights on, before conducting a pat down search. The area between the cars was also partially illuminated by lights from a building off the highway. Defendant faced the officer and the officer stood in front of Defendant to block the view of any onlookers.

The officer's first pat down search failed to find the source of the odor, which was still very strong. But his second search revealed that the smell was strongest around Defendant's waistline and that a package was hidden around Defendant's

waistline area. At the time, Defendant was wearing blue jeans, athletic shorts, and boxer underwear.

The officer unbuttoned the front of Defendant's jeans, pulled down slightly until they rested on the top of Defendant's buttocks, and saw a package through Defendant's shorts and underwear. Without exposing Defendant's genitals, the officer pulled Defendant's clothing away from his body and retrieved the package of marijuana lodged between Defendant's navel and crotch area. Subsequently, the police found two small bags of marijuana by Defendant's feet that were previously unnoticed because the area was dimly lit. Defendant was placed under arrest.

On 5 June 2017, a Moore County Grand Jury indicted Defendant on one count each of possession with intent to sell/deliver marijuana, maintain a place to keep a controlled substance, possession of marijuana paraphernalia, and attaining habitual felon status. On 30 November 2017, Defendant filed a motion to suppress, and on 31 March 2019, the trial court held a hearing and denied Defendant's motion. On 24 June 2019, Defendant pled guilty to one count each of possession with intent to sell/deliver marijuana and attaining habitual felon status, but reserved his right to appeal. The trial court sentenced Defendant to 20 to 36 months' imprisonment and released him on bond pending resolution of this appeal. Defendant timely appealed.

II. Discussion

Defendant argues that the trial court's denial of his motion to suppress should be reversed because the roadside search violated his Fourth Amendment right to be free from unreasonable searches. Specifically, Defendant claims the State failed to demonstrate exigent circumstances warranted conducting a strip search or that the search was reasonable under the totality of the circumstances.

A. Standard of Review

> It is well established that the standard of review in evaluating a trial court's ruling on a motion to suppress is that the trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. In addition, findings of fact to which defendant failed to assign error are binding on appeal. Once this Court concludes that the trial court's findings of fact are supported by the evidence, then this Court's next task is to determine whether the trial court's conclusions of law are supported by the findings. The trial court's conclusions of law are reviewed de novo and must be legally correct.

State v. Eaton, 210 N.C. App. 142, 144–45, 707 S.E.2d 642, 644–45 (2011) (quotation marks and citation omitted).

B. Motion to Suppress

Defendant argues that the trial court's denial of his motion to suppress should be reversed because the search amounted to a strip search and the trial court failed to find that the officers searched him under exigent circumstances justifying a strip search, as required by *State v. Battle*, 202 N.C. App. 376, 688 S.E.2d 805 (2005). We

disagree because the standard articulated under *Battle* does not apply to the facts and circumstances in this case.

"No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891). The Fourth Amendment protects "[t]he right of the people to be secure in their persons, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). "What is reasonable, of course, depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989) (quotation marks and citations omitted).

While the U.S. Supreme Court and the courts of this state have yet "to define in precise terms exactly what constitutes a strip search," they have determined when a strip search complies with the Fourth Amendment's reasonableness requirement. *State v. Johnson*, 225 N.C. App. 440, 450, 737 S.E.2d 442, 448 (2013) (citations omitted). In the context of roadside strip searches, *Battle* held that a roadside strip search can pass constitutional muster if the officer has probable cause to search and

exigent circumstances justify conducting the search. *Battle*, 202 N.C. App. at 402–03, 688 S.E.2d at 824.

But the exigent circumstances requirement articulated in *Battle* "only applies in the event that the investigating officers lack a specific basis for believing that a weapon or contraband is present beneath the defendant's underclothing." *State v. Robinson*, 221 N.C. App. 267, 281, 727 S.E.2d 712, 722 (2012). When an officer has a specific basis for believing that a weapon or contraband is present beneath the defendant's underclothing, as long as the officer takes "reasonable steps to protect [d]efendant's privacy," the search is constitutionally permissible. *Id.* at 282, 727 S.E.2d at 723.

The facts here are nearly identical to those in *State v. Johnson*, 225 N.C. App. 440, 450, 737 S.E.2d 442, 448 (2013), where this Court rejected an argument remarkably similar to the one made here. In *Johnson*, officers stopped defendant and detected the smell of marijuana coming from his person. *Id.* at 452, 737 S.E.2d at 449. The troopers then searched defendant's "outer clothing without finding the source of the marijuana odor, which was still strong." *Id.* But during a second pat down, an officer felt "a blunt object in defendant's crotch area . . . directly implicating defendant's undergarments." *Id.* Defendant argued that "we must reverse the trial court's order denying his motion to suppress because it failed to find that the troopers searched him under exigent circumstances justifying a strip search, as required by

[*Battle*]." *Id* at 450, 737 S.E.2d at 448. But we held that *Battle* did not apply "because there was sufficient information to provide a sufficient basis for believing that contraband was present beneath defendant's underwear." *Id.* at 451, 737 S.E.2d at 449 (quotation marks and citations omitted).

The State contends the search was not a "strip search" because the officer found the marijuana between the layers of clothing and not inside Defendant's underwear. The State argues that a search is not transformed into a "strip search" merely because a defendant is wearing several layers of clothing and the item is found underneath the outer layers but not within the layer closest to the body. The trial court's findings of fact do not clearly resolve this factual issue.

But even assuming that the search in this case was indeed a "strip search," *Battle* does not apply "because there was sufficient information to provide a sufficient basis for believing that [marijuana] was present beneath [D]efendant's underwear." *Id.* After stopping Defendant, an officer detected the smell of marijuana coming from Defendant's vehicle and person. Although the first pat down revealed nothing, the marijuana odor was still strong. During a second pat down the officer discovered that the smell of marijuana was strongest along Defendant's waistline and that a package was hidden underneath his clothes, "directly implicating [D]efendant's undergarments." *Id.* at 452, 737 S.E.2d at 449. As in *Johnson*, "we conclude that the

facts in this case *sub judice* provide an ample basis for believing that contraband would be found in [D]efendant's undergarments." *Id.*

Having determined the officers had a specific basis to search Defendant, "the next question is whether the searching officers took reasonable steps to protect [D]efendant's privacy." *Id.* at 452, 737 S.E.2d at 450. The officer walked Defendant approximately 10 feet away from the paved roadway, placed Defendant between two vehicles, and stood directly in front of Defendant to obscure him from oncoming vehicles. While the area was illuminated by the light of patrol cars and a nearby building, the area was dim enough for officers to miss, on their first inspection, two bags of marijuana that were by Defendant's feet. Additionally, Defendant wore two layers of clothing under his jeans, and the officer "never actually removed or pulled down his pants and never examined [or exposed] his 'private parts'" when retrieving the package of drugs. *Id.* We hold that these facts, as found by the trial court, support the trial court's conclusion that "none of [D]efendant's constitutional rights, either federal or state, were violated."

Defendant contends that the search was unreasonable because officers could have taken him to a more secluded area to search him, such as in a patrol car or at the Pinehurst Police Station. Although this may be true, the "reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." *Illinois v. Lafayette*, 462 U.S. 640,

647 (1983). "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Jimeno*, 500 U.S. at 250. As there was a specific basis for believing that contraband was present beneath Defendant's undergarments and the searching officer took reasonable steps to protect Defendant's privacy, we reject Defendant's argument that the search was unreasonable under the circumstances. Accordingly, we affirm the trial court's order denying Defendant's motion to suppress.

In his reply brief, Defendant also avers that several of the State's arguments should be ignored as the State failed to assert them at the suppression hearing. *See State v. Rawlings*, 236 N.C. App. 437, 442, 762 S.E.2d 909, 913 (2014). But our Supreme Court held that we can consider grounds "not articulated by the trial court" when reviewing the soundness of the trial court's legal conclusions. *State v. Bone*, 354 N.C. 1, 8, 550 S.E.2d 482, 486 (2001) ("The crucial inquiry for this Court is . . . whether the ultimate ruling was supported by the evidence" "not whether the reason given therefor is sound or tenable.") (citation omitted). Thus, in cases where the ultimate ruling is correct but the trial court's reasoning may be faulty, our role as an error correcting court is to ascertain whether the evidence supports the trial court's conclusion. If it does, we are bound to affirm the ruling by correcting the reasoning. *Id.*

III. Conclusion

The evidence shows that the officer had a specific basis to believe Defendant was concealing drugs under his clothes and took reasonable steps to protect his privacy when they searched him. *Robinson*, 221 N.C. App. at 281–82, 727 S.E.2d at 722–23. Thus, the trial court correctly concluded that the roadside search did not offend Defendant's constitutional rights. Accordingly, we affirm the trial court's order denying Defendant's motion to suppress.

AFFIRMED.

Judges STROUD and INMAN concur.

Report per Rule 30(e).