IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-52

Filed 05 September 2023

Jackson County, Nos. 21 CRS 481, 21 CRS 50374-75

STATE OF NORTH CAROLINA

v.

CHRISTOPHER MICHAEL JOHNSON

Appeal by defendant from judgments entered 31 March 2022 by Judge Daniel A. Kuehnert in Jackson County Superior Court. Heard in the Court of Appeals 8 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert P. Brackett, Jr., for the State.

BJK Legal, by Benjamin J. Kull, for defendant.

ARROWOOD, Judge.

Christopher Michael Johnson ("defendant") appeals from judgments entered upon his convictions for trafficking methamphetamine by transportation, trafficking methamphetamine by possession, possession with intent to sell or distribute methamphetamine, and having attained the status of habitual felon. Defendant contends the trial court plainly erred in denying his motion to suppress and

committed an abuse of discretion by questioning the State's witness during the suppression hearing in "a clear and obvious attempt . . . to aid the prosecution in making its case." For the following reasons, we find no error.

I. Background

Around 7:00 or 8:00 p.m. on 23 February 2021, Deputy Robert Porter ("Deputy Porter") of the Jackson County Sheriff's Office was nearing "the county garage [gas] pumps" located across the street from defendant's residence when he witnessed a vehicle entering defendant's driveway. Deputy Porter was familiar with defendant and knew he had an active arrest warrant for failing to return rental property. After a few minutes passed, Deputy Porter observed the individual he believed to be defendant leave the residence in a black Chevrolet truck and drive to PJ's, a nearby gas station. While Deputy Porter was stopped at a red light in front of PJ's, he witnessed the individual, who was wearing clothing similar to what defendant wore during previous encounters, exit the driver's side of the vehicle. Deputy Porter made a U-turn and parked on the opposite side of the gas pumps where defendant's vehicle was located. After confirming his identity, Deputy Porter informed defendant that he was being placed under arrest.

Defendant was "lean[ing] inside the driver's seat with the door open" when Deputy Porter initially approached him. During this "first interaction" with defendant, Deputy Porter detected "an odor of marijuana" emanating from the vehicle. After escorting defendant to the rear of his patrol vehicle, Deputy Porter

questioned "if [defendant] had anything illegal on his person." Defendant advised that he had "a syringe in his pocket[,]" which he removed and placed on the trunk of Deputy Porter's patrol vehicle. Deputy Porter further checked defendant for firearms and drugs and placed him into handcuffs.

During this encounter with Deputy Porter, defendant called out to Tara Bryson ("Ms. Bryson"), the passenger riding with defendant, as she was entering the gas station. When Ms. Bryson returned to the area near the patrol vehicle, Deputy Porter asked her if defendant's vehicle contained "anything illegal[,]" to which she responded affirmatively. Ms. Bryson stated "she had some paraphernalia" and a "handgun . . . concealed in between the center console and the passenger seat." At that point, Deputy Porter placed defendant into the back of his patrol vehicle and proceeded to search defendant's vehicle.

Deputy Porter discovered a "drawstring bag" containing: a "plastic orange box" with approximately seventy-two grams of methamphetamine; "[b]aggies of a green leafy substance" suspected to be marijuana; and several "plastic baggies" typically used for "packaging and selling illegal narcotics." Deputy Porter also found "a glass smoking pipe in Ms. Bryson's purse." Ms. Bryson was not charged with any crime, and with defendant's permission, she was allowed to leave the scene with defendant's vehicle.

On 20 September 2021, a Jackson County Grand Jury indicted defendant with counts of: trafficking methamphetamine by transportation, trafficking

methamphetamine by possession, possession with the intent to sell or deliver methamphetamine, possession of drug paraphernalia, and attaining the status of habitual felon. On 14 February 2022, defendant filed a pretrial motion to suppress the evidence obtained from the search of his vehicle. In support of his motion to suppress, defendant argued the search violated his Fourth Amendment rights because he was handcuffed in the back of the patrol vehicle during the search, therefore, Deputy Porter "should have acquired a search warrant[.]" Defendant further argued that a motor vehicle search incident to an individual's arrest is lawful only if the arrestee is "within reaching distance of the passenger compartment of the vehicle" or "the vehicle contains evidence related" to the arrest.

On 28 March 2022, the trial court conducted a hearing on defendant's motion to suppress. During direct-examination, Deputy Porter testified that he decided to search defendant's vehicle "[b]ased upon the odor of marijuana . . . , the syringe . . . located in [defendant]'s pocket," and Ms. Bryson's statements regarding the firearm and paraphernalia. The trial court denied defendant's motion to suppress and rendered oral findings from the bench. Given defendant's outstanding arrest warrant and considering the totality of the circumstances, the trial court ultimately concluded that Deputy Porter's actions were reasonable, stating "from an objective standpoint, . . . I don't know that much else could have been done." In relevant part, the trial court found:

> There's a number of things that the court, while a warrant

> could have been gotten, hypothetically, the vehicle could have been moved, it could have stayed at that location, which would not be an optimum situation because the people coming and going; you know there's at least one weapon involved. Whether there's immediate danger or not is not necessarily what's important, but you know there's a weapon in the vehicle, and you know - - the officer knows there's some drug involvement with the paraphernalia, the vehicle is in a public place, a very public place, and the vehicle would have to be moved.
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> Now, whether or not the vehicle could be moved safely wouldn't make sense without searching the vehicle first because you could potentially lose evidence or put officers' lives in danger, so it makes sense to move the vehicle by having the passenger get in the vehicle and move it. And also it wouldn't really make a whole lot of sense for similar reasons to have an officer move the vehicle to another location, even another location within PJ's convenience store area away from the gas pumps without doing some kind of reasonable search of the vehicle.
>
> . . . .
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> But it makes more sense under the circumstances, considering all the circumstances, the totality of the circumstances, that the officer did a search before the vehicle was either moved or released back to somebody.

Following a trial, on 31 March 2022, defendant was found guilty of all charges. Defendant was sentenced to 96 to 128 months imprisonment for the trafficking convictions, followed by a consecutive sentence of 72 to 99 months for possession with intent to sell or distribute methamphetamine, and a consecutive term of 120 days confinement suspended for 60 months of supervised probation. Defendant entered oral notice of appeal.

II. Discussion

On appeal, defendant asserts the trial court plainly erred in denying his pretrial motion to suppress because there was no constitutional basis to conduct a warrantless search of his vehicle. He further argues that the trial court abused its discretion during the suppression hearing by questioning Deputy Porter in a deliberate attempt to aid the State "in making its case." We disagree.

A. Plain Error

As an initial matter, we must determine whether the denial of defendant's motion to suppress is properly preserved for appellate review.

Our precedent establishes that "[a] defendant cannot rely on his pretrial motion to suppress to preserve an issue for appeal. His objection must be renewed at trial." *State v. Lenior*, 259 N.C. App. 857, 860, 816 S.E.2d 880, 883 (2018) (citation and internal quotation marks omitted). "Because the evidence may be different when offered at trial, a party has the responsibility of making a contemporaneous objection." *State v. Waring*, 364 N.C. 443, 468, 701 S.E.2d 615, 631 (2010) (citation omitted), *cert. denied*, 565 U.S. 832, 181 L. Ed. 2d 53 (2011). Such failure to do so waives his right to appellate review. *See id.* at 468, 701 S.E.2d at 631-32 (citation and internal quotation marks omitted). However, in criminal cases, issues that were "not preserved by objection noted at trial and . . . not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on

appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C.R. App. P. 10(a)(4) (2023).

Here, defendant expressly contends the denial of his pretrial motion to suppress amounted to plain error. Contrary to the State's assertions that defendant's failure to preserve the issue waives his right to any review, we review the denial of defendant's motion to suppress as he specifically "makes a plain error argument on appeal." *Lenoir*, 259 N.C. App. at 860, 816 S.E.2d at 883 (citation omitted); N.C.R. App. P. 10(a)(4).

> For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings.

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citations, brackets, and internal quotation marks omitted). "In conducting plain error review, we must first determine whether the trial court did, in fact, err[.]" *Lenoir*, 259 N.C. App. at 860, 816 S.E.2d at 883 (citation omitted).

B. Motion to Suppress

This Court's review of whether a trial court properly denied 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) (citations omitted). We "accord[ ] great deference to the trial court's ruling on a motion to suppress because the trial court is entrusted with the duty to hear testimony (thereby observing the demeanor of witnesses) and to weigh and resolve any conflicts in the evidence." *State v. Parker*, 277 N.C. App. 531, 538-39, 860 S.E.2d 21, 28 (citation and internal quotation marks omitted), *disc. review denied and appeal dismissed*, 860 S.E.2d 917 (Mem) (2021).

"The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment–subject to only a few specifically established and well-delineated exceptions." *State v. Degraphenreed*, 261 N.C. App. 235, 241, 820 S.E.2d 331, 336 (2018) (citation and internal quotation marks omitted). One such exception is the motor vehicle exception, "[a] search of a motor vehicle which is on a public roadway or in a public vehicular area is not in violation of the Fourth Amendment if it is based on probable cause, even though a warrant has not been obtained." *State v. Isleib*, 319 N.C. 634, 638, 356 S.E.2d 573, 576 (1987) (citation omitted). "Probable cause is generally defined as 'a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused

to be guilty' of an unlawful act." *Parker*, 277 N.C. App. at 539, 860 S.E.2d at 28 (citation omitted). Under the motor vehicle exception,

> [a] police officer in the exercise of his duties may search an automobile without a search warrant when the existing facts and circumstances are sufficient to support a reasonable belief that the automobile carries contraband materials. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

Id. (citation and internal quotation marks omitted).

Here, there were three factors establishing probable cause to search defendant's vehicle: (1) Deputy Porter's detection of marijuana emanating from the vehicle; (2) Ms. Bryson's admission that the vehicle contained drug paraphernalia and a firearm; and (3) a syringe being located in defendant's pocket, which Deputy Porter suspected to be drug paraphernalia. *See State v. Mitchell*, 224 N.C. App. 171, 175, 735 S.E.2d 438, 442 (2012) (citation omitted) ("[T]he mere odor of marijuana or presence of clearly identified paraphernalia constitutes probable cause to search a vehicle."), *disc. review denied and appeal dismissed*, 366 N.C. 578, 740 S.E.2d 466 (Mem) (2013).

Although defendant contends his arrest precluded a finding of exigency to justify a warrantless search, that is not the standard our precedent contemplates for motor vehicles. "[N]o exigent circumstances other than the motor vehicle itself are required in order to justify a warrantless search of a motor vehicle if there is probable

cause to believe that it contains the instrumentality of a crime . . . and the vehicle is in a *public place*." *Isleib*, 319 N.C. at 638, 356 S.E.2d at 576-77 (emphasis added); *State v. Parker*, 285 N.C. App. 610, 629, 878 S.E.2d 661, 675 (2022) (finding "the automobile exception to the warrant requirement applied to the search of [d]efendant's [vehicle] parked at the gas pumps"). Accordingly, we conclude the trial court did not err, much less plainly err, in denying defendant's motion to suppress.

C. Trial Court's Questioning of Deputy Porter

Defendant contends the court trial committed an abuse of discretion during the suppression hearing by questioning Deputy Porter in a fashion that supported its "own theory for denying the motion (*i.e.*, the community caretaking doctrine)" and "aid[ed] the prosecution in making its case[,]" "rather than simply clarifying any confusing or contradictory testimony[.]" We disagree.

"The court may interrogate witnesses, whether called by itself or a party." N.C. Gen. Stat. § 8C-1, Rule 614(b) (2022). Indeed, it is the "trial court's duty to supervise and control trial proceedings to ensure fair and impartial justice for both parties, and in carrying out this duty, the court may question a witness in order to clarify confusing or contradictory testimony." *State v. Rios*, 169 N.C. App. 270, 281, 610 S.E.2d 764, 772 (citations omitted), *disc. review denied and appeal dismissed*, 360 N.C. 75, 623 S.E.2d 37 (Mem) (2005). In determining whether a trial court "cross[es] into the realm of impermissible opinion, a totality of the circumstances test is utilized. Unless it is apparent that such infraction of the rules might reasonably have had a

prejudicial effect on the result of the trial, the error will be considered harmless." *Id.* (citation and internal quotation marks omitted). "The burden of showing prejudice is on the defendant. The trial court's broad discretionary power to control the trial and to question witnesses to clarify testimony will not be disturbed absent a manifest abuse of discretion." *Id.* (citations omitted).

Here, defendant challenges the trial court's following exchange with Deputy Porter:

> THE COURT: Now, this is at – what time of day was this? This was in the evening; is that right?
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> THE WITNESS: Yes, sir.
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> THE COURT: Were there other people in PJ's at that time coming and going, best of your recollection?
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> THE WITNESS: They could have been. I don't really remember how busy it was.
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> THE COURT: But, suffice it to say, that's a busy intersection, correct?
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> THE WITNESS: Yes, sir.
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> THE COURT: And PJ's was open for business, so I assume people were coming and going, but you don't recall how busy it was, correct?
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> THE WITNESS: Yes, sir.
>
> THE COURT: Now, the vehicle itself would have had to have been moved at some point if you arrested [defendant], correct? And the passenger. Somehow, it would have to be moved off of that location; otherwise, it's blocking the pumps, correct?

THE WITNESS: Yes, sir.

Defendant argues that this line of questioning "had nothing to do with the existence of probable cause." This contention is meritless. It is clear that the trial court's questions were designed to clarify Deputy Porter's testimony "to enable the court to rule on the admissibility of certain evidence . . . and to promote a better understanding of the" facts. *Rios*, 169 N.C. App at 281-82, 610 S.E.2d at 772 (citations omitted). Furthermore, as set forth above, Deputy Porter had probable cause to search defendant's vehicle. Therefore, defendant cannot illustrate that the trial court's questions "had a prejudicial effect on the result of the trial." *State v. Mack*, 161 N.C. App. 595, 599, 589 S.E.2d 168, 172 (2003) (citation and internal quotation marks omitted), *disc. review denied*, 358 N.C. 379, 598 S.E.2d 140 (Mem), *cert. denied*, 543 U.S. 966, 160 L. Ed. 2d 336 (2004). Accordingly, defendant's argument to the contrary is overruled.

III. Conclusion

For the foregoing reasons, we find no prejudicial error.

NO ERROR.

Chief Judge STROUD and Judge GRIFFIN concur.

Report per Rule 30(e).