NO. COA10-205

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2010

STATE OF NORTH CAROLINA

v. Wake County
No. 06 CRS 101768

ADAM DERBYSHIRE

Appeal by Defendant from Judgment entered 10 July 2009 by Judge Abraham P. Jones in Wake County Superior Court. Heard in the Court of Appeals 14 September 2010.

Attorney General Roy Cooper, by Assistant Attorney General John W. Congleton, for the State.

George B. Currin, for Defendant.

BEASLEY, Judge.

Adam Derbyshire (Defendant) appeals from his conviction of driving while impaired. For the reasons stated below, we remand the case for further proceedings consistent with this opinion.

On 8 November 2006, Defendant was arrested and charged with driving while impaired. On 30 June 2008 Defendant was convicted of that offense in Wake County District Court and entered notice of appeal to Wake County Superior Court for a trial *de novo*. On 25 February 2009, Defendant filed a Motion to Suppress Evidence in Wake County Superior Court, alleging that no reasonable and articulable suspicion existed to justify the stop of his vehicle.

At the hearing on the motion to suppress, the State's witness, Raleigh Police Officer Tracy Dean Turner, testified that she saw Defendant driving with his high beam headlights on. As it is customary among motorists, she flashed her own high beam headlights to inform him to dim his headlights. Officer Turner stated that Defendant did not acknowledge this message, and when she passed him he had a blank stare on his face, so she turned around to follow him. Officer Turner stated that after following Defendant through the intersection at Glenwood Avenue and Peace Street, she saw Defendant weave in and out of his traffic lane, at which point she activated her blue lights to initiate a traffic stop. Officer Turner further testified that Defendant traveled four to five blocks, passing several side streets, before he finally made a left turn onto Washington Street and stopped his car.

Offering a conflicting account of the events, Defendant testified that his high beam headlights were not on, and that he did not see Officer Turner signal him to turn off his high beams. Defendant also stated that he saw the blue lights from Officer Turner's car behind him when he was either three-fourths or all of the way through the intersection at Glenwood Avenue and Peace Street. Defendant further testified that once he realized the blue lights were meant for him, he made a right turn onto Washington Street and stopped his vehicle.

Defendant's motion to suppress was denied on 19 June 2009 by the Honorable Ronald L. Stephens. On 10 July 2009, Defendant pled guilty to the offense of driving while impaired in Wake County

Superior Court. Defendant reserved his right to appeal the denial of his motion to suppress. Upon his guilty plea, the Honorable Abraham P. Jones sentenced Defendant to Level 5 punishment for driving while impaired, and imposed a suspended sentence of sixty (60) days imprisonment and twelve (12) months unsupervised probation.

On appeal, Defendant argues and the State concedes, that the trial court erred when it failed to make written findings of fact to support its denial of his motion to suppress. We agree.

The procedure required for a motion to suppress evidence in Superior Court is provided in N.C. Gen. Stat. § 15A-977 (2009). In pertinent part, the statute states "[t]he judge must set forth in the record his findings of fact and conclusions of law." N.C. Gen. Stat. § 15A-977(f) (2009). When a hearing is conducted to decide a motion to suppress evidence, "the general rule is that [the trial court] should make findings of fact to show the bases of his ruling. If there is a material conflict in the evidence on *voir dire*, he must do so in order to resolve the conflict." *State v. Phillips*, 300 N.C. 678, 685, 268 S.E.2d 452, 457 (1980) (citations omitted). Findings of fact and conclusions of law "are required in order that there may be a meaningful appellate review of the decision." *State v. Horner*, 310 N.C. 274, 279, 311 S.E.2d 281, 285 (1984).

In the instant case, the trial court's written order denying the motion to suppress contained no findings of fact. The order

contained only the statement "[t]he Defendant's motion to suppress is denied." Appellate review of the trial court's denial of the motion is impossible here, as our review is "strictly limited to a determination of whether [the trial court's] findings are supported by competent evidence, and . . . whether the findings support the trial court's ultimate conclusion." *State v. Allison*, 148 N.C. App. 702, 704, 559 S.E.2d 828, 829 (2002). In the instant case the trial court failed to make reviewable findings of fact and conclusions of law, and this failure constitutes reversible error.

There is a recognized exception to this general rule requiring a written order for cases where "(1) the trial court provides its rationale from the bench, and (2) there are no material conflicts in the evidence at the suppression hearing. If these two criteria are met, the necessary findings of fact are implied from the denial of the motion to suppress." *State v. Williams*, 195 N.C. App. 554, 555, 673 S.E.2d 394, 395 (2009) (citations omitted). At the suppression hearing in the case sub judice, the trial court offered the following statement:

> I do believe that at least initially the high beam -- the perception of high beams and the blank stare, causing the officer to then turn around and follow the vehicle and then found him to be weaving in his lane and crossing the center line, not maintaining the lane, and further once she initiated the stop, although by then she had made a determination, failure to stop fairly quickly, is sufficient for DWI investigation. I feel like she had articulable suspicion to stop, and the Court's going to deny your motion and let you take exception.

The trial court's statement may have been sufficient to satisfy the first prong of the recognized exception to the rule requiring a

written order. However, the exception is not applicable here because, as discussed above, there were material conflicts in the evidence presented.

The trial court erred by failing to make written findings of fact and conclusions of law sufficient to resolve the material conflicts in the evidence. Accordingly, we remand to the Wake County Superior Court for proceedings consistent with this opinion. *See State v. Haislip*, 362 N.C. 499, 500-01, 666 S.E.2d 757, 759 (2008).

Remanded.

Judges HUNTER, Robert C. and HUNTER, Jr. concur.

Report per Rule 30(e).