IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1184

Filed: 19 September 2017

Anson County, No. 13CRS000640

STATE OF NORTH CAROLINA

v.

ROGER HOWARD WELCH, Defendant.

Appeal by Defendant from order entered 13 March 2014 and judgment entered 14 March 2014 by Judge Tanya Wallace in Anson County Superior Court. Heard in the Court of Appeals 10 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Bethany A. Burgon, for the State.

Franklin E. Wells, Jr., for the Defendant.

DILLON, Judge.

Roger Howard Welch ("Defendant") appeals from the trial court's judgment convicting him of driving while impaired. Defendant pleaded guilty but reserved the right to appeal the denial of his motion to suppress. For the following reasons, we affirm.

I. Background

The uncontradicted evidence and the order denying Defendant's motion to suppress tend to show the facts as follows:

In June 2013, a trooper (the "Trooper") received information that a wreck had just occurred in the vicinity of West Park Road in Peachland. When the Trooper arrived, a motorist on the scene told him that a man had been driving a blue truck erratically. Other motorists had been on the scene at the time of the wreck but had left the scene to follow the blue truck. The motorist guided the Trooper to a nearby residence, where the Trooper observed a blue truck parked in the driveway. The other motorists who had followed the blue truck from the accident scene to the residence were present when the Trooper arrived.

The driveway led up to a two-bay garage, attached on the right side of the residence. The Trooper walked down the driveway past the blue truck and observed that the garage door closer to the residence was open. Just inside the open garage door was a door leading into the residence.

As the Trooper walked past the blue truck parked in the driveway, the Trooper noticed that the grill on the front of the truck was damaged. The Trooper proceeded through the open garage door and knocked on the door leading into the residence. A woman answered. While the Trooper was speaking with the woman at the door, Defendant approached the Trooper from inside the "dark" garage. The Trooper observed that Defendant had slurred speech, was unsteady on his feet, and smelled of alcohol.

The Trooper directed Defendant to sit on the front seat of his patrol car while the Trooper went to speak to the witnesses who were at the scene. He left the patrol car unlocked and did not handcuff Defendant. After speaking to the witnesses, the Trooper returned to his patrol car and formally arrested Defendant for impaired driving and hit and run.

Defendant moved to suppress evidence gathered by the Trooper, challenging the Trooper's entry onto Defendant's property and his seizure of Defendant. The trial court denied Defendant's motion to suppress, and Defendant thereafter entered an *Alford* plea of guilty, reserving his right to appeal the denial of his motion to suppress. Defendant timely appealed.

II. Standard of Review

On appeal from the denial of a motion to suppress, we review "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011). "The trial court's findings of fact on a motion to suppress are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165, (2012). "Conclusions of law are reviewed de novo and are fully reviewable on appeal." *Id.*

III. Analysis

Defendant argues that the trial court erred in denying his motion to suppress. *See State v. Rollins*, 200 N.C. App. 105, 109, 682 S.E.2d 411, 414 (2009) (holding that "when a defendant has properly preserved the right to appeal the denial of a motion to suppress evidence at trial, then accepts a plea agreement and admits guilt, and subsequently an appellate court of this State determines that the defendant's motion to suppress was improperly denied, the defendant is *per se* prejudiced"). Specifically, Defendant contends that the Trooper's discovery of the damaged grill on the blue truck was unlawful. Further, Defendant contends that the Trooper did not have the right to order Defendant out of the garage to the patrol car.

A. Discovery of the Damaged Grill

Defendant argues that the Trooper had no right to inspect the truck without a warrant, contending that the Trooper had suggested during his testimony that he walked *around* the blue truck to see if there was damage before proceeding to the door inside the garage. We disagree. The grill was in plain view of where the Trooper had the right to be to conduct a lawful "knock and talk."

We hold that the Trooper had the right to approach the residence to conduct a "knock and talk." The Trooper had been informed of a possible wreck, a witness on the scene directed the Trooper to the West Park Road residence, and the Trooper observed the blue truck in the driveway of the residence. *See, e.g., State v. Smith*,

346 N.C. 794, 800, 488 S.E.2d 210, 214 (1997) (recognizing that a "knock and talk" is an appropriate law enforcement tool in the investigation of a crime).

Further, we hold that the Trooper had the right to approach the door inside the open garage bay to conduct the "knock and talk." Law enforcement officers are permitted to travel wherever the occupants of the home implicitly permit public access in order to conduct "knock and talk" investigations. *See State v. Grice*, 367 N.C. 753, 757, 767 S.E.2d 312, 317 (2015). And an officer performing a "knock and talk" is permitted to approach any door that a "reasonably respectful citizen unfamiliar with the home" would believe appropriate. *State v. Huddy*, ___ N.C. App. ___, ___, 799 S.E.2d 650, 654 (2017) (citing *Florida v. Jardines*, 569 U.S. 1, 11 (2013)). Here, the evidence showed that the Trooper had reason to believe that an occupant of the home had just arrived and had accessed the home through the door just inside the open garage bay door. The findings are silent as to whether there was a path leading from the road or the side of the driveway to a front door. However, even if there was a front door, we conclude that a person with the Trooper's familiarity with the residence would be acting as a "reasonably respectful citizen" to knock on the door just inside the open garage door.

Defendant points to evidence that the Trooper walked down the driveway with the *subjective* intent to conduct an illegal inspection of the truck. However, notwithstanding the Trooper's subjective intent, the trial court properly denied

Defendant's motion to suppress the discovery because the Trooper had a legitimate reason to be in the driveway; namely, to conduct a "knock and talk." Indeed, in *Grice*, our Supreme Court held that when officers discovered marijuana in plain view from a driveway, the marijuana was not subject to suppression where the officers had the right to be in the driveway to approach the house to conduct a lawful "knock and talk," notwithstanding the officers' subjective intent. *Grice*, 367 N.C. at 757-58, 767 S.E.2d at 316-17. The *Grice* Court held that the constitutionality of the officer's discovery depended upon the objective facts surrounding the discovery, "not the officer's subjective motivation." *Id.* at 763, 767 S.E.2d at 320.

Defendant argues that the Trooper unlawfully walked *around* the truck rather than directly to the door to conduct the "knock and talk." It is unclear from the findings or the evidence whether the Trooper walked around the truck in a circuitous manner or simply walked past the truck on the most direct line from the street to the door. However, there is nothing to indicate that the grill was not in plain view from the garage entrance. Therefore, we conclude that the Trooper lawfully viewed the damage of the truck in the course of conducting a "knock and talk."

B. Exigent Circumstances

Defendant makes a number of arguments concerning the lack of exigent circumstances, particularly with regard to his contention that the Trooper did not act lawfully in removing Defendant from the garage to the patrol car. The trial court

concluded that the Trooper lawfully detained Defendant based on exigent circumstances.

We need not determine whether the findings support the trial court's conclusion concerning the presence of exigent circumstances. Rather, we hold that the Trooper lawfully detained Defendant based on our conclusion that the trial court's findings and the uncontradicted evidence concerning events *prior to the detention* support the conclusion that the Trooper had probable cause to arrest Defendant. Therefore, the Trooper acted lawfully in removing Defendant from the garage to his patrol car. Specifically, the Trooper had reliable information that the blue truck in the driveway had been involved in an accident where a street sign was damaged and had been driven in an erratic manner. The Trooper had probable cause to suspect Defendant as the driver based on (1) the information he received from a witness that the driver was male; (2) the proximity of Defendant to the truck in a dark garage immediately after the accident; and (3) the condition of Defendant (drunk, slurred speech, and stumbling) as observed by the Trooper. *State v. Romano*, __ N.C. __, __, 800 S.E.2d 644, 654 (2017) ("Probable cause for an arrest requires a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty; it does not require that the evidence . . . amount to proof of guilt, or even to prima facie evidence of guilt."). Therefore, even if the Trooper did not *subjectively* intend for his placement of

Defendant into his patrol car to be a formal arrest, the Trooper *objectively* acted within the law in directing Defendant to sit in the patrol car. *See State v. Icard*, 363 N.C. 303, 318, 677 S.E.2d 822, 831 (2009) (citing *Whren v. U.S.*, 517 U.S. 806, 812-13 (1996)). Accordingly, the Trooper acted lawfully in detaining Defendant in his patrol car.

AFFIRMED.

Judges ZACHARY and BERGER concur.

Report per Rule 30(e).