IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1308

Filed: 18 July 2017

Alamance County, No. 13 CRS057353-55, 13 CRS057713

STATE OF NORTH CAROLINA

v.

SHAROD JAMES HOOKER, Defendant.

Appeal by Defendant from judgment entered 24 February 2016 by Judge James K. Roberson in Alamance County Superior Court. Heard in the Court of Appeals 8 June 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General L. Charlene Coggins-Franks, for the State.

The Epstein Law Firm PLLC, by Drew Nelson, for the Defendant.

DILLON, Judge.

Sharod James Hooker ("Defendant") appeals from judgment entered upon his guilty plea to several drug offenses. Defendant reserved the right to appeal the trial court's denial of his pre-trial motion to suppress. For the following reasons, we affirm the decision of the trial court.

I. Background

In December 2013, Defendant was a passenger in a vehicle that was stopped by law enforcement for failure to use a turn signal. Prior to stopping the vehicle, the officers observed four separate instances where the vehicle failed to use a turn signal.

Defendant filed a motion to suppress the evidence obtained as a result of the traffic stop, claiming that the officers lacked reasonable suspicion to stop the vehicle because the State did not present evidence that any of the four alleged violations affected another vehicle. *See* N.C. Gen. Stat. § 20-154(a) (2011). The trial court denied Defendant's motion, and Defendant subsequently pleaded guilty to the charged offenses, reserving his right to appeal the denial of his motion to suppress.[1]

II. Analysis

Defendant's sole argument on appeal is that the trial court erred in denying his motion to suppress.

When reviewing a trial court's ruling on a motion to suppress, we consider whether the trial court's 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. McKinney*,

[1] We grant Defendant's petition for writ of certiorari to consider the appeal after failing to properly serve notice of appeal on the State per Rule 4 of the Rules of Appellate Procedure. *See State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005) (The Court of Appeals cannot hear defendant's direct appeal, but "it does have discretion to consider the matter by granting a petition for writ of certiorari."); *see also* N.C. R. App. P. 4.

368 N.C. 161, 163, 775 S.E.2d 821, 824 (2015). We review the trial court's conclusions of law *de novo*. *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (holding that conclusions of law are "fully reviewable" on appeal).

A traffic stop of a vehicle constitutes a seizure under the Fourth Amendment and is permissible if the officer has either probable cause to believe that a traffic violation has occurred, *Whren v. United States*, 517 U.S. 806, 809-10 (1996), or reasonable suspicion of unlawful conduct, *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968), regardless of the officer's subjective motivations. *Whren*, 517 U.S. at 813-19. "A court must consider 'the totality of the circumstances—the whole picture' in determining whether reasonable suspicion to make an investigatory stop exists." *State v. Watkins,* 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994). The stop must be based upon "specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." *Id.*

N.C. Gen. Stat. § 20-154 establishes when a driver must use signals when starting, stopping, or turning. The statute provides, in relevant part:

> The driver of any vehicle upon a highway or public vehicular area before starting, stopping or turning from a direct line shall first see that such movement can be made in safety . . . and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the

> driver of such other vehicle, of the intention to make such movement.

N.C. Gen. Stat. § 20-154(a) (2013).

Our Supreme Court has held that the duty to signal under N.C. Gen. Stat. § 20-154(a) does not arise unless "any other vehicle or any pedestrian was, or might have been, affected by the turn." *State v. Ivey*, 360 N.C. 562, 565, 633 S.E.2d 459, 461 (2006), *overruled on other grounds by State v. Styles*, 362 N.C. 412, 665 S.E.2d 438 (2008). Thus, an officer may not make an investigatory stop of a vehicle for failure to use a turn signal "unless a reasonable officer would have believed that [the] defendant's failure to use his turn signal . . . might have affected the operation of another vehicle[.]" *Id.* at 565, 633 S.E.2d at 461. In making this determination in similar cases, our courts have considered the volume of traffic present at the time of the failure to signal, *State v. McRae*, 203 N.C. App. 319, 323, 691 S.E.2d 56, 59 (2010), and the proximity of the vehicle in question to other vehicles. *Styles*, 362 N.C. at 417, 665 S.E.2d at 441 (2008).

Here, two officers testified that prior to stopping Defendant's vehicle, they observed the following traffic violations: (1) failure to signal before turning right sharply at a four-way intersection, (2) failure to signal when making a one-lane change to the left, (3) failure to signal when moving into a left-turn lane, and (4) failure to signal when changing lanes in heavy traffic. The officers also testified that their unmarked police car was traveling "a safe distance directly behind [Defendant's]

vehicle with no intervening vehicles"; that there were other vehicles on the roadway; and that at the time three of the four alleged violations occurred, the traffic volume ranged from "medium" to "heavy."

This testimony supports the trial court's findings of fact regarding each alleged traffic violation. In addition, we conclude that the trial court's findings support its conclusion that the officers had reasonable suspicion that N.C. Gen. Stat. § 20-154(a) had been violated and were thus justified in stopping Defendant's vehicle. It is clear from the trial court's findings that where the police car was following directly behind Defendant's vehicle in "medium" and "heavy" traffic, the vehicle's movement may have affected the operation of another vehicle on the road, thus giving rise to the duty to signal under N.C. Gen. Stat. § 20-154(a).

Accordingly, we affirm the trial court's denial of Defendant's motion to suppress.

AFFIRMED.

Chief Judge McGEE and Judge ZACHARY concur.

Report per Rule 30(e).