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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-145

Filed: 17 October 2017

Surry County, No. 13 CRS 53028

STATE OF NORTH CAROLINA

v.

NICK BOBICH, Defendant.

Appeal by the State from order entered 14 September 2016 by Judge Eric C. Morgan in Surry County Superior Court. Heard in the Court of Appeals 10 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Kristin J. Uicker, for the State.

Appellate Defender G. Glenn Gerding, by Assistant Appellate Defender Michele A. Goldman, for the Defendant-Appellee.

DILLON, Judge.

The State appeals from an order of the trial court granting a motion to suppress filed by Nick Bobich (“Defendant”).

I. Background

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At the hearing on Defendant's motion to suppress, the State's evidence consisted solely of the arresting trooper's testimony, which tended to show as follows: In August 2013, the trooper saw Defendant drive past his parked car in a white truck. The trooper recognized Defendant from a highway patrol checkpoint conducted earlier that summer, and he recalled Defendant being charged with driving while license revoked and with an open container violation.

The trooper ran Defendant's license plate information through his computer database to verify Defendant's current driver's license status. Due to technical issues, the trooper was only able to retrieve a partial report; however, this partial report indicated that Defendant's license was suspended. The trooper attempted to call his department to obtain a full report regarding Defendant's license, but the department was also having technical difficulties and could not process the request. There was evidence presented that Defendant's full report would have indicated that while Defendant *did* have a suspended license, he also had a limited driving privilege.

After obtaining the partial report which indicated that Defendant's driver's license was suspended, the trooper pursued Defendant and saw Defendant pull into his driveway and get out of his truck. The trooper parked his vehicle in an abandoned parking lot next door and approached Defendant, who was in his back yard. The trooper testified that as he approached, he smelled a strong odor of alcohol coming from Defendant's direction when he was approximately fifteen (15) feet downwind.

In addition, the trooper testified that Defendant was stumbling, swaying, and was dragging his feet as he was walking. The trooper approached Defendant and got his attention by calling out his name. The trooper informed Defendant that he needed to speak with him about his driver's license being revoked. Defendant indicated that he had paperwork in his truck. During this conversation and on the way to Defendant's truck, the trooper noticed a strong odor of alcohol around Defendant and testified that Defendant was unsteady on his feet, swaying, and unstable. Defendant did, in fact, produce proof that he had a limited driving privilege.

Defendant was ultimately charged with driving while impaired, driving while license revoked, and consuming an alcoholic beverage in the passenger area of a motor vehicle. Defendant filed a motion to suppress in superior court, contending that the trooper lacked reasonable suspicion to stop Defendant.¹ The trial court granted Defendant's motion, and the State timely appealed.

II. Analysis

On appeal, the State argues that the trial court erred in granting Defendant's motion to suppress because the trooper had reasonable suspicion to stop Defendant based on: (1) the trooper's recollection of Defendant having a revoked license approximately three to four months before the stop, and (2) the incomplete report indicating that Defendant currently had a suspended license. We agree.

¹ In his motion to suppress, Defendant also argued that the trooper lacked probable cause to make the arrest; however, Defendant has not made any argument on appeal related to probable cause.

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A trial court's conclusions of law regarding whether an officer had reasonable suspicion to stop a defendant are reviewable *de novo*. See *State v. Brooks*, 337 N.C. 132, 140-41, 446 S.E.2d 579, 585 (1994).

The Fourth Amendment's protection against unreasonable searches and seizures includes "seizures of the person" and "brief investigatory detentions such as those involved in the stopping of a vehicle." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 69-70 (1994). An investigatory stop must be justified by "a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." *Id.* at 441, 446 S.E.2d at 70 (citing *Brown v. Texas*, 443 U.S. 47, 51 (1979)). In determining whether reasonable suspicion to make an investigatory stop exists, "[a] court must consider the totality of the circumstances—the whole picture[.]" *Id.* (internal marks and citation omitted). A stop must be based on "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.* (citation omitted).

The primary case relied upon by the State is *State v. Kincaid*, 147 N.C. App. 94, 555 S.E.2d 294 (2001). In *Kincaid*, our Court determined that an officer had reasonable suspicion to stop a defendant where "it was his understanding that defendant's licenses were revoked[:]" in the two or three years he had known the defendant, the officer had never seen the defendant drive a car; and the defendant

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attempted to conceal his identity when he saw the officer. *Id.* at 97-98, 555 S.E.2d at 297-98. As in the present case, the officer in *Kincaid* was incorrect regarding the status of the defendant's driver's license. In holding that the officer in *Kincaid* did have reasonable suspicion to stop the defendant, our Court cited *Watkins* for the proposition that the only requirement for reasonable suspicion is "a minimal level of objective justification, something more than an unparticularized suspicion or hunch." *Id.* (citing *Watkins*, 337 N.C. 437, 441-42, 446 S.E.2d at 70) (internal marks omitted).

Here, the trooper had personal knowledge that Defendant's license was not active a few months prior to the date of the stop. The trial court found as fact that the trooper "believes that he may have learned that the defendant's license was revoked" at the highway patrol checkpoint. The finding that the trooper "believed" that he learned that Defendant's license was revoked is not supported by the trooper's testimony at the hearing. The trooper testified specifically that he recognized Defendant as having a revoked license based on his encounter with Defendant at the checkpoint and that he "most definitely . . . knew and remembered that [Defendant had a] revoked [license]." The trooper was also able to pull a partial report which reflected that Defendant's license was revoked immediately before the trooper stopped Defendant.

Therefore, the evidence presented at the hearing tended to show that at the time the trooper stopped Defendant, he believed that (1) Defendant's license had been

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revoked a few months earlier, and (2) Defendant's license was currently suspended. This information certainly amounts to "more than an unparticularized suspicion or hunch." *See id.* The trooper knew who the Defendant was and verified that he currently had a suspended or revoked license. Regardless of the fact that the trooper was mistaken due to the incomplete report, this information is sufficient to give a reasonable, cautious officer reasonable suspicion to make an investigatory stop. *See Watkins*, 337 N.C. at 441-42, 446 S.E.2d at 70; *Kincaid*, 147 N.C. App. at 97-98, 555 S.E.2d at 297-98.

We note that other jurisdictions have found reasonable suspicion existed where an officer has knowledge that a driver's license was revoked in the recent past. *See State v. Spurgeon*, 907 S.W.2d 798, 800 (1995) (finding that an officer was authorized to stop a defendant where he observed him driving and had personal knowledge that his driver's license was under revocation eight months earlier); *U.S. v. Sandridge*, 385 F.3d 1032, 1035 (2004) (finding reasonable suspicion to stop a defendant where the officer ran a driver's license check "a few weeks" before the stop). The present case contains an additional factual basis, the partial driving report indicating that Defendant's license was still suspended.

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For the foregoing reasons, we reverse the decision of the trial court granting Defendant's motion to suppress.²

REVERSED.

Judges HUNTER, JR. and ARROWOOD concur.

Report per rule 30(e).

² We note that Defendant has argued an alternative basis on appeal in support of his motion to suppress: that the trooper unconstitutionally entered Defendant's curtilage without a warrant. We decline to consider this argument for the first time on appeal. Defendant's motions and arguments before the trial court solely focused on an alleged lack of reasonable suspicion to make the stop and lack of probable cause to arrest Defendant.