IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-373

Filed: 21 November 2017

Mecklenburg County, Nos. 15CRS232996-3000

STATE OF NORTH CAROLINA

v.

ALAN HOLLAND GRIFFIN, Defendant.

Appeal by Defendant from order entered 11 October 2016 by Judge Gregory R. Hayes in Mecklenburg County Superior Court. Heard in the Court of Appeals 2 October 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Adrian W. Dellinger, for the State.

Allegra Collins Law, by Allegra Collins, for the Defendant.

DILLON, Judge.

Alan Holland Griffin ("Defendant") appeals from the trial court's order denying his motion to suppress. Defendant contends the evidence presented was obtained when he was unlawfully searched and seized without reasonable suspicion. After thorough review, we affirm the decision of the trial court.

I. Background

The evidence presented at trial tended to show the following: One night in September 2016, multiple officers responded to a report of a suspicious truck parked on the road in a residential neighborhood. When the initial officer arrived at the scene, Defendant was standing next to the truck and talking on his cell phone. Defendant acknowledged the officer's presence, quickly completed his phone call, and then approached the officer. The officer questioned Defendant and obtained Defendant's license information, but remained with the Defendant until two additional officers arrived on the scene.

Once the other officers arrived, the initial officer took Defendant's information back to his car and conducted a routine license check. The second officer engaged Defendant in conversation while the third officer circled Defendant's truck with a flashlight. The third officer saw a rolled-up dollar bill through the vehicle's window, and, based upon experience and training, believed it to have been used in drug-related activity.

The officers requested consent to search the vehicle, and Defendant refused. When questioned about the currency, Defendant stated he had used the currency in conjunction with an apple to smoke marijuana, confirming the officer's suspicions. Defendant once again refused to give the officers his consent to search the vehicle. Defendant then informed the officers that he had marijuana in the truck. Then, without Defendant's consent, the officers searched the vehicle and found marijuana.

At trial, Defendant filed a motion to suppress the evidence obtained during the search, alleging the officers seized him without reasonable suspicion. The trial court denied the motion, and Defendant subsequently pleaded guilty while specifically reserving the right to appeal the judge's ruling on his motion to suppress.

II. Analysis

In his first argument, Defendant contends that the trial court should have granted his motion to suppress, alleging that the officers seized him without reasonable suspicion. Defendant is *not* challenging the actual search of his vehicle, as our Supreme Court has held "a search of an automobile without a warrant is constitutionally permissible if there is probable cause to make the search." *State v. Ratliff*, 281 N.C. 397, 403, 189 S.E.2d 179, 182 (1972). Here, the officer had probable cause to engage in the non-consensual search based on Defendant's admissions concerning the presence of marijuana in his vehicle and his use of the rolled-up currency to ingest drugs. Rather, Defendant's arguments concern what happened leading up to the search; specifically, he contends that he was unlawfully seized when he made the statements regarding the marijuana and the rolled-up currency to the officers. We disagree.

In reviewing the denial of Defendant's motion to suppress, this Court is limited to determining "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 "are conclusive on appeal if supported by competent evidence," even in the presence of conflicting evidence. *State v. Brewington*, 352 N.C. 489, 498, 532 S.E.2d 496, 501 (2000). This Court reviews the trial court's conclusions of law *de novo*, "consider[ing] the matter anew and freely substitut[ing] its own judgment for that of the lower tribunal." *Biber*, 365 N.C. at 168, 712 S.E.2d at 878.

The issue at hand is whether the Defendant was unlawfully seized. The Fourth Amendment to the United States Constitution protects the "right of the people to be secure in their persons . . . and effects, against unreasonable searches and seizures[.]" U.S. Const. amend. IV. To ascertain whether a seizure occurred, we consider "whether under the totality of the circumstances a reasonable person would feel that he was not free to decline the officers' request or otherwise terminate the encounter." *State v. Brooks*, 337 N.C. 132, 142, 446 S.E.2d 579, 586 (1994) (citing *Florida v. Bostick,* 501 U.S. 429, 434-38 (1991)).

The Constitution does not protect against law enforcement officers merely approaching an individual in a public place. *State v. Streeter*, 283 N.C. 203, 208, 195 S.E.2d 502, 506 (1973). Neither reasonable suspicion nor probable cause is required to do so. *Brooks*, 337 N.C. at 142, 446 S.E.2d at 586. When no coercion nor detention is involved, communication between officers and citizens does not implicate the

Fourth Amendment. *State v. Sugg*, 61 N.C. App. 106, 109, 300 S.E.2d 248, 250 (1983) (citing *Terry v. Ohio*, 392 U.S. 1, 34 (1968)).

In this case, the trial court's findings support its conclusion that Defendant was not seized when the initial officer approached Defendant and engaged him in conversation. The officer did not employ his siren nor his lights in approaching Defendant, and he allowed Defendant to finish his phone call before asking questions. Defendant was standing outside of his vehicle on the side of the road when the officer approached. Defendant and the initial officer talked for as long as ten minutes before the other officers arrived, but at no point did the officer convey by words or actions that Defendant was not free to leave.

Further, the trial court's findings support its conclusion that Defendant was not seized when the two other officers arrived, stood with Defendant, and looked into Defendant's vehicle with a flashlight. *See Brooks,* 337 N.C. at 144, 446 S.E.2d at 587 ("Officers who lawfully approach a car and look inside with a flashlight do not conduct a 'search' within the meaning of the Fourth Amendment").

We note that after spotting the rolled-up currency inside the car, the officers requested Defendant's consent to search his vehicle. When he denied the request, the officers again asked permission, and did not actually search the truck until Defendant's statements gave the officers probable cause. Defendant's repeated refusals to allow the officers to search suggest that he felt some amount of control

over the situation, and free to refuse consent. The officers did not use any show of force or use coercive language during their interaction with Defendant, and the marijuana was not discovered until Defendant admitted that it may be in the car, giving the officers probable cause to search the vehicle.

The trial court further found that when Defendant volunteered that he had marijuana in his truck, the encounter remained consensual. We conclude that the trial court's determination is supported by its findings. The trial court also determined the officers had reasonable suspicion at this point of the encounter, based on the discovery of the rolled-up currency and the discovery of Defendant's drug history by the officer running his record.

In his second argument, Defendant contends that there is a material conflict of evidence which the trial court failed to address. Specifically, Defendant states that there was evidence that the initial officer took his actual license to run a record check, not just his information, and that he did not feel free to terminate the encounter because the initial officer indeed did have his license. It is true that a seizure occurs when the situation is such that a reasonable person would not feel free to leave. *State v. Icard*, 363 N.C. 303, 308, 677 S.E.2d 822, 826 (2009). However, in light of the evidence, we find Defendant's argument unpersuasive.

There was no evidence presented that the initial officer took Defendant's license. Defendant never presented any such evidence. The initial officer testified

that he took Defendant's information, stating that he could not remember if he had taken Defendant's identification card or if he simply wrote down the information given to him by Defendant. The police footage presented, though, does not show the officer taking, handling, nor returning a license during the encounter. In its order, the trial court did make a finding that Defendant voluntarily gave his "information" to Defendant. This argument is overruled.

III. Conclusion

Defendant was not seized during the initial encounter with the officers and was not unlawfully seized when he volunteered that he had marijuana in his truck. Further, the trial court properly found that the officer only took down Defendant's "information" and did not otherwise need to make a finding whether the officer took control of Defendant's license during the encounter. Accordingly, we hold that the trial court did not err in denying Defendant's motion to suppress.

AFFIRMED.

Chief Judge MCGEE and Judge CALABRIA concur.

Report per Rule 30(e).