IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1124

Filed: 21 August 2018

Davidson County, No. 15CRS051338

STATE OF NORTH CAROLINA,

v.

JOHN-ADAM DELONE ELLER, Defendant.

Appeal by defendant from judgment entered on or about 4 May 2017 by Judge Julia Lynn Gullett in Superior Court, Davidson County. Heard in the Court of Appeals 16 April 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Jarrett W. McGowan, for the State.

M. Alexander Charns for defendant-appellant.

STROUD, Judge.

Defendant appeals the trial court's order denying his motion to suppress. We affirm.

I. Background

On the evening of 7 March 2015, Deputy Jeremy Parks was on patrol when he came across a car partially in a ditch with its hazard lights on; Deputy Parks engaged

his blue lights and pulled up behind the car to see if anyone needed help. Defendant was standing beside the car and smelled of alcohol. Deputy Parks called for a state trooper. Trooper Bowers arrived, spoke with Deputy Parks, and noticed defendant was swaying, had glassy eyes, and was slurring his speech. Defendant told Deputy Parks he had a couple of beers. Trooper Bowers administered a horizontal gaze nystagmus test and defendant showed four of the six clues of intoxication. Trooper Bowers also tested defendant's breath with a portable breath test device and defendant tested positive for the presence of alcohol. Trooper Bowers arrested defendant and charged him with driving while impaired.

In January 2017, defendant moved to suppress the evidence and statements against him. The trial court denied the motion, and defendant pled guilty, reserving his right to appeal. The trial court entered judgment for impaired driving. Defendant appeals the denial of his motion to suppress.

II. Motion to Suppress

While defendant made several arguments for suppression before the trial court, here he argues only two: (1) "The trial court erred by not concluding as a matter of law that the length of the traffic stop was unreasonably, measurably and unconstitutionally extended by the Deputy's refusal to investigate for up to thirty minutes. The trial court failed to determine when the Trooper arrived on the scene[,]"; and (2) "[t]he trial court erred by not holding that there was no reasonable

suspicion nor probable cause to detain . . . [him] for having a flat tire, a tire in the ditch and the deputy smelling alcohol." (Original in all caps.)

> The standard of review for a motion to suppress is whether the trial court's findings of fact are supported by the evidence and whether the findings of fact support the conclusions of law. The court's findings are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. The trial court's ruling on a motion to suppress is afforded great deference upon appellate review as it has the duty to hear testimony and weigh the evidence.

State v. Wainwright, 240 N.C. App. 77, 83-84, 770 S.E.2d 99, 104 (2015) (citations, quotation marks, and brackets omitted).

> The tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's mission -- to address the traffic violation that warranted the stop, and attend to related safety concerns. Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the traffic stop. Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.
>
> Apart from these inquiries, an officer may conduct certain unrelated checks during an otherwise lawful traffic stop. But he may not do so in a way that prolongs the stop, *absent the reasonable suspicion ordinarily demanded to justify detaining an individual*. Thus, absent reasonable suspicion, authority for the seizure ends when tasks tied to the traffic infraction are -- or reasonably should have been -- completed.

State v. Bedient, ___ N.C. App. ___, ___ 786 S.E.2d 319, 322-23 (2016) (citations and

quotation marks omitted) (emphasis added). We first consider whether Deputy Parks had a reasonable suspicion of criminal activity. *See id.*

> Reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. Only some minimal level of objective justification is required. This Court has determined that the reasonable suspicion standard requires that the stop 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. Moreover, a court must consider the totality of the circumstances -- the whole picture in determining whether a reasonable suspicion exists.

State v. Barnard, 362 N.C. 244, 247, 658 S.E.2d 643, 645 (2008) (citations, quotation marks, brackets, and ellipses omitted).

In relation to Deputy Parks, the trial court found as fact:

> 1. On March 7, 2015, Jeremy Parks with the Davidson County Sheriff's Office was on routine patrol traveling North on Old Salisbury Road.
> 2. Deputy Parks came upon a vehicle that was half in the road and half in the ditch with its flashers on. The vehicle was impeding traffic and was a safety concern.
> 3. Deputy Parks stopped near the vehicle and turned on his blue lights.
> 4. Deputy Parks turned his blue lights on for safety due to the location of the defendant's vehicle.
> 5. Deputy Parks stopped to see if anyone needed any help.
> 6. The defendant was standing outside the vehicle and had a flat tire.
> 7. Deputy Parks identified the defendant as the person standing next to the vehicle.
> 8. The defendant said he had been to hospice to see his

> grandfather, had a flat tire and pulled over.
> 9. Deputy Parks smelled an odor of alcohol coming from the defendant.
> 10. Deputy Parks called for a State Highway Patrolman to come and investigate for a possible DWI. Highway Patrol was dispatched in reference to a collision.
> 11. The State Highway Patrol arrived within 15 to 20 minutes.
> 12. During the wait, Deputy Parks and the defendant engaged in normal conversation.
> 13. The defendant's car was not drivable.
> 14. The location of the vehicle was in a rural area of the county by an elementary school and two businesses, all of which were closed.
> 15. Deputy Parks had been a law enforcement officer for twenty years. The last six years were with the Davidson County Sheriff's Office and the years before that were with the Lexington Police Department.
> 16. During his time with the police department, Deputy Parks was trained and qualified to conduct DWI investigations.
> 17. During his last six years with the Sheriff's Department, Deputy Parks has received no training on DWI investigations.
> 18. During the last six years, Deputy Parks has made approximately five DWI arrests and considers himself to be out of practice.
> 19. The Sheriff's Office does not investigate wrecks in the county unless they occur on private property.
> 20. Deputy Parks was of the opinion that he needed the assistance of the State Highway Patrol.

The trial court concluded that "at no time was the Defendant unlawfully detained in violation of the 4th Amendment to the United States Constitution in that the investigation was based on reasonable suspicion and the officers acted diligently to dispel or confirm said suspicion."

Here, Deputy Parks came upon defendant's car in a ditch with its emergency lights on, and he stopped to see if someone in the car was injured. The car was not drivable and was partially in the road, impeding traffic. Once he talked to defendant, he smelled alcohol and considering this, along with the condition and location of the car, he had reasonable suspicion of criminal activity. "The State does not need to show that the officer had 'probable cause' of [criminal activity] but that he merely had 'reasonable suspicion' to extend the stop." *State v. Warren*, 242 N.C. App. 496, 499, 775 S.E.2d 362, 365 (2015). Because reasonable suspicion has been established, Deputy Parks could validly extend the stop to investigate suspected criminal activity.[1]

While the trial court did not make a finding of exactly how long defendant waited, other than noting that State Highway Patrol arrived within 15 to 20 minutes, the evidence shows Deputy Parks called the Highway Patrol within "a couple minutes" after smelling alcohol, and Trooper Bowers arrived within 15 to 20 minutes. "'The tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's mission -- to address the traffic violation that warranted the stop, and

[1] Though not raised by either side or at the trial court, we briefly note that it appears Deputy Parks's actions would also fall under the community caretaking exception to the warrant requirement under the Fourth Amendment. *See generally State v. Smathers*, 232 N.C. App. 120, 753 S.E.2d 380 (2014). He stopped to check on the condition of anyone in the car at the scene of an accident, and the trial court's findings note that the car was not drivable and was impeding traffic, causing a safety concern.

attend to related safety concerns.'" *Id.* at __, 786 S.E.2d at 322 (quoting *Rodriguez*, __ U.S. at __, 191 L. Ed. 2d at 498, 135 S. Ct. at 1614). Here, part of the "related safety concerns" was to address whether defendant was intoxicated. Defendant's stop was not unreasonably prolonged by waiting 15 to 20 minutes for Trooper Bowers. Deputy Parks, by approaching defendant who smelled of alcohol near a car in the ditch on the side of the road, had reasonable suspicion sufficient to extend the stop. And his "extension" involved calling Trooper Bowers "a couple minutes" after Deputy Parks smelled alcohol, and waiting 15 to 20 minutes for him to arrive.[2] In fact, defendant would have needed to wait for Trooper Bowers even if there had been no suspicion of alcohol, because the "Sheriff's Office does not investigate wrecks in the county unless they occur on private property." Even if the total wait time was actually closer to 30 minutes, defendant has not shown that it was an unreasonable delay. The trial court found the car was in a rural area; depending upon the location, circumstances, time, and availability of officers, it is not reasonable to require that a Trooper show up immediately when called. The trial judge is in a better position than this Court to determine the reasonableness of any delay. *See, e.g., State v. Bartlett*, 368 N.C. 309, 313, 776 S.E.2d 672, 674 (2015) ("The trial judge who presides at a suppression hearing sees the witnesses, observes their demeanor as they testify and by reason of his more favorable position, he is given the responsibility of discovering

[2] They were also waiting for a tow truck to arrive to remove defendant's car, which was partially blocking the roadway.

the truth. For this reason, our appellate courts treat findings of fact made by the trial court as conclusive on appeal if they are supported by the evidence." (Citations and quotation marks omitted)).

Defendant relies in part on our Supreme Court's analysis of *Rodriguez* in *State v. Bullock*, 370 N.C. 256, 805 S.E.2d 671 (2017). But *Bullock* points out that the United States Supreme Court "indicated in *Rodriguez* that reasonable suspicion, if found, would have justified the prolonged seizure that led to the discovery of [illegal activity]." *Bullock*, 370 N.C. at 264, 805 S.E.2d at 678. The *Rodriguez* line of cases is not applicable here, as *Rodriguez* predominately deals with prolonging a stop *absent* reasonable suspicion, *see Rodriguez*, __ U.S. at __, 191 L. Ed. 2d at 499, 135 S. Ct. at 1615, and here, we have determined Deputy Parks had reasonable suspicion to warrant the extension of the stop. And defendant has not shown that the delay of waiting for another officer to arrive after Deputy Parks developed reasonable suspicion of criminal activity -- while defendant, smelling of alcohol, was on the side of the road with his undrivable car in a ditch -- was unreasonable.

We hold that the nature of defendant's car accident and the smell of alcohol adequately support the trial court's conclusion of law that "the investigation was based on reasonable suspicion and the officers acted diligently to dispel or confirm said suspicion." The trial court properly denied defendant's motion to suppress.

III. Conclusion

We affirm.

AFFIRMED.

Chief Judge McGEE and Judge BERGER concur.

Report per Rule 30(e).