IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-672

No. COA22-43

Filed 4 October 2022

Union County, No. 19 CRS 54537

STATE OF NORTH CAROLINA

v.

TONY RAY STARNES, Defendant.

Appeal by defendant from judgment entered 19 May 2021 by Judge J. Thomas Davis in Union County Superior Court. Heard in the Court of Appeals 23 August 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Rajeev K. Premakumar, for the State.

Edward Eldred for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Tony Ray Starnes ("Defendant") pled no contest to one charge of possession of drug paraphernalia, in violation of N.C. Gen. Stat. § 90-113.22(a), and reserved his right to appeal the trial court's denial of his motion to suppress evidence obtained during a 24 October 2019 traffic stop. On appeal, Defendant argues there was no reasonable suspicion to support the stop. After careful review, we conclude the officer

had reasonable suspicion, based on the totality of the circumstances, to support the traffic stop. Thus, we affirm the order.

I. Factual & Procedural Background

¶ 2 On 10 February 2020, a Union County grand jury returned a true bill of indictment against Defendant for the charges of possession of methamphetamine, in violation of N.C. Gen. Stat. § 90-95(a)(3), and possession of drug paraphernalia, in violation of N.C. Gen. Stat. § 90-113.22(a). On 20 January 2021, Defendant filed a motion to suppress the evidence collected by officers on 24 October 2019, alleging there was not reasonable suspicion to support the traffic stop, which led to the charges. The same day, a suppression hearing was held in Union County Superior Court before the Honorable Christopher W. Bragg to consider Defendant's motion.

¶ 3 The evidence presented at the suppression hearing tends to show the following: on 24 October 2019 at approximately 11:00 a.m., Sergeant Coy Norris ("Sergeant Norris") of the Union County Sheriff's Office drove past a home located on Joe Griffin Road (the "Home") during routine patrol, where he observed Christopher Smith ("Smith") on the porch, and "a silver or tan colored BMW [parked] in the front yard." Sergeant Norris described the vehicle as a two-door, older model BMW. He recognized Smith because Sergeant Norris had responded to service calls at this address on ten to fifteen prior occasions, and Smith was a person associated with the address. Within minutes of observing Smith, Sergeant Norris checked the North

Carolina Statewide Warrant Repository ("NCAWARE") and learned there was an outstanding warrant for Smith's arrest. About thirty minutes later, Sergeant Norris and at least three other officers attempted to serve an arrest warrant on Smith at the Home.

¶ 4 The officers arrived at the Home and observed an orange Jeep parked in the driveway, which the officers had never seen before. The officers spoke with the passengers of the Jeep who did not provide Smith's location. Sergeant Norris knocked on the door of the Home in an attempt to make contact with Smith, and no one came to the door. While standing in the driveway, Sergeant Norris noticed the same silver or tan BMW he observed at the Home earlier that day, driving up the road towards the Home. The BMW "slowed down 5 to 10 miles per hour," "as if it was about to turn into the driveway." Rather than turning into the driveway, the BMW sped "up to the speed limit," which was forty-five miles per hour, driving past the Home. Sergeant Norris returned to his patrol car after no one answered the door, followed the BMW, and initiated a traffic stop.

¶ 5 Sergeant Norris testified that when attempting to serve a warrant, it is typical to initiate a traffic stop if the officer believed the person to be served was in the vehicle. Sergeant Norris believed Smith was in the BMW because (1) he recognized the BMW as the vehicle he observed in the driveway thirty minutes earlier, (2) there was no response from Smith at the door of the residence, and (3) the BMW appeared

to be slowing down to turn into the driveway but continued driving, increasing speed as it passed the officers attempting to serve the warrant. Sergeant Norris identified Defendant as the driver of the BMW at the time of the traffic stop, and learned Smith was not in the BMW. Lanita Craig, a known resident of the Home, was in the passenger seat of the BMW.

¶ 6 In a subsequent search of the vehicle, which is not contested on appeal, officers found: in the center console a plastic bag with white residue, in the driver's door a straw containing white residue, under the passenger's seat a small piece of aluminum foil containing a white substance, and in the truck another straw inside of a backpack. Defendant was charged with possessing methamphetamine and drug paraphernalia.

¶ 7 At the close of the hearing, the trial court orally announced its conclusion of law that Sergeant Norris had reasonable suspicion to make the investigatory stop of the BMW before it denied Defendant's motion to suppress. On 21 January 2021, the trial court entered its written order (the "Order"), in which it made findings of fact, and based on these findings, concluded as a matter of law that Sergeant Norris "had reasonable articulable suspicion to initiate an investigatory stop of the silver/tan BMW on October 24, 2019."

¶ 8 On 19 May 2021, Defendant entered a plea of no contest to possessing drug paraphernalia, and the State agreed to dismiss the remaining charge. The plea agreement specifically reserved Defendant's right to appeal the denial of the motion

to suppress. Defendant gave oral notice of appeal after the trial court announced its judgment. On the same date, the Honorable J. Thomas Davis entered his written judgment.

II. Jurisdiction

¶ 9 This Court has jurisdiction to address an order finally denying a motion to suppress. N.C. Gen. Stat. § 15A-979(b) (2021).

III. Issue

¶ 10 The sole issue before this Court is whether the trial court erred in concluding there was reasonable suspicion for stopping Defendant's vehicle and in denying Defendant's motion to suppress.

IV. Standard of Review

¶ 11 Our review of a trial court's denial of a motion to suppress is "strictly limited to determining whether the trial judge's underlying 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. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (citations omitted). Unchallenged findings of fact "are presumed to be supported by competent evidence and are binding on appeal." *State v. Baker*, 312 N.C. 34, 37, 320 S.E.2d 670, 673 (1984) (citation omitted). "The trial court's conclusions of law . . . are fully reviewable on appeal," *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000), and are

reviewed *de novo*. *State v. Allen*, 197 N.C. App. 208, 210, 676 S.E.2d 519, 521 (2009) (citations omitted).

V. Analysis

¶ 12 On appeal, Defendant challenges only the trial court's conclusion of law that Sergeant Norris had reasonable suspicion to effectuate the traffic stop. Defendant contends Sergeant Norris lacked reasonable suspicion to stop Defendant because Defendant was not the "particular person" that Sergeant Norris had reasonably believed was engaged in criminal activity. We disagree.

¶ 13 "The Fourth Amendment [of the United States Constitution and the North Carolina Constitution] protect[ ] individuals 'against unreasonable searches and seizures.'" *State v. Barnard*, 362 N.C. 244, 246, 658 S.E.2d 643, 645 (citing U.S. Const. amend. IV), *writ denied*, 555 U.S. 914, 129 S. Ct. 264, 172 L. Ed. 2d 198 (2008); *see* N.C. Const. art. I, § 20. Traffic stops are constitutional seizures if there is "a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (quoting *Brown v. Texas*, 443 U.S. 47, 51, 99 S. Ct. 2637, 2641, 61 L. Ed. 2d 357, 362 (1979)).

¶ 14 "The reasonable suspicion standard is 'a less demanding standard than probable cause' and a 'considerably less [demanding standard] than preponderance of the evidence.'" *State v. Bullock*, 370 N.C. 256, 258, 805 S.E.2d 671, 674 (2017)

(quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675, 145 L. Ed. 2d 570, 576 (2000)). The reasonable suspicion standard takes into account "the totality of the circumstances," and requires there must be "something more than an unparticularized suspicion or hunch." *State v. Jackson*, 262 N.C. App. 329, 333–34, 821 S.E.2d 656, 661 (2018) (citation omitted). "[T]he stop must be based on 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Otto*, 366 N.C. 134, 137, 726 S.E.2d 824, 827 (2012) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968)). The facts must "be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *State v. Nicholson*, 371 N.C. 284, 293, 813 S.E.2d 840, 845–46 (2018) (quoting *Terry*, 392 U.S. at 21–22, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906).

¶ 15 A mistake of fact does not negate an officer's reasonable suspicion, but the mistake must be objectively reasonable. *State v. Eldridge*, 249 N.C. App. 493, 498, 790 S.E.2d 740, 743 (2016) ("[T]he Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable.") (emphasis in original).

¶ 16 Here, the facts available to Sergeant Norris at the time of the stop would have caused a reasonable officer to believe the stop was appropriate. *See Nicholson*, 371

N.C. at 293, 813 S.E.2d at 845–46. Sergeant Norris observed Smith on the front porch of the Home, and a silver or tan two-door BMW was parked in the driveway. When Sergeant Norris returned to the Home to execute the arrest warrant on Smith, the BMW was gone, and there was no response from Smith at the Home. As Sergeant Norris stood in the driveway, a silver or tan two-door BMW approached the driveway of the Home at a slow speed, seeming to indicate it was going to turn into the driveway; instead, it quickly accelerated past the Home where the police officers were standing outside. These events occurred within thirty minutes of Sergeant Norris originally observing Smith on the porch and the silver or tan BMW in the driveway. A reasonable officer in Sergeant Norris's position could have rationally inferred Smith was in the BMW because neither Smith nor the BMW were at the Home when Sergeant Norris returned to execute the warrant. These facts, taken together with a rational inference Smith was in the BMW, reasonably warranted the traffic stop. *See Otto*, 366 N.C. at 137, 726 S.E.2d at 827.

¶ 17 Defendant argues Sergeant Norris was not stopping any particular person, but only stopping the BMW that "had not violated any traffic law." Contrary to Defendant's assertion, Sergeant Norris initiated the traffic stop on a particular person, Smith, whom Sergeant Norris reasonably believed was in the vehicle. *See Watkins*, 337 N.C. at 441, 446 S.E.2d at 70. The fact that Sergeant Norris was mistaken about Smith being in the BMW does not negate the totality of the

circumstances which led Sergeant Norris to reasonably believe Smith was in the BMW. *See Eldridge*, 249 N.C. App. at 498, 790 S.E.2d at 743. The trial court's findings, which are unchallenged and binding on appeal, support the conclusion Sergeant Norris did not act on an "unparticularized hunch or suspicion" that Smith was in the BMW, but rather on a rational inference based on the totality of the circumstances. *See Jackson*, 262 N.C. App. at 333–34, 821 S.E.2d at 661; *Baker*, 312 N.C. at 37, 320 S.E.2d at 673.

VI. Conclusion

¶ 18 We hold the trial court did not err by denying Defendant's motion to suppress because Sergeant Norris had reasonable suspicion for initiating the traffic stop. Accordingly, we affirm the trial court's Order denying Defendant's motion to suppress.

AFFIRMED.

Judges DILLON and GORE concur.

Report per Rule 30(e).