

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-909

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

STATE OF NORTH CAROLINA

v.

Davidson County
Nos. 99 CRS 783-84

CHUCK LAMBETH

Appeal by defendant from judgments dated 4 January 2001 by Judge Mark K. Klass in Davidson County Superior Court. Heard in the Court of Appeals 26 March 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Isaac T. Avery, III and Assistant Attorney General Patricia A. Duffy, for the State.

Jon C. Michael for defendant-appellant.

GREENE, Judge.

Chuck Lambeth (Defendant) appeals from judgments dated 4 January 2001 entered pursuant to a jury verdict finding him guilty of driving while impaired and of driving while license revoked.

On 24 April 2000, Defendant was indicted on charges of driving while license revoked, driving while impaired, and habitual driving while impaired. Defendant's case was tried on 2 January 2001. The evidence at trial revealed that on 12 September 1998, Deputy Sheriff Jeff White (White) and Sergeant Frank Young (Young) of the Davidson County Sheriff's Department had set up a roadblock for the

purpose of conducting a driver's license checkpoint. Their patrol cars were pulled over to the side of the road; the cars' blue lights were flashing; traffic cones were set out; and both officers were wearing reflective clothing. At some point, the officers noticed two motorcycles approaching the checkpoint, one of which was ridden by Defendant. Before the motorcycles reached the checkpoint both riders executed U-turns and rode off in the opposite direction. According to Young, one rider was fifty yards away and the other two hundred yards away when they made their U-turns.

The officers got in their patrol cars and pursued the motorcycles in their patrol cars with their blue lights flashing and sirens activated, but the motorcyclists refused to stop. Eventually, the motorcyclists split up, and Young continued pursuit of Defendant, while White followed the other motorcyclist. Defendant soon entered a residential area, going to the dead-end of a road and turning left onto a dirt driveway. Defendant then made a turn onto a motorcycle or walking trail. Unable to continue pursuit in his vehicle, Young exited his vehicle to pursue Defendant on foot. After approximately fifty yards, Young heard a crash and spotted Defendant crawling up a hill away from a creek bed, which is where Young apprehended Defendant and took him into custody.

Young escorted Defendant out of the woods and radioed a towing service to retrieve the motorcycle. While talking with Defendant, Young noticed a strong odor of alcohol. Young also observed that

Defendant's eyes were bloodshot and Defendant was unsteady on his feet. Defendant was taken to the magistrate's office where he was administered an intoxilyzer test as well as psycho-physical tests. Young testified Defendant performed badly on the psycho-physical tests and the intoxilyzer test showed that Defendant had an alcohol concentration of 0.13.

Prior to trial, Defendant made a motion to suppress all of the evidence, arguing that no basis existed for the stop. The trial court summarily denied Defendant's motion. Defendant was convicted of driving while license revoked and driving while impaired. Defendant was sentenced to a term of fifteen to eighteen months imprisonment for habitual driving while impaired as well as a concurrent term of forty-five days imprisonment for the driving while license revoked conviction.

The dispositive issue is whether the trial court committed reversible error in denying Defendant's motion to suppress the evidence based on Defendant's failure to meet the requirements set out in N.C. Gen. Stat. § 15A-977(a).

Pursuant section 15A-977(a):

A motion to suppress evidence in superior court made before trial must be in writing and a copy of the motion must be served upon the State. The motion must state the grounds upon which it is made. *The motion must be accompanied by an affidavit containing facts supporting the motion.* The affidavit may be based upon personal knowledge, or upon information and belief, if the source of the information and the basis for the belief are stated.

N.C.G.S. § 15A-977(a) (1999) (emphasis added). Our Supreme Court has held that a defendant who seeks to suppress evidence must comply with this section. *State v. Satterfield*, 300 N.C. 621, 624, 268 S.E.2d 510, 513 (1980); see *State v. Pearson*, 131 N.C. App. 315, 317, 507 S.E.2d 301, 302 (1998). In this case, Defendant's motion to suppress was not accompanied by an affidavit, and the unsworn statements of Defendant's counsel in the motion to suppress were not sufficient to satisfy the requirements of section 15A-977(a). Accordingly, the trial court properly denied Defendant's motion to suppress.

Affirmed.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).