NO. COA06-109

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

STATE OF NORTH CAROLINA

v. Davidson County
No. 04 CRS 52680-1

DIANA SUZANNE WILLIAMS,
Defendant.

Appeal by defendant from judgments entered 13 July 2005 by Judge Susan C. Taylor in the Superior Court in Davidson County. Heard in the Court of Appeals 18 October 2006.

Attorney General Roy Cooper, by Assistant Attorney General Martin T. McCracken, for the State.

Brian Michael Aus, for defendant-appellant.

HUDSON, Judge.

On 21 June 2004, defendant was indicted for trafficking in cocaine by manufacture, by transportation, and by possession. On 13 July 2005, the trial court heard defendant's motion to suppress, which motion it denied. Defendant pled guilty to trafficking in cocaine by transportation and by possession pursuant to a plea agreement and the court sentenced her to 70 to 84 months of imprisonment. Defendant appeals the denial of her motion to suppress. We conclude that the trial court did not err.

The evidence tends to show that shortly after midnight on 13 March 2004, Sheriff's Deputy William Byrd observed a white sedan traveling northbound on I-85. The vehicle was traveling slower than other traffic, such that other traffic was coming up behind

the vehicle, and the vehicle was traveling on top of the line on the far right side of the interstate. Deputy Byrd suspected that the driver might be fatigued or impaired and pulled the vehicle over. Defendant was driving the vehicle and there was a female passenger in the car. Byrd noticed no odor of alcohol and defendant appeared alert. He asked defendant to step back to his vehicle for issuance of a warning ticket while the passenger remained in the car. Defendant provided Byrd with her driver's license and a rental agreement for the vehicle.

While checking defendant's information, Byrd asked where defendant was going and she responded that she was traveling from Georgia to Greensboro to visit a friend enrolled in "Greensboro at UNC." Byrd inquired if she meant UNC-G and defendant responded that she did not know. Byrd asked how long her friend had been going to college in Greensboro and defendant responded "a couple of weeks." Byrd also asked if defendant planned to wake up her friend in Greensboro upon arrival or if her friend was waiting up for her and defendant stated that she might get a hotel room. The temporary tag number on the rental agreement did not match the license number contained in the rental agreement and Byrd returned to the vehicle to gather additional information. Defendant remained in Byrd's vehicle when he went to obtain this information and while retrieving the information, Byrd asked the passenger where they were going and she stated that they were traveling to Petersburg, Virginia, to visit defendant's sister. Byrd returned

to his patrol car, issued a warning ticket for impeding traffic, placed defendant's license and registration on the computer console between the front seats and told defendant to drive carefully and watch out for large trucks driving too closely behind her. As defendant was turning to get out of the car, Byrd asked her if she had any illegal substances, guns, weapons, drugs, or cash in excess of $10,000 in the car. Defendant responded that she did not and Byrd asked if he could search the car, to which defendant responded, "you are more than welcome to." Another officer arrived about four or five minutes later and helped Byrd search the vehicle. The search revealed a kilogram of cocaine in a duffel bag in the back seat.

On appeal, we review denial of a defendant's motion to suppress to determine whether the trial court's findings of fact are supported by competent evidence, in which case they are binding on appeal, and in turn, whether those findings support the trial court's conclusions of law. *State v. Corpening*, 109 N.C. App. 586, 587-88, 427 S.E.2d 892, 893 (1993). If the defendant does not assign error to the trial court's findings of fact, they are deemed 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). Here, as defendant did not assign error to any findings of fact, we review only whether the court's findings support its conclusions of law.

Defendant argues that the trial court should have suppressed the evidence seized from her vehicle because it was seized during an illegal detention. "A police officer may conduct a brief investigative stop of a vehicle where justified by specific, articulable facts which give rise to a reasonable suspicion of illegal conduct." *State v. Morocco*, 99 N.C. App. 421, 427, 393 S.E.2d 545, 548 (1990). Here, the trial court found and concluded that Deputy Byrd had reasonable, articulable suspicion to stop defendant, as he suspected that the driver was impaired or fatigued. On appeal, defendant does not argue that the initial stop was illegal, but contends that defendant's detention beyond the initial stop was an unreasonable seizure. It is well-established that "the scope of the detention must be carefully tailored to its underlying justification." *Id.* at 427-28, 393 S.E.2d at 549. "Once the original purpose of the stop has been addressed, there must be grounds which provide a reasonable and articulable suspicion in order to justify further delay." *State v. Falana*, 129 N.C. App. 813, 816, 501 S.E.2d 358, 360 (1998). However, because we conclude that defendant consented to the search after the detention ended, we need not address the scope of the detention.

This Court has held that generally the initial seizure concludes when an officer returns the defendant's documents and license. *State v. Kincaid*, 147 N.C. App. 94, 99-100, 555 S.E.2d 294, 298-99 (2001); *Morocco*, 99 N.C. App. at 428-29, 393 S.E.2d

549. However, the return of documents "is not always sufficient to demonstrate that an encounter has become consensual." *Kincaid* at 99, 555 S.E.2d at 298.

> [T]he return of a driver's documents would not end the detention if there was evidence of a coercive show of authority, such as the presence of more than one officer, the display of a weapon, physical touching by the officer, or his use of a commanding tone of voice indicating that compliance might be compelled. Furthermore, the return of documentation would render a subsequent encounter consensual only if a reasonable person under the circumstances would believe he was free to leave or disregard the officer's request for information.

Id. at 99, 555 S.E.2d at 298-99 (internal citations and quotation marks omitted). After a detention has ended, officers are not prohibited from seeking consent. *Id.* at 100, 555 S.E.2d at 299. *See also Morocco,* 99 N.C. App. at 428-29, 393 S.E.2d 549. Here, in its order, the court found and concluded that:

> The deputy spoke to the defendant in a very polite manner at all times . . . . The deputy returned to the car, completed the warning ticket, told the defendant a number of times that the warning ticket would not affect her insurance and that she could throw it away on reaching her destination. The deputy placed all of the defendant's documents and paperwork on the computer console between the front seats, told the defendant to drive carefully and watch out for large trucks driving too closely behind her and made these comments in a friendly manner. As the defendant was turning to get out of the car, the deputy asked her if she had any illegal substances, guns, weapons, drugs, or cash in excess of $10,000.00 in her car. The defendant said "No." The deputy asked her if she could search the Chrysler. The defendant responded by saying, "You are more than welcome to." .

> . . . [T]he defendant was not placed under arrest and was free to leave after the warning ticket was issued; that the deputy did not issue the ticket with any delay, and that the defendant consented freely, knowingly, understandingly and voluntarily to the search of her vehicle.

As discussed, defendant does not challenge any of the court's factual findings. Furthermore, in her brief, defendant does not argue that she was not free to leave after the warning ticket was issued or that her consent to search was not freely and voluntarily given. Therefore, as defendant does not contest that the detention had ended at the time of her consent, we need not address the reasonableness or scope of the detention. We conclude that the trial court did not err.

Affirmed.

Judges HUNTER and CALABRIA concur.

Report per Rule 30(e).