

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-94

NORTH CAROLINA COURT OF APPEALS

Filed: 21 August 2007

STATE OF NORTH CAROLINA

v.

Davidson County
No. 04 CRS 61972

JERMAINE ROBERT JONES

Court of Appeals

Appeal by defendant from judgment entered 16 August 2006 by Judge Mark E. Klass in Davidson County Superior Court. Heard in the Court of Appeals 6 August 2007.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Robert W. Helgett, For the State.

Brian Michael Aus, for defendant-appellant.

JACKSON, Judge.

While reserving the right to appeal the denial of his motion to suppress, Jermaine Robert Jones ("defendant") entered a guilty plea to the charge of felonious possession of marijuana. The trial court suspended a prison sentence of six to eight months and placed defendant on supervised probation for three years. Defendant filed timely notice of appeal.

Defendant moved to suppress a quantity of marijuana found on his person by Thomasville Police Detectives Steven Truell ("Truell") and Dustin Carter ("Carter") following a traffic stop on

the afternoon of 15 November 2004. The evidence at the suppression hearing tended to show that the detectives observed defendant driving a white Chevrolet Caprice Classic southbound on National Highway, a four-lane roadway with a posted speed limit of forty-five miles per hour. From a stop light at the intersection of National Highway and Hasty School Road, defendant traveled in the left passing lane for more than one mile at a speed fluctuating between twenty-seven and thirty miles per hour. Traffic was extremely heavy on the highway, and cars were "backing up" behind defendant. After pulling beside defendant's car to determine if he was wearing a seatbelt, Truell followed behind defendant and watched his progress until they passed beneath Interstate 85. Traffic continued to accumulate behind defendant, with drivers "literally blowing their horns trying to get by him." Truell activated his blue light and siren and stopped defendant on Circle Drive for impeding traffic in violation of North Carolina General Statutes, section 20-141(h) (2005).

Carter approached defendant's open window to obtain his driver's license and registration and detected an odor of marijuana from the interior of defendant's vehicle. The detectives then contacted a canine handler, Officer John Elgin. As Carter conducted routine license and warrants checks on defendant in the patrol car, Elgin arrived at the scene and led a certified drug-detection dog around defendant's vehicle. The dog alerted for the presence of controlled substances by scratching at defendant's passenger's side door. After Carter asked defendant to step out of

the car, the dog alerted a second time on the driver's side. Carter patted down defendant's clothing and discovered a soft, spongy, softball-sized object concealed in the crotch area of his pants. Based upon his training and experience, Carter immediately recognized the object by "the texture, [and] the feel of it" as a controlled substance. He unbuttoned defendant's pants and retrieved a plastic bag containing individually-wrapped portions of marijuana.

On appeal, defendant challenges only the legality of the initial stop of his vehicle, arguing that the detectives lacked probable cause to believe he was impeding the normal flow of traffic as proscribed by section 20-141(h). He argues that the detectives would not have needed to determine his compliance with the seatbelt law if they had, in fact, had probable cause to stop him for impeding traffic. Defendant further claims that the detectives "contributed to, if not caused, any traffic back-up that occurred that rush hour" by driving beside his car to view his seat belt usage and then decreasing the speed of their patrol car in order to follow him.

On appeal,

[o]ur review of a denial of a motion to suppress by the trial court is "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. Barden, 356 N.C. 316, 340, 572 S.E.2d 108, 125 (2002) (quoting *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619

(1982)), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074 (2003). Because defendant does not assign error to any of the trial court's findings, we need only determine "whether the trial court's findings of fact support its conclusions of law." *State v. Cheek*, 351 N.C. 48, 63, 520 S.E.2d 545, 554 (1999).

"A law enforcement officer may stop a motorist when the officer has 'probable cause' to believe that the motorist has committed a readily observed traffic infraction." *State v. Parker* __ N.C. App. __, __, 644 S.E.2d 235, 240-41 (2007) (citing *Whren v. United States*, 517 U.S. 806, 819, 135 L. Ed. 2d 89, 101 (1996)). "Probable cause is 'a suspicion produced by such facts as indicate a fair probability that the person seized has engaged in or is engaged in criminal activity.'" *State v. Wilson*, 155 N.C. App. 89, 94, 574 S.E.2d 93, 97-98 (2002) (quoting *State v. Schiffer*, 132 N.C. App. 22, 26, 510 S.E.2d 165, 167, *disc. rev. denied*, 350 N.C. 847, 539 S.E.2d 5 (1999)), *cert. denied*, 540 U.S. 843, 157 L. Ed. 2d 78 (2003). Because the officer's "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis," *Whren*, 517 U.S. at 813, 135 L. Ed. 2d at 98, the issue before this Court is "whether the objective facts support a finding that probable cause existed to stop the defendant." *State v. Ivey*, 360 N.C. 562, 564, 633 S.E.2d 459, 460-61 (2006). The existence of probable cause is a conclusion of law subject to *de novo* review. *Wilson*, 155 N.C. App. at 94, 574 S.E.2d at 97 (citing *State v. Young*, 148 N.C. App. 462, 466, 559 S.E.2d 814, 818, *appeal*

dismissed and disc. rev. denied, 355 N.C. 500, 564 S.E.2d 233 (2002)).

Pursuant to North Carolina General Statutes, section 20-141(h),

[n]o person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

N.C. Gen. Stat. § 20-141(h) (2005). Because section 20-141(h) does not establish a particular minimum speed limit, we have held that "whether [a driver]'s speed was unreasonably slow and whether traffic was impeded are questions of fact to be resolved by" the fact finder. *Page v. Tao*, 56 N.C. App. 488, 493, 289 S.E.2d 910, 913, *aff'd*, 306 N.C. 739, 295 S.E.2d 470 (1982); *see also Fonville v. Dixon*, 16 N.C. App. 664, 669, 193 S.E.2d 406, 411 (1972).

In denying defendant's motion to suppress, the trial court made the following findings of fact pertaining to the stop of defendant's vehicle:

2. On 15 November 2004 Detective Steven Truell saw the defendant between 4 and 5 o'clock P.M. when Detective Truell was driving north toward High Point along the National Highway in Davidson County accompanied by Detectives Carter and Barber. The defendant was observed driving a motor vehicle . . . along the National Highway. . . . The defendant was operating his automobile in the inside or passing lane for southbound traffic. . . .

3. The detective turned around and followed the automobile being operated by the

defendant. Traffic was heavy due to people going home from work. The speed limit in the area was 45 miles per hour. The detectives observed that the defendant was going only about 30 miles per hour, and traffic was backing up in the passing lane behind the defendant as a result. The defendant did not have any emergency flashing lights activated on his automobile. People operating other motor vehicles were blowing their horns at the defendant because he was going abnormally slow. The officers observed no signs of mechanical difficulty with the defendant's automobile. The defendant did not attempt to move from the inside, or passing, lane to the outside lane for southbound traffic, nor did he signal any intention to do so. Accordingly, the officers activated their blue lights on their police vehicle and stopped the defendant for impeding traffic in violation of N.C. Gen. Stat. § 20-141(h). The traffic congestion was then relieved.

Based upon these uncontested facts, we hold Truell's direct observation of defendant's slow speed of travel and his effect on the flow of traffic established probable cause to suspect a violation of North Carolina General Statutes, section 20-141(h). *Wilson*, 155 N.C. App. at 95, 574 S.E.2d at 98 (holding that an officer's "personal observation of [a car's] speed and its following distance to another vehicle provided him with . . . probable cause to believe that defendants were in violation of Section 20-152.").

Affirmed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).