

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-1534

NORTH CAROLINA COURT OF APPEALS

Filed: 4 August 2009

STATE OF NORTH CAROLINA

v.

Orange County  
No. 07 CRS 53192

CHARLES ANTHONY BRADSHAW

Appeal by Defendant from order entered 9 September 2008 by Judge Thomas H. Lock in Orange County Superior Court. Heard in the Court of Appeals 23 April 2009.

*Attorney General Roy Cooper, by Assistant Attorney General Jess D. Mekeel, for the State.*

*Mary McCullers Reece for Defendant.*

STEPHENS, Judge.

*I. Factual Background and Procedural History*

On 17 June 2007, at approximately 1:35 a.m., Officer Brian D. Matthews of the Hillsborough Police Department was on patrol duty in his marked patrol car in Hillsborough, North Carolina. He observed a white 1998 Ford Taurus with Virginia tags, driven by Defendant Charles Anthony Bradshaw, stopped at a red light and preparing to make a right turn. Although there was no other traffic in the area, Defendant waited at the red light for approximately 45 seconds until the light turned green. Defendant then turned right onto Churton Street.

Matthews began to follow Defendant and observed that Defendant was traveling between ten and fifteen miles per hour below the posted speed limit along Churton Street. As Defendant approached the intersection of Churton and Corbin Streets, Defendant made an abrupt lane change without using a turn signal and turned onto Corbin Street without using a turn signal. Matthews followed Defendant onto Corbin Street and again noted that Defendant was driving approximately ten miles below the speed limit.

Based upon these observations, Matthews determined that an investigatory stop of Defendant's vehicle was necessary to ascertain whether Defendant was impaired. Matthews activated his blue lights and stopped Defendant's vehicle. After determining that Defendant was impaired, Matthews placed Defendant under arrest and transported Defendant to the Orange County Jail.

On 11 October 2007, Defendant pled guilty in district court to driving while impaired, in violation of N.C. Gen. Stat. § 20-138.1. Defendant was sentenced to one day imprisonment. The sentence was suspended subject to Defendant's paying a \$100 fine, completing twelve months of unsupervised probation, twenty-four hours of community service, and a substance abuse assessment. Defendant gave notice of appeal to superior court.

On 25 April 2008, Defendant filed a motion to suppress all evidence seized as a result of Matthews' stop of Defendant's vehicle. By written order entered 9 September 2008, Judge Lock denied Defendant's motion. After reserving his right to appeal the denial of his motion to suppress, Defendant pled guilty. Defendant

was sentenced to sixty days imprisonment. The sentence was suspended subject to Defendant's paying a \$100 fine and completing eighteen months of supervised probation. From the denial of his motion to suppress, Defendant appeals.

## *II. Discussion*

By Defendant's sole argument on appeal, Defendant contends the trial court erred in denying his motion to suppress as the trial court's findings of fact did not support the conclusion of law that Matthews had reasonable, articulable suspicion to justify the stop of Defendant's vehicle. We disagree.

We note that Defendant does not assign error to any of the trial court's findings of fact and, therefore, the findings of fact "are deemed to be supported by competent evidence and are binding on appeal." *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36, *disc. review denied*, 358 N.C. 240, 594 S.E.2d 199 (2004).

On review of a motion to suppress,

[a]n appellate court accords great deference to the trial court's ruling on a motion to suppress because the trial court is entrusted with the duty to hear testimony (thereby observing the demeanor of the witnesses) and to weigh and resolve any conflicts in the evidence. Our review of a trial court's denial of a motion to suppress is strictly limited to a determination of whether it's [sic] findings are supported by competent evidence, and in turn, whether the findings support the trial court's ultimate conclusion. However, the trial court's conclusions of law are reviewed *de novo* and must be legally correct.

*State v. Hernandez*, 170 N.C. App. 299, 303-04, 612 S.E.2d 420, 423 (2005) (internal quotation marks and citations omitted).

"[T]he police can stop and briefly detain a person for investigative purposes if they have a reasonable suspicion supported by articulable facts that criminal activity may be afoot, even if they lack probable cause under the Fourth Amendment." *United States v. Sokolow*, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 10 (1989) (quotation marks and citation omitted). Under the reasonable suspicion standard, "it is only necessary that, given the totality of the circumstances, the detaining officers have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Milien*, 144 N.C. App. 335, 339-40, 548 S.E.2d 768, 771 (2001) (internal quotation marks, alteration, and citation omitted).

In determining the existence of reasonable suspicion,

we must examine both the articulable facts known to the officers at the time they determined to approach and investigate . . . and the rational inferences which the officers were entitled to draw from those facts. In doing so, however, we do not believe the circumstances should be analyzed in isolation, but that they should be viewed as a whole "through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training."

*State v. Thompson*, 296 N.C. 703, 706, 252 S.E.2d 776, 779 (quoting *United States v. Hall*, 525 F.2d 857, 859 (D.C. Cir. 1976)), cert. denied, 444 U.S. 907, 62 L. Ed. 2d 143 (1979).

Activity at a late hour is one factor that may be considered in evaluating whether reasonable suspicion of criminal activity

existed. *State v. Watkins*, 337 N.C. 437, 442, 446 S.E.2d 67, 70-71 (1994). Furthermore, although operating a motor vehicle at a rate of speed below the posted speed limit may be lawful in and of itself, such conduct may be considered when determining if reasonable suspicion of impaired driving existed. See *State v. Bonds*, 139 N.C. App. 627, 629, 533 S.E.2d 855, 857 (2000) (“[W]e note that the National Highway Traffic Safety Administration (“NHTSA”), in its recent publication “The Visual Detection of DWI Motorists,” states that driving ten miles per hour or more under the speed limit, plus staring straight ahead with fixed eyes, indicates a fifty percent chance of being legally intoxicated.”). Moreover, an abrupt turn demonstrates unpredictable or erratic driving, which would create a reasonable suspicion of impaired driving. See *United States v. White*, 42 F.3d 457, 459 (8<sup>th</sup> Cir. 1994) (“An abrupt change of lanes without signaling constitutes a legitimate reason for a traffic stop.”). Additionally, although turning right on a red light is permitted but not required by N.C. Gen. Stat. § 20-158(b)(2)(a), much like failing to proceed in a timely fashion after a traffic light has turned green, see, e.g., *State v. Barnard*, 362 N.C. 244, 248, 658 S.E.2d 643, 645 (holding that defendant’s thirty-second delay at a green traffic light under the circumstances gave rise to a reasonable, articulable suspicion that the defendant may have been driving while impaired), cert. denied, \_\_\_ U.S. \_\_\_, 172 L. Ed. 2d 198 (2008), a defendant’s failure to turn right at a red light in a timely fashion even though it was safe to do so is a valid factor to be considered in determining

reasonable suspicion. Finally, an officer's training and experience are also relevant factors to consider in the determination of reasonable suspicion. *Bonds*, 139 N.C. App. at 629, 533 S.E.2d at 857.

In its order denying Defendant's motion to suppress, the trial court made the following relevant findings of fact:

1) On 17 June 2007, at approximately 1:35 a.m., Hillsborough Police Officer Brian D. Matthews was operating his marked patrol car . . . in Hillsborough, North Carolina.

2) At that time, Officer Matthews had been employed by the Hillsborough Police Department for approximately six years. Officer Matthews had completed Basic Law Enforcement Training in 1999 and previously had been employed with the Orange County Sheriff's Department. Officer Matthews also had received specialized training in the detection and apprehension of impaired drivers, including training through the National Highway Traffic Safety Administration, known as NHTSA.

3) As Officer Matthews approached the intersection of Churton Street with U.S. Highway 70-A, he observed a white Ford Taurus stopped at the intersection . . . preparing to make a right turn onto Churton Street. The traffic light facing the direction of the white Ford Taurus was red at the time. No other traffic was in the area.

4) After Officer Matthews proceeded through the intersection, he continued to observe the white Ford Taurus in his rearview mirror for a total period of time of about 45 seconds. Officer Matthews observed the Ford Taurus then turn right onto Churton Street. At that time, the traffic light facing Churton Street was red. Hence, Officer Matthews believed the traffic light facing the Ford Taurus was green at the time the Taurus made its turn.

5) Based upon his training in the detection of impaired drivers, Officer Matthews believed that sitting still at a traffic signal when a

driver has the right to proceed lawfully through the signal is one of the indicators that that driver might be impaired. . . .

6) Officer Matthews caught up with the Ford Taurus and began to follow it. Officer Matthews noted that the Taurus was operating at a speed of approximately 10 miles per hour in a 20-mile-per-hour zone along Churton Street. . . .

7) The Ford Taurus continued to proceed along Churton Street to a point at which the speed limit increased to 30 miles per hour. The speed of the Taurus increased slightly, but the Taurus continued to operate at a speed of 10 to 15 miles per hour below the posted speed limit.

8) As the Ford Taurus approached the intersection of Churton Street with Corbin Street, the driver of the Ford Taurus made an abrupt lane change into the left turn lane of Churton Street without giving a turn signal. The driver of the Ford Taurus then immediately turned onto Corbin Street without giving a turn signal.

9) Officer Matthews also turned onto Corbin Street and continued to follow the Ford Taurus. The speed limit along Corbin Street was 35 miles per hour, and the Ford Taurus proceeded along the street at approximately 25 miles per hour.

10) Based upon his observations of the operation of the Ford Taurus, including the length of time at which the Ford Taurus had sat at the traffic signal at the intersection of U.S. Highway 70-A with Churton Street, the operation of the Ford Taurus at a speed averaging ten miles per hour below the posted speed limit, and the abrupt manner in which the Ford Taurus had turned onto Corbin Street, Officer Matthews made the decision to stop the Ford Taurus for the purpose of determining whether or not the driver of the Taurus was impaired.

We conclude that these unchallenged findings of fact support the trial court's conclusion of law that based on the totality of

the circumstances, Officer Matthews had reasonable, articulable suspicion to justify stopping Defendant's vehicle. Accordingly, the trial court did not err in denying Defendant's motion to suppress, and the trial court's order is thus

AFFIRMED.

Judges BRYANT and GEER concur.

Report per Rule 30(e).