NO. COA08-570

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2008

STATE OF NORTH CAROLINA

v. Guilford County
Nos. 06 CRS 87066-67
06 CRS 87072-73

CEDRIC CANTRELL MONROE

Appeal by defendant from judgment entered 1 October 2007 by Judge William Z. Wood, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 17 November 2008.

Attorney General Roy Cooper, by Assistant Attorney General Kathleen Mary Barry, for the State.

A. Wayne Harrison, for defendant.

BRYANT, Judge.

Cedric Cantrell Monroe ("defendant") appeals from the trial court's denial of his motion to suppress evidence recovered through a search of his car. Defendant's motion came on for hearing on 23 August 2007, and after hearing evidence from both the State and defendant, the trial court made the following ruling from the bench:

> This case came on for hearing and the Court makes the following findings of fact.
>
> That Marcus Guy was working as a campus police officer for North Carolina State A&T on July 28, 2006. That he was sitting at a location of Sullivan and Lindsay Street and observed a

vehicle driven by the Defendant with a bent license tag on the back thereof.

That he proceeded behind that vehicle at approximately 1:35 in the afternoon. That the vehicle was a green Saturn . . . which turned out to be driven by the Defendant. That . . . [Officer Guy] proceeded after it on Lindsay and saw what he perceived to be suspicious movements in the vehicle of the driver attempting to put something under the seat or making a motion appearing to put something below his seat. There were no vehicles between him and the Defendant's car.

That upon observing the green Saturn, he saw the green Saturn cross over the center line onto the double yellow line for a period of travel. And he further observed Defendant watching him through his rear view mirror. That the Defendant came back into the proper lane and [] Officer Guy initiated the stop. That upon stopping the vehicle, he found the Defendant to be the sole occupant. That he observed the Defendant's hands shaking uncontrollably and the twitching of muscles in his face.

That he informed the Defendant that he had stopped him because of the bent tag and because he was driving left of center. That as soon as he approached the vehicle, he detected a strong odor of marijuana coming from the vehicle. That the officer was a certified K-9 handler at the time and had been involved in at least 80 arrests of marijuana before and knew the smell of marijuana.

That he also observed . . . what he perceived to be a partially smoked marijuana blunt cigarette on the driver's seat. That he placed the Defendant in handcuffs and called for assistance. And Officer Mills [sic] of the AT&T [sic] campus police arrived shortly thereafter along with [O]fficer White of the AT&T [sic] police department.

. . .

While still at the scene, Officer White searched the trunk of the vehicle and found two bags of controlled substances, one being a

> bag of powdered cocaine in a plastic bag and another being a bag of crack cocaine.
>
> . . .
>
> That based on the foregoing findings of fact, the [c]ourt concludes that the officers had probable cause to search the vehicle based on the totality of the circumstances then existing. That the officers had probable cause that there was contraband in the vehicle based on the above-stated findings of fact that justified a search of the entire vehicle and its contents.
>
> And that the -- in viewing the totality of the circumstances, the reasonableness of the seizure, based on officers -- these trained officers at the time, it appears the search was proper.
>
> And the Court hereby denies the motion to suppress.

Defendant reserved the right to appeal the denial of his motion to suppress and subsequently pled guilty to one count of trafficking cocaine by transportation, one count of trafficking cocaine by possession, one count of possession of marijuana with intent to sell or distribute, one count of possession of cocaine with the intent to sell or distribute, and one count of feloniously maintaining a vehicle for the purpose of keeping and selling a controlled substance. The trial court consolidated the charges for judgment and sentenced defendant to an active term of thirty-five to forty-two months imprisonment and imposed a fine of $50,000. Defendant appeals.

On appeal, defendant raises only one question: Did the trial court err in denying defendant's motion to suppress.

However, we first address the State's motion to dismiss defendant's appeal filed 3 July 2008. The State argues defendant's appeal suffers from numerous defects, both jurisdictional and non-jurisdictional, which warrant the dismissal of the appeal. The State contends the appeal suffers from two jurisdictional defects, insufficient evidence of: (1) defendant's notice of appeal; and (2) of whether defendant complied with the procedural requisites to appeal the denial of a motion to suppress after the entry of a guilty plea. N.C. R. App. P. 9(a)(3)(h), 28(b)(4) (2008); *see also State v. Brown*, 142 N.C. App. 491, 492, 543 S.E.2d 192, 193 (2001) (notice of intent to appeal the denial of a motion to suppress is to be given to the trial court and prosecution prior to entry of a guilty plea). The State also contends defendant's appeal suffers from three non-jurisdictional defects[1]: (1) lack of a statement of the grounds for appellate review in his brief; (2) improper statement of the standard of review for the issue presented on appeal; and (3) failure to reference pages of the record at which defendant's assigned error occurs. N.C. R. App. P. 28(b)(4), 28(b)(6).

In response to the motion to dismiss his appeal, defendant filed a motion to amend the record on appeal. This Court granted defendant's motion by order entered 24 July 2008 and permitted

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[1]In addition to the three non-jurisdictional violations of our Appellate Rules noted by the State, we note that defendant has also not included an index in his record on appeal, did not paginate the record on appeal, failed to properly identify appellate counsel in his brief, and used an improper type size in his brief. *See* N.C. R. App. P. 9(a)(3)(a), 9(b)(4), 28(b)(8), and 28(j)(1)(b)(2) (2008).

defendant to include two transcripts of his plea proceedings as exhibits to the record on appeal. In these transcripts it is clear that defendant gave oral notice of appeal, and, prior to entering his guilty plea, gave notice to the trial court and the prosecution of his intent to appeal the denial of his motion to suppress. Accordingly, this Court has jurisdiction to hear defendant's appeal. We further hold that defendant's non-jurisdictional violations of our appellate rules do not merit the dismissal of defendant's appeal. *See Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 201, 657 S.E.2d 361, 367 (2008). Accordingly, the State's motion to dismiss defendant's appeal is denied.

Defendant's sole argument on appeal is that the superior court erred in denying his motion to suppress. Defendant contends the trial court erred in denying his motion to suppress because the search of the trunk of defendant's car exceeded the scope of a search incident to arrest. Defendant's argument is misplaced.

We note that the record before this Court contains no formal written order by the trial court denying defendant's motion to suppress, and no indication such an order exists. However, the trial court's failure to file a written order does not invalidate its ruling because, in announcing its ruling from the bench, the trial court made findings of fact and fully explained its reasoning for denying defendant's motion to suppress. *State v. Thompson*, ___ N.C. App. ___, ___, 654 S.E. 2d 486, 491 (2007).

> Our standard of review of an order granting or denying a motion to suppress is "strictly limited to determining whether the trial [court'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 [trial court's] ultimate conclusions of law.

State v. Ortez, 178 N.C. App. 236, 243-44, 631 S.E.2d 188, 194-95 (2006) (citation omitted), *disc. review denied*, 361 N.C. 434, 649 S.E.2d 642 (2007). "However, the trial court's conclusions of law are fully reviewable on appeal." *State v. McArn*, 159 N.C. App. 209, 212, 582 S.E.2d 371, 374 (2003) (citation omitted).

"The law is settled in North Carolina that a law enforcement officer may conduct a warrantless search of an automobile if the officer has a reasonable belief that the automobile contains contraband materials." *State v. Greenwood*, 47 N.C. App. 731, 741, 268 S.E.2d 835, 841 (1980), *rev'd on other grounds*, 301 N.C. 705, 707, 273 S.E.2d 438, 440 (1981). "Our Supreme Court has held the odor of marijuana to be sufficient to establish probable cause to search for the contraband drug in an automobile." *State v. Yates*, 162 N.C. App. 118, 122, 589 S.E.2d 902, 904 (2004) (citation omitted).

Here, defendant does not challenge the trial court's findings of fact. And, the trial court found that "as soon as [Officer Guy] approached the [defendant's] vehicle, he detected a strong odor of marijuana coming from the vehicle. . . . [H]e also observed . . . what he perceived to be a partially smoked marijuana blunt cigarette on the driver's seat." These findings of fact are

supported by competent evidence in the record and in turn support the trial court's conclusion that the officers on the scene had probable cause to search the entire vehicle, including the trunk. *See Greenwood*, 47 N.C. App. at 741, 268 S.E.2d at 841 (where a trained officer detected the odor of marijuana upon approaching a vehicle, the officer had probable cause to search the vehicle). Accordingly, the trial court did not err in denying defendant's motion to suppress.

No error.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).