NO. COA10-232

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

STATE OF NORTH CAROLINA

v. Guilford County
No. 08 CRS 110889-890

JUAN MEDINA VALENCIA

Appeal by defendant from judgment entered 15 September 2009 by Judge Catherine C. Eagles in Guilford County Superior Court. Heard in the Court of Appeals 30 September 2010.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Richard E. Slipsky, for the State.

Cheshire, Parker, Schneider, Bryan & Vitale, by John Keating Wiles, for defendant-appellant.

JACKSON, Judge.

Juan Medina Valencia ("defendant") appeals his 15 September 2009 convictions of trafficking in 400 or more grams of cocaine by transportation and possession. For the reasons set forth below, we hold no error.

On 15 December 2008, Detective Richard Alston ("Detective Alston") was working with a confidential informant named Christopher Wilson ("Wilson"). Wilson told Detective Alston that a man named Black ("Black") was arranging to get him half a kilo of

cocaine from two Hispanic males that day. Wilson gave Detective Alston directions which led to a house at 4211 Olympia Drive, Greensboro, North Carolina.

Detective Duane James ("Detective James") watched the house, and Detective Alston parked several streets away. Detective Alston instructed Wilson to meet Black and the two men, to call off the deal, and to leave. Detective James saw a white pick-up truck arrive and observed two Hispanic males enter the house. Approximately five to ten minutes later, Detective James observed the passenger return to the truck and walk back into the house with a brown bag in hand. Wilson called Detective Alston and said that the driver offered him a sample of cocaine. Wilson advised Detective Alston that the two men had half a kilo of cocaine.

Previously, Detective Alston asked Officer E. K. Wrenn ("Officer Wrenn") to look for "a white Chevy pick-up truck occupied by two Hispanic males." Officer Wrenn was advised when the truck left the area and received "continuous updates on the vehicle – its location, its direction of travel - up to the point where I saw it pass where I was sitting." Within a minute, Officer Wrenn observed the truck. After identifying the truck, Officer Wrenn followed the vehicle for approximately one-half of a mile. Officer Wrenn observed the license plate light on the truck was not operating. Before making a traffic stop, he also observed the truck make a wide U-turn, swerving into the straight lane to the right. Officer Wrenn identified defendant as the driver and another Hispanic male as a passenger.

Defendant pulled over immediately after Office Wrenn activated his patrol vehicle's blue lights to initiate the stop. Officer Wrenn spoke with defendant in English, and defendant responded in English. Officer Wrenn observed defendant to be nervous. He asked defendant to step out of the vehicle, and defendant complied. Officer Wrenn asked if defendant would give consent to search his vehicle "for anything illegal," and defendant consented. Officer Wrenn found the half kilo of cocaine in two bags "stuffed within the back seat of the truck."

On or about 1 September 2009, defendant moved to suppress evidence on the basis of an unlawful stop. Defendant testified at the hearing and denied that he was responsible for possessing the cocaine, that he made a wide U-turn, that the license plate lights were out, and that he gave consent for the search. Defendant further testified that he had "a little bit" of trouble understanding Officer Wrenn. Defendant's wife testified that the truck's license plate lights were working when she picked up the truck from police impoundment. She sold the truck to a friend, Rosa Rodriguez. Rodriguez testified that the license plate lights were working properly.

The trial court denied defendant's motion to suppress. On 15 September 2009, pursuant to a plea agreement, defendant pleaded guilty to trafficking in cocaine by transporting 400 or more grams and trafficking in cocaine by possessing 400 or more grams. The trial court consolidated the two charges for judgment pursuant to the plea agreement and sentenced defendant to a minimum of

175 months and a maximum of 219 months imprisonment. Defendant appeals.

In the record on appeal, defendant's counsel made eight assignments of error. Pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967), defendant's brief presents "the only argument that he perceives presents an arguable basis for relief" and requests that the Court conduct its own review.

> Pursuant to *Anders*, this Court must now determine from a full examination of all the proceedings whether the appeal is wholly frivolous. In carrying out this duty, we will review the legal points appearing in the record, transcript, and briefs, not for the purpose of determining their merits (if any) but to determine whether they are wholly frivolous.

State v. Kinch, 314 N.C. 99, 102–03, 331 S.E.2d 665, 667 (1985) (citing *Anders*, 386 U.S. 738, 18 L. Ed. 2d 493) (footnote call number omitted). In Kinch, counsel's brief requested that the Court review the record on appeal and abandoned all assignments of error. *Id.* at 100–01, 331 S.E.2d at 666. We hold that defendant's counsel has complied with *Anders* and *Kinch*.

Defendant argues that the trial court erred in denying his motion to suppress, because its factual findings regarding defendant's traffic violations were incorrect and led to improper conclusions of law. We disagree.

> It is well established that the standard of review in evaluating a trial court's ruling on a motion to suppress is that the trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. The trial court's conclusions of law, however, are fully reviewable.

State v. Green, 194 N.C. App. 623, 626, 670 S.E.2d 635, 637 (2009) (citing *State v. Nixon*, 160 N.C. App. 31, 33, 584 S.E.2d 820, 822 (2003)). In determining the credibility of witnesses, this Court has held that "we must defer to the trial court since it was in the best position to observe the demeanor of the witness . . . ." *State v. Morocco*, 99 N.C. App. 421, 429, 393 S.E.2d 545, 550 (1990) (citing *State v. Smith*, 278 N.C. 36, 41, 178 S.E.2d 597, 601, *cert. denied*, 403 U.S. 934, 29 L. Ed. 2d 715 (1971)). The trial court

> sees the witnesses, observes th[ei]r demeanor as they testify and by reason of his more favorable position, he is given the responsibility of discovering the truth. The appellate court is much less favored because it sees only a cold, written record. Hence the findings of the trial [court] are, and properly should be, conclusive on appeal if they are supported by the evidence.

State v. Cooke, 306 N.C. 132, 135, 291 S.E.2d 618, 620 (1982) (quoting *State v. Smith*, 278 N.C. 36, 41, 178 S.E.2d 597, 601, *cert. denied*, 403 U.S. 934, 29 L. Ed. 2d 715 (1971)).

We previously have considered traffic stop cases when the defendant and the State presented inconsistent evidence. "Where, as here, 'there is a conflict between the [S]tate's evidence and defendant's evidence on material facts, it is the duty of the trial court to resolve the conflict and such resolution will not be disturbed on appeal.'" *State v. Hopper*, ___ N.C. App. ___, ___, 695 S.E.2d 801, 805 (quoting *State v. Fernandez*, 346 N.C. 1, 11, 484 S.E.2d 350, 357 (1997)). In *Hopper*, we held that an officer's testimony that the roads were the property of the City of Winston-Salem and is a "public road" was sufficient evidence to

support the trial court's finding that the street was indeed public. *Hopper*, ___ N.C. App. at ___, 695 S.E.2d at 805-06. Our Supreme Court has held that a Chapter 20 violation is sufficient to give rise to reasonable suspicion to stop a vehicle. *State v. Styles*, 362 N.C. 412, 417, 665 S.E.2d 438, 441 (2008).

Officer Wrenn testified that the truck lacked operating license tag lights and made a wide U-turn, both of which constituted violations of Chapter 20. Defendant testified on his own behalf and presented testimony that the license tag light was in working order and that defendant properly executed the U-turn. Notwithstanding evidence to the contrary, the officer's testimony is nonetheless competent evidence that defendant's truck lacked operating license tag lights and made a wide U-turn. Therefore, we hold that the trial court's findings of fact are supported by competent evidence. In accordance with *Styles*, we further hold that the officer had reasonable suspicion to stop defendant's vehicle.

Defendant further argues that the trial court erred in denying his motion to suppress, because its factual findings regarding defendant's consent were incorrect and led to improper conclusions of law regarding the constitutionality of the search. We disagree.

We review the trial court's findings of fact in denying a motion to suppress for competency of the evidence. *State v. Young*, 186 N.C. App. 343, 347, 651 S.E.2d 576, 579 (2007), *appeal dismissed*, 362 N.C. 372, 662 S.E.2d 394 (2008). "We must keep in mind that '[w]here the trial judge sits as a jury and where

different *reasonable* inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial judge.'" *Young*, 186 N.C. App. at 350, 651 S.E.2d at 581 (quoting *Sharp v. Sharp*, 116 N.C. App. 513, 530, 449 S.E.2d 39, 48, *disc. rev. denied*, 338 N.C. 669, 453 S.E.2d 181 (1994)) (emphasis in original).

Officer Wrenn testified that defendant consented to the search and that defendant appeared to understand. Although defendant testified that he refused consent, Officer Wrenn's testimony is competent evidence. Therefore, we hold that the trial court's finding of fact is supported by competent evidence.

Regarding the trial court's conclusion of law, "[a] reviewing court determines whether a reasonable person would feel free to decline the officer's request or otherwise terminate the encounter by examining the totality of the circumstances." *State v. Icard*, 363 N.C. 303, 308-09, 677 S.E.2d 822, 826 (2009). "Evidence seized during a warrantless search is admissible if the State proves that the defendant freely and voluntarily, without coercion, duress, or fraud, consented to the search." *State v. Williams*, 314 N.C. 337, 344, 333 S.E.2d 708, 714 (1985) (citing *State v. Long*, 293 N.C. 286, 237 S.E.2d 728 (1977)).

Previously, this Court has considered language barriers in the context of search and seizure. *See, e.g.*, *State v. Medina*, ___ N.C. App. ___, ___, 697 S.E.2d 401, 402-06, *disc. rev. denied*, 364 N.C. 330, ___ S.E.2d ___ (2010). When a defendant did not respond to English questions and the officer was not fluent, but knew

college-level Spanish and subsequently asked questions in Spanish, we held consent to be valid. *Id.* at ___, 697 S.E.2d at 403-05. Additionally, when a defendant gave logical responses to questions, our Supreme Court held the waiver of rights to be voluntary. *State v. Mlo*, 335 N.C. 353, 366, 440 S.E.2d 98, 104, *cert. denied*, 512 U.S. 1224, 129 L. Ed. 2d 841 (1994).

Officer Wrenn testified that he had no difficulty understanding defendant's English and that defendant responded logically. Although defendant testified that he had "a little bit" of difficulty in understanding Officer Wrenn, defendant gave logical, clear answers in response to Officer Wrenn's questions. No testimony from defendant or Officer Wrenn indicates that defendant could not proceed in English. We hold defendant's consent to be voluntary.

Therefore, the trial court's conclusions regarding defendant's motion to suppress are correct.

In accordance with our duty pursuant to *Kinch* and *Anders*, we have conducted a thorough review of the record, transcript, and brief. We hold no error.

No error.

Judges ELMORE and THIGPEN concur.

Report per Rule 30(e).