

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-1489
NORTH CAROLINA COURT OF APPEALS

Filed: 21 August 2012

STATE OF NORTH CAROLINA

v.

Johnston County
No. 10 CRS 52025

EARVIN EUGENE HOWELL, JR.

Appeal by Defendant from judgment entered 7 July 2011 by Judge Thomas H. Lock in Superior Court, Johnston County. Heard in the Court of Appeals 5 June 2012.

Attorney General Roy Cooper, by Assistant Attorney General Kathryne E. Hathcock, for the State.

The Robinson Law Firm, P.A., by Leslie S. Robinson, for Defendant-Appellant.

McGEE, Judge.

Earvin Eugene Howell, Jr. (Defendant) appeals the trial court's denial of his motion to suppress.

At approximately 10:15 p.m. on the evening of 6 April 2010, Officer William Parker (Officer Parker) of the Kenly Police Department received a call from dispatch involving a possible impaired driver. An unidentified driver had called the police

to report erratic driving, and Officer Parker responded. Officer Parker intercepted the suspect vehicle, which was being driven by Defendant and was still being followed by the anonymous tipster. Officer Parker passed the tipster's vehicle and pulled in directly behind Defendant, who was driving on South Gardner Avenue, a public highway. Defendant stopped at a stop sign, then made a right-hand turn onto a road (the road) identified by Officer Parker as South Church Street. At the suppression hearing, Officer Parker testified that "[a]s the vehicle made the turn, the vehicle turned very wide and went into the oncoming travel lane." The road ran perpendicular to South Gardner Avenue and connected South Gardner Avenue with Highway 301 (also known as South Church Street).

At the hearing, conflicting evidence was presented concerning whether the road was a part of South Church Street. It was uncontroverted that a portion of the road was privately maintained by a Food Lion shopping center. It was also uncontroverted that a portion of the road connecting to Highway 301/South Church Street was publicly maintained.

Defendant drove along the road in the direction of Highway 301/South Church Street, with Officer Parker following. Defendant entered a curve in the road and, according to Officer Parker, approximately half of Defendant's vehicle crossed the

center line in the road. According to testimony and evidence, there is a center line just before the beginning of this curve in the road, and a center line at the end of this curve, but the central portion of the curve does not have markings. Officer Parker testified that Defendant remained partially in the oncoming lane of traffic throughout Defendant's negotiation of this curve. Defendant then "swerved" back into the proper lane. Defendant stopped at a light and turned right onto Highway 301/South Church Street, a four-lane road with an additional central turn lane. According to Officer Parker, Defendant made a wide right turn and crossed into the second lane of traffic before moving back into the far right lane. Defendant then made a right turn into a gas station where Officer Parker initiated a stop. Defendant was arrested for driving while impaired. Defendant is not contesting on appeal that he was impaired.

Defendant filed a pre-trial motion to suppress evidence of his impairment on 14 June 2010, arguing that Officer Parker lacked a reasonable suspicion to make the stop. The suppression hearing occurred on 7-8 April 2011, and the trial court denied Defendant's motion to suppress by order filed 6 May 2011. Defendant preserved his right to appeal the denial of his motion to suppress, and entered into a plea agreement with the State. Judgment suspending Defendant's driving privileges and imposing

a suspended sentence of sixty days in jail was entered against Defendant on 7 July 2011. Defendant appeals.

I.

The issues on appeal are whether the trial court (1) made findings of fact not supported by competent evidence, and (2) erroneously concluded that reasonable suspicion existed to support Officer Parker's stop of Defendant. Defendant argues that his motion to suppress should have been granted.

II.

Defendant first argues that the trial court erred in making its fifth finding of fact because that finding was not supported by competent evidence. We disagree.

"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, 304, 612 S.E.2d 420, 423 (2005) (citations omitted).

The trial court's finding of fact number five states: "Officer Parker further observed half of the black Impala go left of center and to the left of the double yellow lines in a curve [on the road] going toward Church St/US 301. This portion

of the service road is marked with double yellow lines and is state maintained."

Officer Parker testified that Defendant crossed over onto the left-hand side of the road as he was traversing a curve in the road, then "swerved" back onto the right-hand side of the road. The State asked Officer Parker: "Q. Well, point out where [Defendant] swerved back into [the] lane?" Officer Parker indicated on an aerial photograph where this occurred, and the State asked:

Q. So you're pointing to the second driveway right here?

A. Yes.

Q. And that's after the yellow line begins; is that correct?

A. Yes.

Q. So [Defendant] continued - he was still crossed - he's over, halfway over the yellow line, and swerved back over to the right lane?

A. Yes.

Defendant and the State spent a great deal of time at the hearing debating where, on the road, Defendant had crossed the center line. There was also debate as to which parts of the road were publicly maintained and which parts were privately maintained. Photographs of the road were introduced into evidence and used by both sides to argue these issues. Officer

Parker pointed out where he observed Defendant crossing the center line. Defendant argued that this occurred on a portion of the road that was privately maintained, while the State argued that when Defendant "swerved" to bring his vehicle completely back into the right-hand lane, he had already crossed onto the publicly maintained portion of the road. Defendant's counsel questioned Officer Parker as follows:

Q. Okay. And then the vehicle - there's a sign that indicates where the state maintenance ends; is that correct?

A. Yes, sir.

Q. And [Defendant] entered onto that portion of the roadway too, didn't he?

A. He did.

. . . .

Q. And in that lane that [Defendant] entered into, he stayed in his lane of travel all the way up to the traffic light, did he not?

A. On the state maintenance?

Q. Yes, sir.

A. Other than him having trouble negotiating the curve, yes sir, he did.

Q. But that's before the state maintenance began; is that correct?

A. Well, it's kind of where the sign is where - right in there is kind of where he went left of center.

Q. Well, the state maintenance side, it's

actually after you exit the curve?

A. Well, it's still partially - the road is still curving from where I'm looking.

Defendant's counsel did not challenge Officer Parker further on this issue.

The trial court was in a better position to evaluate this testimony and evidence than is this Court. *Hernandez*, 170 N.C. App. at 303-04, 612 S.E.2d at 423 ("An 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."). Though some evidence may have been conflicting, it was the province of the trial court to weigh the evidence and resolve any contradictions. We find that sufficient evidence was presented at the hearing to support the trial court's finding of fact number five. *Id.* at 304, 612 S.E.2d at 423.

III.

Defendant argues that the trial court erred in concluding that Officer Parker had reasonable suspicion to stop Defendant. We disagree.

The trial court's seventh conclusion of law states in relevant part:

In light of . . . Defendant's vehicle . . . going left of center in violation of N.C.G.S. § 20-146 where the roadway had double yellow lines and was state maintained, and Officer Parker's training and experience, Officer Parker had reasonable suspicion to stop Defendant for the observed violation of N.C.G.S. § 20-146[.]

We hold that finding of fact number five supports this conclusion of law. When an officer observes a motorist cross the center line of a highway - a violation of N.C. Gen. Stat. § 20-146(a) - the officer may legally stop that motorist for the violation. *State v. Baublitz*, 172 N.C. App. 801, 806, 616 S.E.2d 615, 619 (2005). The trial court's findings were supported by competent evidence, and those findings supported the trial court's conclusions of law and its ultimate conclusion in this matter. *Hernandez*, 170 N.C. App. at 304, 612 S.E.2d at 423. The trial court did not err in denying Defendant's motion to suppress.

In light of our holdings above, we do not address Defendant's additional argument on appeal.

Affirmed.

Judges STEELMAN and ERVIN concur.

Report per Rule 30(e).