NO. COA13-363
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 10 CRS 241907

RANDALL V. BRICE

Appeal by Defendant from judgment entered 1 November 2012 by Judge Linwood O. Foust in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 September 2013.

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

Arnold & Smith, PLLC, by J. Bradley Smith, for Defendant.

DILLON, Judge.

Randall V. Brice ("Defendant") appeals from a judgment entered, after a guilty plea, convicting Defendant of possession with intent to sell or deliver marijuana and felonious possession of marijuana. On appeal, Defendant argues the trial court erroneously entered an order denying his motion to suppress. We disagree and find no error in the trial court's order denying Defendant's motion to suppress.

I. Background

The evidence of record tends to show the following: On 10 August 2010, Officers Cory Thigpen and Alan Savelle of the Charlotte-Mecklenburg Police Department were patrolling when they got behind a vehicle driven by Defendant. They ran Defendant's license plate in the Division of Criminal Information database. The database revealed that the plate had been revoked due to a lapse in insurance, and the officers pulled the vehicle over. When Officer Thigpen approached the driver's side, he immediately smelled marijuana. Officer Thigpen checked Defendant's license and registration and told Defendant that he was stopped due to the lapse in his insurance.[1] Then, Officer Thigpen went back to his patrol car to run Defendant through several databases. Officer Thigpen discovered that two months earlier, Defendant had been arrested for possession of marijuana. Officer Thigpen then returned to Defendant's vehicle and asked Defendant for consent to search the vehicle; however, Defendant refused. Thereafter, Officer Savelle opened the driver's side door, at which time he smelled a strong odor of marijuana. Defendant, of his own accord, turned around and presented his hands behind his back to Officer

[1] Defendant denied that the officers told him the reason for the stop.

Thigpen and admitted that he had marijuana. Officer Savelle recovered marijuana in vacuum-packed containers from the car.

On 7 February 2011, Defendant was indicted on charges of possession with intent to sell and deliver marijuana and felonious possession of marijuana.

On 14 February 2012, Defendant moved to suppress all evidence recovered from his vehicle, claiming the evidence was obtained in violation of Defendant's constitutional rights and without probable cause or reasonable suspicion.

On 12 October 2012, the Honorable Eric L. Levinson entered an order denying Defendant's motion to suppress. After the trial court denied Defendant's motion to suppress, Defendant pled guilty to possession with intent to sell and deliver marijuana and felonious possession of marijuana. On 1 November 2012, the Honorable Linwood O. Foust entered a judgment consistent with Defendant's guilty plea and sentenced Defendant to four to five months incarceration; however, the trial court suspended the foregoing sentence and placed Defendant on twelve months supervised probation. From this judgment, Defendant appeals.

I: Analysis

Defendant makes a number of arguments contending that his motion to suppress should have been allowed because of the impropriety of the stop of his vehicle by the officers, which resulted in their discovery of the marijuana.

Our review of an appeal from the denial of a defendant's motion to suppress "is limited." *State v. Hughes*, 353 N.C. 200, 207, 539 S.E.2d 625, 630 (2000). The question for this Court is "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011) (citation omitted). "[W]hen . . . the trial court's findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal." *Id.* at 168, 712 S.E.2d at 878 (citation omitted). "Conclusions of law are reviewed *de novo* and are subject to full review." *Id.* (citation omitted).

"Under [the United States Supreme Court's] *Terry* [decision and the decisions in] subsequent cases, a traffic stop is permitted if the officer has a reasonable, articulable suspicion that criminal activity is afoot." *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008) (citation and quotation marks omitted).

> Reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. The standard is satisfied by some minimal level of objective justification. This Court requires that [t]he stop . . . be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training. Moreover, [a] court must consider the totality of the circumstances – the whole picture in determining whether a reasonable suspicion exists.

Id. at 414, 665 S.E.2d at 439-40 (citations and quotation marks omitted).

In this case, the trial court made a number of findings of fact and conclusions of law in its order denying Defendant's motion to suppress, including, *inter alia*, the following:

> 3. While on patrol, Officers Thigpen and Savelle got behind a Silver Jeep Liberty belonging to Defendant as Defendant was making a right turn onto Monroe Road from McAlway Road.
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> 4. Officer Savelle ran the license plate of this Jeep Liberty displaying [license plate number omitted] through his DMV computer station in the police vehicle. The DMV computer returned information showing that the car Defendant was driving had an insurance lapse.
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> 5. Based upon the information related to the insurance lapse, and relying upon the same as a basis for executing a stop of the vehicle, the police officers initiated a

> traffic stop. Officer Thigpen believed that Defendant was in violation of North Carolina General Statute § 20-313 requiring operators of motor vehicles to have valid, effective insurance coverage.
>
> . . .
>
> 36. Days after the offense, Defendant called his insurance company and asked for proof that he had insurance on the Jeep Liberty on August 30, 2010, and received such letter indicating that there was proof of insurance on the vehicle on the date of offense.
>
> . . .
>
> Based on the foregoing FINDINGS OF FACT the Court makes the following [] CONCLUSIONS OF LAW[:]
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> . . .
>
> 4. The information that the officers received regarding the defendant's insurance status that they relied upon in executing a stop of the vehicle made the traffic stop by Officers Thigpen and Savelle on August 30, 2010, permissible under the Fourth Amendment, even though the vehicle did have proper insurance coverage on the date of offense.

We now address Defendant's arguments concerning the trial court's order.

A: Conflict in Evidence

In Defendant's first argument, he contends the trial court erred in denying his motion to suppress, because "[t]he State could not demonstrate that the patrol-car computer in fact

displayed an insurance stop[,]" and Defendant "proved . . . that the vehicle was properly insured at the time of the traffic stop." Defendant contends "the trial court was asked to take a leap of faith – to conclude that officers had seen an insurance stop relating to the vehicle . . . when it is undisputed that no such stop existed." We find this argument unconvincing.

"At a suppression hearing, conflicts in the evidence are to be resolved by the trial court." *State v. McArn*, 159 N.C. App. 209, 211-12, 582 S.E.2d 371, 373-74 (2003) (internal quotation marks and citations omitted). In this case, both officers testified under oath that the computer in their patrol vehicle displayed DMV information from the DCI database showing that the vehicle driven by Defendant was uninsured. Defendant, however, presented as evidence a letter he received from his insurance company, verifying that his "insurance was active and paid in full at the time of the . . . incident." The officers' sworn testimony and the letter from Defendant's insurer created a conflict of evidence that the trial court was required to resolve. When there is a conflict in the evidence "deference is afforded the trial judge because he is in the best position to weigh the evidence, given that he has heard all of the testimony and observed the demeanor of the witnesses." *Hughes*, 353 N.C.

at 207, 539 S.E.2d at 631. Certainly, it would have been within the trial court's ability – based on the verification letter from Defendant's insurer stating that there was no lapse in his insurance at the time of the stop – to find that the officers' testimony was incredible; and, therefore, the officers did not have a reasonable suspicion to stop Defendant. However, the trial court did not do so. Defendant provides no authority for the proposition that the officers' testimony in this case was *not* competent evidence, and we find none. Therefore, Defendant's first argument must be overruled.

C: Subjective Belief of Officer

In Defendant's second argument, he contends the trial court erred in denying his motion to suppress because "[o]fficers were allowed in this case to stop a vehicle based on their subjective belief that traffic laws were violated, where in fact no such violation had occurred." We find this argument lacks merit.

"In examining the legality of a traffic stop, the proper inquiry is not the subjective reasoning of the officer, but whether the objective facts support a finding that [a reasonable suspicion] existed to stop the defendant." *State v. Ivey*, 360 N.C. 562, 633 S.E.2d 459 (2006), *overruled on other grounds, State v. Styles*, 362 N.C. 412, 665 S.E.2d 438 (2008).

In *State v. McLamb*, 186 N.C. App. 124, 127-28, 649 S.E.2d 902, 904 (2007), this Court held, on the following facts, that no reasonable suspicion existed, even though the officer subjectively believed the defendant had violated the speed limit, which the arresting officer believed was twenty miles per hour:

> Deputy Bryan's sole reason for stopping defendant was for an alleged speeding violation. The State conceded in oral argument that the speed limit on the road was actually fifty-five miles per hour, and the defendant was driving within the speed limit. Because the legal justification for this traffic stop was not objectively reasonable, we hold that the stop violated defendant's Fourth Amendment rights. To hold otherwise would be to allow[] [officers] to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred[.]

Id.

In this case, Defendant contends this Court should apply *McLamb* to conclude that the trial court erroneously denied Defendant's motion to suppress. However, we believe *McLamb* is distinguishable from this case. In *McLamb*, the deputy believed the speed limit was twenty miles per hour though the speed limit was actually fifty-five miles per hour. *Id.* at 124, 649 S.E.2d at 902. We reasoned that "the proper inquiry is not the

subjective reasoning of the officer, but whether the objective facts support a finding that [a reasonable suspicion] existed to stop the defendant." *Id.* at 126, 649 S.E.2d at 903 (citation and quotation marks omitted). However, in the present case, the police officers were not mistaken in their subjective belief that driving a vehicle without insurance is a crime. Operating a motor vehicle without insurance is, in fact, a Class 1 misdemeanor. *See* N.C. Gen. Stat. § 20-313. Further, the evidence tends to show that the officers' belief that Defendant was violating the law was based upon the objective information retrieved from the DMV computer. We reiterate that the standard for reasonable suspicion "is satisfied by some minimal level of objective justification[,]" and a reasonable suspicion must be "based on specific and articulable facts[.]" *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008) (citation and quotation marks omitted). We believe, based on the facts of this case, as found by the trial court and supported by competent evidence, and the "inferences from those facts, as [objectively] viewed through the eyes of a reasonable, cautious officer," a reasonable suspicion existed that Defendant was

driving a vehicle without insurance. The trial court did not err in denying Defendant's motion to suppress.[2]

AFFIRMED.

Judge McGEE and Judge McCULLOUGH concur.

Report per Rule 30(e).

[2] In Defendant's final two arguments, he contends there was "no evidence . . . other than the officer's testimony" to support findings of fact numbers 4 and 5, and that the findings of fact do not support the trial court's conclusion that a reasonable articulable suspicion existed. As we stated in Subsection B., the officer's testimony alone was competent evidence to support findings of fact numbers 4 and 5. Moreover, as we stated in Subsection C., the trial court did not err in concluding that a reasonable suspicion existed to stop Defendant.