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NO. COA13-416
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Wake County
No. 10 CRS 223677

ROBERT LOUIS GREGORY

Appeal by defendant from judgment entered 31 October 2012 by Judge Paul G. Gessner in Wake County Superior Court. Heard in the Court of Appeals 30 September 2013.

Attorney General Roy Cooper, by Assistant Attorney General Matthew Boyatt, for the State.

Mark Hayes for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant appeals from a judgment entered upon his conviction for habitual impaired driving and from the trial court's order denying his motion to suppress. After careful review, we find no error.

Evidence from the suppression hearing establishes the following factual background. On 2 October 2010, Officer Robert Smith was on patrol in downtown Raleigh. He was driving north

on Capital Boulevard around 2:45 a.m. when he noticed defendant's vehicle traveling in close proximity to the vehicle in front of it. At the time, the roadway was lit, traffic conditions were light, and there were no conditions, such as construction, which would cause a vehicle to follow closely. Officer Smith estimated that defendant's vehicle was 15 to 20 feet behind the front vehicle. When the front vehicle made a right hand turn, defendant's vehicle swerved into the middle lane to avoid a collision. Defendant's vehicle then "aggressively sped up away from the situation."

Officer Smith obtained a visible estimation of defendant's speed. He determined that defendant was traveling 60 miles per hour in a 45 mile per hour zone. As part of his training for radar certification, he learned how to conduct visible estimations of speed. Officer Smith explained that he caught up to defendant's vehicle and paced it. To do so, Officer Smith stayed an equal distance from defendant's vehicle and tracked his speed. Officer Smith stopped defendant's vehicle based on the two traffic violations, speeding and following too closely. Officer Smith also explained that he stopped defendant's vehicle because he "didn't know what was going on in the vehicle" and wanted "to make sure [defendant] was okay." He additionally

stated that there were a high number of impaired driving offenses in the area at that time of night.

As a result of the traffic stop, Officer Smith determined that defendant was impaired. Defendant was arrested, and charged with driving while impaired ("DWI"), habitual impaired driving ("habitual DWI"), and driving while license revoked.

Prior to trial, defendant filed a motion to suppress evidence obtained following the traffic stop. Following a hearing, the trial court denied defendant's motion, concluding that Officer Smith had a reasonable articulable suspicion to believe that the defendant committed one or more motor vehicle violations.

Defendant entered a plea of guilty to DWI and habitual DWI, but he properly preserved his right to appeal the denial of his motion to suppress. The trial court arrested judgment on the DWI charge, and sentenced defendant to a term of 13 to 16 months imprisonment. Defendant appeals.

On appeal, defendant solely challenges the trial court's denial of his motion to suppress. Our review of a trial court's denial of a motion to suppress is "strictly limited to determining whether the trial judge'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 judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). "The trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

The trial court made the following oral findings of fact:

I'll specifically find the facts that it was at 2:45 in the morning and that the traffic conditions were light; the defendant was following closely behind another vehicle, the officer testified 15 to 20 feet. And that the defendant had to serve [sic] into the middle lane to avoid a collision with the vehicle in front of him. He accelerated and visually estimated his speed at approximately 60 miles an hour in a 45-mile-per-hour zone.

Here, defendant only contests the findings that he was following too closely and that Officer Smith visually estimated his speed at 60 miles per hour. He does not contest the remaining findings, and they therefore are deemed to be supported by competent evidence and binding on appeal. See *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).

Defendant first argues the finding that he was following too closely is not supported by the evidence. We disagree.

Officer Smith testified that he was able to observe defendant's vehicle from his position, that traffic was light, that the roadway was lit, and that there were no road conditions, such as construction, that would cause one to follow closer. Furthermore, Officer Smith testified that defendant was 15 to 20 feet away from the front vehicle and that he had to swerve into the middle lane to avoid a collision when the front car made a right turn. This evidence is sufficient to support the trial court's finding that defendant was following too closely.

Second, defendant argues that Officer Smith's visual estimate of defendant's speed was not competent evidence. He argues that Officer Smith did not have sufficient time to estimate defendant's speed. We again disagree. "[I]t is well established in this State, that any person of ordinary intelligence, who had a reasonable opportunity to observe a vehicle in motion and judge its speed may testify as to his estimation of the speed of that vehicle." *State v. Barnhill*, 166 N.C. App. 228, 232, 601 S.E.2d 215, 218 (2004). Officer Smith is not just "a person of ordinary intelligence," but was trained to estimate speeds through his radar certification. He also confirmed that he caught up to defendant before beginning to pace the vehicle. Ultimately, defendant argues that Officer

Smith's testimony is not credible, and issues of credibility are for the trial court to determine when sitting without a jury. See *State v. Darrow*, 83 N.C. App. 647, 649, 351 S.E.2d 138, 140 (1986). We therefore find the evidence sufficient to support the trial court's finding that defendant was speeding.

Next, defendant contends that the trial court should have used the probable cause standard, rather than reasonable suspicion, in determining the constitutionality of the traffic stop. Defendant argues that the higher standard was required because the stop had nothing to do with the investigation of suspected traffic violations. In support for this assertion, defendant relies on Officer Smith's testimony that he stopped the vehicle, in part, because he did not know what was going on in the vehicle and wanted to make sure that defendant was okay. We disagree with defendant's assertions. First, defendant overlooks the second part of Officer Smith's explanation of the stop, in which Officer Smith stated that he stopped defendant based on the traffic violations of speeding and driving too closely. Second, our Supreme Court has expressly held that "reasonable suspicion is the necessary standard for traffic stops, regardless of whether the traffic violation was readily observed or merely suspected." *State v. Styles*, 362 N.C. 412,

415, 665 S.E.2d 438, 440 (2008) (footnote omitted). We therefore reject defendant's argument, and hold that the trial court properly applied the correct standard of reasonable suspicion.

Finally, we hold that the trial court did not err in concluding that the traffic stop was justified based on Officer Smith's reasonable suspicion that defendant committed two traffic violations. Our Supreme Court has explained the reasonable suspicion standard as follows:

Reasonable suspicion is a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675-76, 145 L. Ed. 2d 570, 576 (2000) (citation omitted). The standard is satisfied by "some minimal level of objective justification." *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1, 10 (1989) (quoting *INS v. Delgado*, 466 U.S. 210, 217, 104 S. Ct. 1758, 1763, 80 L. Ed. 2d 247, 255 (1984)). 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." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968)). Moreover, "[a] court must consider 'the totality of the circumstances--the whole picture' in determining whether a reasonable suspicion" exists. *Id.* (quoting *United*

States v. Cortez, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 629 (1981)). See generally *State v. Barnard*, 362 N.C. 244, 246, 658 S.E.2d 643, 645 (2008).

Styles, 362 N.C. at 414, 665 S.E.2d at 439-40.

The trial court concluded that the traffic stop was justified based on Officer Smith's reasonable articulable suspicion that defendant committed two traffic violations. This conclusion is supported by the trial court's factual findings, which establish that Officer Smith observed defendant following too closely and traveling at 60 miles per hour in a 45 mile per hour zone. The findings also establish that Officer Smith's observations were based on "specific and articulable facts" and "rational inferences" from those facts. See *id.* We therefore hold that the trial court's findings of fact support its conclusion of law. Accordingly, we find no error in the trial court's denial of defendant's motion to suppress.

NO ERROR.

Judges BRYANT and McCULLOUGH concur.

Report per Rule 30(e).