

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-569
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

STATE OF NORTH CAROLINA

v.

Johnston County
No. 11 CRS 55516

MELISSA MOODY GOODWIN

Appeal by Defendant from order entered 22 October 2012 by Judge Thomas H. Lock and judgments entered 16 November 2012 by Judge William Douglas Parsons in Superior Court, Johnston County. Heard in the Court of Appeals 22 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Steven Armstrong, for the State.

Reece & Reece, by Michael J. Reece, for Defendant.

McGEE, Judge.

The vehicle driven by Melissa Moody Goodwin ("Defendant") was stopped on 10 September 2011 by Officer Jordan Cutchins ("Officer Cutchins") with the Town of Smithfield Police Department. Officer Cutchins requested a drug dog from Officer Kenneth Hundley ("Officer Hundley"), and, shortly thereafter, Officer Hundley arrived with a drug dog. Defendant stepped out

of the vehicle with "her dog, shrimp sandwich wrapped in aluminum foil, and a Styrofoam white cup with a top" in hand. After the dog alerted, Officer Cutchins searched Defendant's vehicle while Officer Hundley stood next to Defendant. Defendant then threw the foil-wrapped sandwich and Styrofoam cup into a nearby trash can. Officer Hundley was "behind [Defendant] when she threw away" her sandwich and cup.

Officer Hundley picked up the items from the trash can and saw small plastic bags tucked "in between the foil and the sandwich[.]" He found Ziploc bags with a "clear crystallly (sic) substance inside of the bags." SBI Agent Brittany Dewell testified that four of the bags contained methamphetamine. Another of the bags contained "dimethyl sulphone, which is a common cutting agent or diluent for methamphetamine." When Officer Hundley removed the lid from the cup, "a methamphetamine smoking pipe floated to the top."

Defendant was convicted of possession with intent to sell or deliver methamphetamine and possession of drug paraphernalia. Defendant appeals.

I. Motion to Suppress

Defendant first argues the trial court erred in denying her motion to suppress "all evidence procured after the illegal and

unconstitutional search and/or seizure of [D]efendant[.]” We disagree.

A. Standard of Review

Our standard of review in evaluating a ruling on a motion to suppress is well settled. “Our review 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. Sellars*, ___ N.C. App. ___, ___, 730 S.E.2d 208, 209 (2012), *appeal dismissed and disc. review denied*, 366 N.C. 428, 736 S.E.2d 489 (2013) (internal quotation marks omitted). The “trial court’s conclusions of law are fully reviewable on appeal.” *State v. Leach*, 166 N.C. App. 711, 715, 603 S.E.2d 831, 834 (2004).

B. Analysis

Defendant makes only one argument challenging the denial of her motion to suppress. She contends that, “[a]lthough Cutchins had not issued the citation when he began searching the car, the ten-minute delay was longer than the *de minimis* delay permitted in *Sellars*.” Defendant contends that the “delay went beyond the time necessary to issue a citation for driving while license revoked.”

In *Sellars*, the issue was whether the officers had "reasonable suspicion to continue to detain [the] defendant once the original purpose of the stop was concluded." *Sellars*, ___ N.C. App. at ___, 730 S.E.2d at 210. The original purpose of the stop was to investigate whether the defendant was driving while impaired. *Id.* at ___, 730 S.E.2d at 209.

Upon stopping the defendant, the officer "was immediately able to determine that [the] defendant was not suffering from any impairment that would inhibit his ability to safely operate his motor vehicle." *Id.* at ___, 730 S.E.2d at 209. Nonetheless, the officer requested the defendant's driver's license. *Id.* at ___, 730 S.E.2d at 209. "Upon entering [the] defendant's identifying information into his on-board computer, [the officer] found an 'alert' posted by the Burlington Police Department indicating that [the] defendant was a 'drug dealer' and a 'known felon.'" *Id.* at ___, 730 S.E.2d at 209. The officer "determined that he would have the drug dog conduct an open-air sniff" of the vehicle. *Id.* at ___, 730 S.E.2d at 209. After issuing a warning ticket and returning the license, "four minutes and thirty-seven seconds elapsed before [the drug dog] alerted on [the] defendant's vehicle." *Id.* at ___, 730 S.E.2d at 209.

This Court concluded that the original purpose of the stop was concluded at "the issuance of the warning ticket[.]" *Id.* at ____, 730 S.E.2d at 213. It further concluded that the "delay of four minutes and thirty-seven seconds for the dog sniff" was a "de minimis delay that did not rise to the level of a violation of [the] defendant's constitutional rights under the Fourth Amendment[.]" *Id.* at ____, 730 S.E.2d at 213.

The facts in the present case are distinguishable from the facts in *Sellars*. The original purpose of the stop in the present case concerned the offense of driving while license revoked. In contrast to *Sellars*, Officer Cutchins had not returned Defendant's license or issued a citation at the point that he decided to obtain a drug dog to sniff the vehicle. Thus, the original purpose of the stop had not yet concluded.

Even assuming *arguendo*, without deciding, that the original purpose of the stop had concluded when Officer Cutchins decided to obtain a drug dog, Officer Hundley arrived with the dog "in less than one minute[.]" The dog "alerted within one and a half minutes of arriving on the scene[.]" This period of time is substantially less than the delay of four minutes and thirty-seven seconds in *Sellars*.

Defendant asserts as error a ten-minute delay that Defendant says encompasses the time from the stop until the

officer "made the decision to search" Defendant's vehicle. The trial court made no finding as to a ten-minute delay, and Defendant does not challenge any of the trial court's findings. The trial court did not err in denying the motion to suppress.

II. Motions to Dismiss

Defendant next argues the trial court erred in denying her motions to dismiss. We disagree.

A. Standard of Review

We review the trial court's denial of a motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). The "trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Bradshaw*, 366 N.C. 90, 93, 728 S.E.2d 345, 347 (2012) (internal quotation marks omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*

The "trial court must consider the evidence in the light most favorable to the State, drawing all reasonable inferences in the State's favor." *Id.* at 92, 728 S.E.2d at 347. "All evidence, competent or incompetent, must be considered. Any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not

considered." *Id.* at 93, 728 S.E.2d at 347 (internal citations and quotation marks omitted).

B. Analysis

It is unlawful for any person to "possess with intent to manufacture, sell or deliver, a controlled substance." N.C. Gen. Stat. § 90-95(a)(1) (2011). Methamphetamine is a controlled substance. N.C. Gen. Stat. § 90-90(3)(c) (2011). It is also unlawful for any person to possess drug paraphernalia. N.C. Gen. Stat. § 90-113.22 (2011).

Defendant argues "there was insufficient evidence that [Defendant] possessed the methamphetamine[.]" Officer Hundley arrived with a drug dog, at the request of Officer Cutchins. When Officer Hundley arrived, he noticed Defendant "was holding a small dog as well as a -- a sandwich wrapped in foil and a full cup of tea, Styrofoam cup of tea." Officer Hundley walked the drug dog around Defendant's vehicle, and the drug dog alerted on the driver's side door. Officer Cutchins searched Defendant's vehicle, while Officer Hundley stood next to Defendant. Officer Hundley stated that Defendant "became agitated, [and] real nervous acting[.]"

Defendant asked Officer Hundley "several times if she could throw her food away because she didn't have an appetite." She refused his offer to throw the food away for her. Defendant

then "turned around and started walking to the trash can." When asked to stop, "she stepped it up and started going even faster to the trash can." Officer Hundley was "right there behind her when she threw away" her sandwich and cup. He observed "the sandwich and the drink go into the trash can[.]" He never lost sight of the items.

Officer Hundley picked up the items from the trash can and observed small plastic bags tucked "in between the foil and the sandwich[.]" When he investigated further, he found Ziploc bags with a "clear crystalline (sic) substance inside of the bags." Four bags contained methamphetamine, and one bag contained "dimethyl sulphone, which is a common cutting agent or diluent for methamphetamine." When the lid was removed from the cup, "a methamphetamine smoking pipe floated to the top."

Viewing the evidence in the light most favorable to the State, the evidence suggests Defendant had actual possession of the methamphetamine. Furthermore, the inference that the sandwich containing methamphetamine and plastic bags that Officer Hundley observed Defendant put in the trash can was the same sandwich that he retrieved from the trash can just moments later is a reasonable inference. The trial court did not err in denying Defendant's motions to dismiss.

III. Correction of Clerical Errors in the Judgments

Defendant argues that, according to her worksheet, she has one prior misdemeanor conviction, making her a prior record level I for felony sentencing purposes and a prior conviction level II for misdemeanor sentencing purposes. However, the felony judgment indicates Defendant is a prior record level II, and the misdemeanor judgment indicates Defendant has two prior misdemeanor convictions. In accordance with *State v. Smith*, 188 N.C. App. 842, 656 S.E.2d 695 (2008) and *State v. Lark*, 198 N.C. App. 82, 678 S.E.2d 693 (2009), we remand for the limited purpose of correcting these two clerical errors.

Affirmed in part, no error in part; remanded for correction of clerical errors in judgments.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).