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NO. COA14-663  
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

STATE OF NORTH CAROLINA,

v.

Duplin County  
Nos. 11 CRS 50335, 50343

RODNEY PAUL SMITH,  
Defendant.

Appeal by State from order entered on or about 8 May 2014  
by Judge John E. Nobles, Jr. in Superior Court, Duplin County.  
Heard in the Court of Appeals 23 October 2014.

*Attorney General Roy A. Cooper, III, by Assistant Attorney  
General Teresa M. Postell, for the State.*

*Andrew L. Farris, for defendant-appellant.*

STROUD, Judge.

The State appeals the trial court order granting  
defendant's motion to suppress. For the following reasons, we  
reverse and remand.

I. Background

On or about 1 August 2011, defendant was indicted for felony  
breaking or entering, larceny after breaking/entering,  
possession of stolen goods/property, larceny of a firearm, and

possession of stolen goods/property, two charges of attaining the status of habitual felon, and possession of a firearm by a felon. On or about 21 March 2012, defendant filed a motion to suppress "[b]ecause the fruit of the stop and seizure of the Defendant arose from an illegal stop of a vehicle in which the Defendant was a passenger, all evidence seized during the search should be suppressed[.]"

On or about 26 December 2012, the trial court entered an order granting defendant's motion to suppress. The State appealed, and in an opinion filed 17 December 2013, this Court remanded the case because

[v]irtually every finding of fact the trial court made in its suppression order merely recited that Deputy Wood had testified to that particular fact. Notably absent from the order are actual findings by the trial court on the key facts at issue. It is well established that recitations of the testimony of each witness do not constitute findings of fact by the trial judge. Although such recitations of testimony may properly be included in an order denying suppression, they cannot substitute for findings of fact resolving material conflicts. If the trial court includes the recitation of testimony in its suppression order, our review is limited to facts found by the trial court and the conclusions reached in reliance on those facts, not the testimony recited by the trial court in its order.

As discussed above, the findings in the trial court's order essentially consist of

recitations of Deputy Wood's testimony at the suppression hearing. Consequently, they are not proper findings of fact. When the trial court fails to make findings sufficient to allow the reviewing court to apply the correct legal standard, it is necessary to remand the case to the trial court. Accordingly, we remand this case to the trial court so that it may make proper findings of fact and conclusions of law as to whether the vehicle stop at issue was supported by reasonable suspicion.

*State v. Smith*, \_\_\_ N.C. App. \_\_\_, 753 S.E.2d 743, slip. op. at 8-9 (2013) (unpublished) (citations, quotation marks, ellipses, and brackets omitted) ("*Smith I*").

In addition, although *Smith I* did not address the substantive issues due to the need for proper findings of fact, in footnote one we noted that

[i]n the conclusions of law, the suppression order stated that "[Deputy] Wood did not have reasonable suspicion or probable cause to believe that the defendant had committed, was committing or was about to commit a crime." (Emphasis added.) We note that reasonable suspicion is the appropriate legal standard when reviewing a vehicle stop. See *State v. Styles*, 362 N.C. 412, 427, 665 S.E.2d 438, 447 (2008) ("[A]n officer may stop a vehicle on the basis of a reasonable, articulable suspicion that criminal activity is afoot."). It is not necessary for the higher standard of probable cause to be established.

*Id.* at 10 n.1.

On 8 May 2014, on remand from this Court, the trial court

found:

1. Officer Jerry Wood was called to investigate a breaking and entering at 308 Providence Church Road near Wallace, North Carolina a little after 9:30 p.m. on February 5, 2011.

2. Officer Wood was employed with the Duplin County Sheriff's Department in February 2011 as a child support deputy and not a detective. Officer Wood was previously employed by the Warsaw Police Department as a detective for approximately twelve and a half years from 1998 to 2010. Officer Wood investigated a lot of breaking and entering and larceny-type cases during that time. However, on the date in question, his law enforcement duties consisted of serving papers and keeping up with the child support process.

3. When Officer Wood arrived at 308 Providence Church Road, he was met by a man who identified himself as Thomas Smith and said he was the brother of Audrey Smith, the owner of the residence. Officer Wood never verified the identity of Thomas Smith, that he was the brother of Audrey Smith, or that Audrey Smith owned the residence. Officer Wood had no knowledge of the reliability of Smith.

4. Thomas Smith told Officer Wood that the residence had been broken into through the back door and there was some guns and change missing from the residence. Officer Wood did not examine the house himself to determine whether it had been broken into and what, if anything, had been stolen.

5. Thomas Smith told Officer Wood that Smith heard the defendant talking

loudly on his phone before law enforcement arrived. Smith told Officer Wood that the defendant seemed to be in a hurry to leave and was waiting for somebody to come get him. Smith described the defendant's tone as excited or anxious. Officer Wood did not hear the conversation himself.

6. Thomas Smith told Officer Wood that he observed boot prints in the victim's driveway and boot prints in the defendant's driveway next door. The victim's house and defendant's house were next to each other but were approximately 210 feet apart. Smith told Officer Wood the boot prints were similar. Smith never said the prints belonged to the defendant. Officer Wood did not examine the boot prints himself.

7. There were no boot prints leading from one house to the other. Officer Wood observed the victim's driveway and it was mainly dirt and it was wet. The side road was grassy and Providence Church Road was made of asphalt and there should not have been a print there.

8. A few minutes after Officer Wood arrived, a van came down Providence Church Road and pulled into the defendant's driveway. Thomas Smith walked onto the defendant's property to watch the van. Smith said he saw the defendant throwing bags into the van in a hurried fashion. He also said the defendant made several trips.

9. Officer Wood was sitting in his cruiser in front of 208 Providence Church Road and did not personally observe defendant loading the van. Officer Wood did not see anyone walking around Providence Church Road while he was sitting in his cruiser.

10. After the van pulled out of the defendant's driveway, Officer Wood pulled out to catch up to it in order to initiate a vehicle stop. Officer Wood stopped the van on a rural road and did not wait for other officers who were on the way to arrive, indicating that he was not concerned about firearms in the vehicle.

11. The stop was based solely on the statements of Thomas Smith. Officer Wood[ ] had ample opportunity to verify Smith's statements but failed to do so.

The trial court ultimately concluded that "Officer Jerry Wood did not have reasonable suspicion to believe that the defendant had committed, was committing, or was about to commit a crime" and "there was no reasonable, articulable suspicion to justify the vehicle stop and search of the defendant's vehicle." The State appeals.

## II. Motion to Suppress

The State contends that "the trial court erred in granting defendant's motion to suppress because there was reasonable suspicion." (Original in all caps.) As we stated in *Smith I*,

We have jurisdiction to hear the State's appeal because the State filed a timely certificate stating that the appeal was not taken for the purpose of delay and that the evidence suppressed as a result of the Court's Order is essential to the prosecution of the case.

This Court's review of a trial court's suppression order 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. Any findings of fact that are not challenged on appeal are deemed to be supported by competent evidence and are binding on appeal. However, a trial court's conclusions of law regarding whether the officer had reasonable suspicion to detain a defendant is reviewable *de novo*.

When a trial court holds a hearing on a defendant's motion to suppress, the trial judge must find facts to support his determination and set forth in the record his findings of fact and conclusions of law. An appellate court accords great deference to the trial court in this respect because it is entrusted with the duty to hear testimony, weigh and resolve any conflicts in the evidence, find the facts, and, then based upon those findings, render a legal decision as to whether or not a constitutional violation of some kind has occurred.

*Smith I*, slip op. at 4-5 (citations, quotation marks, ellipses, brackets, and heading omitted).

Before the trial court, defendant contended that his motion to suppress "any and all evidence gathered as a result" of the vehicle stop should be granted because his Fourth Amendment rights had been violated.

The Fourth Amendment to the Constitution of the United States and Section 20 of Article I of the North Carolina Constitution prohibits unreasonable searches and seizures. They apply to

seizures of the person, including brief investigatory detentions such as those involved in the stopping of a vehicle. A court must consider the totality of circumstances—the whole picture in determining whether reasonable suspicion to make an investigatory stop exists. To determine whether the information relied on by the officer[] in the . . . case was sufficiently reliable to create reasonable suspicion justifying the stop, we must probe the reliability and content of the informant's tip.

. . . Although reasonable suspicion is less stringent than probable cause, it nevertheless requires that statements from tipsters carry some indicia of reliability.

In evaluating the reliability of an informant's tip, due weight must be given to the informant's veracity, reliability, and basis of knowledge as highly relevant factors in determining whether an informant's tip is sufficient from the totality of circumstances. There must also exist sufficient police corroboration of the tip before the stop is made. If reasonable suspicion exists before the stop is made, there is no violation of the Fourth Amendment.

*State v. Sanchez*, 147 N.C. App. 619, 623-24, 556 S.E.2d 602, 606-07 (2001) (citations, quotation marks, and brackets omitted), *disc. review denied*, 355 N.C. 220, 560 S.E.2d 358, *disc. review dismissed*, 355 N.C. 220, 560 S.E.2d 359 (2002); see *State v. Barnard*, 362 N.C. 244, 247, 658 S.E.2d 643, 645 ("Reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than



preponderance of the evidence. *Only some minimal level of objective justification is required.* This Court has determined that the reasonable suspicion standard requires that the 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.” (emphasis added) (citations, quotation marks, ellipses, and brackets omitted)), *cert. denied*, 555 U.S. 914, 172 L.Ed. 2d 198 (2008). What an officer personally observes may be included in weighing the reliability of the informant’s tip. See *State v. Maready*, 362 N.C. 614, 619, 669 S.E.2d 564, 567 (2008), *disc. review denied and dismissed*, 364 N.C. 329, 701 S.E.2d 247 (2010). Furthermore, when an officer’s basis for a vehicle stop relies mostly upon information provided by an informant, if “the informant is known or where the informant relays information to an officer face-to-face, an officer can judge the credibility of the tipster firsthand and thus confirm whether the tip is sufficiently reliable to support reasonable suspicion.” *State v. Hudgins*, 195 N.C. App. 430, 434, 672 S.E.2d 717, 719 (2009).

Defendant argues to this Court that Thomas Smith's information "was insufficient to support reasonable suspicion because" (1) "Thomas was essentially an anonymous informant because there was no evidence that Deputy Wood was previously acquainted with him or made any attempt to verify his identity[,]" and (2) "Deputy Wood did not corroborate the tip, although he could have done so[.]" Here, the trial court found, a man identified himself to Deputy Wood as Thomas Smith and stated that he was standing on his sibling's property whom he identified as Audrey Smith. While Thomas was an informant unknown to Deputy Wood, he was not an anonymous one. As for corroboration, while Deputy Wood may not have actively investigated every statement made by Thomas Smith at the time Thomas Smith was providing the information, Deputy Wood was allowed to rely on his personal observations to verify the information, which is a form of corroboration. See *Maready*, 362 N.C. at 619, 669 S.E.2d at 567.

The trial court's order and defendant's arguments seem to conflate the standards used to consider tips from anonymous informants by a phone call, when the officer does not know the caller and cannot see him, with those used to consider the information developed by an officer who has been called to

investigate the scene of a crime based upon his evaluation of the crime scene and conversations with the person who reported the crime. In this instance, the officer was actually present while the crime was still in progress, as the van came to pick up defendant, and he loaded the van with bags containing the stolen property which Thomas Smith had reported. Requiring a law enforcement officer to treat the statements made on the scene by a person reporting a crime which is actually still in progress in the same way as a tip from an anonymous caller would seriously impair the officer's ability to respond to the call, and the law does not require this type of independent corroboration of each fact in this situation.

Ultimately, this Court must determine "whether the information relied on by [Deputy Wood] in the . . . case was sufficiently reliable to create reasonable suspicion justifying the stop [which requires us to] probe the reliability and content of the informant's tip." *Sanchez*, 147 N.C. App. at 623-24, 556 S.E.2d at 606-07. Thomas Smith was not at all anonymous, and "willing[ly] plac[ing one's] anonymity at risk" weighs in favor of the information being reliable. *Maready*, 362 N.C. at 619-20, 669 S.E.2d at 567-68. In *State v. Allen*, this Court summarized another case where a tip was properly found to

be reliable in part because

the tip came from a face-to-face encounter rather than an anonymous telephone call, [the officer] could observe the [informant's] demeanor to assess her reliability, and the likelihood [the informant] could have been held accountable if her tip proved false was increased by the fact that she engaged with the officer directly.

197 N.C. App. 208, 212, 676 S.E.2d 519, 522 (2009) (citation and quotation marks omitted).

Here, the trial court found, a man identified himself face-to-face to Deputy Wood as Thomas Smith, the brother of Audrey Smith; Thomas Smith was at his sibling's residence and told Deputy Wood that it had been broken into and entered. Thomas Smith told Deputy Wood specifically what was missing from his sibling's residence, which included "guns and change[.]" Thomas Smith told Deputy Wood that there were boot prints on his sibling's property and defendant's yard had similar boot prints and that he had witnessed a hurried defendant speaking on the phone in an "excited or anxious" manner. Shortly thereafter, Thomas Smith told Deputy Wood that he saw a van arrive at defendant's residence where defendant hurriedly threw bags into the van. Deputy Wood observed Thomas Smith as he provided the information, including actually seeing the van pull into

defendant's driveway. Considering the totality of the circumstances, Thomas Smith's report provided the basis for reasonable suspicion for Deputy Wood's stop of the vehicle leaving the scene of the crime. See *Sanchez*, 147 N.C. App. at 623-24, 556 S.E.2d at 606-07. We therefore conclude that the trial court's findings of fact do not support its conclusions of law and reverse the order granting defendant's motion to suppress.

### III. Conclusion

For the foregoing reasons, we reverse and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

Judges GEER and BELL concur.

Report per Rule 30(e).