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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-324

Filed: 5 January 2016

Buncombe County, No. 13 CRS 51991

STATE OF NORTH CAROLINA

v.

CAMERON WAYNE DUNCAN

Appeal by defendant from judgment entered 13 October 2014 by Judge Thomas H. Lock in Buncombe County Superior Court. Heard in the Court of Appeals 4 November 2015.

*Roy Cooper, Attorney General, by John A. Payne, Assistant Attorney General, for the State.*

*Law Office of Aaron Young, PLLC, by Aaron Young, for defendant-appellant.*

DAVIS, Judge.

Cameron Wayne Duncan (“Defendant”) appeals from a judgment entered upon his conviction for driving while impaired. On appeal, Defendant argues that the trial court erred by denying his motion to suppress. After careful review, we affirm.

**Factual Background**

On 2 September 2014, Defendant pled guilty in Buncombe County District Court to driving while impaired and was placed on supervised probation for twelve

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months. Defendant gave notice of appeal to superior court. Prior to trial, Defendant filed a motion to suppress. The motion was heard by the Honorable Marvin P. Pope, Jr. on 8 October 2014.

At the suppression hearing, North Carolina Alcohol Law Enforcement Agent David Miller (“Agent Miller”) testified that on 23 February 2013, he was on duty monitoring alcohol sales and consumption at the Showtime Saloon in Buncombe County. At approximately 1:55 a.m., Agent Miller was stationed outside the establishment and was speaking with the bar’s security personnel. There were approximately 200 people inside the building. At approximately 2:00 a.m., the bar stopped selling alcohol, and people began to enter the parking lot, which became crowded.

Agent Miller testified that he “heard tires, actually a truck rev up, tires squeal. And I looked and I see the defendant’s vehicle[.]” Agent Miller observed Defendant’s Nissan truck swerve to the right as it exited the parking lot. He stated that “[i]t swayed back and forth about three times like he lost control of the rear of the vehicle. His . . . left rear tire came off the ground and I observed the tire sling gravel in the parking lot.” At this time, there were approximately 20 vehicles nearby, and pedestrians were present within five to ten feet of Defendant’s vehicle.

After observing Defendant’s driving, Agent Miller got into his patrol car and pulled over Defendant’s vehicle. Defendant was charged with driving while impaired.

Following Agent Miller's testimony, the trial court announced its ruling denying Defendant's motion to suppress.<sup>1</sup> Defendant subsequently pled guilty to driving while impaired before the Honorable Thomas H. Lock, reserving his right to appeal the denial of his motion to suppress. The trial court sentenced Defendant to thirty days imprisonment, suspended the sentence, and placed him on supervised probation for twelve months. Defendant filed a timely written notice of appeal.

### **Analysis**

Defendant's sole argument on appeal is that the trial court erred by denying his motion to suppress. We disagree.

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).

In order to lawfully stop a vehicle, a law enforcement officer must have reasonable suspicion that an individual is involved in criminal activity. *State v.*

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<sup>1</sup> Judge Pope subsequently entered a written order memorializing his denial of Defendant's motion to suppress on 24 October 2014.

*Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994). This means “[t]he stop must 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.” *Id.* “A court must consider the totality of the circumstances” in determining if reasonable suspicion existed. *Id.* (citation and internal quotation marks omitted).

### **I. Findings of Fact**

Defendant challenges the following three findings of fact in the written order denying his motion to suppress:

30. Immediately upon observing the defendant’s erratic driving the officer entered his vehicle and followed the defendant, initiating his blue lights and siren, and stopped the defendant on Fanning Bridge Road.

....

32. There was no evidence of any mechanical failure of the defendant’s vehicle.

33. The reckless driving of the defendant’s vehicle was the reason Agent Miller stopped the defendant on February 23, 2013.

With regard to finding of fact 30, Defendant contends that there was no evidence that his driving was “erratic.” We disagree. Agent Miller testified that he heard Defendant’s truck engine “rev up” and the tires squeal. Defendant then appeared to lose control of the rear of his vehicle as he was “fishtailing” out of the

parking lot, one of Defendant's tires came off the ground, and the vehicle slung gravel. Defendant drove in this manner in a crowded parking lot at approximately 2:00 a.m. with vehicles and pedestrians nearby. Thus, competent evidence existed to support the trial court's finding that Defendant's driving was "erratic."

Defendant next challenges finding of fact 32, which stated that there was no evidence of mechanical failure in Defendant's vehicle. This argument is based on the fact that Agent Miller testified that Defendant told him after the stop that the Nissan truck had "car problems or a clutch problem." Even putting aside the fact that any past mechanical problems Defendant's truck may have experienced would not prove his vehicle was suffering from mechanical failure at the precise time period at issue, this issue lacks relevance. Since Agent Miller did not know of any possible mechanical issues *before* the stop, the trial court's finding of fact on this issue has no bearing on the legality of his decision to stop Defendant's vehicle in the first place. *See Hughes*, 353 N.C. at 208, 539 S.E.2d at 631 (holding that "[t]he reasonable suspicion must arise from the officer's knowledge *prior to* the time of the stop" (emphasis added)).

Defendant also argues that finding of fact 33 improperly constitutes a determination that he engaged in reckless driving, asserting that this portion of the finding was actually a conclusion of law with no supporting analysis. We are not persuaded. This finding simply states the reason *why* Agent Miller conducted the

stop and does not constitute a legal conclusion that Defendant was in fact guilty of reckless driving. Accordingly, we reject Defendant's challenge to these three findings of fact in the trial court's order.

## **II. Conclusions of Law**

Defendant's final argument is that conclusion of law 2 of the trial court's order was erroneous. We disagree.

Conclusion of law 2 stated as follows:

2. Based on the totality of the circumstances, the vehicle stop Agent Miller conducted was objective and the stop was based and guided by his law enforcement training, knowledge and experience and was justified after observing the reckless driving of the defendant.

Section 20-140(b) of the North Carolina General Statutes provides that "[a]ny person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving." N.C. Gen. Stat. § 20-140(b) (2013).

We are satisfied that the trial court's findings of fact support its conclusion that Agent Miller had sufficient reasonable suspicion to stop Defendant's vehicle. As discussed above, the trial court determined that (1) Defendant "revved up" his truck's engine and spun the tires; (2) his vehicle then swerved to the right with the rear end "fishtailing" and the left tire coming off the ground; (3) Defendant's tire slung gravel; and (4) pedestrians and other vehicles were within approximately five to ten feet of

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Defendant's truck. Based on these factual findings, the trial court did not err in concluding that the stop of Defendant's vehicle was lawful. *See State v. Wainwright*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 770 S.E.2d 99, 105-06 (2015) (holding that trial court properly denied defendant's motion to suppress related to investigatory stop of defendant's vehicle based on defendant swerving, almost hitting a curb in the process, and the fact that "defendant's driving was dangerous to others due to the pedestrian traffic on the sidewalks and street . . . . at the time [the officer] observed defendant swerve").

**Conclusion**

For the reasons stated above, we affirm the trial court's order denying Defendant's motion to suppress.

AFFIRMED.

Judges STEPHENS and STROUD concur.

Report per Rule 30(e).