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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-22

Filed: 1 November 2016

Johnston County, No. 14 CRS 53092

STATE OF NORTH CAROLINA

v.

PEGGY MARIE MARSHALL

Appeal by defendant from judgment entered 10 June 2015 by Judge Robert F. Floyd in Johnston County Superior Court. Heard in the Court of Appeals 5 October 2016.

*Roy Cooper, Attorney General, by Joseph A. Newsome, Assistant Attorney General, for the State.*

*Guy J. Loranger for defendant-appellant.*

DAVIS, Judge.

Peggy Marie Marshall (“Defendant”) appeals from her conviction for felony conspiracy to manufacture methamphetamine. On appeal, Defendant argues that the trial court erred in denying her motion to suppress evidence discovered during the stop of her vehicle based on a lack of reasonable suspicion that she was driving while impaired. After careful review, we affirm the trial court’s order denying Defendant’s motion to suppress.

### **Factual Background**

On 12 June 2014, Deputy Bill Britt, a member of the Sheriff's Aggressive Field Enforcement Team ("SAFE Team") of the Johnston County Sheriff's Office, was on duty in the Kenly area of Johnston County.<sup>1</sup> At approximately 10:00 a.m., Detective Jason Guseman, a narcotics detective with the Sheriff's Office, radioed for assistance from SAFE Team members in the Kenly area. Deputy Britt responded to the call, and Detective Guseman informed him that Defendant was leaving her hotel in a green Grand Cherokee and that there was a possibility that "an amount of methamphetamine" could be in the vehicle and that the vehicle would be "headed towards Smithfield."

Deputy Britt waited in his vehicle for the Grand Cherokee to appear. When he saw Defendant's vehicle pass by, he began to follow it. Defendant's vehicle merged onto the circular on ramp to enter I-95 South. As he followed the Grand Cherokee, Deputy Britt observed the vehicle cross over the yellow line on the left hand side of the ramp onto the sandy gravel beyond that line. In the same motion, the vehicle "shot back across" and crossed over the white fog line on the right side of the ramp, almost striking the concrete curb.

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<sup>1</sup> At the hearing for the motion to suppress, Deputy Britt testified that the SAFE Team works closely with the narcotics agents in the Johnston County Sheriff's Office. As a SAFE Team member, Deputy Britt had training in DWI detection and was certified in both standardized field sobriety testing and chemical breath analysis.

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Defendant then merged into the right lane of I-95 but immediately moved into the left hand lane. Approximately five seconds later, Defendant's vehicle moved back into the right lane and slowed to a speed of 50 miles per hour, fifteen miles below the posted speed limit of 65 miles per hour. Deputy Britt activated his blue lights to stop Defendant's vehicle. She complied and pulled over to the shoulder of the nearest exit ramp.

As Deputy Britt approached Defendant's vehicle, he could smell the odor of marijuana emanating from the driver's side window, which was rolled down. He asked Defendant and her passenger to exit the vehicle. After both women got out of the Grand Cherokee, Deputy Britt conducted a search of the vehicle. He discovered marijuana inside the cellophane of a cigarette wrapper underneath the front passenger side floor mat as well as several jars containing clear liquid in the back of the Grand Cherokee.

On 21 July 2014, a grand jury indicted Defendant on charges of possession of a precursor with intent to manufacture methamphetamine, felony conspiracy to manufacture methamphetamine, and manufacturing methamphetamine. On 24 April 2015, Defendant filed a motion to suppress evidence seized as a result of the traffic stop of her vehicle. A hearing was held on 5 June 2015 before the Honorable Thomas H. Lock in Johnston County Superior Court. During the hearing, Deputy Britt testified as to the events of the 12 June 2014 traffic stop.

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At the end of the hearing, the trial court announced that it was denying Defendant's motion and made verbal findings of fact and conclusions of law. On 20 August 2015, the court entered a written order memorializing its ruling. In this order, the trial court made the following pertinent findings of fact:

3. On June 12, 2014 Deputy Britt heard a radio dispatch from Detective Jason Guseman of the Johnston County Sheriff's Office Narcotics Unit asking if any SAFE Team members were in the Kenly area.

4. Deputy Britt responded in the affirmative, and Detective Guseman then asked him to be on the lookout for a green in color Jeep Grand Cherokee. Detective Guseman informed Deputy Britt that he believed the Jeep was at a motel in the Kenly area. Detective Guseman informed Deputy Britt that he had received information that the defendant, Peggy Marshall, might be operating that vehicle and might be involved in some drug activity, including the manufacturing and distribution of methamphetamine.

5. Deputy Britt positioned himself at the intersection of Luper Road and U.S. 301 in Kenly and shortly thereafter saw the green Jeep Grand Cherokee approaching his position.

6. Deputy Britt fell in behind the vehicle and observed it enter the on ramp of I-95 South from U.S. 301 driving at approximately 35-40 miles per hour.

7. Deputy Britt was immediately behind the vehicle. As the driver of the green Jeep Cherokee proceeded onto the on ramp of the interstate, Deputy Britt saw the Jeep cross approximately two feet across the yellow stripe line designating the left boundary of the one lane on ramp.

8. Deputy Britt then observed the vehicle immediately

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move[ ] back across the entire width of the single lane of travel of the on ramp. The right tires of the vehicle completely crossed the right hand fog line of the on ramp, and the right tires almost struck an eight inch curb on the right side of the on ramp.

9. Deputy Britt continued to follow the vehicle as it entered into the right hand lane of travel of Interstate 95 South and observed the vehicle immediately maneuver into the left hand lane of travel on I-95 South. Deputy Britt observed the vehicle travel in the left hand lane for approximately five or six seconds and then move[ ] back into the right hand lane of travel, where the vehicle slowed down and proceeded at a speed of approximately 50 miles per hour. The posted speed limit on the interstate was 65 miles per hour in that area. The Jeep was traveling south on Interstate 95 at a speed below the speed of the flow of traffic but was not impeding the flow of traffic.

10. Based upon his observations of the vehicle, Deputy Britt activated his blue light and briefly sounded the siren.

11. The vehicle took the next exit onto Bagley Road, and immediately upon turning onto Bagley Road the driver of the Jeep stopped.

12. As he approached the vehicle, Deputy Britt immediately recognized the driver of the vehicle to be Peggy Marshall, the defendant.

13. Upon request the defendant produced her driver's license. The driver's window of the vehicle was down; and Deputy Britt, based upon his training and experience, detected the odor of marijuana coming from the vehicle. Deputy Britt, based on his training and experience, believed it to be the odor of a mixture of green marijuana and burnt marijuana.

14. Deputy Britt asked the defendant to get out of the vehicle; and based upon the odor of suspected marijuana,

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he conducted a search of the interior of the vehicle. Deputy Britt found a cellophane cigarette wrapper under the front passenger floor mat which contained a small amount of what the officer concluded was green marijuana. The wrapper also contained a single partially burnt marijuana cigarette, commonly called a roach. Based upon those findings, Deputy Britt continued to search the interior of the vehicle. Deputy Britt opened the hatchback or rear tailgate of the Jeep Cherokee and observed a pink colored bag and an open bottle of drain cleaner in the hatchback area. Inside the pink bag Deputy Britt observed several clear Mason jars containing a clear liquid inside. Based upon his training and experience [D]eputy Britt believed that the drain cleaner and jars containing the clear liquid were evidence of a lab used for the manufacturing of methamphetamine.

15. Detectives Guseman and Rodney Langdon of the drug unit arrived on the scene and Deputy Britt turned over the vehicle and scene to them. The defendant was charged at that time with possession of a controlled substance.

The trial court concluded that Deputy Britt acted lawfully in stopping Defendant's vehicle based upon his reasonable and articulable suspicion that the driver of the vehicle was impaired. The court also determined that Deputy Britt had probable cause to (1) search the interior of the vehicle after detecting the odor of marijuana; and (2) arrest Defendant after finding marijuana in the vehicle along with various items, including drain cleaner and Mason jars, suspected to be components of a methamphetamine manufacturing operation.

On 10 June 2015, Defendant pled guilty to the offense of felony conspiracy to manufacture methamphetamine in exchange for the dismissal of her remaining

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charges, reserving her right to appeal the denial of her motion to suppress pursuant to N.C. Gen. Stat. § 15A-979(b). The trial court sentenced Defendant to 50 to 72 months imprisonment. Defendant filed written notice of appeal.

**Analysis**

This Court's review of an order denying a motion to suppress is limited to determining whether the findings of fact are supported by competent evidence and whether the conclusions of law are supported by the findings of fact. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (citations omitted). "[T]he trial court's conclusions of law must be legally correct, reflecting a correct application of applicable legal principles to the facts found." *State v. Fernandez*, 346 N.C. 1, 11, 484 S.E.2d 350, 357 (1997) (citation omitted). Conclusions of law are reviewable *de novo*. *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citations omitted).

The Fourth Amendment of the United States Constitution and Article I, Section 20 of the North Carolina Constitution protect individuals from unreasonable searches and seizures. *State v. Garner*, 331 N.C. 491, 506, 417 S.E.2d 502, 510 (1992).

A traffic stop is a constitutionally permissible seizure if:

- (1) the officer making the stop has a reasonable suspicion, based on his personal observations, that criminal conduct has occurred, is occurring, or is about to occur;
- (2) the officer making the stop has received a request to stop the defendant from another officer, if that other officer had, prior to the issuance of the request, the necessary reasonable suspicion; [or]
- (3) the officer making the stop received, prior to the stop, information from another

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officer, which, when combined with the observations made by the stopping officer, constitute the necessary reasonable suspicion.

*State v. Battle*, 109 N.C. App. 367, 371, 427 S.E.2d 156, 159 (1993).

The reasonable suspicion 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.” *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (citations omitted). Reasonable suspicion is the standard “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).

Defendant contends that the trial court’s findings of fact do not support its conclusion of law that Deputy Britt had reasonable suspicion to stop Defendant’s vehicle. She submits that the court’s findings indicate Deputy Britt stopped her vehicle merely “on the basis of a tip from an unreliable source” and his observation of “one continuous act of swerving on the interstate entrance ramp.” Citing *State v. Peele*, 196 N.C. App. 668, 675 S.E.2d 682, *disc. review denied*, 363 N.C. 587, 683 S.E.2d 383 (2009), Defendant argues that these facts failed to establish reasonable suspicion for the vehicle stop.

Defendant’s reliance upon *Peele* is misplaced. In that case, the officer making the stop followed the defendant’s vehicle for only a little more than one-tenth of a mile during which time he observed the vehicle weave within its lane only once. *Id.*



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at 669, 675 S.E.2d at 684. He also made the stop based upon an uncorroborated anonymous tip. *Id.* at 673, 675 S.E.2d at 686. We held that observation of a single instance of weaving, paired with an uncorroborated anonymous tip lacking any indicia of reliability, was insufficient to provide reasonable suspicion for the stop. *Id.* at 674, 675 S.E.2d at 687.

In the present case, Deputy Britt observed Defendant's vehicle cross the left yellow line by approximately two feet and then swerve immediately back across the entire width of the single lane of travel on the ramp. The right tires of the vehicle completely crossed the right hand fog line of the ramp and almost struck a concrete curb. Deputy Britt testified that when he saw the Grand Cherokee cross over the fog line, he feared the vehicle would strike the curb and crash or flip over. He followed Defendant's vehicle onto I-95 and observed the Grand Cherokee move from the right hand lane to the left hand lane and then travel for approximately five seconds in the left lane before moving back into the right lane. The vehicle then slowed down to a speed of approximately 50 miles per hour, which was fifteen miles per hour below the posted speed limit and below the speed of the flow of traffic. Deputy Britt followed the vehicle from the U.S. 301 exit to the next exit at Bagley Road. He testified that the distance from Exit 107, where he entered I-95, and Exit 105, the Bagley Road exit, is approximately two miles. He also testified that traffic generally proceeds at a rate in excess of 65 miles per hour on I-95.

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In contrast to the officer in *Peele*, Deputy Britt had a better opportunity to observe the vehicle, and — as discussed above — he saw the vehicle do more than simply swerve one time within its lane. This Court has previously upheld findings of reasonable suspicion based on similar examples of erratic driving observed by law enforcement officers. *See, e.g., State v. Aubin*, 100 N.C. App. 628, 632, 397 S.E.2d 653, 655 (1990) (reasonable suspicion of impaired driving was supported by officer's observation of vehicle weaving within its lane of travel and driver's lowering of speed to 45 miles per hour), *appeal dismissed and disc. review denied*, 328 N.C. 334, 402 S.E.2d 433 (1991); *State v. Jones*, 96 N.C. App. 389, 395, 386 S.E.2d 217, 221 (1989) (upholding finding of reasonable suspicion of impaired driving based upon officer's observation of vehicle weaving within its lane of travel and traveling at speed of twenty miles per hour less than posted speed limit on interstate highway). Accordingly, we hold that the trial court did not err in denying Defendant's motion to suppress.

**Conclusion**

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

AFFIRMED.

Judges INMAN and ENOCHS concur.

Report per Rule 30(e).