IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 16-1149

Filed: 1 August 2017

Durham County, Nos. 15 CRS 3445–46, 15 CRS 58952, 16 CRS 1821

STATE OF NORTH CAROLINA

v.

CORNELIUS DELANE BENTON, Defendant.

Appeal by defendant from judgments entered 28 June 2016 by Judge Robert H. Hobgood in Durham County Superior Court. Heard in the Court of Appeals 19 April 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Steven Armstrong, for the State.

Winifred H. Dillon for defendant-appellant.

ELMORE, Judge.

Defendant Cornelius Benton moved to suppress evidence obtained during a traffic stop. The trial court denied defendant's motion. Reserving his right to appeal the order, defendant pleaded guilty to possession of a stolen firearm, possession of a firearm by a felon, carrying a concealed firearm, and attaining habitual felon status. Defendant argues on appeal that the trial court erred in denying his motion to

suppress because the officer lacked reasonable suspicion to stop the vehicle in which defendant was a passenger. Considering the totality of the circumstances, as reflected in the order, we hold that the officer had a reasonable suspicion to initiate the stop. Affirmed.

I. Background

On 8 October 2015, at approximately 11:49 p.m., Officer Rex McQueen of the Durham Police Department was on patrol, southbound on Highway 55, when he noticed a white and gold Lincoln leaving the Red Roof Inn. That particular Red Roof Inn was a "known area for drug offenses," where Officer McQueen had executed "numerous search warrants" and "drug- and weapons- related arrests." A shooting and a sexual assault had also taken place at the hotel within the past two weeks.

The vehicle exited the hotel parking lot and turned south onto Highway 55. Officer McQueen followed at a distance as the vehicle approached the intersection with Westpark Drive, host to a Waffle House and several other hotels. The vehicle moved into the designated left-turn lane before taking an abrupt right turn, without signaling, cutting across three lanes of traffic. On the left side of the intersection, Officer McQueen observed a fully marked police cruiser in the Waffle House parking lot. The cruiser was clearly visible from the vehicle's position before it changed lanes. Officer McQueen continued to follow the vehicle as it merged onto I-40. When he pulled directly behind it, the vehicle changed lanes to the right. When the officer

changed lanes to the right, the vehicle changed lanes again, prompting the officer to activate his blue lights and sirens. After twenty or thirty seconds, the vehicle pulled over to the shoulder of the interstate. Officer McQueen illuminated the back of the vehicle with his spotlight and saw "abundant movement inside [ ] from all passengers and the driver."

Officer McQueen approached the vehicle and asked the driver for his license. The driver became belligerent, arguing: "I didn't do anything wrong. You don't need to see my driver's license." He eventually told the officer that his license was suspended. When Officer McQueen asked if any of the other passengers had a valid license, defendant supplied his own but claimed it was expired. During the interaction, the front-seat passenger placed something in the glove compartment. He appeared nervous, avoided eye contact, and said: "I don't talk to police."

Officer McQueen returned to his patrol car to check the status of defendant's license which, as it turned out, was suspended. The officer also discovered that defendant had an "extensive criminal history of drug charges and weapons charges," totaling more than ninety entries in the North Carolina warrant system. At that point, Officer McQueen called a K-9 unit and ordered the occupants out of the vehicle.

Officer McQueen frisked the occupants while the K-9 performed a sniff of the vehicle's exterior. The officer found bullets inside a plastic bag in defendant's pants pocket and a black revolver in the grass where defendant had been standing. The

revolver was loaded with .38 caliber Federal Ammunition, the same caliber and brand of ammunition found inside the plastic bag. After checking the serial number, Officer McQueen discovered the revolver was stolen and placed defendant under arrest. The front-seat passenger asked defendant: "What have they got you for?" Defendant replied, within earshot of the officer: "The gun. They found it."

Defendant moved to suppress the revolver, the ammunition, and his statements made during the stop. At the suppression hearing, the State offered testimony from Officer McQueen. Defendant offered no evidence but argued that Officer McQueen lacked reasonable suspicion to initiate the stop.

By order entered 27 June 2016, the trial court denied defendant's motion to suppress. Among its findings, the court found the following:

> 1. Officer Rex McQueen is a 10 year veteran officer with the Durham Police Department . . . .
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> . . . .
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> 3. Officer McQueen was on patrol at 11:49 p.m., near NC 55 Highway, in uniform and traveling in a marked patrol vehicle.
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> 4. He observed a white and gold Lincoln leaving the Red Roof Inn on NC 55 Hwy, a known area of drug offenses, with a shooting having occurred in the previous weeks.
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> 5. The vehicle went into the dedicated left turn lane, then made an abrupt turn across 3 travel lanes. There was a fully marked police vehicle in the Waffle House parking lot, which was clearly observable from the position the Lincoln was in when it made its turn.

> . . . .
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> 10. McQueen, after observing the vehicle change lanes, pursued onto Interstate 40, and activated his lights and sirens.

The court concluded that Officer McQueen had reasonable suspicion to stop the vehicle based on "what he saw, including the vehicle making an illegal lane change across 2 other lanes, his experience of over 1,000 traffic stops, and an area known for drug, weapon, and violent crimes."

Defendant pleaded guilty to all charges, reserving his right to appeal the court's denial of his motion to suppress. The court sentenced defendant to an active term of 87 to 117 months of imprisonment. Defendant timely appeals.

II. Discussion

Defendant contends that the trial court erred in denying his motion to suppress because Officer McQueen lacked reasonable suspicion to stop the vehicle. We review the trial court's order to determine "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167–68, 712 S.E.2d 874, 878 (2011) (citation omitted). Reasonable suspicion is a conclusion of law, reviewed *de novo*. *State v. Castillo*, ___ N.C. App. ___, ___, 787 S.E.2d 48, 53 (May 3, 2016) (No. COA15-855), *appeal dismissed and disc. review denied*, ___ N.C. ___, 792 S.E.2d 784 (Aug. 18, 2016) (No. 222P16).

The Fourth Amendment guards "against unreasonable searches and seizures." U.S. Const. amend. IV. "A traffic stop is a seizure 'even though the purpose of the stop is limited and the resulting detention quite brief.' " *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 1396, 59 L. Ed. 2d 660, 667 (1979)). An officer may initiate a traffic stop upon "a 'reasonable, articulable suspicion that criminal activity is afoot.' " *Id.* (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675, 145 L. Ed. 2d 570, 576 (2000)).

"Reasonable suspicion is a 'less-demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.' " *State v. Barnard*, 362 N.C. 244, 247, 658 S.E.2d 643, 645 (2008) (quoting *Wardlow*, 528 U.S. at 123, 120 S. Ct. at 675–76, 145 L. Ed. 2d at 576). It requires only " 'some minimal level of objective justification.' " *Id.* (quoting *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1, 10 (1989)). The standard is met "if a 'reasonable, cautious officer, guided by his experience and training,' would believe that criminal activity is afoot 'based on specific and articulable facts, as well as the rational inferences from those facts.' " *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 167 (2012) (quoting *State v. Watkins*, 337 N.C. 437, 441–42, 446 S.E.2d 67, 70 (1994)). Officers must be allowed " 'to draw on their own experience and specialized training to make inferences from and deductions about the cumulative

information available to them that might well elude an untrained person.' " *Id.* at 116–17, 726 S.E.2d at 167 (quoting *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 750–51, 151 L. Ed. 2d. 740, 749–50 (2002)) (internal quotation marks omitted). In determining whether a reasonable suspicion exists, we "consider 'the totality of the circumstances—the whole picture.' " *Watkins*, 337 N.C. at 441, 446 S.E.2d at 70 (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 629 (1981)).

An officer has reasonable suspicion to stop a vehicle based upon a readily observed traffic violation. *Styles*, 362 N.C. at 415–17, 665 S.E.2d at 440–41. In North Carolina, a person who changes lanes without signaling commits a traffic violation if "the operation of any other vehicle may be affected by such movement." N.C. Gen. Stat. § 20-154(a) (2015). In *Styles*, for example, the trial court found that the defendant changed lanes without a signaling "immediately in front of" an officer's patrol car. *Id.* at 416–17, 665 S.E.2d at 441 (internal quotation marks omitted). That finding, the Supreme Court explained, "indicates that defendant's failure to signal violated N.C.G.S. § 20-154(a), because it is clear that changing lanes immediately in front of another vehicle may affect the operation of the trailing vehicle." *Id.* at 417, 665 S.E.2d at 441. Therefore, based on his observation of the traffic violation, the officer had reasonable suspicion to stop the defendant's vehicle. *Id.*

In this case, we cannot conclude from the record evidence that Officer McQueen

had reasonable suspicion to stop the vehicle based solely upon an illegal lane change. The driver failed to signal his lane change on Highway 55 but there is no evidence as to whether other drivers, including the officer, may have been affected by the movement. Officer McQueen testified that he was sixty meters away from the vehicle when it left the Red Roof Inn, and that he followed the vehicle "at a distance." Although he was directly behind the vehicle on I-40, there is no evidence as to whether the driver activated his turn signal during the two subsequent lane changes. It is also unclear whether the court considered the lane changes on I-40 in its reasonable suspicion determination. The findings reference "an abrupt turn across 3 travel lanes" on Highway 55, but the conclusions reference "an illegal lane change across 2 other lanes."

We can conclude, however, that Officer McQueen had reasonable suspicion to stop the vehicle by considering the totality of the circumstances. When assessing the circumstances surrounding a traffic stop, our courts have considered, *inter alia*, "activity at an unusual hour, . . . presence in a high-crime area, and unprovoked flight." *State v. Garcia*, 197 N.C. App. 522, 529, 677 S.E.2d 555, 559 (2009). While not "sufficient independently," *id.*, a combination of these factors may establish reasonable suspicion, *State v. Mello*, 200 N.C. App. 437, 443–47, 684 S.E.2d, 483, 488–90 (2009).

In *State v. Foreman*, 351 N.C. 627, 527 S.E.2d 921 (2000), our Supreme Court considered how a driver's legal left turn, immediately before a checkpoint, may factor into reasonable suspicion. *Id.* at 629–31, 527 S.E.2d at 923–24. At 2:00 a.m., the officer observed the vehicle traveling toward the checkpoint when the driver made a quick left turn onto a side street. *Id.* at 629, 527 S.E.2d at 922. The officer followed the vehicle as it made a second, abrupt left turn onto a residential street. *Id.* He found the vehicle parked in a residential driveway with its lights and ignition turned off and the occupants "crouched down" inside the vehicle. *Id.* As he approached, the officer observed the defendant in the driver's seat, several open containers of alcohol, and a strong odor of alcohol coming from the inside the vehicle. *Id.* at 629, 527 S.E.2d at 923. The defendant appealed her DWI conviction to our Supreme Court, arguing that the officer lacked reasonable suspicion of criminal activity prior to any seizure. *Id.* at 629–30, 527 S.E.2d at 923. Upholding the defendant's conviction, the Supreme Court explained:

> Although a legal turn, by itself, is *not* sufficient to establish a reasonable, articulable suspicion, a legal turn in conjunction with other circumstances, such as the time, place and manner in which it is made, *may* constitute a reasonable, articulable suspicion which could justify an investigatory stop. As the United States Supreme Court recently stated . . . , "flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."

Id. at 631, 527 S.E.2d at 923–24 (quoting *Wardlow*, 528 U.S. at 124, 120 S. Ct. at 676, 145 L. Ed. 2d at 576).

Similarly, in *State v. Jackson*, 368 N.C. 75, 772 S.E.2d 847 (2015), an officer on nightly patrol formed a reasonable suspicion based upon evasive action by two men standing outside a convenience store known for "frequent hand-to-hand drug transactions." *Id.* at 76–77, 772 S.E.2d at 848. When they saw the officer's patrol car, the two men walked away in opposite directions. *Id.* at 76, 772 S.E.2d at 848. The officer continued down the main road for some distance before circling back to the convenience store and finding the two men had reconvened. *Id.* When they saw the patrol car a second time, the two men again separated and walked away in opposite directions. *Id.* at 76–77, 772 S.E.2d at 848. The Supreme Court concluded that such "facts go beyond an inchoate suspicion or hunch and provide a 'particularized and objective basis for suspecting [defendant] of [involvement in] criminal activity.' " *Id.* at 80–81, 772 S.E.2d at 850–51 (alteration in original) (quoting *Navarette v. California*, ___ U.S. ___, ___, 134 S. Ct. 1683, 1687, 188 L. Ed. 2d 680, 686 (2014)).

Guided by *Foreman* and *Jackson*, and based on the circumstances in this case, we conclude that Officer McQueen had a reasonable suspicion to initiate the traffic stop. The officer first observed the vehicle leaving the Red Roof Inn at a late hour—shortly before midnight. He testified as to his familiarity with the hotel, which was

"a known area for drug offenses," and where Officer McQueen had personally executed "numerous drug- and weapons-related arrests." He was also aware of a shooting at the hotel in the two weeks prior to defendant's arrest. On Highway 55, the officer saw the vehicle move "into the dedicated left turn lane" at an intersection before abruptly crossing three lanes to the right. On the left side of the intersection sat a marked patrol car, in the Waffle House parking lot, clearly visible from the vehicle's position before it changed lanes. The proximity of the marked patrol car would lead a reasonable officer to believe that the vehicle changed lanes abruptly to avoid police presence. The evasive maneuver, in conjunction with the time of night, his experience executing arrests at the hotel, and his knowledge of the recent crimes at the hotel, established a sufficient basis for Officer McQueen to stop the vehicle and conduct a brief investigation to confirm or deny his reasonable suspicion that criminal activity was afoot.

III. Conclusion

The trial court did not err in denying defendant's motion to suppress. The totality of the circumstances provided Officer McQueen with the requisite " 'minimal level of objective justification' " to stop the vehicle. *Barnard*, 362 N.C. at 247, 658 S.E.2d at 645 (quoting *Sokolow*, 490 U.S. at 7, 109 S. Ct. at 1585, 104 L. Ed. 2d at 10). The court's findings, which are supported by competent evidence, support its conclusion that the officer had a reasonable suspicion to initiate the traffic stop.

AFFIRMED.

Judges INMAN and BERGER concur.

Report per Rule 30(e).