IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-451

Filed: 6 June 2017

Mecklenburg County, No. 14 CRS 230517

STATE OF NORTH CAROLINA,

v.

RHODEN REDDICK, JR., Defendant.

Appeal by defendant from judgment entered on or about 11 December 2015 by Judge Richard L. Doughton in Superior Court, Mecklenburg County. Heard in the Court of Appeals 19 September 2016.

Attorney General Joshua H. Stein, by Assistant Attorney General David L. Gore, III, for the State.

Stephen G. Driggers for defendant-appellant.

STROUD, Judge.

Defendant Rhoden Reddick, Jr. ("defendant") appeals from the trial court's judgment suspending sentence after defendant plead guilty to charges of felony possession of a Schedule II controlled substance and possession of drug paraphernalia. Defendant reserved his right to appeal the denial of pretrial motions and argues on appeal that the trial court erred in denying his motions to suppress for

lack of reasonable suspicion to stop his vehicle and for lack of probable cause to search the console of the vehicle. Because we find that under the totality of the circumstances, the officers had reasonable suspicion to stop defendant's vehicle and probable cause to search the console, we affirm the trial court's denial of defendant's motions to suppress.

I. Background

On 1 August 2014, Officer Henry Rozell[1] of the Charlotte-Mecklenburg Police Department was monitoring electronic surveillance video and spot-checking live feeds from numerous cameras throughout the Charlotte-Mecklenburg area looking for suspicious people and vehicles. One surveillance camera covered the parking lot of a Bojangles restaurant where several drug arrests had taken place over the prior two months. After first observing no vehicles in the parking lot, Officer Rozell scanned the area again and noticed two vehicles -- a Toyota and a BMW -- parked side-by-side away from the Bojangles entrance. Officer Rozell could see two people inside the BMW, and after running the vehicle's tags, discovered that the owner of the car had a history of cocaine offenses. Officer Rozell watched as the two men in the BMW "appeared to be . . . exchanging something, just based on their arms going

[1] The trial transcript initially spells Officer Rozell's last name as "Rozell" but indicates that when asked to spell his name for the court reporter, he spelled it as "Rozelle." The transcript continued to indicate his name is spelled as "Rozell" and never indicated otherwise. Since the trial court only spelled his name as "Rozell," we use "Officer Rozell" to be consistent with how the name is indicated repeatedly throughout the transcript.

from driver's seat to passenger seat and meeting in the middle near the console area[.]" To Officer Rozell, "it seemed like something was being passed from one to the other."

The man in the passenger seat -- who was wearing an orange shirt -- got out of the vehicle with his hand clenched and returned to the Toyota. Officer Rozell then watched both cars drive away and reported a summary of what he had observed to officers patrolling the area. The CMPD patrol officers -- Officer Scottie Carson and Officer Adam Thompson -- were in an unmarked car when they spotted the Toyota driving toward them about three minutes after receiving Officer Rozell's call. The officers made a U-turn and followed the Toyota for a short period of time, running the vehicle's license plate at the same time to discover that the owner -- defendant -- had two past cocaine convictions. At an intersection, the officers watched the Toyota turn left from the far right lane of two left-turn-only lanes without signaling and then veered right out of his lane into the next lane without signaling.

At that point, Officer Carson and Officer Thompson initiated a traffic stop. Defendant was the sole occupant of the vehicle. The officers approached the Toyota and Officer Carson saw two or more baseball or softball bats in the back seat positioned "within a reasonable distance where they could be grabbed [from the front seat] if that was the intent[.]" After alerting Officer Thompson of the baseball bats for officer safety purposes, Officer Carson began speaking with defendant, but noticed

that defendant "kept leaning and tapping" on the center console with his elbow. The console "was large enough so you [could] conceal a handgun," which was Officer Carson's initial concern. Officer Carson also noticed that defendant "was breathing real rapidly, extremely nervous."

After getting defendant's license and information, Officer Carson went back to the patrol vehicle and ran defendant's information through multiple databases to see if he had any outstanding warrants, while Officer Thompson stayed at the passenger side of the vehicle. After determining there were no warrants but also noticing that defendant had a prior conviction for trafficking of cocaine, Officer Carson went back to the vehicle and asked defendant to step out. Defendant stepped out and "kind of leaned his back up against the vehicle" in a way that Officer Carson interpreted as "aggressive[.]" Officer Carson had concerns for his safety and thought that defendant was "either going to strike [him] or maybe even fully, kind [sic] like a fight-or-flight mode."

Officer Carson spoke to defendant and asked him "what he was doing at the Bojangles with the Mercedes[.]" Defendant corrected him and said "I didn't get into a Mercedes, I got into a BMW." Officer Carson took defendant's quick reply as "more than argumentative." Officer Carson asked defendant if he had any guns or knives in the car, to which defendant responded by "thr[owing] both his hands up in the air to show that he didn't have anything on his person[.]" Officer Carson, however, was

still concerned about the possibility of a weapon in the vehicle, so he then went straight into the center console of the vehicle, where he located a bag that had "three individual baggies of cocaine." At that point, defendant was placed under arrest.

A grand jury indicted defendant on 2 March 2015 on the charges of possession of a Schedule II controlled substance and possession of drug paraphernalia. On 3 June 2015, defendant filed a motion to suppress evidence seized on the grounds that the arresting officers lacked reasonable suspicion to stop his vehicle and another motion to suppress evidence on the grounds that the officers lacked probable cause to search the console of his vehicle. After hearing arguments on 2 October 2015, the trial court orally denied defendant's motion. Defendant subsequently entered a plea of guilty to both charges on 11 December 2015 while preserving his right to appeal the denial of his pretrial motions. After receiving a suspended sentence, defendant timely appealed to this Court.

II. Motion to Suppress Due to Lack of Reasonable Suspicion to Stop Vehicle

Defendant argues that "the trial court erred by making an unsupported factual finding and using the unsupported finding to make a determinative legal conclusion and deny the motion to suppress for lack of reasonable suspicion." (Original in all caps).

> The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law. However,

> when . . . the trial court's findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal. Conclusions of law are reviewed de novo and are subject to full review. Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.

State v. Biber, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011) (citations and quotation marks omitted).

The trial court announced its order in open court and made the following findings at the suppression hearing[2] in ruling on the motion to suppress due to lack of reasonable suspicion to stop defendant's vehicle:

> That Officer Rozell of the Charlotte-Mecklenburg Police Department has 15 years of experience and hundreds of arrests related to drug activity, and on August 1st, 2013, he was conducting remote surveillance of the parking of Bojangles at the intersection of Harris Boulevard and Albemarle Road. That he was familiar with that area. That there had been five arrests of drug activity within the prior two months and other arrests in the immediate vicinity.
>
> In the course of his surveillance he observed the parking lot and changed surveillance to another location and returned his surveillance to the parking lot, at which point he noticed two vehicles, a Toyota and a BMW, which he had not seen in his earlier view of the parking lot. That the BMW tag was facing the camera such that they [sic] officer was able to obtain the tag number of the BMW. He noticed two occupants of the BMW, did a search of the tag number in order to identify the registered owner, and then ran a history of the registered owner, which revealed prior

[2] The record on appeal contains no written orders on either of defendant's motions to suppress or indication that any orders were ever entered by the trial court.

convictions for drug-related offenses.

> He observed the driver reach into the backseat, and then he observed arm movement between the driver and passenger. He then observed the passenger exit the vehicle with his left hand clenched as if he were holding something. He observed the passenger go around the rear of the vehicle to the driver's side and have a conversation with the driver and then observed the passenger get into a Toyota and drive away. He then relayed this information over the radio to other officers. This surveillance was a live feed through a remote camera, and based upon Defense Exhibit 1F, there was a direct view with no obstructions.
>
> Officer Carson is also an officer with the [CMPD] with 4-1/2 years of experience . . . . He heard the information being relayed by Officer Rozell related to the activity in the Bojangles parking lot and responded to that general location. Within two-and-a-half to three minutes he spotted the defendant and did a U-turn, confirming the tag number of the Toyota previously identified in radio transmission. He observed the defendant -- once behind the defendant's vehicle at a traffic light he observed the defendant make a wide left turn into a neighboring lane. The intersection where the left turn was made is a high traffic area known for lots of accidents. The defendant's vehicle, as it made its left turn, did not negatively impact any other vehicle or pedestrian traffic.

The trial court concluded "[t]hat Officer Carson had an objective or reasonable suspicion to stop the vehicle" and denied the motion to suppress.

A. Unsupported Findings

First, defendant argues that "[t]he finding that [defendant] made a 'wide left turn into a neighboring lane' was unsupported." Officer Carson's testimony, however, supported this finding. Officer Carson stated at the suppression hearing that

defendant "committed an unsafe movement by turning into a wider lane. Instead of staying in his lane, he turned out wide without using the turn signal and just kind of veered over, and that's -- we initiated a traffic stop based off of that." Furthermore, the trial court observed the dash camera video from the officers' vehicle, which shows exactly what Officer Carson described: defendant making a turn from the middle lane -- a left turn lane -- and veering directly over to the right into the next lane without signaling. Thus, defendant's argument is without merit.

Defendant also states more generically that the trial court's finding that defendant "committed a traffic violation" was unsupported by evidence. But the trial court never made any such finding. The entirety of the court's findings in relation to this issue were as follows:

> He observed the defendant -- once behind the defendant's vehicle at a traffic light he observed the defendant make a wide left turn into a neighboring lane. The intersection where the left turn was made is a high traffic area known for lots of accidents. The defendant's vehicle, as it made its left turn, did not negatively impact any other vehicle or pedestrian traffic.

The court never explicitly states that defendant "committed a traffic violation" as defendant contends, so we need not address this portion of defendant's argument in more detail.

B. Reasonable Suspicion to Stop Vehicle

Defendant next argues that the trial court's "uncontested" findings -- in relation to the observations in the Bojangles parking lot -- "do not support a reasonable suspicion to stop [defendant's] vehicle." Defendant notes that he "does not contest the trial court's findings pertaining to Officer [Rozell's] observations of [defendant] in the Bojangles parking lot." Defendant's argument rests on the idea that those findings, standing alone, were not sufficient to support an objective or reasonable suspicion to stop defendant's vehicle. Since we have concluded that the contested finding was supported by evidence, we consider this issue in light of *all* the findings.

In this case, the trial court concluded, based both on what the officers observed when following defendant before pulling him over and the earlier testimony regarding what was observed in the Bojangles parking lot with the same vehicle, that Officer Carson "had an objective or reasonable suspicion to stop the vehicle[.]"

> Under the Fourth Amendment, police are permitted to conduct a brief investigatory stop of a vehicle if an officer has reasonable and articulable suspicion of criminal activity. Our Supreme Court has explained that reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.
>
> A court, in determining whether an officer had reasonable suspicion, looks at the totality of the circumstances. The only requirement is a minimal level of objective justification, something more than an unparticularized suspicion or hunch. The reasonable suspicion must, however, arise from the officer's knowledge

> prior to the time of the stop.

State v. McRae, 203 N.C. App. 319, 321-22, 691 S.E.2d 56, 58 (2010) (citations, quotation marks, and brackets omitted). Furthermore, " '[a] court must consider the totality of the circumstances . . . in determining whether a reasonable suspicion to make an investigatory stop exists.' " *State v. Mello*, 200 N.C. App. 437, 443, 684 S.E.2d 483, 488 (2009) (quoting *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994)).

Both defendant and the State cite to *State v. Travis*, __ N.C. App. __, 781 S.E.2d 674 (2016). In *Travis*, the defendant was a former informant for the officer who observed him pull up next to an SUV and exchange something with the passenger of that vehicle. *Id.* at __, 781 S.E.2d at 675. The officer sent a request over the radio for a nearby officer to stop the defendant after he pulled away, and the responding officer initiated a traffic stop. *Id.* at __, 781 S.E.2d at 675. This Court ultimately held in *Travis* that "the trial court did not err in finding that based upon the totality of the circumstances reasonable suspicion existed to stop [the defendant's] vehicle." *Id.* at __, 781 S.E.2d at 679.

While defendant points out that the *Travis* Court relied at least in part on the fact that (1) the defendant in that case was known to the officer previously and (2) that the officer observed the defendant touch hands with the other individual, in arguing that the trial court erred in finding reasonable suspicion to stop his vehicle,

defendant's argument fails to take into account the totality of the evidence in his case. For example, this Court specifically noted that the incident in *Travis* "took place in broad daylight in the parking lot of a public building rather than in an area known for drug activity[,]" *id.* at __, 781 S.E.2d at 678; here, by contrast, defendant was observed in the Bojangles parking lot, which Officer Rozell testified is known as a high drug area, and he was seen exiting the BMW with his hand "clenched[.]"

In addition, defendant was also observed turning left at an intersection and then immediately veering right into the next lane without stopping or signaling. Defendant did so with an officer's vehicle immediately behind him and without regard for cars that could have pulled out into the right lane. This also gave the officers reasonable suspicion to stop defendant's vehicle. *See, e.g.*, *State v. Styles*, 362 N.C. 412, 417, 665 S.E.2d 438, 441 (2008) ("This finding of fact indicates that defendant's failure to signal violated [N.C. Gen. Stat. §] 20-154(a), because it is clear that changing lanes immediately in front of another vehicle may affect the operation of the trailing vehicle. Officer Jones' observation of defendant's traffic violation gave him the required reasonable suspicion to stop defendant's vehicle."); *see also McRae*, 203 N.C. App. at 323, 691 S.E.2d at 59 ("[A]s in *Styles*, defendant was traveling, before his turn, in a through lane with 'medium' traffic and was a short distance in front of the police officer. The trial court did not err in concluding that a reasonable officer would have believed, under these circumstances, that the failure to use a turn signal

could have affected another motor vehicle. Accordingly, the officer had reasonable suspicion to stop defendant based on his failure to use his turn signal."). Accordingly, under the totality of the circumstances in this case, we hold that the trial court did not err when it concluded that the officers had reasonable suspicion to stop defendant's vehicle in this case.

III. Motion to Suppress for Lack of Probable Cause to Search Vehicle

Next, defendant argues that "[t]he trial court erred by making unsupported factual findings and using the unsupported findings to make a determinative legal conclusion and deny the motion to suppress for lack of probable cause to search the console of the vehicle." (Original in all caps).

As to this issue, the trial court made the following findings:

> The Court will first incorporate filings [sic] of fact in its ruling on the motion to suppress based on reasonable suspicion[3] and will further find that Officer Carson, in approaching defendant's vehicle after a traffic stop noticed baseball bats in the floorboard of the backseat lying between the front seats.
>
> He further noticed . . . the defendant performing what he described as a security tap on the center console or armrest, which he demonstrated for the Court, and which based upon his training and experience indicated the defendant's intent to secure or conceal items within the console.
>
> The officer was concerned about the presence of weapons based upon his understanding of the hand-to-

[3] These findings of fact were quoted above in Section II of this opinion.

> hand transaction that had occurred earlier and based upon his experience that weapons and drugs are often related. He further observed a level of nervousness from the defendant, rapid breathing, lip quivering. Upon further search of police databases found the defendant to have an older trafficking offense.
>
> He asked the defendant to exit the vehicle, and noticed the defendant bouncing his body off the car in a fight-or-flight stance.
>
> After some further conversation, he asked the defendant to step aside with Officer Thompson, and then Officer Carson went directly to search the center console, where he discovered the suspected cocaine.

The court then concluded "[t]hat based on the totality of circumstances, a reasonably prudent officer would have concluded that there was probable cause to believe the presence of drugs and/or contraband were in the center console, and therefore the motion to suppress is denied."

A. Unsupported Findings

Defendant first argues that the trial court's finding that Officer Carson saw "baseball bats in the floorboard of the backseat lying between the front seats" was unsupported by the evidence. Defendant argues that Officer Carson and Officer Thompson gave "conflicting testimony" about whether there was more than one baseball bat and claims that neither officer testified that the bats were "lying between the front seats."

As defendant acknowledges, however, "a trial court's findings of fact are conclusive on appeal if supported by competent evidence, *even if the evidence is conflicting*." *State v. Cornelius*, 219 N.C. App. 329, 333, 723 S.E.2d 783, 786 (2012) (citation and quotation marks omitted). In this case, the trial court heard Officer Carson testify: "One of the observations that was made right away by myself and Officer Thompson was that there were baseball or softball bats that were inside the vehicle." And when asked about how many bats were in the vehicle, Officer Carson replied: "I know there were more than one. Maybe one or two." Furthermore, when asked where the bats were located, Officer Carson responded:

> They were located in the backseat, kind of, and some of them were -- the handles were kind of protruding through the middle of the front and the rear. And, I'm sorry, the front driver's side and front passenger seat of the vehicle, so they were within a reasonable distance where they could be grabbed if that was the intent -- if that would have been the intent.

This testimony supports the trial court's finding that "Officer Carson, in approaching defendant's vehicle after a traffic stop noticed baseball bats in the floorboard of the backseat lying between the front seats."

Defendant also argues that the trial court's finding that Officer Carson "noticed the defendant bouncing his body off the car in a fight-or-flight stance" is unsupported by the evidence. Defendant claims that the dash cam video shows defendant "pushed himself away a few inches from the car frame four times in

response to Officer Carson's questions at intervals of about 30 seconds[,]" but argues that "[t]hese motions were too inconclusive to support a finding of 'fight-or-flight' behavior." We disagree with defendant's characterization of the evidence. Officer Carson testified that defendant "kind of leaned his back up against the vehicle, which to [him] was an aggressive manner," and Officer Carson described his mindset in that moment as being that he thought defendant was in "a fight-or-flight mode." Officer Carson further testified that based on how defendant was standing, he thought initially "he was going to take a swing while we were outside the vehicle" or that he might "take off running." This testimony, combined with the video, which even defendant admits shows defendant moving on the car, supports the trial court's finding.

B. Search of Defendant's Vehicle

Defendant argues that the trial court erred in denying his motion to suppress related to the search of his vehicle's console both because it was not justified as "frisk" of the vehicle and because the officers lacked probable cause to search the console. We disagree with both of these claims for the reasons stated below.

i. Vehicle "Frisk"

Defendant contends that the warrantless search of the console of his vehicle "was not justified as a 'frisk' of the vehicle".

> When the law enforcement officer conducting a traffic stop reasonably believes that an occupant of the car

> is dangerous and may gain immediate control of a weapon, the officer may conduct a protective search of areas inside the passenger compartment of the vehicle where a weapon may be located. This brief search is known as a "vehicle frisk," and its purpose is to ensure officer safety. The scope of a valid "vehicle frisk" does not extend to searching for evidence.

State v. Parker, 183 N.C. App. 1, 8-9, 644 S.E.2d 235, 241 (2007) (citations and quotation marks omitted). *See also State v. King*, 206 N.C. App. 585, 589, 696 S.E.2d 913, 915 (2010) ("In determining the reasonableness of a weapons frisk, we are guided by the [standard set out in *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)], adopted by our Supreme Court . . ., and must resolve whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. . . . Ultimately, the determination of whether an officer was justified in conducting a pat-down frisk [or a weapons frisk of the vehicle] . . . hinges on the totality of the circumstances." (Citations and quotation marks omitted)).

Although the State argued before the trial court that the search was proper as a "*Terry* frisk" of the vehicle, we first note that it is not entirely clear from the trial court's ruling that the court relied upon this ground in denial of the motion to suppress. The Court's sole "conclusion of law" was as follows:

> That based on the totality of circumstances, a reasonably prudent officer would have concluded that there was probable cause to believe the presence of drugs and/or contraband were in the center console, and therefore

the motion to suppress is denied.

Yet we also note that the trial court did make findings of fact regarding the officers' concern for their safety and suspicion that there may have been a weapon in the console. If the search was proper as a *Terry* frisk of the vehicle, we would not need to address defendant's additional argument regarding probable cause to believe that drugs may be in the console. But since the basis for the trial court's ruling is not entirely clear, we will address both of defendant's arguments.

Here, Officer Carson testified that he observed defendant doing a "security tap" on the center console, which he described as "large enough so you can conceal a handgun, which was [his] initial concern." Officer Carson also testified to his years of training and experience as a police officer and the connection between drug crimes and weapons as part of the basis for why he was concerned about a weapon being present in this case, in addition to defendant's "aggressive" behavior. Under the totality of the circumstances, it was reasonable for Officer Carson to believe his and Officer Thompson's safety may have been in danger to justify his search of the console.

ii. Probable Cause to Search Console

Defendant further argues that Officer Carson "did not have probable cause to search the vehicle."

> The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that

> searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions. One such exception is the automobile exception. A police officer in the exercise of his duties may search an automobile without a search warrant when the existing facts and circumstances are sufficient to support a reasonable belief that the automobile carries contraband materials. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

State v. Mitchell, 224 N.C. App. 171, 174-75, 735 S.E.2d 438, 441 (2012) (citations and quotation marks omitted). *See also Parker*, 183 N.C. App. at 10, 644 S.E.2d at 242 ("If a law enforcement officer has probable cause to believe that the vehicle contains evidence of a crime, the officer may conduct an immediate warrantless evidentiary search of the vehicle, including closed containers found therein. . . . The scope of such an evidentiary search is limited to areas and containers capable of concealing the evidence suspected to be present." (Citations and quotation marks omitted)).

Defendant argues that the evidence in this case was "insufficient to support a reasonable belief that the console contained contraband." We disagree. As we have already noted, Officer Carson testified to his extensive training and experience as a police officer, specifically in the area of drug enforcement. Officer Rozell watched defendant on live video surveillance in the Bojangles parking lot -- a high crime area where multiple drug-related arrests had recently taken place -- and noticed that

defendant's fist was clenched as if he was holding something when he exited the BMW and returned to his vehicle. Based on his observations, Officer Rozell instructed the other officers to follow defendant's Toyota. Officers Carson and Thompson ran defendant's license plate and discovered that defendant has two prior cocaine convictions. The officers saw baseball bats in the backseat, and watched as defendant repeatedly tapped his elbow on the center console while they spoke with him, appearing nervous and later aggressive. Given all of these facts and the totality of the circumstances, we hold that the officers had probable cause to open and search the center console of defendant's vehicle.

IV. Conclusion

Accordingly, we conclude that the trial court did not err when it denied defendant's motions to suppress. We therefore affirm the trial court's ruling on the motions to suppress.

AFFIRMED.

Chief Judge McGEE and Judge INMAN concur.

Report per Rule 30(e).