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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1419

Filed: 20 November 2018

Lee County, No. 15 CRS 52722

STATE OF NORTH CAROLINA

v.

RASHON ALI BETHEA, Defendant.

Appeal by Defendant from judgment entered 24 April 2017 by Judge William W. Bland in Lee County Superior Court. Heard in the Court of Appeals 18 September 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General June S. Ferrell, for the State.

William D. Spence for defendant-appellant.

HUNTER, JR., Robert N., Judge.

Rashon Ali Bethea (“Defendant”) appeals from a judgment entered upon his *Alford* plea to possession of a firearm by a felon. On appeal, Defendant argues the trial court erred in denying his motion to suppress evidence recovered from a traffic stop and subsequent search of his vehicle because the officer did not have reasonable suspicion to conduct the traffic stop. For the following reasons, we affirm.

I. Factual and Procedural History

On 11 October 2015, Officer Ryan LeBlanc (“Officer LeBlanc”) with the Sanford Police Department conducted a traffic stop of Defendant’s vehicle. During a search of the vehicle, Officer LeBlanc found a firearm in a small bag under the driver side front seat. Defendant was arrested for possession of a firearm by a felon. On 16 November 2015, a Lee County Grand Jury indicted Defendant for one count of the same charge in violation of N.C. Gen. Stat. § 14-415.1 (2015). On 4 May 2016, Defendant filed a motion to suppress with an attached affidavit and incident report, moving to suppress the stop and subsequent search of his vehicle based upon a violation of his constitutional rights. In the motion, Defendant contended Officer LeBlanc “conducted a warrantless, nonconsensual, unreasonable search of the motor vehicle on the pretext that they smelled an odor of marijuana.” The trial court held a hearing on the motion on 29 June 2016.

As a preliminary matter, Defendant moved for a summary ruling on the motion to suppress, which the trial court denied. After the ruling, the State called Officer LeBlanc, a nine-year veteran of the Sanford Police Department, to testify. Officer LeBlanc was on patrol duty, by himself, in the city limits of Sanford in a marked police car on 11 October 2015. Around 1:34 a.m., Officer LeBlanc turned onto Third Street from McIver Street headed South, and observed a light blue car stopped in the “middle of the trafficway” outside a boarding house known for prostitution, drugs,

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and criminal activity. From his experience, Officer LeBlanc knew approximately eighty percent of the boarding house occupants. In his tenure as a patrolman, Officer LeBlanc had “personally taken hundreds of calls at that same location over the past nine years” regarding “[a]lcohol, drug, [and] prostitution-related disturbances.” Officer LeBlanc noticed the vehicle was facing the opposite side of the road in the far right traffic lane. As Officer LeBlanc drove past the vehicle, he observed a “black male wearing basically all black . . . leaned in on the passenger side window” of the car. When he was approximately 100 feet away, Officer LeBlanc “tapped his brakes to stop and look back,” and the unknown male “immediately popped back out the window” and started walking away. The blue car began to drive away in the opposite direction of Officer LeBlanc. Officer LeBlanc was unsure whether the person leaning in the car window had been a passenger in the vehicle.

Based on his training, experience, and his familiarity with the area being known for drug activity, Officer LeBlanc believed he had witnessed a “hand-to-hand drug transaction.” He made a U-turn in the roadway and began to follow the blue car. After the U-turn, the blue car “immediately put on its directional and [made] a left-hand turn” onto McIver Street. Officer LeBlanc observed the vehicle had out-of-state license plates, which raised a suspicion of criminal activity. In his professional experience, Officer LeBlanc knew rental cars typically have out-of-state license plates, and were consistently linked to drug violations in that area. Officer LeBlanc

was unable to discern the sex or race of the driver, and did not see the driver until after approaching the vehicle. Officer LeBlanc initiated a traffic stop of the car about one block away. Officer LeBlanc did not see any traffic violations.

In Officer LeBlanc's incident report, he did not include information concerning the individual leaning into the passenger-side window wearing all black clothing, or dispersing when he put on his brakes. Defense counsel highlighted this omission from Officer LeBlanc's report, and clarified Officer LeBlanc did not have time to run the license plate before initiating the stop, although he did see the car had a Texas license plate. Officer LeBlanc knew the high crime area known for "nefarious activities including prostitution, gangs and drug dealing" to be about "six or seven square blocks," with residents being predominantly black and Hispanic.

After Officer LeBlanc's testimony and arguments from counsel, the trial court orally denied Defendant's motion to suppress the traffic stop "[b]ased upon the totality of the circumstances." Officer LeBlanc then went on to testify regarding the subsequent search of the vehicle. Officer LeBlanc identified Defendant as the driver of the light blue passenger vehicle. After initiating the stop, he approached the driver side of the vehicle, identified himself, and informed Defendant he stopped him due to "the peculiar behavior" he had just observed.

While speaking with Defendant, Officer LeBlanc observed the "overwhelming aroma of a strong cologne as well as marijuana emitting from the vehicle." Defendant

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told Officer LeBlanc he was just “dropping his people off” at the boarding house. Officer LeBlanc did not immediately inform Defendant of this observation, but went back to his patrol car to run Defendant’s information and call for a backup unit. At this time, Officer LeBlanc confirmed the vehicle was a rental car with a rental agreement.

After the second officer arrived on the scene, Officer LeBlanc returned to Defendant and asked him to step out of the vehicle so Officer LeBlanc could separate any odors coming from Defendant as opposed to the vehicle. When Officer LeBlanc informed Defendant that he smelled marijuana, Defendant interrupted him saying that it was “his black oils. He wears black oils and that’s what [Officer LeBlanc was] smelling.” Officer LeBlanc noted once Defendant was out of the vehicle, he could not smell the marijuana on Defendant’s person, but could still smell the cologne, which was “an acrid, strong, probably male in gender scent.”

Defendant did not consent to a search of his vehicle. However, Officer LeBlanc explained he was “going to search it anyway” due to the marijuana odor. Officer LeBlanc began searching the vehicle on the front driver’s side. Upon returning to the vehicle, Officer LeBlanc “could still smell the overwhelming, very powerful aroma of marijuana coming from that vehicle[,]” but the cologne smell “had dissipated.” Officer LeBlanc began the search “with the driver’s compartment[,] left-hand side driver’s seat, driver’s side door, floorboards, [and] under the seat.” When he reached under

the front driver seat, he found a “black shaving kit type bag.” Officer LeBlanc could tell the bag contained a handgun immediately upon grabbing it due to the contours of the bag. Officer LeBlanc removed the bag from under the seat and found a loaded revolver inside. While Officer LeBlanc continued to search the vehicle, the odor of marijuana did not dissipate, but he did not find any marijuana or other contraband.

Defendant testified at the hearing regarding the search of his vehicle. Defendant dropped off his friend on the corner of 3rd Street and Maple Street near his home after playing pool at his friend’s “man-cave.” Defendant did not know whether his friend had a criminal history. Officer LeBlanc turned around after passing Defendant, and followed Defendant after he pulled away and made a left-hand turn, and soon after, initiated the stop. Officer LeBlanc asked for Defendant’s identification and registration, and Defendant complied with his requests. Defendant said he did not smoke marijuana, the vehicle did not smell like marijuana, and he told Officer LeBlanc he was smelling Defendant’s “Muslim oils,” not marijuana. Defendant said he did not possess or had possessed any marijuana in the car the night of the stop.

After arguments from counsel, the trial court denied Defendant’s motion to suppress. Defendant subsequently entered an *Alford* guilty plea pursuant to an agreement with the State, reserving his right to appeal the denial of his motion to suppress. The trial court sentenced Defendant to fourteen to twenty-six months of

imprisonment, suspended, and placed Defendant on twenty-four months of supervised probation. Defendant appealed.

II. Standard of Review

This Court’s “standard of review in evaluating a trial court’s 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.” *State v. Hammonds*, 370 N.C. 158, 161, 804 S.E.2d 438, 441 (2017) (internal quotation marks and citation omitted). “[T]he trial court’s findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *Id.* at 161, 804 S.E.2d at 441 (alteration in original) (citation and quotation marks omitted). Where the “findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal.” *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36 (2004) (citation omitted). We review the trial court’s conclusions of law *de novo*. *Hammonds*, 370 N.C. at 161, 804 S.E.2d at 441.

III. Analysis

Defendant’s sole issue on appeal is whether the trial court erred in denying his motion to suppress.

A. Investigatory Stop

Defendant argues Officer LeBlanc lacked the reasonable suspicion necessary to conduct a valid investigatory stop of Defendant’s vehicle, and therefore any

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evidence seized as a result of the subsequent search of the vehicle was inadmissible as “fruit of the poisonous tree.”

The Fourth Amendment of the United States Constitution guarantees

[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV; *see also* N.C. Const. art. I, § 20; *State v. Otto*, 366 N.C. 134, 136, 726 S.E.2d 824, 827 (2012). Fourth Amendment protections apply to the several States “through the Due Process Clause of the Fourteenth Amendment.” *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 69 (1994) (citing *Mapp v. Ohio*, 367 U.S. 643, 655, 6 L. Ed. 2d 1081, 1090 (1961)). The Fourth Amendment’s protection against unreasonable searches and seizures includes “seizures of the person, including brief investigatory detentions such as those involved in the stopping of a vehicle.” *Watkins*, 337 N.C. at 441, 446 S.E.2d at 69-70 (citation omitted).

An investigatory stop must be justified by “a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.” *Id.* at 441, 446 S.E.2d at 70 (citation and quotation marks omitted). In determining whether reasonable suspicion to make an investigatory stop exists, the “reviewing court must consider the totality of the circumstances—the whole picture.” *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 167 (2012) (citation and quotation marks omitted).

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Reasonable suspicion demands merely “a minimal level of objective justification, something more than an unparticularized suspicion or hunch.” *Watkins*, 337 N.C. at 442, 446 S.E.2d at 70 (citation and quotation marks omitted). “An officer has reasonable suspicion 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.” *Williams*, 366 N.C. at 116, 726 S.E.2d at 167 (citations and internal quotation marks omitted).

In particular situations, “wholly lawful conduct might justify the suspicion that criminal activity was afoot[.]” *Reid v. Georgia*, 448 U.S. 438, 441, 65 L. Ed. 2d 890, 894 (1980) (holding an “agent could not as a matter of law, have reasonably suspected [a person] of criminal activity on the basis of [*de minimus*] observed circumstances . . . [leading] to virtually random seizures” of innocent citizens.); *see also United States v. Sokolow*, 490 U.S. 1, 9, 104 L. Ed. 2d 1, 11 (1989) (holding “[a]ny one of these [lawful conduct] factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel[, b]ut . . . taken together they amount to reasonable suspicion.” (citation omitted)).

“[W]hen a criminal defendant files a motion to suppress challenging an investigatory stop, the trial court can deny that motion only if it concludes, after considering the totality of the circumstances *known to the officer*, that the officer possessed reasonable suspicion to justify the challenged seizure.” *State v. Nicholson*,

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___ N.C. ___, ___, 813 S.E.2d 840, 843-44 (2018) (emphasis added). However, “the officer’s subjective opinion is not material. Nor are the courts bound by an officer’s mistaken legal conclusion as to the existence or non-existence of probable cause or *reasonable* grounds for his actions.” *Id.* at ___, 813 S.E.2d at 846 (citation omitted). “The search or seizure is valid when the objective facts known to the officer meet the standard required.” *Id.* at ___, 813 S.E.2d at 846 (citation omitted).

In denying Defendant’s motion to suppress the stop, the trial court made the following findings of fact:

1. After graduating from Basic Law Enforcement Training, Officer Ryan LeBlanc started his law enforcement employment with the Sanford Police Department.
2. As of 11 October 2015, Officer LeBlanc had been employed with the Sanford Police Department for nine (9) years, one (1) month as a patrol officer and had earned through performance and demonstrated vocational knowledge the highest ranking designation within that division, Patrolman III.
3. In the early morning hours of 11 October 2015, Officer LeBlanc was alone and operating his marked (“black and white”) police car on routine patrol in the area of McIver Street and Third Street in the city limits of Sanford, North Carolina.
4. At 1:34 a.m., while turning from McIver Street onto Third Street, Officer LeBlanc observed a light blue passenger car stopped in the roadway on McIver Street in front of a boarding house. The light blue car was headed in the opposite direction of travel from Officer LeBlanc.
5. An unknown male individual was standing outside the

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vehicle leaning through the front passenger side window. This behavior was consistent with Officer LeBlanc's prior patrol experiences in witnessing hand-to-hand transfers of controlled substances.

6. Officer LeBlanc could not tell who was operating the light blue vehicle nor how many occupants were inside.

7. Officer LeBlanc did not know if the unknown male had just exited the stopped blue passenger vehicle or had just approached it on foot.

. . . .

9. The boarding house . . . is a multi-story structure subdivided into inexpensive, single room, weekly rentals occupied by a significant number of transient residents and a few long term residents.

10. Officer LeBlanc had previously responded to numerous calls at the boarding house address, including complaints about prostitution and Chapter 90 controlled substances violations. The boarding house is located within a six (6) to seven (7) square block high crime area of Sanford.

11. Officer LeBlanc was professionally acquainted with the majority of the boarding house occupants.

12. Officer LeBlanc had most recently responded to a complaint at [that location] about two weeks prior to 11 October 2015.

13. As Officer LeBlanc approached the stopped light blue passenger vehicle, he observed the unknown male individual step away from the vehicle onto the sidewalk and begin walking away from the vehicle as it drove off in the opposite direction.

14. Based on his training and experience, the location, and the time of day, Officer LeBlanc believed that he had just

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observed a hand-to-hand illegal drug transaction.

15. Officer LeBlanc immediately made a U-turn within view of the vehicle and the pedestrian and began following the light blue passenger vehicle. The unknown male pedestrian disappeared.

16. Officer LeBlanc noted that the light blue vehicle bore an out-of-state registration plate. This elevated his suspicion of criminal activity because in his professional experience, out-of-state registration plates are frequently assigned to rental cars. The majority of his previous rental car stops involved local Sanford residents who were committing Chapter 90 controlled substance violations or in possession of contraband.

17. Officer LeBlanc initiated a traffic stop of the light blue passenger vehicle and found the defendant to be the operator and sole occupant of the vehicle.

18. At the time Officer LeBlanc stopped the vehicle, Officer LeBlanc had not confirmed that the out-of-state registration plate on the vehicle was the name of a rental care company or agency.

Based on these findings, the trial court concluded “[b]ased on the totality of the circumstances . . . Officer LeBlanc possessed a reasonable and articulable suspicion sufficient to justify an investigatory stop of the vehicle [D]efendant was operating.” The trial court concluded “the Officer had reason to believe that an occupant in the vehicle had just participated in a Chapter 90 Controlled Substances violation (a hand-to-hand drug transaction).”

Defendant does not challenge any of the above findings and they are binding on appeal. *Roberson*, 163 N.C. App. at 132, 592 S.E.2d at 735-36. Under the totality

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of the circumstances, Officer LeBlanc's observations, as informed by his experience and training, gave rise to a reasonable suspicion Defendant was engaged in criminal activity to justify the investigatory stop of Defendant's vehicle. The findings show that Officer LeBlanc observed Defendant's vehicle stopped in the roadway and witnessed an interaction that, in his training and experience, was indicative of a hand-to-hand drug transaction. *See Sokolow*, 490 U.S. at 9, 104 L. Ed. 2d at 11; *Nicholson*, ___ N.C. at ___, 813 S.E.2d at 843-44. This occurred in the early morning hours in a high crime location outside a boarding house known for drug violations and prostitution. *See State v. Parker*, 137 N.C. App. 590, 601, 530 S.E.2d 297, 304 (2000) (noting "courts have recognized factors such as activity at an unusual hour, and an area's disposition toward criminal activity as articulable circumstances which may be considered along with more particularized factors to support a reasonable suspicion[.]") (internal citations and quotation marks omitted)); *see also State v. Evans*, ___ N.C. App. ___, ___ 795 S.E.2d 444, 454 (2017) (holding the officer had reasonable suspicion to conduct an investigatory stop where, at 4:00 a.m. in an area known for illegal drug sales, the officer observed the defendant stop his vehicle in a lane of travel and an unknown pedestrian approach the car and lean in the window). Because the trial court's findings support its conclusion Officer LeBlanc possessed the requisite reasonable suspicion to justify the stop, the trial court properly denied Defendant's motion to suppress the traffic stop.

B. Search

Defendant next contends the trial court's findings do not support its conclusion the officer had probable cause to conduct a warrantless search of the vehicle. Defendant argues Findings of Fact 1, 7, and 8 under Part II of the order pertaining to the search of his vehicle merely recite Officer LeBlanc's testimony, and therefore they are not proper "findings" sufficient to support the trial court's conclusion.

In denying Defendant's motion to suppress the search, the trial court made the following challenged findings of fact:

1. While talking with the defendant through the driver's side window, Officer LeBlanc detected an overwhelming aroma of strong cologne and raw marijuana coming from the vehicle.

...

7. Upon returning to the vehicle interior alone, Officer LeBlanc once again detected the strong, overwhelming odor of raw marijuana. Officer LeBlanc also noticed that the odor of cologne had dissipated.

8. Based upon the unabated and isolated odor of raw marijuana emanating from the interior of the vehicle, Officer LeBlanc formed the opinion that marijuana was in or about the vehicle.

Contrary to Defendant's assertion, these findings are not mere recitations of Officer LeBlanc's testimony as they do not indicate that Officer LeBlanc "testified" to the particular information. *See Williamson v. Williamson*, 140 N.C. App. 362, 364, 536 S.E.2d 337, 339 (2000) (stating the trial court's findings were mere recitations of

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evidence as “indicated by the trial court’s repeated statements that a witness ‘testified’ to certain facts or other words of similar import.”). Rather, the trial court found as fact “Officer LeBlanc detected an overwhelming aroma of strong cologne and raw marijuana coming from the vehicle” and “[b]ased upon the unabated and isolated odor of raw marijuana emanating from the interior of the vehicle, Officer LeBlanc formed the opinion marijuana was in or about the vehicle.”

Defendant contends there was a material factual conflict regarding what Officer LeBlanc smelled, and because the findings do not specifically state Officer LeBlanc smelled marijuana “rather than Muslim oil, cologne, or any other substance[,]” the trial court did not resolve the material factual conflict in the evidence. “If there is a conflict between the state’s evidence and defendant’s evidence on material facts, it is the duty of the trial court to resolve the conflict and such resolution will not be disturbed on appeal.” *State v. Veazey*, 201 N.C. App. 398, 400, 689 S.E.2d 530, 532 (2009) (citation omitted). Here, by finding as fact Officer LeBlanc detected an overwhelming aroma of raw marijuana coming from Defendant’s vehicle, the trial court necessarily found the vehicle smell was not Muslim oil or cologne, and therefore resolved the material conflict in the evidence. Thus, Defendant’s argument is overruled.

The trial court’s findings support the conclusion Officer LeBlanc had probable cause to conduct a warrantless search of the vehicle because Officer LeBlanc detected

the odor of raw marijuana coming from Defendant's vehicle, and the odor of marijuana did not dissipate once Defendant was removed from the vehicle. *See State v. Downing*, 169 N.C. App. 790, 796, 613 S.E.2d 35, 39 (2005) ("Plain smell of drugs by an officer is evidence to conclude there is probable cause for a search." (citation omitted)); *see also State v. Greenwood*, 301 N.C. 705, 708, 273 S.E.2d 438, 441 (1981). Therefore, we hold the trial court properly denied Defendant's motion to suppress the search.

IV. Conclusion

Because the trial court's findings support its conclusions that Officer LeBlanc had reasonable suspicion under the totality of the circumstances, Officer LeBlanc had probable cause to conduct a warrantless search of Defendant's vehicle. Accordingly, the trial court properly denied Defendant's motion to suppress. We affirm the trial court's order.

AFFIRMED.

Judges BRYANT and ARROWOOD concur.

Report per Rule 30(e).