IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-227

Filed: 6 November 2018

Pitt County, No. 16 CRS 001393

STATE OF NORTH CAROLINA

v.

CODY AUSTIN AVERETTE

Appeal by defendant from judgment entered 19 September 2017 by Judge Marvin K. Blount, III in Pitt County Superior Court. Heard in the Court of Appeals 1 October 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Karen A. Blum, for the State.

The Robinson Law Firm, P.A., by Leslie S. Robinson, for defendant.

ELMORE, Judge.

Defendant Cody Austin Averette appeals a judgment entered after he entered a conditional guilty plea to driving while impaired ("DWI"), reserving his right to appeal the denial of his motion to suppress the results of a blood test. He argues the 0.12 blood alcohol concentration ("BAC") result should have been suppressed due to

five issues concerning the propriety of the blood withdrawal and later chemical analysis, in alleged violation of his constitutional and statutory rights. We affirm.

I. Background

Around midnight on 5 June 2016, defendant was driving his pickup truck through the intersection of Mac Allen Road and Rountree Road in Pitt County when his vehicle veered off the road, crashing through a damaged utility pole and into an unoccupied parked vehicle, the impact causing that vehicle to overturn, skid several feet, and collide into two other unoccupied vehicles. When State Trooper Ashley Smith of the North Carolina State Highway Patrol arrived at the crash scene, the fire department and Ayden Emergency Medical Services ("EMS") personnel were already there. Trooper Smith found defendant lying on a stretcher in the back of an Ayden EMS truck, injured, bleeding, and visibly upset. When Trooper Smith entered the truck, defendant admitted he had "been drinking and ran a stop sign." Trooper Smith smelled a "strong" odor of alcohol emanating from defendant, observed that defendant's eyes were "very red, blood shot and glassy looking," and noted that he appeared "emotional about what happened, very remorseful."

Trooper Smith left the EMS truck and returned with a Forensic Testing Service Alcosensor breath test. After defendant agreed to submit to the breath test, Trooper Smith administered two Alcosensor tests that yielded positive results. Trooper Smith left the EMS truck again and returned with his citation book and a

State Bureau of Investigation ("SBI") blood test kit. The contents of the SBI blood test kit were sealed and packaged in an outer cardboard box, which listed its expiration date. Inside that outer box was an alcohol-free prep pad, evidence tape, labeling stickers, a needle, and a smaller box containing two glass vials, which also listed the expiration date.

When Trooper Smith returned to the EMS truck, he advised defendant "[he] was going to charge him with driving while impaired" and "provided him with a copy of DHHS-4081," which is the standardized implied-consent rights form, and "read it to him verbatim[.]" Defendant agreed to submit to a blood test. Trooper Smith then asked nearby emergency medical technician ("EMT") Chandler Sutton to withdraw a sample of defendant's blood using the SBI blood test kit he provided.

Trooper Smith observed Sutton extract defendant's blood into the two vials of the SBI blood test kit inside the back of the Ayden EMS truck. Sutton then gave Trooper Smith the vials of blood, which Trooper Smith sealed with evidence tape and repackaged in the SBI blood test kit, and later secured in the back of his patrol car. Immediately after the blood withdrawal, Trooper Smith read defendant his *Miranda* rights; however, Trooper Smith was unable to conduct any questioning because Ayden EMS began transporting defendant to a nearby hospital emergency room for further treatment. Trooper Smith returned to securing the crash scene.

About one hour after the blood withdrawal, Trooper Smith arrived at the hospital and served defendant with a DWI citation. Trooper Smith then deposited the SBI blood test kit into a temporary evidence locker at police headquarters, which was subsequently transported to the North Carolina State Crime Lab for testing. The crime lab destroyed all contents of the SBI blood test kit except the two sealed vials of blood. The later chemical analysis of the blood sample revealed a BAC of 0.12.

Before trial, defendant moved to suppress the blood test results, challenging the withdrawal of his blood at the crash scene and the later chemical analysis. He argued in relevant part that the administration of the blood test substantially violated N.C. Gen. Stat. § 20-16.2 because he was not arrested or charged with DWI until one hour after his blood was withdrawn, as well as N.C. Gen. Stat. § 20-139.1 because Sutton was not qualified to withdraw the blood. He also challenged the propriety of the State destroying all material included in the SBI blood test kit other than the two vials of blood, which he argued was necessary to establish a chain of custody and deprived him of his right to confront and examine whether the blood test kit used had been expired.

At the suppression hearing, Trooper Smith testified in relevant part about asking and observing Sutton withdraw defendant's blood using the SBI blood test kit. Trooper Smith also testified as to how he handled the collected blood sample before depositing them into an evidence locker. Over defendant's objection, the trial court

admitted into evidence at the suppression hearing the North Carolina State Crime Lab's chain-of-custody report, which tracked the transfer of the blood sample from Trooper Smith to the North Carolina State Crime Lab for testing. Megan Keeler, the chemical analyst who analyzed the blood sample, testified as to the chain-of-custody report and her later chemical analysis. Keeler also testified that the same expiration date listed on both the outer packaging of the SBI blood test kit and the two vials refers to the vacuum seal in the vials, that blood would not go into the vials if they were expired, and that, although the SBI blood test kit had been destroyed except the two vials of blood, those vials also listed the expiration date and still remain in storage.

Following the trial court's denial of the motion to suppress the blood test results, defendant entered a conditional plea of guilty to DWI, reserving his right to appeal the suppression ruling. The trial court entered a judgment sentencing defendant to a term of sixty days' incarceration, suspended for twelve months of unsupervised probation with a special condition that he surrender his driver's license to the Division of Motor Vehicles, and ordering defendant to pay $1,297.50 in costs. Defendant appeals.

II. Issues Presented

On appeal, defendant asserts the trial court erred by denying his motion to suppress because (1) "at the time of the blood draw [defendant] was not 'charged' with

an implied-consent offense as mandated by G.S. § 20-16.2(a) and G.S. § 20-16.2(a1)"; (2) "the State failed to offer substantial competent evidence . . . that the person who drew [defendant's] blood was 'a . . . qualified person' as mandated by G.S. § 20-139.1(c)"; (3) "the State failed to comply with the SBI *Blood Specimen Collection Instructions* when it obtained blood samples from [defendant]"; (4) "the trial court erred and violated [defendant's] constitutional rights of confrontation and cross-examination, and statutory rights in G.S. § 20-139.1(c3) when it admitted the lab's internal chain of custody report, State's Exhibit 1, into evidence"; and (5) "the State violated [defendant's] constitutional rights of confrontation and cross-examination and due process when it destroyed the blood test kit, the evidence seals, and all contents, save and except the two (2) vials." We conclude these arguments are meritless and affirm the suppression order.

III. Review Standard

Our review of a suppression ruling 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) (citations omitted). Legal conclusions "are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

IV. Analysis

A. "Charged" under Implied-Consent Statute

Defendant first asserts the trial court erred by denying his motion to suppress because he was not "charged" with DWI before his blood was withdrawn in violation of N.C. Gen. Stat. § 20-16.2. We disagree.

Defendant challenges as unsupported by competent evidence the trial court's finding that "Trooper Smith . . . informed the Defendant that he (Trooper Smith) was charging the Defendant with driving while impaired[.]" Defendant argues that Trooper Smith merely testified that, before requesting the blood test, "he told . . . [d]efendant . . . [he] was *going to* charge him with driving while impaired[.]" (Emphasis added.) We conclude this testimony constitutes competent evidence to support the challenged part of the finding. Additionally, the unchallenged finding that, before the blood draw, "Trooper Smith physically provided and read the Defendant a 'rights form,' which is DHHS-4081," and which instructs in relevant part that "[y]ou have been charged with an implied-consent offense[,]" further supports the challenged part of this finding. We overrule this argument.

Relatedly, defendant challenges the trial court's legal conclusion that "the blood of the Defendant was properly drawn . . . pursuant to . . . N.C.G.S. § 20-16.2[.]" He argues N.C. Gen. Stat. § 20-16.2 mandates that "[a] driver must be *charged* with an implied-consent offense before any type of chemical analysis can be administered"

(emphasis added) and that Trooper Smith substantially violated this statute by not arresting him or issuing and serving a DWI citation before the blood draw but, rather, serving the DWI citation one hour later. We find this argument meritless.

We review *de novo* issues of statutory interpretation. *State v. Davis*, 368 N.C. 794, 797, 785 S.E.2d 312, 315 (2016). N.C. Gen. Stat. § 20-16.2 provides in part:

> (a) Basis for Officer to Require Chemical Analysis; Notification of Rights. — Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis *if charged* with an implied-consent offense. Any law enforcement officer who has reasonable grounds to believe that *the person charged* has committed the implied-consent offense may obtain a chemical analysis of the person.
>
> Before any type of chemical analysis is administered *the person charged* shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing . . . [of his implied-consent rights]:
>
> . . . .
>
> (a1) Meaning of Terms. — Under this section, ... *A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued*.

N.C. Gen. Stat. § 20-16.2(a), -(a1) (2017) (emphasis added). According to defendant, the plain and unambiguous language of this statute mandates that a driver must be "charged"—that is arrested or issued and served a citation for an implied-consent offense—before a chemical analysis may be administered. We disagree.

The plain language of the statute imposes no such mandate. The word "shall" denotes the requirement that a person be duly advised of his or her implied-consent rights before an officer may require that person to submit to a chemical analysis. Contrary to defendant's interpretation, we discern the legislative intent of defining when a person is charged in this section was to ensure that not every driver would be subject to the implied-consent statute, only those whom an officer "has reasonable grounds to believe . . . has committed an implied-consent offense . . . ." N.C. Gen. Stat. § 20-16.2(a); *see also State v. Eubanks*, 283 N.C. 556, 561, 196 S.E.2d 706, 709 (1973) (interpreting N.C. Gen. Stat. § 20-16.2(a)—which provided at that time that a "person . . . shall be deemed to have given consent[ ] . . . to a chemical test . . . for the purpose of determining the alcoholic content of his blood *if arrested* for any offense arising out of acts alleged to have been committed while the person was driving . . . [impaired]" and that "[t]he test . . . shall be administered at the request of a law-enforcement officer *having reasonable grounds to believe* the person to have been driving . . . while [impaired]"—to mean that "administration of the breathalyzer test is *not dependent upon the legality of the arrest* but *hinges solely upon* 'the . . . law-enforcement officer *having reasonable grounds to believe* the person to have been driving . . . while [impaired]' " (emphasis added)).

This Court has refused to require strict conformance with procedural aspects of N.C. Gen. Stat. § 20-16.2 so long as a defendant's substantive statutory rights are

protected. *See, e.g.*, *State v. Thompson*, 154 N.C. App. 194, 198, 571 S.E.2d 673, 676 (2002) ("Although defendant argues that Officer Buesing was required to physically hand him a copy of his rights form prior to administering the test, we find nothing in N.C. Gen. Stat. § 20-16.2(a) or our appellate decisions that mandates such a requirement."); *Rice v. Peters*, 48 N.C. App. 697, 700, 269 S.E.2d 740, 742 (1980) ("We do not believe the North Carolina General Assembly intended by its enactment of G.S. 20-16.2(c) to prescribe such a rigid sequence of events as contended by defendant." (citation omitted)).

Here, despite Trooper Smith's failure to arrest defendant or issue and serve a DWI citation at the crash scene while defendant was being treated in the back of the EMS truck but waiting one hour later to serve defendant a DWI citation while he was in the emergency room being treated for his injuries, the trial court's findings support its conclusion that before the blood draw, "Trooper Smith formed probable cause" to arrest defendant for DWI. Additionally, the challenged part of the finding, which was supported by competent evidence, establishes that defendant knew he would be charged with DWI. Further, defendant does not argue that Trooper Smith failed to properly advise him of his statutory implied-consent rights or that he did not voluntarily waive those rights and agree to submit to the blood test. Under these circumstances, we discern no substantial violation of N.C. Gen. Stat. § 20-16.2 that warrants the suppression of the blood test results. Accordingly, because the trial

court's findings supported its conclusion that defendant's blood was properly drawn pursuant to N.C. Gen. Stat. § 20-16.1 on this basis, we overrule defendant's challenge.

B. "Qualified Person" under Implied-Consent Statute

Defendant next asserts the trial court erred by denying his motion to suppress because "the State failed to offer substantial competent evidence . . . that the person who drew [defendant's] blood was 'a . . . qualified person' as mandated by G.S. § 20-139.1(c)." Defendant challenges the evidentiary support of the trial court's finding that "Chandler Sutton [was] of the Ayden EMS," in the context of challenging its legal conclusion that "the blood of the Defendant was properly drawn . . . pursuant to N.C.G.S. § 20-139.1[.]" We find this argument meritless.

The challenged part of the statute provides that "a physician, registered nurse, *emergency medical technician*, or other qualified person shall withdraw the blood sample . . . ." N.C. Gen. Stat. § 20-139.1(c) (2017) (emphasis added). At the suppression hearing, Trooper Smith testified that EMTs from Ayden EMS were at the scene when he arrived; that defendant was "laying on a stretcher" "inside the . . . Ayden EMS truck"; that, after Trooper Smith entered the Ayden EMS truck, he asked Sutton, who was wearing a uniform "consistent with what [he] knew . . . EMS workers to wear[,]" to withdraw defendant's blood; and that Trooper Smith was standing "[i]nside the EMS truck . . . two feet away" when he observed Sutton withdraw the blood. This testimony constitutes competent evidence to support the trial court's

finding that Sutton was an EMT "of the Ayden EMS" and thus statutorily qualified to withdraw defendant's blood sample. *See, e.g.*, *State v. Hinchman*, 192 N.C. App. 657, 663, 666 S.E.2d 199, 203 (2008) (holding officer testimony that the person who drew the defendant's blood "was working in the blood lab and had on a lab tech I uniform[,]" in a restricted area, "was sufficient to show that she was a qualified person under N.C. Gen. Stat. § 20-139.1(c)"); *State v. Watts*, 72 N.C. App. 661, 664, 325 S.E.2d 505, 507, (holding officer testimony "that the sample was drawn by a blood technician at [a h]ospital" was sufficient to show "the sample was drawn by a qualified person"); *disc. rev. denied*, 313 N.C. 611, 332 S.E.2d 83 (1985); *Richardson v. Hiatt*, 95 N.C. App. 196, 199, 381 S.E.2d 866, 868 (holding undisputed officer testimony "that a nurse was present to withdraw [the] blood" and "that she was 'authorized to do that' " satisfied the State's burden of showing compliance under N.C. Gen. Stat. § 20-139.1(c)), *reh'g granted and modified on other grounds*, 95 N.C. App. 780, 384 S.E.2d 62 (1989). Because this finding in turn supported the trial court's conclusion that defendant's blood was properly drawn pursuant to N.C. Gen. Stat. § 20-139.1(c), we overrule this argument.

C. Compliance with SBI Blood Specimen Collection Instructions

Defendant next asserts the trial court erred by denying his motion to suppress because the State destroyed everything included in the SBI blood test kit used except the two blood vials, in alleged violation of his constitutional rights to confront and

examine whether the blood test kit had expired; and because the State "failed to produce substantial competent evidence that it complied with the *Blood Specimen Collection Instructions* in the SBI blood test kit"—that is, the instructions that the person withdrawing the blood (1) "[c]leanse the blood collection site with the alcohol-free prep pad provided" and (2) "[i]mmediately after blood collection, assure proper mixing of anticoagulant powder by slowly and completely inverting the blood tubes at least five times." We conclude these arguments are meritless.

As defendant has not challenged any finding, our review is limited to whether the trial court's findings supported its relevant conclusions that defendant's "blood . . . was properly drawn" and "the cardboard box(es) which contained the blood-filled vacutainers has no evidentiary value[.]" *See State v. Campbell*, 359 N.C. 644, 662, 617 S.E.2d 1, 13 (2005) ("Defendant has not assigned error to any specific findings of fact. Therefore, the findings of fact are not reviewable, and the only issue before us is whether the conclusions of law are supported by the findings[.]" (citations omitted)). We hold the trial court's twenty-seven unchallenged, detailed findings as to the administration of defendant's blood withdrawal, the transfer of the blood sample to the testing site, and the later chemical analysis, support these conclusions.

Nonetheless, we identify a few findings that address defendant's grievances:

> 18. . . . *Trooper Smith,* after taking note of no issues with the blood kit, *provided Chandler Sutton the sealed blood kit* from his . . . vehicle, such kit including "two blood tubes," "instructions on how to administer the test," and "evidence

tape;"

19. . . . *Trooper Smith did not use another blood kit because this particular blood kit "was not expired" and that he "wouldn't have used [this kit] if it was expired[;]*"

. . . .

24. . . . *Trooper Smith . . . witnessed Chandler Sutton of the Ayden EMS draw the blood from the Defendant's right arm, utilizing the two tubes provided by Trooper Smith from the standard boxed blood kit;*

25. . . . *Trooper Smith witnessed Chandler Sutton "fill up each tube [with blood], rotate [the tubes]" and then handed Trooper Smith each tube,* which Trooper Smith then marked as evidence with evidence tape "that comes with the . . . blood kit itself;"

. . . .

36. . . . Keeler tested [defendant's] blood . . . after retrieving the test tubes from a "heat-sealed plastic bag" with [defendant's] name . . . on the tubes;

37. . . . Keeler testified the kit "comes in a cardboard box to protect the inner . . . vacutainers, the actual evidence, the blood evidence;"

38. . . . Keeler testified that the *State Crime Lab does not keep the cardboard boxes which hold the vacutainers as the actual evidence is the sealed vacutainers*;

. . . .

40. . . . Keeler noted that both vacutainers were still sealed with evidence tape before beginning her testing on the gas chromatograph instrument;

41. . . . Keeler noted no fermentation of the Defendant's

> blood before testing on the instrument;
>
> 42. . . . Keeler "broke the seal" on the tubes and tested the sample to attain a reported alcohol value;
>
> 43. . . . [T]he packaging for the sealed vacutainers had been destroyed, "but *the vacutainers, which also have the expiration date, are at the State Crime Lab still in storage*;"
>
> 44. . . . *Keeler testified that the testing of expired tubes "wouldn't work," that "the blood wouldn't go into the tube if there was no more vacuum[.]"*

(Emphasis added.) These findings are sufficient to establish that Sutton followed proper procedure in withdrawing defendant's blood, the SBI blood test kit was not expired or testing would have been impossible, and the destroyed SBI blood test kit was legally irrelevant, as the preserved vials also listed the expiration date.

D. Admitting Chain-of-Custody Report into Evidence

Defendant next asserts the trial court erred by admitting the North Carolina State Crime Lab's chain-of-custody report into evidence, which tracked the transfer of the blood sample from Trooper Smith to Keeler. Defendant argues the trial court's finding that "Keeler testified as to the chain of custody of the blood samples within the tubes" should be stricken because the chain-of-custody report was inadmissible. As this argument is outside the scope of appellate review on a motion to suppress, we overrule this challenge. Nonetheless, we note that because Keeler indeed testified at the suppression hearing as to the chain of custody, this finding was supported.

We further note that the trial court admitted the chain-of-custody report at a suppression hearing, not at trial. A trial court may consider any relevant and reliable information presented at a suppression hearing, regardless of whether that evidence is admissible at trial. *See State v. Ingram*, 242 N.C. App. 173, 181, 774 S.E.2d 433, 440 (2015) (rejecting the State's argument that the judge improperly considered hearsay evidence at a suppression hearing on the grounds that such a "challenge is relevant as to the admissibility into evidence . . . for a jury to consider, but it is irrelevant as to whether it may be considered by the trial court conducting a *voir dire* hearing on a preliminary motion to suppress" (citation omitted)); *see also* N.C. Gen. Stat. § 8C-1, Rule 104(a) (2017) (providing that the rules of evidence do not apply during preliminary decisions on the admissibility of evidence). Accordingly, the trial court did not err in admitting this report into evidence at the suppression hearing.

E. Alleged Constitutional and Statutory Challenges as to Chain of Custody

Defendant also asserts the trial court erred by denying his motion to suppress because admitting into evidence the chain-of-custody report "violated [his] constitutional rights of confrontation and cross-examination, and statutory rights in G.S. § 20-139.1(c3)" and because the State's destruction of the blood test kit "violated [his] constitutional rights of confrontation and cross-examination and due process[.]" He argues these two actions deprived him of "his constitutional right to confront and cross-examine the critical evidence in the chain of custody for the blood samples"

because he was unable to confront and examine "who had access to the blood samples, whether there was any loss or contamination, and whether there was any undocumented or improper access to the blood samples."

Defendant has not lodged a legitimate challenge to the evidentiary sufficiency of any finding or conclusion to support these arguments. As these arguments thus raise issues outside the limited scope of reviewing a suppression ruling, they are not properly before us. Nonetheless, because defendant raised these arguments at the suppression hearing, we briefly address them.

First, we note that N.C. Gen. Stat. § 15A-974 governs the "[e]xclusion or suppression of unlawfully *obtained* evidence" and requires that evidence be suppressed if, in relevant part, "[i]ts exclusion is [*constitutionally*] *required*[.]" N.C. Gen. Stat. § 15A-974(a)(1) (2017) (emphasis added); *see also id.* official cmt. ("An important point to note is that subdivision (1) only requires suppression of evidence if its exclusion is constitutionally required. It is possible then that *evidence may be gathered in violation of constitutional rights, but suppression is not the sanction to be applied unless authoritative case law so declares*." (emphasis added)). Neither has defendant identified nor our research disclosed any authority for the proposition that the suppression of blood test results is the appropriate sanction for alleged inadequate chain-of-custody evidence. N.C. R. App. P. 28(b)(6). Second, this criminal proceeding ended after the suppression hearing, when defendant pled guilty and

relinquished his right to a jury trial, including expressly waiving his constitutional rights to confront and examine evidence against him at trial. *Cf. State v. Smith*, 312 N.C. 361, 384, 323 S.E.2d 316, 329 (1984) (rejecting the defendant's argument that he was deprived of his constitutional rights to confront and examine the chemical analyst who administered a breath test, because the analyst was not present at the district court trial but the analyst's report was admitted into evidence to prove the defendant's BAC, on the grounds that those constitutional rights were "appropriately preserved for a *de novo* trial before a jury in Superior Court").

Third, because the State was not introducing the blood test results at trial, but at a preliminary hearing on whether to suppress that evidence, the State had no duty at that time to establish an adequate chain of custody. Further, "any weak links in a chain of custody relate only to the weight to be given evidence and *not to its admissibility*." *State v. Snead*, 368 N.C. 811, 815, 783 S.E.2d 733, 737 (2016) (emphasis added) (quoting *State v. Campbell*, 311 N.C. 386, 389, 317 S.E.2d 391, 392 (1984)). Fourth, N.C. Gen. Stat. § 20-139.1(c3)'s 15-day-notice requirement for the State to establish an adequate custody chain without calling each successive person in the chain of custody is mandated only in "cases tried in the district and superior court divisions[,]" N.C. Gen. Stat. § 20-139.1(c3)(3) (2017); defendant waived this statutory argument by foregoing trial. Fifth, as previously determined, the trial court's findings supported its conclusion that the SBI blood test kit packaging had no

evidentiary value; thus, defendant's argument that the State's destruction of this evidence violated his constitutional due process rights is meritless.

In summary, defendant's identified constitutional and statutory rights were fully preserved for trial, but waived after he pled guilty. The trial court properly concluded the blood test results should not be suppressed due to any alleged violation of confrontation or due process rights arising from the State's purportedly inadequate chain-of-custody evidence or its destruction of legally irrelevant evidence.

V. Conclusion

Competent evidence supported the challenged parts of the trial court's findings. The findings supported the trial court's conclusions that defendant's blood was properly drawn and analyzed pursuant to N.C. Gen. Stat. §§ 20-16.2 and 20-139.1, and the destroyed components of the SBI blood test kit had no evidentiary value. Additionally, although defendant's alleged constitutional confrontation and statutory notice arguments as to the chain-of-custody evidence were not proper subjects for appellate review, we conclude they are meritless because these rights were fully preserved for trial, but waived after he pled guilty to DWI. Accordingly, we affirm the trial court's order denying the suppression motion.

AFFIRMED.

Chief Judge McGEE and Judge ARROWOOD concur.

Report per Rule 30(e).