IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-77

Filed: 20 November 2018

Rowan County, Nos. 16 CRS 51618-19, 16 CRS 1296

STATE OF NORTH CAROLINA

v.

EMMANUEL ALEXANDER PARRISH, Defendant.

Appeal by Defendant from judgment entered 16 June 2017 by Judge Susan E. Bray in Rowan County Superior Court. Heard in the Court of Appeals 9 November 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Kevin G. Mahoney, for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

MURPHY, Judge.

Defendant, Emmanuel Alexander Parrish, appeals from a judgment entered upon his convictions for possession of a firearm by a felon, carrying a concealed weapon, and failure to stop at a stop sign. After careful consideration, we conclude Defendant received a fair trial free from error.

On 25 April 2016, Defendant was indicted for possession of a firearm by a felon and carrying a concealed weapon. Defendant was also charged via a uniform citation with failing to stop at a stop sign. On 6 April 2017, Defendant filed a motion to suppress any evidence seized as a result of the search of his vehicle. Defendant's case came on for trial on 14 June 2017. Before the jury was impaneled, the trial court held a hearing on Defendant's motion to suppress.

On the evening of 6 April 2016, Deputy Gerald Gordy was on duty in his patrol vehicle traveling south on Main Street in Kannapolis, North Carolina. A black Saturn Vue pulled out from Blackwelder Street onto Main Street directly in front of Deputy Gordy, causing Deputy Gordy to brake in order to avoid a collision. Deputy Gordy initiated a traffic stop of the vehicle for failure to stop at the stop sign. Approaching the vehicle, Deputy Gordy noticed the smell of marijuana emanating from the vehicle. Deputy Gordy informed the driver, Defendant, that he smelled marijuana, and Defendant responded that he had been smoking marijuana in the vehicle earlier. Deputy Gordy ordered Defendant to step out of the vehicle. Deputy Gordy requested back-up and spoke with Defendant until another deputy arrived five to ten minutes later. Deputy Gordy then proceeded to search Defendant's vehicle, and discovered a marijuana grinder under the front passenger seat and a brown-handled revolver underneath the vehicle's center console.

At the close of the hearing, the trial court denied Defendant's motion to suppress. The trial court entered a written order denying the motion on 16 June 2017. Following a trial, the jury found Defendant guilty of all charges, and the trial court consolidated Defendant's convictions and sentenced him to an active term of 15 to 27 months. Defendant gave oral notice of appeal in open court.

Defendant's lone contention on appeal is that the trial court erred in denying his motion to suppress. More specifically, Defendant contends Deputy Gordy lacked reasonable suspicion that Defendant had committed a traffic violation, and that the trial court erred in concluding otherwise. We disagree.

In reviewing a trial court's order on a motion to suppress, our review of the trial court's findings of fact is limited to whether the findings are supported by competent evidence, and whether the findings support the trial court's conclusions of law. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). Findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001). The trial court's conclusions of law are reviewed *de novo*. *Id.*

Here, Defendant did not renew his objection at trial when the State offered the firearm into evidence, and thus did not preserve the issue for review on appeal. *See State v. Grooms*, 353 N.C. 50, 65-66, 540 S.E.2d 713, 723 (2000) (finding a "pretrial motion to suppress . . . is not sufficient to preserve for appeal the issue of admissibility

of evidence."), *cert. denied*, 534 U.S. 838, 151 L. Ed. 2d 54 (2001). However, Defendant contends on appeal that the trial court's failure to exclude this evidence amounted to plain error. For error to constitute plain error, a Defendant must demonstrate that a fundamental error occurred at trial. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). "To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error 'had a probable impact on the jury's finding that the defendant was guilty.'" *Id.* (quoting *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)).

Defendant challenges the finding in the trial court's written order that Deputy Gordy "observed a vehicle enter Main Street from Blackwelder Street without stopping at the stop sign on Blackwelder." Defendant contends that Deputy Gordy's own testimony at the suppression hearing established that he in fact did not see whether Defendant had stopped at the stop sign. During direct examination by the State, Deputy Gordy testified as follows:

> [Deputy Gordy:] On [6 April 2016], I came into contact with Mr. Parrish when I was traveling south on Main Street in Kannapolis when Mr. Parrish was occupying a black in color vehicle.
>
> He was traveling off of Blackwelder Street onto Main Street. Mr. Parrish ran a stop sign and began traveling in front of me, in the same lane of travel, in the same direction.
>
> [Prosecutor:] Did you have anything obstructing your vision of the stop sign?

[Deputy Gordy:] No, sir.

On cross-examination, defense counsel presented Deputy Gordy with an overhead photograph of the intersection in question, as well as a photograph depicting the stop sign at which Defendant allegedly failed to stop. Defense counsel then questioned Deputy Gordy about his observations:

> [Defense Counsel:] Okay. Do you see, on State's Exhibits C, the location of the stop sign?
>
> [Deputy Gordy:] Yes, sir.
>
> [Defense Counsel:] And the stop sign appears to be near the end of the fence of the car lot; is that correct?
>
> [Deputy Gordy:] Yes, sir.
>
> [Defense Counsel:] So the stop sign would be a distance of 20 feet or more from the actual intersection of Blackwelder and North Main; isn't that correct?
>
> [Deputy Gordy:] I would assume.
>
> [Defense Counsel:] Okay. Can you say with certainty that Mr. Parrish did not stop somewhere back, further away from the road and near to the stop sign, before he moved up to Main Street?
>
> [Deputy Gordy:] Are you talking about back here?
>
> [Defense Counsel:] Yes, sir. Back where the stop sign is.
>
> [Deputy Gordy:] I can't say what he did back here, but when he came to the intersection, he did not stop.

Defendant provides no support for his implicit contention that stopping "at the stop sign" means coming to a stop parallel with the stop sign. The traffic violation Defendant was alleged to have committed is defined in N.C.G.S. § 20-158(b)(1):

> When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway.

N.C.G.S. § 20-158(b)(1) (2017).

As was done in Defendant's uniform citation and judgment, this offense is often written in short-hand as "failure to stop at a stop sign." However, the statute does not provide that the offense occurs if and only if the driver fails to stop parallel with the stop sign. N.C.G.S. § 20-158(b)(5) specifies:

> [w]hen a stop sign . . . requires a vehicle to stop at an intersection, the driver shall stop (i) at an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street.

N.C.G.S. § 20-158(b)(5) (2017).

Our Supreme Court has previously clarified that a driver does not comport himself with the traffic laws simply by stopping parallel with a stop sign:

> The purpose to be served by placing a stop sign some distance from the intersection of a servient and dominant highway, is to give the motorist ample time to slow down and stop before entering the zone of danger. And when the

> driver of a motor vehicle stops at a stop sign on a servient highway and then proceeds into the intersection without keeping a lookout and ascertaining whether he can enter or cross the intersecting highway with reasonable safety, he ignores the intent and purpose of the statute, G.S. s 20-158. It is the duty of the driver of a motor vehicle on such servient highway to stop at such time and place as the physical conditions may require in order for him to observe traffic conditions on the highways and to determine when, in the exercise of due care, he may enter or cross the intersecting highway with reasonable safety.

Clifton v. Turner, 257 N.C. 92, 96, 125 S.E.2d 339, 341 (1962) (quotation marks and citation omitted).

In this case, Deputy Gordy testified that Defendant failed to stop at the intersection before entering Main Street, and that Defendant's failure to yield to Deputy Gordy's vehicle may have caused a collision had Deputy Gordy not applied his brakes. This testimony supported the trial court's finding that Deputy Gordy observed Defendant fail to stop at the stop sign. The testimony also supported the trial court's conclusion that Deputy Gordy had reasonable suspicion to stop Defendant for failure to stop at a stop sign. Defendant's argument on appeal is without merit. We conclude that Defendant received a fair trial free from error.

NO ERROR.

Judges STROUD and DIETZ concur.

Report per Rule 30(e).