IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-609

Filed: 2 July 2019

Jackson County, No. 16 CRS 51386

STATE OF NORTH CAROLINA

v.

ALICIA DIANE RADFORD

Appeal by defendant by writ of certiorari from judgment entered 7 November 2017 by Judge Jeffrey P. Hunt in Jackson County Superior Court. Heard in the Court of Appeals 28 February 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Macari, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for defendant-appellant.

ZACHARY, Judge.

Defendant Alicia Diane Radford appeals from a judgment entered upon her guilty plea to felony possession of a Schedule I controlled substance. After review, we determine that the trial court did not err in denying Defendant's motion to suppress. Furthermore, we vacate the judgment entered upon Defendant's guilty plea, and

remand to the trial court for resentencing in accordance with N.C. Gen. Stat. § 15A-1343.2(d)(3).

I. Background

In the early morning hours of 12 September 2016, Lieutenant Zach Dezarn of the Sylva Police Department was traveling on Asheville Highway behind a white Lincoln registered to an individual named "Amanda Eaton." Lieutenant Dezarn was familiar with Eaton because he and another officer previously stopped and arrested her for possession of cocaine. Lieutenant Dezarn observed the white Lincoln pull into a gas station called "P.J.'s" and park on the right side of the gas pumps. As Lieutenant Dezarn continued to drive down Asheville Highway, he observed a gray or silver vehicle pass him, traveling in the opposite direction. When he noticed that the vehicle's license plate tag light was broken, Lieutenant Dezarn turned around and began to follow the car. This vehicle also turned into P.J.'s, but parked on the left side of the gas pumps, opposite the white Lincoln.

P.J.'s was a location of concern for the Sylva Police Department. Lieutenant Dezarn testified that the Department had received a narcotics complaint after "one of the clerks . . . found a syringe in the bathroom." According to Lieutenant Dezarn, officers "had also dealt with and seen many . . . local drug offenders visiting the gas station at late night hours." With these circumstances in mind, Lieutenant Dezarn

turned off his patrol lights, pulled into a parking area several hundred yards away, and used binoculars to surveil the area outside of P.J.'s.

Through his binoculars, Lieutenant Dezarn observed a man wearing a black shirt and hat hug a blonde female who Lieutenant Dezarn believed to be Amanda Eaton. Lieutenant Dezarn thought that the hug was "the beginning of a possibility of a narcotics deal or trade." After the individuals hugged, they each left P.J.'s. in their own cars.

The gray vehicle with the broken tag light drove down Asheville Highway toward Lieutenant Dezarn. Lieutenant Dezarn observed the car and confirmed the tag-light violation and then entered the road and began to follow the car. Both vehicles stopped at a traffic light at the intersection of NC 107 and Asheville Highway. Lieutenant Dezarn attempted to run the gray car's tag, but he was unable to do so because it was a temporary plate, and he could not see the expiration date clearly due to the broken tag light. When the light turned green, the gray vehicle turned left onto NC 107, and Lieutenant Dezarn followed. Shortly thereafter, the vehicle pulled into another gas station. Lieutenant Dezarn considered it "odd that a vehicle that had just left a gas station would immediately go to another gas station a mile away." At 1:21 a.m., Lieutenant Dezarn activated his patrol lights to initiate a traffic stop for the tag-light violation.

Upon approaching the vehicle, Lieutenant Dezarn noticed that it was packed full of items. Alicia Radford was in the passenger's seat and Dalton Flowers, wearing a black T-shirt and hat, was in the driver's seat. Both individuals provided identification. Without being asked, Flowers began explaining where they were coming from and that they had run out of gas. Lieutenant Dezarn returned to his patrol vehicle to run the identification provided to him, but then realized he did not have the vehicle's registration. Lieutenant Dezarn returned to the vehicle, and after some delay, Radford located the registration.

Through his database searches, Lieutenant Dezarn determined that Flowers had a non-extraditable warrant from Colorado, that he was on probation in Haywood County, and that while he presented a Florida driver's license, he also had a revoked North Carolina driver's license. In addition, Lieutenant Dezarn found that there was an "Alicia Radford" with an outstanding warrant, but the middle name of that individual was different than Defendant's. By this time, Lieutenant Dezarn had decided to issue Flowers a warning for the tag-light violation and a citation for driving while license revoked. However, Lieutenant Dezarn thought that Radford may have provided a false name, so he exited his vehicle to speak with her. Lieutenant Dezarn asked Radford to step behind the vehicle, and he returned her license. He then informed Radford about the individual with the outstanding warrant and the same name. When asked about her own middle name, Radford told Lieutenant Dezarn

that her middle name was Diane, and she showed Lieutenant Dezarn a necklace with her name on it.

Accepting Radford's responses, Lieutenant Dezarn began questioning Radford about what happened at P.J.'s. Radford explained that she and Flowers were traveling from Asheville toward Clyde, which did not make sense to Lieutenant Dezarn, because someone coming from Asheville would drive through Clyde before reaching Sylva. When confronted with this fact, Radford became frustrated and said that she was not from the area. Then Flowers yelled that they were coming from Balsam Mountain. Radford told Lieutenant Dezarn that their vehicle had run out of gas and that they "were traveling down a hill so that they could go to the next gas station." Radford stated that a man driving a green car had stopped to help them, and they followed him to the gas station; however, Lieutenant Dezarn never saw a green car on Asheville Highway when their car originally turned into P.J.'s.

Lieutenant Dezarn then asked Flowers to step out of the vehicle and returned his Florida driver's license. Lieutenant Dezarn asked Flowers about his revoked North Carolina driver's license, and they discussed the tag-light violation. At 1:47 a.m., Lieutenant Dezarn gave Flowers all of his paperwork and citations. At that time, Lieutenant Dezarn asked Flowers what happened at P.J.'s. Flowers told Lieutenant Dezarn that he had run out of gas and first went to another gas station. A man tried to assist him there, but none of the man's credit cards worked, so then

Flowers decided to go to P.J.'s for gas. Flowers mentioned that another man attempted to sell him heroin at P.J.'s. Lieutenant Dezarn then asked Flowers where he and Radford had come from, and Flowers explained that they were originally at a friend's house near a rest stop in Waynesville.

When asked whether Flowers's responses to his questions raised any concerns, Lieutenant Dezarn testified:

> Yeah, I mean, there was a lot of things going on. There were a lot of—from meeting with someone, from the directions and where they had came from, from the gas stations to . . . being out of gas but the vehicle's still driving, and it was able to come into town where I know that they had at least came up one hill, which is the on-ramp to Sylva, and then with him being on probation and, like I had said, what I appeared to see, somebody matching his description and clothing meeting with a woman that I had know[n] had been arrested for possession of a narcotic at a place where we had already had narcotics complaints, which he himself even said that there was somebody trying to sell him narcotics at.

Flowers consented to Lieutenant Dezarn's request to conduct a search of his person, but he refused to consent to a search of the vehicle because it belonged to Radford. Radford refused consent to search her vehicle. Believing that he had reasonable suspicion of criminal activity, at 2:02 a.m., Lieutenant Dezarn decided to detain both of the vehicle's occupants in order to call for a K-9 unit to perform a drug sniff around the vehicle.

The Sylva Police Department did not have a K-9 unit, so Lieutenant Dezarn called Deputy Megan Rhinehart with the Jackson County Sheriff's Office, because he "believed of all the available K-9s, she would have the best chance of coming the quickest." Deputy Rhinehart was off duty when she received the call, and it took her approximately twenty-five minutes to arrive on scene to perform the drug sniff. Deputy Rhinehart arrived at the scene at 2:26 a.m. and began the walk-around with her K-9 at 2:29 a.m. After the dog indicated a positive alert for controlled substances, Lieutenant Dezarn began searching the vehicle. Lieutenant Dezarn seized a plastic bag holding seven capsules containing a brown substance and several empty plastic baggies, among other items. The brown substance inside of the capsules was later identified as dimethyltryptamine ("DMT"), a Schedule I controlled substance.

On 27 March 2017, a Jackson County grand jury indicted Radford for felony possession of a Schedule I controlled substance and possession of drug paraphernalia based on the plastic baggies and empty capsules found in the vehicle. On 18 October 2017, Radford filed a motion to suppress the evidence seized from the traffic stop, arguing that Lieutenant Dezarn impermissibly extended the stop beyond the purpose of addressing the equipment violation. The motion came on for hearing before the Honorable Jeffrey P. Hunt in Jackson County Superior Court on 6 November 2017. By order dated the next day, Judge Hunt denied Radford's motion to suppress.

Radford subsequently pleaded guilty to felony possession of a Schedule I controlled substance, in exchange for the State's dismissal of the possession of drug paraphernalia charge. On 7 November 2017, the trial court entered judgment and sentenced Radford to a term of six to seventeen months in the custody of the North Carolina Division of Adult Correction. The trial court then suspended Radford's active sentence and placed her on thirty-six months of supervised probation. Radford entered oral notice of appeal before the trial court.

The State filed a motion to dismiss on 27 December 2018, and Defendant subsequently filed a conditional petition for writ of certiorari on 9 January 2019. We grant the State's motion to dismiss, but in our discretion we allow Defendant's petition for writ of certiorari to permit review of Defendant's arguments.

II. Discussion

Defendant Radford argues on appeal that the trial court erred by: (1) denying her motion to suppress because Lieutenant Dezarn impermissibly extended the traffic stop beyond the purpose of addressing the equipment violation, in violation of the Fourth Amendment; (2) imposing a term of probation beyond the statutory maximum without finding that a longer period was necessary; and (3) denying Defendant's request for a conditional discharge without making a written finding that "factors related to the offense" made a conditional discharge inappropriate.

A. Motion to Suppress

Defendant first argues that the trial court erred in denying her motion to suppress because Lieutenant Dezarn "impermissibly extended the stop beyond the purpose of addressing the equipment violation that justified the stop." We disagree.

When reviewing the denial of a motion to suppress, we must determine "whether the trial court's findings of fact are supported by the evidence and whether the findings of fact support the conclusions of law. The trial court's findings are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. Wainwright*, 240 N.C. App. 77, 83-84, 770 S.E.2d 99, 104 (2015) (citation and quotation marks omitted). Unchallenged findings are deemed 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, *disc. review denied*, 358 N.C. 240, 594 S.E.2d 199 (2004). "[W]e examine the evidence introduced at trial in the light most favorable to the State." *State v. Moore*, 152 N.C. App. 156, 159, 566 S.E.2d 713, 715 (2002). "Our review of a trial court's conclusions of law on a motion to suppress is *de novo*." *State v. Edwards*, 185 N.C. App. 701, 702, 649 S.E.2d 646, 648 (internal citations and quotation marks omitted), *disc. review denied*, 362 N.C. 89, 656 S.E.2d 281 (2007).

"Both the United States and North Carolina Constitutions protect against unreasonable searches and seizures." *State v. Otto*, 366 N.C. 134, 136, 726 S.E.2d 824, 827 (2012); *see also* U.S. Const. amend. IV; N.C. Const. art. I, § 20. A traffic stop

is a seizure under the Fourth Amendment. *Otto*, 366 N.C. at 136-37, 726 S.E.2d at 827 (citing *Delaware v. Prouse*, 440 U.S. 648, 653, 59 L. Ed. 2d 660, 667 (1979)). Traffic stops are reviewed under the investigatory framework set forth in *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889 (1968). *Id.* at 137, 726 S.E.2d at 827. Thus, "a traffic stop is permitted if the officer has a 'reasonable, articulable suspicion that criminal activity is afoot.' " *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 145 L. Ed. 2d 570, 576 (2000)).

"Reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Id.* (quotation marks omitted). Our Supreme Court has explained that reasonable suspicion must be "based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994). "A court must consider the totality of the circumstances . . . in determining whether a reasonable suspicion to make an investigatory stop exists." *Id.* (quotation marks omitted). A reviewing court should take "a commonsense approach" in making its reasonable suspicion determination, *State v. Johnson*, 246 N.C. App. 677, 688, 783 S.E.2d 753, 762 (2016), and give weight to "the practical experience of officers . . . so as not to indulge in unrealistic second-

guessing of the judgment calls law enforcement officials must invariably make." *Id.* at 689, 783 S.E.2d at 762 (citation and quotation marks omitted).

The United States Supreme Court has established that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Rodriguez v. United States*, 575 U.S. ___, ___, 191 L. Ed. 2d 492, 496 (2015). A stop based only on a traffic violation "becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation." *Id.* at ___, 191 L. Ed. 2d at 496 (brackets and quotation marks omitted). "[T]he duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop, unless reasonable suspicion of another crime arose before that mission was completed[.]" *State v. Bullock*, 370 N.C. 256, 257, 805 S.E.2d 671, 673 (2017) (citations omitted).

The traffic stop is more than just writing a ticket, and includes "ordinary inquiries incident to the traffic stop," such as "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* Nonetheless, a police officer may not prolong a stop to conduct an unrelated search, such as a dog sniff, unless the officer possesses a "reasonable suspicion that any crime is afoot beyond a traffic violation." *State v. Warren*, 242 N.C. App. 496, 499, 775 S.E.2d 362,

365 (2015), *aff'd per curiam*, 368 N.C. 756, 782 S.E.2d 509, *cert. denied*, ___ U.S. ___, 196 L. Ed. 2d 261 (2016).

Defendant challenges the trial court's finding that "P.J.'s was a location at which the officers knew there had been some recently reported drug use, both inside and outside the store."[1] Lieutenant Dezarn testified that the Sylva Police Department "had received a narcotics complaint . . . that one of the clerks had found a syringe in the bathroom. . . . [and] we had also dealt with and seen many of our local drug offenders visiting the gas station at late night hours." Lieutenant Dezarn also testified that he had previously made arrests for narcotics at P.J.'s, and that "a lot of our drug offenders and known drug users have been frequenting [P.J.'s] playing on the slot electronic gambling machines."

It is established that the collective knowledge of officers, when communicated to each other, may form the basis of reasonable suspicion. *State v. Battle*, 109 N.C. App. 367, 371, 427 S.E.2d 156, 159 (1993). Thus, Lieutenant Dezarn's testimony about drug users in and around P.J.'s supports the trial court's finding that there was "recently reported drug use, both inside and outside the store."

Defendant next challenges the trial court's finding number 41 that Lieutenant Dezarn "learned that [Flowers] was on felony probation" only after satisfying himself

[1] While the trial court termed this finding of fact a conclusion of law, the trial court's labels are "not determinative, and, when necessary, [this Court] can reclassify an item before applying the appropriate standard of review." *N.C. State Bar v. Key*, 189 N.C. App. 80, 88, 658 S.E.2d 493, 499 (2008).

"as to [Radford's] correct identity" and not as a result of running Flowers's information through computer checks. However, finding of fact number 15, unchallenged by Defendant, states that Lieutenant Dezarn "checked the computer . . . and learned that [Flowers's] North Carolina license was revoked and that he was on probation for a felony conviction and that he may not have been supposed to leave Haywood County without prior permission." Finding of fact number 15, unchallenged and binding on appeal, remedies any temporal deficiency in finding of fact number 41. Regardless, Lieutenant Dezarn testified that he was in his patrol vehicle running the record check when he discovered that Flowers "was on active probation"; therefore, the evidence supports a finding that Lieutenant Dezarn learned about Flowers's probation status while he was completing the mission of the traffic stop, the tag-light violation.

Lieutenant Dezarn's initial stop of the vehicle due to the tag-light violation was supported by reasonable suspicion, because driving with a broken tag light is a violation of N.C. Gen. Stat. § 20-129(d) (2015). *See also State v. Ford*, 208 N.C. App. 699, 703, 703 S.E.2d 768, 771 (2010) (holding that a police officer's observation of an equipment violation supported the trial court's conclusion that the officer had reasonable suspicion to stop a vehicle), *disc. review denied*, 365 N.C. 196, 710 S.E.2d 11 (2011). Thus, the only remaining question is whether Lieutenant Dezarn had

reasonable suspicion of another crime before completing his mission of addressing the tag-light violation.

Various circumstances have been found to support an officer's reasonable suspicion of criminal activity, including inconsistent travel plans, *State v. Williams*, 366 N.C. 110, 117, 726 S.E.2d 161, 167 (2012); activity at an "unusual hour," *Watkins*, 337 N.C. at 442, 446 S.E.2d at 70; the presence of individuals at a location known for drug activity, *State v. Parker*, 137 N.C. App. 590, 601, 530 S.E.2d 297, 304 (2000); as well as other "more particularized factors," *id.*

Here, at around 1:00 a.m., Lieutenant Dezarn observed Flowers meet with an individual he had previously arrested for drug possession at a place frequented by drug users. Lieutenant Dezarn believed that the embrace between Flowers and Eaton was a drug transaction. After stopping the gray car for the tag-light violation, Lieutenant Dezarn learned that Flowers had a non-extraditable warrant, a revoked North Carolina driver's license, and was on probation. Radford and Flowers provided conflicting statements about their travel history, and Flowers told Lieutenant Dezarn that an unknown individual had attempted to sell him drugs at the same gas station where Lieutenant Dezarn observed Flowers and Eaton conduct a suspected drug transaction. Based on the totality of the circumstances, and viewed through the eyes of a "trained law enforcement officer . . . familiar with drug trafficking and illegal activity on interstate highways, the [observations and] responses were sufficient to

provoke a reasonable articulable suspicion that criminal activity was afoot and to justify extending the detention until a canine unit arrived." *Williams*, 366 N.C. at 117, 726 S.E.2d at 167.

Accordingly, the trial court did not err in denying Defendant's motion to suppress.

B. Probation

Defendant next argues that the trial court erroneously imposed a term of probation beyond the statutory maximum without finding that a longer period of probation was warranted. We agree.

When sentencing a felony offender, the trial court's sentence "shall contain a sentence disposition specified for the class of offense and prior record level, and its minimum term of imprisonment shall be within the range specified for the class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment." N.C. Gen. Stat. § 15A-1340.13(b) (2017). The felony sentencing grid provides for three types of sentence dispositions: active, intermediate, and community punishments. *Id.* An active punishment is "[a] sentence . . . that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment." *Id.* § 15A-1340.11(1). An intermediate punishment is "[a] sentence . . . that places an offender on supervised probation. . . . [, which] may

include drug treatment court, special probation as defined in G.S. 15A-1351(a), and one or more of the conditions set forth in G.S. 15A-1343(a1)." *Id.* § 15A-1340.11(6). A community punishment is "[a] sentence . . . that does not include an active punishment or assignment to a drug treatment court, or special probation as defined in G.S. 15A-1351(a). . . . [, but] may include any one or more of the conditions set forth in G.S. 15A-1343(a1)." *Id.* § 15A-1340.11(2). "If a community punishment is authorized, the judgment may consist of a fine only." *Id.* § 15A-1340.17(b). Thus, in a community disposition, the trial court can place the defendant on supervised probation, unsupervised probation, or impose a fine. *See id.* §§ 15A-1340.11(2), -1340.17(b).

A trial court may place a defendant on probation "if the class of offense of which the person is convicted and the person's prior record or conviction level under [the Structured Sentencing Act] authorizes a community or intermediate punishment as a type of sentence disposition." *Id.* § 15A-1341(a). If the felony sentencing grid *requires* community or intermediate punishment based on the defendant's prior record level and class of offense, the trial court must suspend the defendant's active sentence. *Id.* § 15A-1340.13(f). The term of probation that a trial court must impose is governed by N.C. Gen. Stat. § 15A-1343.2(d), which requires that "[u]nless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for . . . felons sentenced to community

punishment, [shall be] not less than 12 nor more than 30 months." *Id.* § 15A-1343.2(d)(3).

In this case, the parties did not agree to a sentence disposition or term in the plea arrangement. Defendant had a prior record level of I and pleaded guilty to a Class I felony. As a result, the trial court sentenced Defendant to community punishment, as required by N.C. Gen. Stat. § 15A-1340.13(b), (f). *See id.* § 15A-1340.17. However, the trial court imposed thirty-six months of probation, an unauthorized term for a Prior Record Level I, Class I felony offender, absent findings by the trial court that a longer period of probation is required. *Id.* § 15A-1343.2(d)(3).

Accordingly, we vacate Defendant's judgment and remand for resentencing. "The trial court must reduce [D]efendant's probation to the statutory period of twelve to [thirty] months or enter appropriate findings of fact that a longer period of probation is necessary." *State v. Lambert*, 146 N.C. App. 360, 366, 553 S.E.2d 71, 76 (2001), *appeal dismissed and disc. review denied*, 355 N.C. 289, 561 S.E.2d 271 (2002); *see* N.C. Gen. Stat. § 15A-1343.2(d)(3).

III. Conclusion

After review, we affirm the order denying Defendant's motion to suppress because Lieutenant Dezarn possessed a reasonable suspicion of criminal activity sufficient to justify extending Defendant's traffic stop.

The trial court imposed a period of probation beyond the statutory maximum allowed for a Class I felony offender with a prior record level of I without making the required findings of fact that a longer period was necessary. Accordingly, we vacate the judgment and remand for resentencing. Because we remand for resentencing, we need not address Defendant's additional argument that the trial court erred by failing to enter the statutorily mandated finding that a conditional discharge was inappropriate for Defendant in this case. On remand, the trial court shall conduct a new sentencing hearing *de novo*, during which Defendant may seek a conditional discharge.

AFFIRMED IN PART; VACATED IN PART AND REMANDED FOR RESENTENCING.

Judges BERGER and HAMPSON concur.

Report per Rule 30(e).