IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-222

Filed: 1 December 2020

Guilford County, Nos. 18 CRS 90865, 90867-68, 19 CRS 25185

STATE OF NORTH CAROLINA

v.

JOHN DAVID WOOD

Appeal by defendant from judgment entered 31 October 2019 by Judge Lora Christine Cubbage in Guilford County Superior Court. Heard in the Court of Appeals 20 October 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Justin Isaac Eason, for the State.

Stephen G. Driggers for defendant-appellant.

ZACHARY, Judge.

Defendant John David Wood appeals from his *Alford* plea[1] of guilty to charges of possession of a firearm by a felon, resisting a public officer, carrying a concealed gun, and attaining the status of a habitual felon, following the trial court's denial of

[1] An *Alford* plea is a guilty plea in which the defendant does not admit to any criminal act, but admits that there is sufficient evidence to convince the judge or jury of the defendant's guilt. *See North Carolina v. Alford*, 400 U.S. 25, 37, 27 L. Ed. 2d 162, 171 (1970); *State v. Baskins*, 260 N.C. App. 589, 592 n.1, 818 S.E.2d 381, 387 n.1 (2018), *disc. review denied*, 372 N.C. 102, 824 S.E.2d 409 (2019).

his motion to suppress evidence. After careful review, we affirm the trial court's order denying Defendant's motion to suppress evidence.

Defendant also attempts to appeal from a civil judgment for the cost of his court-appointed attorney. However, he has not successfully invoked this Court's appellate jurisdiction, and therefore, we dismiss that portion of his appeal.

Background

On 22 December 2018, around 3 a.m., Master Police Officer Steve Patalano, of the University of North Carolina at Greensboro ("UNCG") Police Department, heard what sounded like a gunshot, somewhere close to the 1400 block of West Gate City Boulevard in Greensboro, and reported it over his radio. Within three minutes, two other UNCG police officers—Sergeant Greg Williams and Officer Saqib Shahzad—responded to the call.

Sergeant Williams drove on West Gate City Boulevard with his car windows down, surveying the 1400 block. As he approached the intersection of West Gate City Boulevard and Fuller Street, he heard a vehicle "accelerating rapidly," and "saw a gray four-door Honda sedan traveling at a high rate of speed for [Fuller Street.]" Sergeant Williams testified that the speed limit on Fuller Street was 35 miles per hour, and confirmed that in his opinion the Honda was traveling in excess of 35 miles per hour. Sergeant Williams pulled into the parking lot of a supply store and turned

around in order to follow the Honda, because of "a likelihood that that vehicle could be involved in shots being fired[.]"

As Sergeant Williams followed the Honda, he noticed that it had several occupants, and radioed for support from Officers Patalano and Shahzad. After confirming that the other officers were behind him, Sergeant Williams initiated a traffic stop of the Honda. The three officers approached the vehicle, and Sergeant Williams identified the driver as Defendant. The officers asked that all of the Honda's occupants exit the vehicle, and then asked each if there was a firearm in the vehicle. Defendant denied having any weapons in the vehicle. Defendant also volunteered that they heard the gunshot, but that it "[w]asn't from that neighborhood."

Sergeant Williams then asked whether Defendant "had a problem with [the sergeant] checking his vehicle," to which Defendant replied, "Yes, I do." Sergeant Williams then stated that he could arrest Defendant for the open container of tequila in plain view in the Honda, but that he would rather search the vehicle for weapons. Defendant asked, "Do you want me to call an attorney?" Sergeant Williams replied that Defendant could call whomever he wanted, but that he would remain subject to arrest.

Defendant again denied that there were guns in the vehicle, and began speaking to his fiancée on his cell phone. Sergeant Williams heard Defendant complaining about the stop to his fiancée, and heard Defendant's fiancée yelling that

she was "coming up there with a whole team of people." Both Sergeant Williams and Officer Patalano asked Defendant several times to leave his cell phone on the trunk, with the speaker on, but Defendant did not comply with their requests.

Sergeant Williams attempted to handcuff Defendant, but Defendant physically resisted, and Sergeant Williams and Officer Shahzad "had to tackle him and fight him to get him handcuffed." Sergeant Williams then placed Defendant under arrest. Defendant continued to resist as law enforcement officers tried to place him in the patrol vehicle, but was eventually secured in the vehicle. Officer Shahzad searched the Honda, and found and seized a loaded .380-caliber semi-automatic pistol. Officer Shahzad also found a six-to-eight inch fixed-blade knife in the center console, two loaded .22-caliber magazines in the driver's side door pocket, and a nine-millimeter handgun in the trunk of the vehicle.

Defendant was arrested and charged with resisting a public officer, transporting unsealed wine or liquor in the passenger area, carrying a concealed gun, and possession of a firearm by a felon. On 4 February 2019, Defendant was charged by indictment with the same counts, as well as charges of carrying a concealed weapon and committing the charged offenses as a habitual felon. On 17 October 2019, Defendant filed a motion to suppress the evidence obtained as a result of the traffic stop and subsequent search of the vehicle.

On 30 October 2019, Defendant's case came on for trial before the Honorable Lora Christine Cubbage in Guilford County Superior Court. After hearing testimony and arguments, the trial court denied Defendant's motion to suppress. That same day, Defendant stipulated to a prior record level of IV, and entered an *Alford* plea to the charges while preserving his right to appeal the trial court's denial of his motion to suppress, pursuant to N.C. Gen. Stat. § 15A-979(b) (2019). Pursuant to the plea arrangement, the trial court sentenced Defendant to 66-92 months in the custody of the North Carolina Division of Adult Correction.

Defendant gave his notice of appeal in open court. Defense counsel then presented the trial court with a fee application, and the State requested that any order to pay attorney's fees be entered as a civil judgment. The trial court entered a civil judgment against Defendant in the amount of his court-appointed attorney's fees and appointment fee, totaling $1,965.00. On 31 October 2019, the trial court entered its written judgment, documenting Defendant's sentencing pursuant to the plea arrangement. On 12 November 2019, the trial court entered its written order reflecting its denial of Defendant's motion to suppress.

Discussion

On appeal, Defendant challenges (1) the denial of his motion to suppress, and (2) the imposition of a civil judgment against him for attorney's fees and appointment

fee without first affording Defendant the opportunity to be heard as to the final amount.

I. Motion to Suppress

Defendant argues that the trial court committed reversible error in denying his motion to suppress. Defendant challenges three of the trial court's findings of fact as not supported by the evidence, and one of its conclusions of law as not supported by the findings of fact.

A. Applicable Legal Standards

Our review of an order denying a motion to suppress 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. Miller*, 243 N.C. App. 660, 661, 777 S.E.2d 337, 339 (2015) (quoting *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. Robinson*, 189 N.C. App. 454, 458, 658 S.E.2d 501, 504 (2008) (citation and internal quotation marks omitted). "Conclusions of law are reviewed de novo and are subject to full review." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011).

"Traffic stops have been historically reviewed under the investigatory detention framework first articulated in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Under *Terry* and subsequent cases, 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) (citations and internal quotation marks omitted). "Reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Id.* (citation and internal quotation marks omitted). A traffic stop 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." *Id.* (citation omitted). "[A] court must consider the totality of the circumstances—the whole picture[—]in determining whether a reasonable suspicion exists." *Id.* at 414, 665 S.E.2d at 440 (citation and internal quotation marks omitted).

B. Findings of Fact

Defendant challenges three of the trial court's findings of fact: (1) "When Williams observed the suspect vehicle it was going at a high rate of speed"; (2) the suspect vehicle was "traveling from the a [sic] location that the alleged [gunshot] was reported to have possibly come from"; and (3) "Williams ran the tag on the vehicle and the registration returned expired" before he "proceeded to initiate a traffic stop

at the intersection of Patterson and Gate City Blvd." As explained below, the first of the challenged findings of fact was supported by competent evidence, and was sufficient to support the trial court's ultimate conclusion of law that Sergeant Williams' stop of the vehicle was justified.

1. Exceeding the Posted Rate of Speed

Defendant first argues that "[t]he trial court's finding that [he] was traveling at a high rate of speed on Fuller Street was unsupported by competent evidence." In its order denying Defendant's motion to suppress, the trial court found the following relevant facts:

> In this case, a call was made over the police modems that a possible gunshot had been fired to the west of where Officer Patalano was conducting a traffic stop. [Sergeant] Williams and Officer Shahzad headed in the direction that would be west of Officer Patalano, as both knew where Patalano was conducting a traffic stop. Once near the possible [gunshot], Williams riding with his window down heard the noise of a car engine accelerating. When he looked in the direction of the engine noise it was the same direction of the possible [gunshot]. He observed a 4-door gray Honda Accord coming toward the direction he was parked at a higher rate of speed than authorized in that area of the city. [Sergeant] Williams has been an officer for 28 years with the last 7 years being with the UNCG police department. He has been a [sergeant] for the last 5 years.

The standard for admission of lay opinion testimony regarding the estimated speed of a vehicle is well established:

> Any person of ordinary intelligence, who had a reasonable opportunity to observe a vehicle in motion and judge its speed may testify as to his estimation of the speed of that

> vehicle. Where the witness does not have a reasonable opportunity to judge the speed, it is error to permit such testimony. The observation must be for such a distance and over such a period of time as to enable the witness to do more than merely hazard a guess as to speed.

State v. Royster, 224 N.C. App. 374, 378, 737 S.E.2d 400, 404 (2012) (citations and internal quotation marks omitted).

In *Royster*, this Court upheld, as sufficient evidence to support a finding that the defendant had been speeding, the testimony of a "radar certified officer" who observed the suspect vehicle for "three to five seconds" while traveling in the opposite direction. *Id.* at 380-81, 737 S.E.2d at 405. However, in *McNeil v. Hicks*—a civil case involving a traffic accident which Defendant cites—while the plaintiff similarly testified that she observed the defendant's vehicle for "about three seconds" before it hit hers, the plaintiff also "testified that she did not have time to form an opinion of the speed at which [the defendant] was traveling when she first saw her[.]" 119 N.C. App. 579, 581, 459 S.E.2d 47, 48-49 (1995).

In the case at bar, Sergeant Williams testified that he was traveling on West Gate City Boulevard, "intently surveying th[e] very next block to the west" because of the gunshot report. As he approached Fuller Street with his windows down, he "heard a vehicle [that] sounded like it was accelerating rapidly." Sergeant Williams testified that he "looked to that direction and saw a gray four-door Honda sedan traveling at a high rate of speed for that street[.]"

Sergeant Williams admitted on cross-examination that "[t]here's actually a fairly short section of Fuller Street that you can see vehicle traffic on without going down Fuller Street from Gate City Boulevard." However, he explained that

> one of the things that got my attention about the defendant's vehicle, is that when I heard the engine -- I'm scanning and I'm looking, and I hear his engine, and it's surprising that he appears to be -- and sounds to be -- accelerating. And I realized he doesn't have much road left. He's got to come to a stop [at] Josephine/Gate City Boulevard, and he is accelerating rapidly. And that's part of what drew my attention to him.

When asked how long he observed the Honda, Sergeant Williams answered, "I don't know what the period of time was, but it wasn't -- it certainly wasn't 20 or 30 seconds."

Defendant contends that "like the plaintiff in [*McNeil*], Sergeant Williams did not have a reasonable opportunity to observe the Honda and judge its speed." This comparison is unavailing; in *McNeil*, the "plaintiff's testimony clearly established that she had no reasonable opportunity to observe [the defendant's] vehicle and judge its speed[.]" *Id.* at 581, 459 S.E.2d at 49. Sergeant Williams gave no similarly disqualifying testimony.

Defendant also asserts that, unlike the "radar certified officer" in *Royster*, 224 N.C. App. at 381, 737 S.E.2d at 405, Sergeant Williams "had no training in assessing the speed of a vehicle coming toward him." Even so, "it is not necessary that an officer have specialized training to be able to visually estimate the speed of a vehicle. Excessive speed of a vehicle may be established by a law enforcement officer's opinion

as to the vehicle's speed after observing it." *State v. Barnhill*, 166 N.C. App. 228, 233, 601 S.E.2d 215, 218, *disc. review denied*, 359 N.C. 191, 607 S.E.2d 646 (2004).

While Defendant cites evidence that could cast a doubt over the accuracy of Sergeant Williams' estimate of the Honda's speed, the trial court's finding of fact that Sergeant Williams "observed a 4-door gray Honda Accord coming toward the direction he was parked at a higher rate of speed than authorized in that area of the city" is nevertheless supported by competent evidence in the record. It is thus binding on appeal. *Robinson*, 189 N.C. App. at 458, 658 S.E.2d at 504 ("At a suppression hearing, conflicts in the evidence are to be resolved by the trial court . . . ."). Defendant's argument is overruled.

2. Expired Registration

Defendant also contends that the trial court erred in its finding of fact that "Williams ran the tag on the vehicle and the registration returned expired" before "Williams proceeded to initiate a traffic stop at the intersection of Patterson and Gate City Blvd." Although each sentence, on its own, is supported by competent evidence, Defendant is correct that this *sequence* of the events, as described in the trial court's findings of fact, is not supported by competent evidence.

During Sergeant Williams' direct examination at the suppression hearing, the following exchange occurred:

> Q. And at some point during the course of your investigation, did you ever have an opportunity to run a tag on the vehicle?
>
> A. I did.
>
> Q. And what was the result of that?
>
> A. It came back as an expired registration.
>
> Q. Is that something you could pull a vehicle over for?
>
> A. It is.
>
> Q. That was not the reason you initially stopped it at that time; is that right?
>
> A. That's correct.
>
> Q. But --
>
> A. That's correct. *I learned that subsequent, after -- after the stop.*

(Emphasis added). The State concedes that the sequence of the events described in the trial court's findings of fact "contradicts the testimony of record[.]" However, excluding this portion of the trial court's order does not make a material difference in our analysis of the trial court's challenged conclusion of law.

C. Conclusion of Law

Defendant further asserts that the trial court committed reversible error by "[c]iting Sergeant Williams' information that the Honda's registration had expired" as it concluded that "the officer at that point reached the standard of probable cause to stop the defendant."

As a threshold matter, we note that although the trial court stated that it analyzed the traffic stop for probable cause, in other parts of its order the trial court applied the reasonable suspicion standard. This ambiguity does not present reversible error, because the trial court applied the proper, less demanding standard—reasonable suspicion—in determining whether the traffic stop was legally justified. *See Styles*, 362 N.C. at 415, 665 S.E.2d at 440.

Moreover, regardless of whether the trial court relied on the mistaken sequence of events in concluding that the traffic stop was legally justified,

> our Supreme Court had made clear that a correct decision of a lower court on a motion to suppress will not be disturbed on review simply because an insufficient or superfluous reason is assigned. *Even where the trial court's reasoning for denying a defendant's motion to suppress is incorrect, we are not required on this basis alone to determine that the ruling was erroneous*, because the crucial inquiry for this Court is admissibility and whether the ultimate ruling was supported by the evidence.

State v. McKnight, 239 N.C. App. 108, 116, 767 S.E.2d 689, 695 (emphasis added) (citations and internal quotation marks omitted), *disc. review denied*, 368 N.C. 264, 772 S.E.2d 727 (2015).

Allowing that the trial court misapprehended the sequence of events surrounding the discovery of the Honda's expired registration, that error is not sufficient to disturb the trial court's denial of Defendant's motion to suppress. The trial court's order contains many other findings of fact that are amply supported by competent evidence, and that together support the court's ultimate ruling on the

motion to suppress, that Sergeant Williams had developed a reasonable suspicion—if not probable cause—to justify stopping Defendant's vehicle.[2]

Even excluding the two sentences that Defendant challenges from the trial court's four-page narrative findings of fact and conclusions of law, the court's "ultimate ruling was supported by the evidence." *Id.* (citation omitted). The trial court did not err in denying Defendant's motion to suppress. Defendant's argument is overruled.

II. Attorney's Fees

Defendant next asserts that he "did not have an opportunity to be heard on the issue of his attorney's fees" before the trial court imposed its civil judgment in this case, in violation of *State v. Friend*, 257 N.C. App. 516, 809 S.E.2d 902 (2018), and its progeny. However, Defendant has not properly invoked our appellate jurisdiction, and thus, we are unable to review this issue on appeal.

In criminal cases, "judgments entered against a defendant for attorney fees and appointment fees constitute civil judgments, which require a defendant to comply with Rule 3(a) of the North Carolina Rules of Appellate Procedure when appealing from those judgments." *State v. Patterson*, ___ N.C. App ___, ___, 839 S.E.2d 68, 71 (2020). Rule 3(a) "requires that a party file notice of appeal with the clerk of superior

[2] In that the remaining findings of fact amply support this conclusion of law, we need not address the Defendant's challenge to the trial court's finding that his vehicle was "traveling from the a [sic] location that the alleged [gunshot] was reported to have possibly come from."

court and serve copies thereof upon all other parties." *State v. Brooks*, 204 N.C. App. 193, 195, 693 S.E.2d 204, 206 (2010) (citation and internal quotation marks omitted).

In the case at bar, Defendant objected after the trial court denied his motion to suppress, and gave oral notice of appeal in open court, as permitted by Rule 4(a)(1) of the North Carolina Rules of Appellate Procedure for criminal matters. However, the record in this case "does not indicate that Defendant gave written notice of appeal from the . . . civil judgment in accordance with the requirements of Rule 3(a)." *Patterson*, ___ N.C. App. at ___, 839 S.E.2d at 71. Neither has Defendant filed with this Court a petition for writ of certiorari, as had the defendants in several of the cases which Defendant cites in his appellate brief. *See State v. Mayo*, 263 N.C. App. 546, 549, 823 S.E.2d 656, 659 (2019) ("A criminal defendant may file a petition for a writ of certiorari to appeal a civil judgment for attorney's fees and costs."); *see also Patterson*, ___ N.C. App. at ___, 839 S.E.2d at 71-72; *Friend*, 257 N.C. App. at 519, 809 S.E.2d at 905.

"Because the record on appeal does not contain a written notice of appeal filed with the clerk of superior court, which was served upon the State, this [portion of the] appeal must be dismissed." *Brooks*, 204 N.C. App. at 195, 693 S.E.2d at 206. Although the State concedes that Defendant's issue is meritorious under *Friend*, and agrees that the civil judgment should be vacated and remanded, in the absence of jurisdiction we are "preclude[d] . . . from acting in any manner other than to dismiss"

this portion of Defendant's appeal. *State v. Hammonds*, 218 N.C. App. 158, 162, 720 S.E.2d 820, 823 (2012) (quoting *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008)).

Conclusion

For the foregoing reasons, the trial court did not err in denying Defendant's motion to suppress. Accordingly, we affirm.

Defendant has not properly invoked our appellate jurisdiction in order to review the trial court's entry of a civil judgment against him for the cost of his court-appointed attorney. We dismiss this part of Defendant's appeal.

AFFIRMED IN PART; DISMISSED IN PART.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).