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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-39

Filed: 16 June 2020

Wake County, No. 15CRS225511-12

STATE OF NORTH CAROLINA

v.

JOSHUA MAURICE MITCHELL, Defendant.

Appeal by Defendant from order entered 6 August 2019 by Judge Andrew Heath in Wake County Superior Court. Heard in the Court of Appeals 27 May 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Benjamin T. Spangler, for the State.

Stephen G. Driggers for the Defendant.

BROOK, Judge.

Joshua Maurice Mitchell (“Defendant”) appeals from the trial court’s order denying his motion to suppress. We affirm the order of the trial court.

I. Factual and Procedural Background

At approximately 3:05 a.m. on 19 November 2015, Officer Howard observed a vehicle traveling on New Bern Avenue in Raleigh, North Carolina. The vehicle failed

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to stop at a stop sign and Officer Howard initiated a traffic stop. Defendant was driving the vehicle. He had a companion traveling with him.

After stopping the vehicle, Officer Howard requested Defendant's driver's license, registration, and proof of insurance, whereupon Defendant provided his driver's license but was unable to produce documentation of the vehicle's registration. The vehicle was displaying dealer tags, which prevented Officer Howard from verifying who owned it. Officer Howard used Defendant's driver's license information to search the CJLeads database and learned that Defendant had a prior felony conviction and was known to carry a gun.

Officer Howard then asked Defendant to exit the vehicle so that he could determine the VIN number of the vehicle, which would allow him to confirm the vehicle's ownership, but Defendant refused. Officer Howard and his partner, Officer Sirianna, proceeded to physically remove Defendant from the vehicle. A struggle ensued. During the struggle, Defendant yelled to his companion, "Get the ratchet and run!"

After the officers successfully secured Defendant in their patrol car, a search of Defendant's vehicle was conducted, revealing a gun hidden beneath the driver's seat. Defendant was placed under arrest.

On 25 January 2015, a Wake County grand jury indicted Defendant with possession of a firearm by a felon and two counts of assault on a law enforcement

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officer. On 10 March 2016, Defendant made a motion to suppress the gun obtained during the search. The motion came on for hearing on 5 August 2019 before the Honorable Andrew T. Heath in Wake County Superior Court. Judge Heath denied the motion in an order entered on 6 August 2019. Defendant pleaded guilty to all three offenses of which he had been indicted, conditioning his pleas on his notice of appeal from the denial of his motion to suppress the gun.

II. Analysis

On appeal, Defendant challenges the sufficiency of the evidence presented at the suppression hearing to support two of the findings in the trial court's order denying his motion to suppress, and contends that the trial court erred in denying his motion to suppress because the stop of his vehicle was unreasonably prolonged. We do not find merit in these challenges.

Our review of a trial court's ruling on a motion to suppress is limited to "whether . . . findings of fact are supported by competent evidence, and whether [the] findings of fact support the [] conclusions of law." *State v. Pulliam*, 139 N.C. App. 437, 439-40, 533 S.E.2d 280, 282 (2000). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *State v. Chukwu*, 230 N.C. App. 553, 561, 749 S.E.2d 910, 916 (2013). "A trial court's unchallenged findings of fact are conclusive on appeal." *Henry v. Morgan*, ___ N.C. App. ___, ___,

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826 S.E.2d 475, 477 (2019). “A trial court’s conclusions of law are reviewed *de novo*[.]”

In the Matter of J.L.B.M., 176 N.C. App. 613, 617, 627 S.E.2d 239, 242 (2006).

Defendant challenges Findings of Fact 9 and 12 of the trial court’s order as unsupported by competent evidence. The trial court found in Findings of Fact 9 and 12 as follows:

9. Because Officer Howard would be using both hands and directing his full attention to write down the VIN, Officers Howard and Sirianna would not be able to devote adequate attention to both the Defendant and his passenger while Officer Howard wrote down the VIN.

...

12. Officer Howard’s routine investigation and mission of the traffic stop had not concluded at the point when the Defendant refused to exit the vehicle.

However, the trial court also made numerous other findings of fact, which Defendant does not challenge on appeal:

1. The Court heard credible testimony from Officer Howard who is employed by the Raleigh Police Department and was so duly sworn and on duty on November 19th 2015.

2. The Defendant, Joshua Mitchell was traveling on a public vehicular area on New Bern Avenue in Raleigh, within Wake County at approximately 3:05 am on November 19, 2015.

3. Officer Howard observed the Defendant fail to stop at a duly erected stop sign, and initiated lawful a [sic] traffic stop.

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4. After stopping the Defendant, Officer Howard performed a normal and routine investigation within the mission of the traffic stop including requesting the Defendant's driver license, proof of insurance searching the CJLeads database and investigating the ownership of the vehicle.

5. The Defendant's vehicle displayed dealer tags which did not allow Officer Howard to verify ownership. Defendant was unable to produce further documentation about the vehicle and claimed the information was in his hotel room.

6. In order to complete his investigation into the ownership of the vehicle, Officer Howard needed to write down the VIN so he could run the VIN from the vehicle against the VIN database.

7. Officer Howard's search of the CJLeads database showed that no active warrants had been issued for Defendant, but it did reveal that the Defendant had a record of prior felony conviction. Alerts in the CJLeads database also indicated that officers who had previously encountered the Defendant noted that he had a history of possessing a firearm.

8. The VIN is displayed just under the front windshield near the dashboard on the driver side of the vehicle.

...

10. Officer Howard asked Defendant to exit the vehicle before he began writing down the VIN for officer safety reasons to eliminate safety concerns regarding the Defendant or his passenger that could arise while Officer Howard was distracted. This was a reasonable course of action in furtherance of Officer Howard's investigation into ownership of the vehicle and was part of the mission of the traffic stop.

11. The Defendant refused to exit the vehicle.

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...

13. Officer Howard and his partner, Officer Sirianna, lawfully extracted the Defendant from the vehicle.

14. When Officers Howard and Sirianna extracted the Defendant from the vehicle, the Defendant resisted and a physical struggle ensued.

15. During the Officers' attempt to subdue the Defendant, the Defendant yelled to his passenger "get the ratchet and run!"

16. Based on his experience and training, Officer Howard took this statement to be an instruction from the Defendant to his passenger to "get the gun from the car and flee."

17. The Defendant was subdued and placed in the back of the police car for officer safety.

18. Once the Defendant was subdued, Officer Howard searched the Defendant's vehicle and located a Ruger 9mm, a type of firearm, under the driver's seat of the vehicle Defendant had been driving.

These unchallenged findings are conclusive on appeal. *See Henry*, ___ N.C. App. at ___, 826 S.E.2d at 477.

Based on these findings, the trial court made the following conclusions of law:

1. Officer Howard lawfully stopped the defendant for failing to stop at a duly erected stop sign.

...

4. Obtaining the VIN and running the VIN against the VIN database to determine vehicle ownership falls within the mission of a traffic stop, and therefore Officer Howard did

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not unconstitutionally extend the traffic stop by attempting to safely obtain the VIN and complete his investigation. . . .

5. Given that the CJLeads alerts [sic] associated with the Defendant, and because Officers Howard and Sirianna would be unable to devote adequate attention to both Defendant and his passenger while Officer Howard would attempt to write down the VIN located near the Defendant, it was reasonable for Officer Howard to request that Defendant exit the vehicle for officer safety reasons before he wrote down the VIN. It was also reasonable for Officers Howard and Sirianna to physically extract Defendant from the vehicle after Defendant refused Officer Howard's request to exit the vehicle.

6. . . . [T]he routine investigations and mission of the traffic stop were still ongoing at the time when the Defendant made the statement "get the ratchet and run" during the physical struggle that ensued when Officers Howard and Sirianna extracted the Defendant from the vehicle for officer safety reasons.

7. . . . Officer Howard knew of Defendant's prior felony conviction and of the CJLeads alerts that Defendant was known to carry a gun. That knowledge, combined with the Defendant's statement "get the ratchet and run" and Officer Howard's knowledge that "ratchet" is another word [for] "gun" is sufficient to establish probable cause that the offense of possession of a firearm by a felon had been or was being committed.

. . .

9. Probable cause existed to conduct a search of the vehicle being driven by the Defendant, including the area underneath the driver's seat.

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10. There was no unlawful extension of the traffic stop of the vehicle being driven by Defendant on November 19, 2015.

We hold that the unchallenged findings support the trial court's conclusions, setting aside whether the challenged findings were supported by competent evidence. That is, "[e]ven assuming *arguendo* that there was no evidence to support the challenged findings, we hold that [the] unchallenged findings are fully sufficient to support the trial court's conclusion[s] that there was a reasonable and articulable suspicion to stop the Defendant and probable cause for his arrest." *State v. Miller*, 243 N.C. App. 660, 663, 777 S.E.2d 337, 340 (2015) (internal marks and citation omitted).

As to the challenged findings, we hold that there is no record evidence that undermines or supports them and that Defendant has therefore failed to meet his burden to demonstrate they are unsupported by competent evidence. Rule 9 of the North Carolina Rules of Appellate Procedure imposes a burden of production on appellants, requiring them to include in the record on appeal "so much of the litigation . . . as is necessary for an understanding of all issues presented on appeal[.]" N.C. R. App. P. 9(a)(1). Explaining the requirements of Rule 9, our Court has observed, "[t]he burden is on an appealing party to show, by presenting a full and complete record, that the record is lacking in evidence to support the trial court's findings of fact." *Walker v. Penn Nat'l Sec. Ins. Co.*, 168 N.C. App. 555, 560, 608

S.E.2d 107, 110 (2005) (internal marks and citation omitted). Failure to meet this burden will result in the status quo being upheld on appeal. *See id.*

Defendant has not included in the record on appeal the full transcript of the 5 August 2019 hearing on his motion to suppress, and our review is therefore limited to the excerpts of the transcript Defendant has chosen to include. These excerpts neither support nor undermine the trial court’s findings in the order denying the motion to suppress because they do not include any of the testimony offered on 5 August 2019. Because the failure of Defendant to include relevant portions of the transcript of the 5 August 2019 suppression hearing prevents our review of whether the testimony offered at the hearing was competent to support the findings, we “assume[] that there was sufficient evidence to support the findings.” *Id.*

Defendant next argues that the trial court erred in concluding that the stop of his vehicle was not unreasonably prolonged beyond its valid purpose. We have held that the “ordinary inquiries incident to [a] traffic stop . . . include checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *State v. Campola*, 258 N.C. App. 292, 299, 812 S.E.2d 681, 687 (2018) (internal marks and citation omitted). On the record before us, Officer Howard’s investigation did not extend beyond those valid ordinary inquiries. Defendant was unable to produce documents related to the registration of the vehicle, and the dealer tags the vehicle

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displayed prevented officers from confirming ownership of the vehicle except by searching its VIN number. A CJLeads search indicated Defendant had a felony record and was known carry a gun. As this Court noted in *Campola*, an officer may take “certain negligibly burdensome precautions in order to complete his mission safely.” *Id.* (internal marks omitted). Asking Defendant to exit the vehicle while Officer Howard wrote down the VIN number to confirm its ownership was precisely the “negligibly burdensome precaution” to ensure officer safety our Court recognized as legitimate in *Campola*. And while Defendant’s forceable removal from the vehicle undoubtedly was not “negligibly burdensome,” it followed Defendant’s refusal of Officer Howard’s request to exit the vehicle and, as such, was necessary to ensure officer safety under these circumstances.

III. Conclusion

We affirm the trial court’s denial of the motion to suppress.

AFFIRMED.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).