IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-875

No. COA22-349

Filed 20 December 2022

Alexander County, No. 19 CRS 50647

STATE OF NORTH CAROLINA

v.

GARY THOMAS BOLICK, Defendant.

Appeal by Defendant from judgment entered 3 September 2021 by Judge Joseph N. Crosswhite in Alexander County Superior Court. Heard in the Court of Appeals 18 October 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General William F. Maddrey, for the State.

Edward L. Hedrick, V, and Matthew D. Breyerly for the Defendant.

JACKSON, Judge.

¶ 1 Gary Thomas Bolick ("Defendant") appeals from judgment entered after pleading guilty to driving while impaired. Upon careful review, we find no error.

I. Background

¶ 2 On 14 May 2019, M. Warren was driving when Defendant began tailgating him. Warren turned into a Bojangles's parking lot and Defendant followed. After

parking, Defendant exited his truck and began screaming at Warren. Warren also exited his vehicle and upon speaking with Defendant, noticed the smell of alcohol on Defendant's breath. After the altercation, Defendant got back in his truck and drove away. Warren watched Defendant make a right turn out of the parking lot and drive towards Walmart. Warren then got in his truck and drove down the street to the nearby "old hospital" where he called 911 and reported the incident. A "Be On The Lookout" ("BOLO") broadcast was issued stating that a potentially intoxicated driver had just left Bojangles and was driving south on Highway 16 toward Walmart. The make, model, and license plate number of Defendant's vehicle were also given.

¶ 3 Deputy Holler of the Taylorsville Police Department heard the call over his in-car radio and drove to the area. He quickly located Defendant's vehicle and followed Defendant for nearly three minutes before stopping him. Deputy Holler testified that he did not observe any indication that Defendant was intoxicated while driving before making the stop and did so solely based on the BOLO issued after the 911 call received from Warren.

¶ 4 Defendant was charged with driving while impaired. On 9 June 2021, Defendant filed a motion to suppress the evidence obtained during the traffic stop. On 22 July 2021, in Alexander County Superior Court, the Honorable Joseph Crosswhite heard oral arguments on Defendant's motion to suppress. On 3

September 2021, an order was entered denying Defendant's motion. On 21 October 2021, Defendant pleaded guilty and gave oral notice of appeal.

II. Standard of Review

¶ 5 Our review of a trial court's denial of a motion to suppress is strictly limited to determining whether the record contains competent evidence to support the findings of fact and, in turn, whether the findings of fact support the conclusions of law. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). Findings of fact supported by competent evidence are binding on appeal. *Id.* A trial court's conclusions of law are reviewed de novo. *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

III. Analysis

¶ 6 On appeal, Defendant argues the trial court erred in (A) denying Defendant's motion to suppress, and (B) admitting State's Exhibit 2.

A. No Error in Denying Defendant's Motion to Suppress

¶ 7 Defendant contends the trial court erred in denying his motion to suppress the evidence of the traffic stop because there was insufficient evidence to provide an objectively reasonable basis for a warrantless seizure.

¶ 8 Our federal and state constitutions provide individuals protection against unreasonable searches and seizures. U.S. Const. amend. IV; N.C. Const. art. I, § 20. Seizures include "brief investigatory detentions such as those involved in the stopping of a vehicle." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 69-70 (1994)

(citations omitted). Under the investigatory detention framework first articulated in *Terry v. Ohio*, 392 U.S. 1 (1968), an officer must have a "reasonable, articulable suspicion that criminal activity is afoot" or reasonable suspicion to justify an investigatory traffic stop. *State v. Fields*, 195 N.C. App. 740, 743, 673 S.E.2d 765, 767 (2009) (internal marks and citations omitted). While a less stringent standard than probable cause, reasonable suspicion still requires "something more than an unparticularized suspicion or hunch." *Watkins*, 337 N.C. at, 442, 446 S.E.2d at 70 (internal marks and citations omitted).

¶ 9 Our Court recognizes that "anonymous tips are one of the most important investigatory tools used by law enforcement to prevent and solve crimes." *State v. Young*, 148 N.C. App. 462, 468, 559 S.E.2d 814, 819 (2002). Therefore, in an effort to preserve the ability of law enforcement to use such tips without violating individuals' constitutional protections, we established that in order "'to provide the justification for a warrantless stop, an anonymous tip must have sufficient indicia of reliability, and if it does not, then there must be sufficient police corroboration of the tip before the stop may be made.'" *State v. Neal*, 267 N.C. App. 442, 451, 833 S.E.2d 367, 374 (2019) (quoting *State v. Peele*, 196 N.C. App. 668, 672, 675 S.E.2d 682, 685 (2009)).

¶ 10 The United States Supreme Court in *Navarette v. California*, held that an anonymous tip exhibited a sufficient indicia of reliability to stop an alleged drunk driver where: (1) the caller claimed an eyewitness basis of knowledge; (2) there was

a short time between the incident and the 911 call suggesting little time for fabrication; and (3) a reasonable officer could conclude that a false tipster would not likely use the 911 system, as it has technological and regulatory features that safeguard against making false reports with immunity. 572 U.S. 393, 393 (2014).

¶ 11 Here, in an effort to distinguish the instant case from *Navarrette*, Defendant relies on our Court's decisions in several cases decided prior to *Navarette* to support his contention that the information received by the stopping officer, Deputy Holler, contained no information or particularized assertion of illegal activity by the eyewitness and therefore did not have a sufficient indicia of reliability.

¶ 12 Defendant analogizes the present case to both *State v. Blankenship* and *State v. Coleman*. In *Blankenship*, an anonymous caller contacted 911 and reported a red Mustang with a black soft top driving erratically and running over traffic cones. *State v. Blankenship*, 230 N.C. App. 113, 114, 748 S.E.2d 616, 617 (2013). The caller gave the license plate number and the street name and direction in which the defendant was traveling. *Id.* Similarly, in *Coleman*, an anonymous caller reported there was a cup of beer in a gold Toyota sedan parked at a gas station. *State v. Coleman*, 228 N.C. App. 76, 77, 743 S.E.2d 62, 64 (2013). The caller gave the location of the vehicle and the license plate number of the vehicle. *Id.* Our Court in both cases held that while the caller's tips provided some limited indicia of reliability, neither caller was able to identify or describe the defendant, provide any way for the officers to assess

their credibility, explain their basis of knowledge, or include any information concerning the defendants' future actions. *See Blankenship*, 230 N.C. App. at 117, 748 S.E.2d at 619; *See Coleman*, 228 N.C. App. at 82, 743 S.E.2d at 67. Therefore, our Court held, in both cases, the tip did not have a sufficient indicia of reliability which was necessary to create the reasonable suspicion needed to support the stops. *See Blankenship*, 230 N.C. App. at 117, 748 S.E.2d at 619; *See Coleman*, 228 N.C. App. at 82, 743 S.E.2d at 67.

¶ 13 Defendant also relies on our Court's previous decision in *State v. McArn* to support his contention. In *McArn*, an anonymous caller reported that a white Nissan vehicle was involved in the sale of illegal drugs. *State v. McArn*, 159 N.C. App. 209, 210, 582 S.E.2d 371, 373 (2003). We held that while the tip gave a description of the vehicle and the area in which the vehicle was located, the caller did not describe the defendant, predict the defendant's actions, or explain the basis upon which he knew about the white Nissan and the drug activity and therefore there was not a sufficient indicia of reliability. *Id*. at 214, 582 S.E.2d at 375.

¶ 14 Since our decisions in *Blankenship*, *Coleman*, and *McArn*, this Court decided *State v. Neal* relying on the Supreme Court's decision in *Navarette*. In *Neal,* we held, while recognizing the tension between our previous case law and *Navarette*, that an anonymous tip exhibited a sufficient indicia of reliability and therefore served as reasonable suspicion to support a traffic stop where an officer received a report from

dispatch, drove to the scene, and stopped the defendant based solely on an anonymous tip in which the caller stated they observed a "small green vehicle in color with a tag number of [042-RCW] on [Interstate] 40 that had almost run a few vehicles off the road . . . [and] ended up in an area known as Sleepy Hollow" where the green vehicle hit a car and was attempting to flee. *Neal*, 267 N.C. App. at 455-56, 833 S.E.2d at 377.

¶ 15 The instant case is analogous to our Court's decision in *Neal* and can be analyzed using the *Navarette* factors which were applied in *Neal*. Here, Deputy Holler testified that he heard over his in-car radio a BOLO reporting that a potentially intoxicated driver in a white Dodge Ram truck had just left the Bojangle's parking lot and was traveling south on Highway 16 towards Walmart. Additionally, the computer-aided dispatch ("CAD") report created from the information Warren gave in the 911 call stated:

> Made contact with the caller. Caller did not advise he had a 10-81 in his vehicle. Caller states the driver of the vehicle threatened him in the Bojangle's parking lot. Possible 10-55. Right out of Bojangle's headed back toward Walmart, white Dodge Ram extended cab.

Deputy Holler was also given Defendant's license plate number, the caller's name and phone number, and, within the report, the location where the caller could be found noting: "Located at the old hospital. Caller is in a burgundy Toyota Tacoma single cab."

¶ 16 Here, as in *Neal* and *Navarette*, the caller claimed an eyewitness basis of knowledge as he personally had a face-to-face encounter with Defendant in the Bojangle's parking lot. Through this encounter, he was able to smell alcohol on Defendant's breath. Further, the caller observed Defendant driving behind him before both vehicles pulled into the parking lot and, after their encounter, saw Defendant get in his truck and drive away. Additionally, as in *Neal* and *Navarette*, the caller gave the make, model, and license plate number of Defendant's truck and was able to explain where and in which direction Defendant was currently driving. The caller here not only called 911 immediately but also disclosed his name and location to the 911 dispatcher—suggesting an improbability of fabrication. For these reasons, we hold that the tip was supported by a sufficient indicia of reliability and therefore Deputy Holler had the reasonable suspicion necessary to support the traffic stop.

¶ 17 Because the traffic stop was supported by reasonable suspicion thereby providing an objectively reasonable basis for a warrantless seizure under our Constitutions, the trial court did not err in denying Defendant's motion to suppress.

B. No Error in Admitting State's Exhibit 2

¶ 18 Defendant contends that the trial court erred in admitting State's Exhibit 2 (the CAD report) as it was impermissible hearsay and the probative value in admitting the exhibit was far outweighed by its prejudicial effect.

¶ 19 The trial court has the statutory authority to make initial determinations on preliminary questions concerning the admissibility of evidence. N.C. Gen. Stat. § 8C-1, Rule 104 (2021). Further, in doing so, the court "is not bound by the rules of evidence except those with respect to privileges." *Id*.; *See also* N.C. Gen. Stat. § 8C-1, Rule 1101 (2021). In these instances, the trial court, rather than acting as a trier of fact, is "deciding a threshold question of law, which lies mainly, if not entirely, within the trial judge's discretion." *State v. Ingram*, 242 N.C. App. 173, 182, 774 S.E.2d 433, 441 (2015) (citations omitted). Likewise,

> [i]n interpreting Rule 104, this Court has explained: 'The Rule's plain meaning, the Commentary to the Rule, and sound judgment all contemplate that, in deciding preliminary matters, the trial court will consider any relevant and reliable information that comes to its attention, whether or not that information is technically admissible under the rules of evidence.'

Id. at 182, 774 S.E.2d at 440-41 (quoting *In re Will of Leonard*, 82 N.C. App. 646, 648, 347 S.E.2d 478, 480 (1986)). Nonetheless, "our Supreme Court has also emphasized that a judge's findings of fact will be reversed where it affirmatively appears they are based in whole or in part upon incompetent evidence." *State v. Thomas*, 34 N.C. App. 534, 538, 239 S.E.2d 281, 284 (1977) (citing *State v. Davis*, 290 N.C. 511, 227 S.E. 2d 97 (1976)).

¶ 20 Here, Defendant's motion to suppress was based solely on his contention that the anonymous caller's tip lacked a sufficient indicia of reliability. The trial court

considered the CAD report which was not only relevant but also a reliable source of information concerning the content of the 911 call. Because the trial court has the authority to consider any relevant and reliable information in making admissibility determinations, it did not err in admitting the contents of the CAD report for the purposes of evaluating Defendant's motion to suppress.

IV. Conclusion

¶ 21 For the aforementioned reasons, we hold that the trial court did not err in denying Defendant's motion to suppress or in admitting State's Exhibit 2 during the motion to suppress hearing.

AFFIRMED.

Judges INMAN and GRIFFIN concur.

Report per Rule 30(e).