

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1036

Filed: 17 March 2015

State of North Carolina

v.

Pitt County

No. 07 CRS 58124

Jamie Cole Wainwright

Appeal by defendant from judgment entered 26 March 2014 by Judge Alma L. Hinton in Pitt County Superior Court. Heard in the Court of Appeals 18 February 2015.

*Attorney General Roy Cooper, by Assistant Attorney General J. Aldean Webster III, for the state.*

*The Robinson Law Firm, P.A., by Leslie S. Robinson, for defendant.*

TYSON, Judge.

Defendant appeals from the denial of his motions to suppress the investigatory stop of his vehicle and to quash the citation charging him with driving while impaired. We affirm.

I. Background

Officer Chad Edwards was on duty in the early Sunday morning hours of 12 August 2007. Officer Edwards had four years of experience as a police officer, and had been employed by the East Carolina University Police Department for nearly a year. At approximately 2:37 a.m., Officer Edwards was standing beside his patrol

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car in the driveway of the Chancellor's residence on East Fifth Street. The Chancellor's residence is located directly across the street from the East Carolina University campus, three to four blocks from downtown Greenville. There are numerous bars and nightclubs located in the downtown area. The area around the Chancellor's residence is mostly comprised of student housing.

Officer Edwards was speaking with two women when he observed a grey Jeep Cherokee traveling toward downtown on East Fifth Street. The Jeep swerved to the right, crossed the white line marking the outside lane of travel, and almost hit the curb. The vehicle continued on East Fifth Street, and Officer Edwards observed nothing else unusual about the vehicle.

Officer Edwards testified he was concerned the vehicle would swerve again and strike a pedestrian. He stated pedestrian traffic in this immediate area was much heavier than normal. Students had moved back onto campus, but had not resumed their classes. The bars and nightclubs had stopped serving alcohol at 2:00 a.m., shortly before Officer Edwards observed the Jeep. Officer Edwards testified that one of the nightclubs located downtown has a capacity of 800 patrons, and it generally operated at full capacity on a Saturday night. About a dozen other establishments in the area serve alcohol. Many pedestrians were walking along the sidewalks on their way home from the bars and nightclubs in the downtown area. Officer Edwards testified some pedestrians were walking in the bicycle lane, and it was not unusual to observe some pedestrians walking in the road.

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After he observed the grey Jeep swerve, Officer Edwards left the Chancellor's driveway and pulled into the roadway behind the vehicle. He activated his blue lights and initiated a traffic stop. Officer Edwards, along with two other police officers, determined defendant, the driver, was impaired and arrested him. Defendant was transported to the Pitt County Detention Center and administered an Intoxilyzer test to determine his blood alcohol concentration. The Intoxilyzer test revealed a blood alcohol concentration of .11.

Defendant was tried before the Pitt County District Court on 12 November 2013, and was convicted of driving while impaired. He appealed the conviction to Pitt County Superior Court. Prior to trial, the Superior Court denied defendant's motion to suppress evidence obtained from the traffic stop and to quash the citation.

The case was tried before a jury and defendant was convicted of driving while impaired. The trial court found aggravating factors of a prior driving while impaired conviction within seven years, and defendant was driving with a revoked license at the time of his arrest. He was sentenced as a Level 1 offender to a term of eighteen months of supervised probation, and was ordered to serve an active term of thirty days in prison. Defendant appeals.

II. Issues

Defendant argues the trial court: (1) lacked jurisdiction to enter judgment on his driving while impaired conviction, because defendant did not sign the citation to acknowledge receipt and Officer Edwards did not certify delivery of the citation; (2)

failed to enter a written order on the denial of his motion to suppress; and, (3) erred in denying his motion to suppress, because Officer Edwards did not form a reasonable articulable suspicion that defendant was impaired.

### III. Motion to Quash the Citation

Defendant asserts the trial court erred by denying his pretrial motion to quash the citation, which charged him with driving while impaired, because he did not sign the citation and Officer Edwards did not certify the delivery of the citation as mandated by N.C. Gen. Stat. § 15A-302(d) (2013). He argues Officer Edwards's failure to follow the procedure set forth in the statute for service of a citation divested the court of jurisdiction to enter judgment on his conviction for driving while impaired. We disagree.

#### a. Standard of Review

“An alleged error in statutory interpretation is an error of law, and thus our standard of review for this question is *de novo*.” *Armstrong v. N.C. State Bd. of Dental Examiners*, 129 N.C. App. 153, 156, 499 S.E.2d 462, 466 (1998) (citations omitted). This Court also reviews challenges to the jurisdiction of the trial court under a *de novo* standard. *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quotation marks omitted).

b. Statutory Requirements for Service of a Citation

“An officer may issue a citation to any person who he has probable cause to believe has committed a misdemeanor or infraction.” N.C. Gen. Stat. § 15A-302(b) (2013). The citation must:

- (1) Identify the crime charged, including the date, and where material, identify the property and other persons involved,
- (2) Contain the name and address of the person cited, or other identification if that cannot be ascertained,
- (3) Identify the officer issuing the citation, and
- (4) Cite the person to whom issued to appear in a designated court, at a designated time and date.

N.C. Gen. Stat. § 15A-302(c) (2013). The issuance of a citation requires the person to appear in court and answer a misdemeanor or infraction charge or charges, or waive his appearance. N.C. Gen. Stat. § 15A-302(a) (2013).

The manner of service of a citation is governed by N.C. Gen. Stat. § 15A-302(d), which provides:

A copy of the citation shall be delivered to the person cited who may sign a receipt on the original which shall thereafter be filed with the clerk by the officer. If the cited person refuses to sign, the officer shall certify delivery of the citation by signing the original, which shall thereafter be filed with the clerk. Failure of the person cited to sign the citation shall not constitute grounds for his arrest or the requirement that he post a bond.

N.C. Gen. Stat. § 15A-302(d) (2013) (emphasis supplied).

The citation form includes a signature box for the defendant to sign to acknowledge receipt of a copy of the citation. The citation issued in this case is included in the record and does not bear defendant's signature. The citation form does not include an additional place for the officer to sign, in the event the defendant refuses to sign for receipt of the document. Officer Edwards signed the citation, as issuing officer, pursuant to N.C. Gen. Stat. § 15A-301(a) (2) (2013). ("The citation must be signed and dated by the law-enforcement officer who issues it.").

The record indicates defendant was provided with a copy of the charges when he was brought before the magistrate. The Magistrate's Order, included on the citation, states defendant was arrested without a warrant, there is probable cause for the arrest, and that a copy of the order was delivered to defendant. The magistrate signed the order on 12 August 2007, the day of defendant's arrest.

Defendant argues that § 15A-302(d) requires Officer Edwards to have signed the citation a second time, because defendant did not sign to acknowledge receipt of a copy. We disagree.

"When the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give the statute its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein." *State v. Jackson*, 353 N.C. 495, 501, 546 S.E.2d 570, 574 (2001) (quotation and citation omitted). The language of this statute is plain and unambiguous. The statute requires the officer to deliver a copy of the

citation to the person charged. N.C. Gen. Stat. § 15A-302(d) (2013). The accused may, but is not required to, sign the original citation to acknowledge receipt. *Id.* By the plain language of the statute, the officer is only required to sign and date the document if the defendant refuses to sign. *Id.* While the practice of some officers is to write “refused to sign” or some other notation, if defendant refuses or is unable to sign the citation, this notation is not required by the statute.

Here, there is no evidence defendant refused to sign the citation. Defendant’s motion to quash alleges he “was not requested to sign, and did not sign acknowledging receipt” of a copy of the citation. Even if the absence of defendant’s signature on the citation was a conscious refusal, defendant has failed to show Officer Edwards failed to follow the procedure set forth in N.C. Gen. Stat. § 15A-302(d). Defendant’s argument is overruled.

#### IV. Requirement of a Written Order

Defendant argues the trial court erred by failing to reduce the order, denying his motion to suppress to writing, and by failure to include specific findings of fact and conclusions of law. We disagree.

##### a. Standard of Review

In ruling on a motion to suppress, “[t]he judge must set forth in the record his findings of facts and conclusions of law.” N.C. Gen. Stat. § 15A-977(f) (2013). “This statute has been interpreted as mandating a written order unless (1) the trial court provides its rationale from the bench, and (2) there are no material conflicts in the

evidence at the suppression hearing.” *State v. Williams*, 195 N.C. App. 554, 555, 673 S.E.2d 394, 395 (2009) (citing *State v. Shelly*, 181 N.C. App. 196, 205, 638 S.E.2d 516, 523, *disc. review denied*, 361 N.C. 367, 646 S.E.2d 768 (2007)).

In reviewing the trial court’s failure to set forth written findings of fact and conclusions of law, the appropriate standard of review is as follows:

The trial court’s ruling on the motion to suppress is fully reviewable for a determination as to whether the two criteria set forth in *Williams* have been met — (1) whether the trial court provided the rationale for its ruling on the motion to suppress from the bench; and (2) whether there was a material conflict in the evidence presented at the suppression hearing. If a reviewing court concludes that both criteria are met, then the findings of fact are implied by the trial court’s denial of the motion to suppress, . . . and shall be binding on appeal if supported by competent evidence . . . . If a reviewing court concludes that either of the criteria is not met, then a trial court’s failure to make findings of fact and conclusions of law, contrary to the mandate of section 15A-977(f), is fatal to the validity of its ruling and constitutes reversible error.

*State v. Baker*, 208 N.C. App. 376, 381-82, 702 S.E.2d 825, 829 (2010) (citations omitted).

b. Sufficiency of the Order

At the conclusion of the evidentiary hearing on defendant’s motion to suppress, the court concluded: “After hearing arguments of [c]ounsel and reviewing the summary presented by [d]efense counsel, the Court finds that Officer Edwards had a reasonable suspicion to stop and denies the [d]efendant’s motion.” Defense counsel requested the court to “actually enter an order with the findings of facts and



conclusions of law.” The record does not indicate the court made any further findings of fact or conclusions of law to support the denial of defendant’s motion to suppress, or that it entered a written order.

When ruling on a motion to suppress, our Supreme Court has recognized the importance of the trial court to establish a record, which allows for meaningful appellate review. “[I]t is always the better practice to find all facts upon which the admissibility of the evidence depends.” *State v. Phillips*, 300 N.C. 678, 685, 268 S.E.2d 452, 457 (1980). If the trial court provides the rationale for its ruling from the bench and there are no material conflicts in the evidence, the court is not required to enter a written order. *Williams*, 195 N.C. App. at 555, 673 S.E.2d at 395. “If these two criteria are met, the necessary findings of fact are implied from the denial of the motion to suppress.” *Id.* “If there is not a material conflict in the evidence, it is not reversible error to fail to make such findings because we can determine the propriety of the ruling on the undisputed facts which the evidence shows.” *State v. Lovin*, 339 N.C. 695, 706, 454 S.E.2d 229, 235 (1995).

Here, the trial court ruled from the bench on defendant’s motion to suppress. See *Williams*, 195 N.C. App. at 555, 673 S.E.2d at 394 (holding an order denying motion to suppress sufficient in the absence of a written order where the court ruled from the bench and there were no material conflicts in the evidence). Upon a full review of the transcript and record, we find no material conflicts in the evidence presented at the hearing on defendant’s motion to suppress. When asked by the

court whether defendant wished to put forth evidence, defendant responded that he did not.

Officer Edwards was the only witness to testify. Defendant does not cite any material conflicts in his testimony. “We, therefore, infer that the trial court made the findings necessary to support the denial of the motion to suppress.” *Id.* The record is sufficient to permit appellate review of the denial of defendant’s motion to suppress. Defendant’s argument is overruled.

V. Motion to Suppress

Defendant asserts the trial court erred by denying his motion to suppress and argues Officer Edwards was without probable cause to conduct an investigatory stop of his vehicle. We disagree.

a. Standard of Review

The standard of review for a motion to suppress “is whether the trial court’s findings of fact are supported by the evidence and whether the findings of fact support the conclusions of law.” *State v. Cockerham*, 155 N.C. App. 729, 736, 574 S.E.2d 694, 699 (citations and quotations omitted), *disc. review denied*, 357 N.C. 166, 580 S.E.2d 702 (2003). “The court’s findings ‘are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.’” *Id.* (quoting *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001)). “[T]he trial court’s ruling on a motion to suppress is afforded great deference upon appellate review as it has the duty to hear testimony and weigh the evidence.” *State v.*

*McClendon*, 130 N.C. App. 368, 377, 502 S.E.2d 902, 908 (1998), *aff'd*, 350 N.C. 630, 517 S.E.2d 128 (1999).

b. Reasonable Suspicion

“A police officer may effect a brief investigatory seizure of an individual where the officer has reasonable, articulable suspicion that a crime may be underway.” *State v. Barnard*, 184 N.C. App. 25, 29, 645 S.E.2d 780, 783 (2007), *aff'd*, 362 N.C. 244, 658 S.E.2d 643, *cert. denied*, 555 U.S. 914, 172 L. Ed. 2d 198, 129 S. Ct. 264 (2008). “The 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.” *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 20 L. Ed. 2d 889, 906 (1968)).

The reasonable suspicion standard is a “less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.” *Barnard*, 362 N.C. at 247, 658 S.E.2d at 645. (citation and quotation marks omitted). “Factors supporting reasonable suspicion are not to be viewed in isolation.” *State v. Campbell*, 188 N.C. App. 701, 706, 656 S.E.2d 721, 725, *appeal dismissed*, 362 N.C. 364, 664 S.E.2d 311 (2008). Rather, reasonable suspicion exists when “the totality of the circumstances – the whole picture” supports the inference that a crime has been or is about to be committed. *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 440 (2008).

c. Swerving / Weaving

Officer Edwards observed defendant's vehicle at approximately 2:37 a.m. on a Sunday morning. Defendant was driving in an area comprised mainly of student housing, located three or four blocks from downtown and numerous bars and nightclubs. Those establishments stop serving alcohol at 2:00 a.m. Pedestrian traffic was heavy when Officer Edwards observed defendant driving.

Students were leaving the bars and nightclubs in downtown Greenville and were walking back to their dormitories or residences. Officer Edwards estimated that 100 or more students were walking from downtown to their residences between 2:00 and 3:00 a.m. Some pedestrians were walking on the sidewalks and others were walking on the paved portion of the street.

Officer Edwards initiated the stop of defendant's vehicle based solely on his observation of defendant's "swerving" or "weaving" on a single occasion. While defendant was traveling down Fifth Street toward downtown, Officer Edwards observed him swerve to the right. Defendant's vehicle crossed the white line that marked the outside lane of travel and came within inches of the curb. Officer Edwards testified he was concerned defendant would swerve again and strike pedestrians.

This Court has determined that weaving within the lane of travel, standing alone, is insufficient to justify a traffic stop without the existence of additional facts to indicate the driver is impaired.

[W]eaving can contribute to a reasonable suspicion of driving while impaired. However, in each instance, the defendant's weaving was coupled with additional specific articulable facts, which also indicated that the defendant was driving while impaired. *See, e.g., State v. Aubin*, 100 N.C. App. 628, 397 S.E.2d 653 (1990) (weaving within lane, plus driving only forty-five miles per hour on the interstate), *appeal dismissed, disc. review denied*, 328 N.C. 334, 402 S.E.2d 433, *cert. denied*, 502 U.S. 842, 116 L. Ed. 2d 101 (1991); *State v. Jones*, 96 N.C. App. 389, 386 S.E.2d 217 (1989) (weaving towards both sides of the lane, plus driving twenty miles per hour below the speed limit), *appeal dismissed, disc. review denied*, 326 N.C. 366, 389 S.E.2d 809 (1990); *State v. Adkerson*, 90 N.C. App. 333, 368 S.E.2d 434 (1988) (weaving within lane five to six times, plus driving off the road); *State v. Thompson*, 154 N.C. App. 194, 571 S.E.2d 673 (2002) (weaving within lane, plus exceeding the speed limit).

*State v. Fields*, 195 N.C. App. 740, 744, 673 S.E.2d 765, 768, *disc. review denied*, 363 N.C. 376, 679 S.E.2d 390 (2009).

Weaving, standing alone, “can be sufficient to arouse a reasonable suspicion of criminal activity when it is particularly erratic and dangerous to other drivers.” *State v. Derbyshire*, \_\_ N.C. App. \_\_, \_\_, 745 S.E.2d 886, 892 (2013), *disc. review denied*, \_\_ N.C. \_\_, 753 S.E.2d 785 (2014). See also *State v. Fields*, 219 N.C. App. 385, 723 S.E.2d 777 (2012) (officer had reasonable suspicion where defendant's weaving within his lane was so erratic that other drivers were maneuvering to avoid his car). Under the totality of the circumstances, defendant's driving was dangerous to others due to the pedestrian traffic on the sidewalks and street as Officer Edwards described in his testimony. *Derbyshire*, \_\_ N.C. App. \_\_, 745 S.E.2d

at 891. The undisputed evidence shows many pedestrians in the area at the time Officer Edwards observed defendant swerve right, cross the line marking the outside of his lane of travel and almost strike the curb.

d. Time and Place Factors

A defendant's driving at an unusual hour and his proximity to establishments that serve alcohol are additional factors the court can consider to determine whether the officer had reasonable suspicion to effectuate the stop. *Id.* (citing *Fields*, 195 N.C. App. at 744, 673 S.E.2d at 768). In *State v. Jacobs*, 162 N.C. App. 251, 255, 590 S.E.2d 437, 440-41 (2004), the defendant's weaving within his lane at 1:43 a.m. in an area near bars was sufficient to establish a reasonable suspicion of driving while impaired. Similarly, in *State v. Watson*, 122 N.C. App. 596, 599-600, 472 S.E.2d 28, 30 (1996), this Court upheld the trial court's finding of reasonable suspicion where the defendant was weaving within his lane and driving on the dividing line of the highway at 2:30 a.m. on a road near a nightclub.

The trial court is to consider "the totality of the circumstances – the whole picture" in determining whether the officer had a reasonable suspicion of impaired driving. *Styles*, 362 N.C. at 414, 665 S.E.2d at 440; *Campbell*, 188 N.C. App. at 706, 656 S.E.2d at 725. The swerving nature of defendant's driving outside the lane of travel and nearly striking the curb, the pedestrian traffic along the sidewalks and in the roadway, the unusual hour defendant was driving, and his proximity to bars

and nightclubs, supports the trial court's conclusion that Officer Edwards had reasonable suspicion to believe defendant was driving while impaired. Defendant's argument is overruled.

#### VI. Conclusion

The trial court properly denied defendant's motion to quash the citation, where the officer signed as issuing the citation. Defendant presented no evidence he refused to sign the citation. N.C. Gen. Stat. § 15A-302(d). The record shows the magistrate signed and provided defendant with a copy of the charges.

In the absence of a written order, the record is sufficient to permit appellate review of the denial of defendant's motion to suppress. The trial court pronounced its ruling from the bench and no material conflicts exist in the evidence presented at the hearing.

The trial court properly denied defendant's motion to suppress. The officer had probable cause to conduct an investigatory stop of defendant's vehicle. Defendant swerved outside the lane of travel and almost struck the curb at 2:37 a.m. in an area with heavy pedestrian traffic and within close proximity to bars and nightclubs. The orders of the trial court denying defendant's motions to quash and motion to suppress are affirmed.

Affirmed.

Judges STEPHENS and HUNTER, JR. concur.