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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-645

Filed: 7 March 2017

Mecklenburg County, No. 14 CRS 223560

STATE OF NORTH CAROLINA

v.

SAMUEL BAKER, Defendant.

Appeal by defendant from judgment entered 16 December 2015 by Judge Jeffrey P. Hunt in Mecklenburg County Superior Court. Heard in the Court of Appeals 11 January 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Paige Phillips, for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

ELMORE, Judge.

Samuel Baker (defendant) was convicted of possessing a controlled substance and attaining habitual felon status. Before trial, he moved to suppress evidence obtained by police during a traffic stop. The trial court denied defendant's motion from the bench but did not state its rationale for the ruling or offer its findings of fact into the record. On appeal, defendant argues that the trial court violated N.C. Gen. Stat. § 15A-977(f), which requires a trial judge to "set forth in the record his findings

of fact and conclusions of law” when ruling on a motion to suppress. Because there were no material conflicts in the evidence presented at the suppression hearing, the trial court was not required to enter explicit factual findings that showed the basis for its ruling. No error.

I. Background

On 17 June 2014, Officer Alex Saine of the Charlotte Mecklenburg Police Department conducted a traffic stop which led to the driver’s arrest and the discovery of contraband. The passenger, defendant, was indicted for possession with intent to sell or deliver N-Benzylpiperazine (BZP), a Schedule I controlled substance, in violation of N.C. Gen. Stat. § 90-95(a)(1). The case came to trial at the 14 December 2015 Criminal Session of Mecklenburg County Superior Court, the Honorable Jeffrey P. Hunt presiding.

Before trial, defendant moved to suppress all physical evidence seized during the traffic stop as fruit of an unconstitutional search and seizure because police did not have “probable cause to stop the vehicle in which the defendant was a passenger.” At the suppression hearing, the State offered testimony from Officer Saine and published footage from the dash-mounted video recorder (DMVR). Defendant did not offer any evidence.

Officer Saine testified at the hearing that he initiated the traffic stop because he observed the vehicle without a valid license plate or operable tag lights. He

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conceded on cross-examination that after he stopped the vehicle, he did not turn off his headlights to verify whether the tag lights were inoperable. When shown the footage from the DMVR, however, Officer Saine confirmed that the vehicle had a dealer advertisement in the tag well instead of a valid temporary or permanent tag.

When Officer Saine approached the driver's side of the vehicle, he noticed marijuana buds in the door handle and ordered the driver and defendant to exit the vehicle. Officer Saine searched the driver while his partner, Officer Sinnot, spoke with defendant on the passenger's side. When he learned that the driver had an outstanding warrant, Officer Saine placed the driver under arrest and proceeded to search the vehicle. He discovered a small marijuana roach inside the front passenger door handle and plastic corner bags in the center console, which Officer Saine knew to be consistent with drug packaging.

At that point, Officer Saine approached defendant on the passenger's side and initiated conversation. He testified that defendant's speech seemed inhibited, which is common behavior in people who are trying to conceal narcotics in their mouths. When he asked defendant to open his mouth, he saw defendant use his tongue to manipulate a plastic corner bag, similar to the ones found in the center console. A brief struggle ensued as the officers tried to detain defendant in handcuffs. Officer Saine testified that during the struggle he "heard a loud forceful spitting sound" and "an object landed in the grass." Officer Saine searched the area which defendant had

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been facing and recovered the plastic bag, now wet with saliva, which he had seen in defendant's mouth. Inside the bag were ten pills containing BZP.

After hearing arguments from counsel, the trial court ruled on defendant's motion to suppress from the bench:

THE COURT: All right. The motion is respectfully denied. The way to proceed in connection with this, in the event that this matter continues to trial today, I think it would suffice for the Court to enter findings and conclusions just into the record.

However, if the matter is not reached for trial today or this week, I really don't want to just enter an order of findings and conclusions in the transcript because I think this transcript might not catch up to your trial whenever it actually is and it will be a matter for consideration at the next level, if it goes to that.

MR. TAYLOR: I'll be glad, if we don't reach this this week, Your Honor, to draft a proposed order and allow Mr. Joseph to note objections in writing and submit it to the Court, if that's satisfactory.

THE COURT: I think that's how we will proceed. And make you obviously—

MR. TAYLOR: I'm sure we will have some disagreements on what the order is but—

THE COURT: If you can articulate your disagreements then I'll break the tie when I take a look at it. But I've got pretty complete notes and I can compare you all's findings or suggested findings to what I would find based on my notes.

MR. TAYLOR: Is that satisfactory to you, Mr. Joseph?

MR. JOSEPH: Yes, sir.

The State called defendant's case for trial after recess on the same day, but the court did not enter its findings or conclusions on defendant's suppression motion into the record. The contraband seized during the traffic stop, including the pills, were admitted into evidence at trial without objection. The jury found defendant guilty of possession of BZP and he pleaded guilty to attaining habitual felon status. Defendant entered notice of appeal in open court.

II. Discussion

On appeal, defendant argues that the trial court violated N.C. Gen. Stat. § 15A-977(f) by failing to enter a written order denying defendant's suppression motion or set forth in the record the rationale for its ruling along with its findings of fact resolving material conflicts in the evidence. He asks this Court to reverse and remand for entry of proper findings and conclusions supporting the denial his suppression motion, or alternatively, a de novo suppression hearing.

We first note that defendant did not object when the evidence was admitted at trial. Because his argument on appeal is directed more specifically toward the trial court's purported failure to comply with a statutory mandate, rather than the admissibility of the evidence itself, we review the issue as preserved. *See State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985) (“[W]hen a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the

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court's action is preserved, notwithstanding defendant's failure to object at trial."); *State v. Horner*, 310 N.C. 274, 279, 311 S.E.2d 281, 285 (1984) (explaining that the trial court's failure to enter findings and conclusions to accompany its suppression order may prejudice a defendant by thwarting "meaningful appellate review of the decision").

Pursuant to N.C. Gen. Stat. § 15A-977(f) (2015), the trial court "must set forth in the record [its] findings of fact and conclusions of law" when ruling on a motion to suppress. *See also* N.C. Gen. Stat. § 15A-974(b) (2015) ("The court, in making a determination whether or not evidence shall be suppressed under this section, shall make findings of fact and conclusions of law which shall be included in the record, pursuant to G.S. 15A-977(f).").

Defendant contends that in accordance with *State v. Williams*, 195 N.C. App. 554, 673 S.E.2d 394 (2009), *abrogated by State v. Bartlett*, 368 N.C. 309, 312, 776 S.E.2d 672, 674 (2015), the trial court is required by N.C. Gen. Stat. § 15A-977(f) to enter a written suppression 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." *Williams*, 195 N.C. App. at 555, 673 S.E.2d at 395 (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)). The *Williams* court explained that if these two requirements are satisfied, "the necessary findings of fact are implied from the denial

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of the motion to suppress.” *Id.* Defendant contends that because the trial court denied defendant’s motion from the bench without stating its rationale, findings, or conclusions, the court violated its statutory mandate and the case must be remanded.

In *State v. Bartlett*, however, our Supreme Court clarified the scope of N.C. Gen. Stat. § 15A-977(f) and the corresponding duties of the trial court:

A written determination setting forth the findings and conclusions is not necessary, but it is the better practice. *State v. Oates*, 366 N.C. 264, 268, 732 S.E.2d 571, 574 (2012). Although the statute’s directive is in the imperative form, only a material conflict in the evidence—one that potentially affects the outcome of the suppression motion—must be resolved by explicit factual findings that show the basis for the trial court’s ruling. *State v. Salinas*, 366 N.C. 119, 123–24, 729 S.E.2d 63, 66 (2012); *State v. Ladd*, 308 N.C. 272, 278, 302 S.E.2d 164, 168 (1983). When there is no conflict in the evidence, the trial court’s findings can be inferred from its decision. *State v. Munsey*, 342 N.C. 882, 885, 467 S.E.2d 425, 427 (1996). Thus, our cases require findings of fact only when there is a material conflict in the evidence and allow the trial court to make these findings either orally or in writing. To the extent that cases such as *Williams* suggest otherwise, they are disavowed.

Bartlett, 368 N.C. at 312, 776 S.E.2d at 674.

As the State points out, in this case there were no material conflicts in the evidence presented at the suppression hearing from which the court was required to enter its findings or conclusions into the record. Officer Saine testified at the hearing that he stopped the vehicle for two reasons, including a tag violation. The driver was

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running a “generic dealership advertisement” instead of the temporary or permanent tags required by law. After reviewing the footage from the DMVR, Officer Saine confirmed that the driver was operating the vehicle without a valid license plate. Because there was no contrary evidence presented, this Court can easily infer that trial court denied defendant’s motion to suppress because Officer Saine had reasonable suspicion to stop the vehicle for a tag violation. The trial court was not required to make any findings or conclusions to support its ruling from the bench.

III. Conclusion

The trial court did not err in failing to state specific findings of fact or conclusions of law when it denied defendant’s motion to suppress from the bench because there were no material conflicts in the evidence offered at the suppression hearing.

NO ERROR.

Judge DILLON concurs.

Judge ZACHARY concurs in result only by separate opinion.

Report per Rule 30(e).

ZACHARY, concurring in result only.

I concur with the conclusion reached in this appeal that the trial court did not violate the requirements of N.C. Gen. Stat. § 15A-977(a) and that defendant is not entitled to relief. I write separately to express my concern that, on the facts of this case, we should not have reached the merits of defendant's arguments regarding the trial court's compliance with N.C. Gen. Stat. § 15A-977(a).

"In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . ." N.C. R. App. P. 10(a)(1). "To be timely, an objection to the admission of evidence must be made at the time it is actually introduced at trial." . . . [See] *State v. Gladden*, 315 N.C. 398, 414, 340 S.E.2d 673, 684 ("[A] defendant is not entitled to relief where there was no objection made at the time the evidence was offered.").

State v. Snead, 368 N.C. 811, 816, 783 S.E.2d 733, 737-38 (2016) (quoting *State v. Ray*, 364 N.C. 272, 277 & n.1, 697 S.E.2d 319, 322 & n.1 (2010) (internal quotations and emphasis omitted)).

In this case, defendant failed to object to the admission of the challenged evidence at the time that it was admitted in the jury's presence. In addition, defendant has not argued that it was plain error to admit this evidence. As a result, defendant has waived review of the trial court's denial of his suppression motion for plain error. *State v. Lawrence*, 365 N.C. 506, 516, 723 S.E.2d 326, 333 (2012) ("To have an alleged error reviewed under the plain error standard, the defendant must 'specifically and distinctly' contend that the alleged error constitutes plain error. N.C.R. App. P. 10(a)(4)[.]").

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ZACHARY, J., concurring in result only.

It is true that in order for this Court to conduct a meaningful review of a trial court's ruling on a suppression motion, the trial court must enter an order that resolves material conflicts in the evidence presented at the hearing on the motion. However, in this case defendant has waived any review of the trial court's decision to deny his suppression motion. Given that the substantive issue of the admission of the challenged evidence is not before us, I would hold that we should not reach the issue of the failure of the trial court to enter an order memorializing its decision. For this reason, I concur only in the result reached in this case.