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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1044

Filed: 20 June 2017

Orange County, No. 12 CRS 53176

STATE OF NORTH CAROLINA

v.

STEPHEN DAVID BROWN

Appeal by defendant from judgment entered 6 June 2016 by Judge R. Allen Baddour, Jr. in Orange County Superior Court. Heard in the Court of Appeals 30 May 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Ashleigh P. Dunston, for the State.

Law Office of Matthew Charles Suczynski, PLLC, by Matthew C. Suczynski and Michael R. Paduchowski, for defendant-appellant.

ELMORE, Judge.

Defendant Stephen David Brown appeals from a judgment entered upon his guilty plea to driving while impaired. The trial court imposed a Level IV punishment and sentenced defendant to a suspended term of 120 days' imprisonment. The court placed defendant on supervised probation for eighteen months and ordered defendant

to serve an active term of forty-eight hours in the county jail. Defendant gave oral notice of appeal at the close of his plea hearing.

Defendant's sole argument on appeal is that the trial court erred by denying his motion to suppress the evidence against him because the arresting officer lacked the requisite reasonable suspicion required to conduct an investigatory stop of his vehicle under the Fourth Amendment. We disagree.

"[W]hen a criminal defendant files a motion to suppress challenging an initial investigatory stop, the trial court can deny that motion only if it concludes, after considering the totality of the circumstances known to the officer, that the officer possessed reasonable suspicion to justify the challenged stop." *State v. Jackson*, 368 N.C. 75, 78, 772 S.E.2d 847, 849 (2015). On appeal, "[t]he standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167–68, 712 S.E.2d 874, 878 (2011). Unchallenged findings of fact "are deemed to be supported by competent evidence and are binding on appeal." *Id.* at 168, 712 S.E.2d at 878. We review conclusions of law *de novo*. *Id.*

The reasonable suspicion necessary to justify such a stop is dependent upon both the content of information possessed by [the officer] and its degree of reliability. The standard takes into account the totality of the circumstances—the whole picture. Although a mere hunch does not create reasonable suspicion, the level of suspicion the standard

requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.

Navarette v. California, ___ U.S. ___, ___, 138 L. Ed. 2d 680, 686 (2014) (citations and internal quotation marks omitted). “An informant’s tip may provide the reasonable suspicion necessary for an investigative stop” so long as “the tip possesses sufficient indicia of reliability.” *State v. Hudgins*, 195 N.C. App. 430, 434, 672 S.E.2d 717, 719 (2009) (citation omitted); *see also State v. Maready*, 362 N.C. 614, 619–20, 669 S.E.2d 564, 567–68 (2008).

Here, the trial court held a hearing on defendant’s motion to suppress on 26 January 2015, and entered its order denying the motion on 3 May 2016. The trial court’s order contains twenty-one findings of fact, none of which are challenged by defendant and are thus binding on appeal. The court found that around 2:26 a.m. on Friday, 16 November 2012, Aaron Cecil observed defendant walking across a parking lot adjacent to a building that houses three establishments that serve alcohol. Cecil saw defendant was walking “deliberately” but in a “fumbling” manner. When defendant reached a silver van, Cecil saw that he had difficulty with his keys, which he dropped under the van, while attempting to open the van’s door. Concerned that defendant seemed intoxicated yet attempted to drive, Cecil called 911 and reported his observations to the operator. After defendant drove off, Cecil followed behind in his own vehicle, while remaining on the phone with the 911 operator. Cecil gave his

name and contact information to the 911 operator and the operator dispatched Officer Randy Villalta to investigate. Officer Villalta drove up beside Cecil while Cecil was still following defendant. Cecil pointed to defendant's van, and Officer Villalta followed the van for a short distance. Officer Villalta testified that he saw the van twice cross the centerline of the road, but video footage from his in-car camera did not show the lane deviations. Officer Villalta activated his blue lights and stopped defendant's van.

We conclude that these facts are sufficient, considering the totality of the circumstances, to create reasonable suspicion to justify the initial investigatory stop. Cecil gave specific details about when and where he first saw defendant, defendant's fumbling demeanor, and a description of defendant's vehicle. Cecil thus established that he had eyewitness knowledge of defendant's possible intoxication, which "lends significant support to the tip's reliability." *Navarette*, ___ U.S. at ___, 138 L. Ed. 2d at 687. Cecil also provided his tip through the 911 emergency communications system that "has some features that allow for identifying and tracing callers, and thus provide some safeguards against making false reports," *id.* at ___, 138 L. Ed. 2d at 688; he identified himself and provided his contact information to the 911 operator; and he followed defendant's vehicle and personally identified the vehicle to Officer Villalta. We conclude that Cecil's tip was supported by sufficient indicia of reliability

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such that, standing alone, it provided Officer Villalta with reasonable suspicion to conduct an investigatory stop of defendant's vehicle.

Accordingly, we hold the trial court did not err in denying defendant's motion to suppress, and we affirm the court's judgment entered upon his guilty plea to driving while impaired.

AFFIRMED.

Judges DIETZ and BERGER concur.

Report per Rule 30(e).