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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1237

Filed: 5 July 2017

Guilford County, No. 14 CRS 88608

STATE OF NORTH CAROLINA

v.

SANDY KEITH BASKINS

Appeal by defendant from order entered 18 July 2016 by Judge Susan E. Bray in Guilford County Superior Court. Heard in the Court of Appeals 18 April 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kevin G. Mahoney, for the State.*

*Marilyn G. Ozer for defendant-appellant.*

DAVIS, Judge.

Sandy Keith Baskins (“Defendant”) appeals from the trial court’s order denying his motion to suppress. On appeal, he primarily argues that the trial court failed to comply with the instructions on remand articulated by this Court in *State v. Baskins*, \_\_ N.C. App. \_\_, 786 S.E.2d 94 (2016) (hereinafter “*Baskins I*”). After careful review, we affirm the trial court’s order.

**Factual and Procedural Background**

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The facts giving rise to this appeal are set out in full in *Baskins I*. However, the pertinent facts are repeated below.

In the early morning hours of 6 October 2014, Detective M.R. McPhatter of the Greensboro Police Department “was parked at the Shell Station on High Point Road, in his unmarked black Chevrolet Camaro.” He was working with other law enforcement officers as part of a drug interdiction operation near a drop-off point of the China Bus Line, which runs from the Triad area to New York City.

When the bus arrived, several people exited. Two individuals drew the attention of Detective McPhatter because they were carrying small bags, “indicat[ing] a very short stay, such as one just to deliver or pick up drugs.” After quickly entering and leaving the Shell Station, the two individuals got into a red Buick sedan that was waiting outside the store.

Detective McPhatter noted the license plate of the Buick and “ran the number through the DMV and learned the registration had expired, as had the inspection . . . .” Detective McPhatter informed a second officer, Detective M.P. O’Hal, who confirmed that both the vehicle’s registration and the deadline for inspection of the vehicle had expired.

Detective O’Hal conducted a traffic stop of the Buick. Defendant was sitting in the driver’s seat while the two individuals who had exited the bus were passengers in the vehicle. Detective O’Hal asked Defendant to produce his driver’s license, and

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Defendant informed Detective O’Hal that his license had been revoked. Detective O’Hal discovered that heroin was present in the vehicle, and Defendant subsequently admitted that he and the two passengers were delivering drugs to another individual. Defendant was ultimately placed under arrest.

On 27 April 2015, Defendant moved to suppress evidence of the heroin found in the vehicle, alleging that the “evidence was obtained by means of searches and seizures without any warrant or other lawful authority[.]” On 10 July 2015, the trial court entered an order denying Defendant’s motion.

A jury trial was held, and Defendant was convicted of trafficking by possession of more than 28 grams of heroin and trafficking by transporting more than 28 grams of heroin. Defendant appealed the denial of his motion to suppress to this Court, arguing that the trial court had erred in concluding his vehicle was lawfully stopped by Detective O’Hal. *Baskins I*, \_\_ N.C. App. at \_\_, 786 S.E.2d at 97-98. He contended there was insufficient evidence to support the trial court’s findings that Detective O’Hal could tell from looking at a DMV computer screen in his vehicle that either (1) the Buick’s registration had expired; or (2) the deadline for the Buick’s inspection had expired. *Id.* at \_\_, 786 S.E.2d at 97-98.

With regard to the trial court’s finding regarding the Buick’s registration status, we held in *Baskins I* that the “portions of findings of fact . . . indicating that the Buick’s registration had expired [we]re supported by substantial record

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evidence[.]” *Id.* at \_\_\_, 786 S.E.2d at 98. However, applying the relevant statute, we determined that Defendant was operating the Buick during a fifteen-day grace period provided by law — meaning that the Buick’s expired registration could not have served as a legitimate ground for the stop of the vehicle. *Id.* at \_\_\_, 786 S.E.2d at 98.

We then turned to the question of whether the Buick’s inspection status gave Detective O’Hal a lawful reason to conduct the traffic stop. During the suppression hearing, Detective O’Hal had “testified that the information he received from DMV indicated that the Buick’s inspection was not current.” *Id.* at \_\_\_, 786 S.E.2d at 98. He also stated that “State’s Exhibit 1, a printout of a DMV request for the Buick, was *identical* to the information he received on 6 October 2014” and that “he based his stop solely on the information included in State’s Exhibit 1.” *Id.* at \_\_\_, 786 S.E.2d at 98 (emphasis added).

However, upon reviewing State’s Exhibit 1, we determined that “[t]his DMV registration request response printout contained *no* information indicating the status of the Buick’s inspection.” *Id.* at \_\_\_, 786 S.E.2d at 97. Thus, we reasoned, “[i]f [his] testimony was correct, then Detective O’Hal could not have known that the Buick’s inspection was not current.” *Id.* at \_\_\_, 786 S.E.2d at 98.

Because we concluded that there was “no record evidence indicating that Detective O’Hal was provided information indicating that the Buick had not been properly inspected prior to the 6 October 2014 stop[.]” we remanded the case to the

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trial court for additional findings of fact and conclusions of law regarding Detective O’Hal’s knowledge of the inspection status of the Buick prior to the traffic stop. *Id.* at \_\_, 786 S.E.2d at 99.<sup>1</sup> In our decision, we noted that “it is possible Detective O’Hal had access to additional information concerning the inspection status of the Buick[.]” *Id.* at \_\_, 786 S.E.2d at 98.

On remand, the trial court held a hearing on 6 July 2016 to reconsider Defendant’s motion to suppress. The State presented testimony from Detective O’Hal and Lieutenant Gary Ollis, an officer with the license and theft bureau of the North Carolina Division of Motor Vehicles. During this hearing, Detective O’Hal clarified his earlier testimony, stating that State’s Exhibit 1 did not, in fact, reflect the entirety of the information possessed by him prior to conducting the stop of the Buick. He acknowledged that State’s Exhibit 1 “was not the complete message” and that he had mistakenly “thought that [State’s Exhibit 1] *was* the complete message until [he] noticed that there was one piece missing.” (Emphasis added.) He testified that the DMV “computer database” was reflected on a “scroll-down screen” and “[t]he very bottom part of that scroll-down screen” would have displayed “an asterisk inspection violation . . . .” He stated that on 6 October 2014 the bottom of this scroll-down screen provided information that the Buick “was last inspected on 08/31/2013 . . . .”

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<sup>1</sup> Additionally, we determined that the trial court’s conclusion of law in its order was insufficient in that it did “not specifically state that the stop was justified based upon any specific violation of a traffic law.” *Id.* at \_\_, 786 S.E.2d at 99.

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On 18 July 2016, the trial court entered a new order denying Defendant's motion to suppress, concluding that based on the testimony provided at the hearing "Detective O'Hal's stop of the vehicle was justified based on Defendant's violation of the inspection law . . . ." Defendant gave oral notice of appeal.

**Analysis**

In his present appeal, Defendant argues that the trial court erred once again by denying his motion to suppress on remand and that in so ruling it failed to comply with our decision in *Baskins I*. "The 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. Jackson*, 368 N.C. 75, 78, 772 S.E.2d 847, 849 (2015) (citation and quotation marks omitted). "An appellate court accords great deference to the trial court's ruling on a motion to suppress because the trial court is entrusted with the duty to hear testimony (thereby observing the demeanor of the witnesses) and to weigh and resolve any conflicts in the evidence." *State v. Hodges*, 195 N.C. App. 390, 395, 672 S.E.2d 724, 728 (2009) (citation and quotation marks omitted).

In its order on remand denying Defendant's motion to suppress, the trial court made the following pertinent findings of fact and conclusions of law:

2. Detective O'Hal (and Officer McPhatter) had the ability to see that the inspection on the vehicle Defendant Sandy Keith Baskins was driving was expired when he ran the tag number through CAD/DMV from his in-car

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computer.

3. Detective O’Hal learned that the Park Avenue Buick (tag CAD5127) Defendant Sandy Keith Baskins was driving had last been inspected 8-31-13. This information was at the bottom of a scroll down screen.
4. Detective McPhatter also researched this same information prior to Detective O’Hal.

....

12. Both officers saw on the computer screen in their vehicles that the inspection had expired on the car Defendant Sandy Baskins was driving.

....

14. Detective O’Hal had probable to [sic] cause to believe Defendant Sandy Keith Baskins had committed such [sic] infraction and was authorized to detain him for a reasonable period of time to issue him a citation.

....

This Court concludes as a matter of law that Detective O’Hal’s stop of the vehicle was justified based on Defendant’s violation of the inspection law (NCGS 20-183.4C(a)). [sic]

On appeal, Defendant argues that (1) these findings of fact are unsupported by competent evidence because the State “offered no admissible evidence of the contents of the computer screen”; and (2) the trial court failed to comply with the instructions of this Court in *Baskins I* by denying his motion to suppress without requiring the

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presentation of additional non-testimonial evidence. We address each argument in turn.

First, Defendant contends that Detective O’Hal’s testimony regarding the information displayed on the computer screen in his vehicle violated Rule 1002 of the North Carolina Rules of Evidence. This “so-called ‘best evidence’ rule . . . requires the exclusion of secondary evidence offered to prove the contents of a document whenever the original document itself is available.” *U.S. Leasing Corp. v. Everett, Creech, Hancock & Herzig*, 88 N.C. App. 418, 423, 363 S.E.2d 665, 668 (citation, quotation marks, and emphasis omitted), *disc. review denied*, 322 N.C. 329, 369 S.E.2d 364 (1988). Defendant argues that in order to comply with the best evidence rule, the State was required to actually introduce into evidence an exhibit depicting the computer screen as it appeared to Detective O’Hal on 6 October 2014. We disagree.

As the State correctly notes, trial courts are not bound by the Rules of Evidence in determining the admissibility of evidence. *See* N.C. R. Evid. 104(a) (“Preliminary questions concerning . . . the admissibility of evidence shall be determined by the court . . . . In making its determination it is not bound by the rules of evidence except those with respect to privileges.”). Thus, the best evidence rule did not prevent the trial court from considering Detective O’Hal’s testimony at the 6 July 2016 hearing.

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Second, Defendant argues that because no non-testimonial evidence was presented at the suppression hearing, the trial court failed to comply with this Court's instructions on remand. Once again, we disagree. Our opinion in *Baskins I* did not expressly require the admission of non-testimonial evidence. We recognized the possibility that "Detective O'Hal had access to additional information concerning the inspection status of the Buick," *Baskins I*, \_\_ N.C. App. at \_\_, 786 S.E.2d at 98, and stated that on remand the trial court "may, in its discretion, take additional evidence in order to comply with this holding." *Id.* at \_\_, 786 S.E.2d at 100. Nothing in our decision mandated that the trial court rely on *non-testimonial* evidence in reconsidering Defendant's motion to suppress.

Our holding in *Baskins I* was based on our concern that Detective O'Hal's testimony at the original suppression hearing appeared to be inconsistent with State's Exhibit 1 — which made no mention of the Buick's inspection status. On remand, Detective O'Hal's testimony clarified this issue by explaining (1) that his computer screen had, in fact, contained information at the time the Buick was stopped showing that the deadline for the vehicle's inspection had expired; and (2) why this information had not been depicted on State's Exhibit 1. Therefore, in light of this testimony, we are satisfied that competent evidence supported the trial court's findings.

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Finally, the trial court complied with our instructions in *Baskins I* to set out conclusions of law that specifically stated the justification for the traffic stop. *See id.* at \_\_\_, 786 S.E.2d at 99-100. On remand, the trial court entered an order containing a new conclusion of law that Detective O’Hal’s stop of the Buick “was justified based on Defendant’s violation of the inspection law (NCGS 20-183.4C(a) [sic].” Unlike the trial court’s conclusion of law at issue in *Baskins I*, the conclusion of law in the 18 July 2016 order provided the specific reason why the traffic stop of Defendant’s vehicle was legally justified — namely, the violation of N.C. Gen. Stat. § 20-183.4C(a).

**Conclusion**

For the reasons stated above, we affirm the trial court’s 18 July 2016 order.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).