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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-183

Filed: 2 January 2018

Wake County, Nos. 15 CRS 216616–17, 15 CRS 4405

STATE OF NORTH CAROLINA,

v.

TERRY TERRALE MOORE.

Appeal by defendant from judgment entered 3 June 2016 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 23 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Perry J. Pelaez, for the State.

Lisa Miles for defendant-appellant.

ELMORE, Judge.

Terry Terrale Moore (defendant) was convicted by a jury of possession with intent to sell or deliver marijuana, felony possession of marijuana in excess of 1.5 ounces, keeping and maintaining a vehicle for controlled substances, and possession of drug paraphernalia for marijuana; he subsequently pled guilty to obtaining habitual felon status. On appeal, defendant argues the trial court erred in denying

his motion to suppress evidence obtained from a traffic stop that he contends was unconstitutionally based on an officer's mere hunch. We conclude that the traffic stop was constitutionally based on reasonable suspicion and therefore affirm the judgment of the trial court.

I. Background

At approximately 3:00 p.m. on 25 July 2015, defendant was lawfully driving alone on U.S. 1 North in Wake County. Officer Tyler Webb of the Wake Forest Police Department was on routine patrol on U.S. 1 at that time. As Officer Webb drove alongside defendant's vehicle, his attention was drawn to defendant's posture and body language. The officer described defendant as having a "death grip" on the steering wheel. Spurred by what he considered abnormal behavior, Officer Webb began to investigate defendant while they each continued driving.

The officer first slowed down and pulled behind defendant's vehicle in the right-hand lane so he could run the vehicle's registration plate through a database known as CJLEADS (Criminal Justice Law Enforcement Automated Data Services). The database returned information about the vehicle that included a picture of its female registered owner, who was clearly not defendant. Officer Webb then queried the database to see if any other individuals were associated with the registered address of the vehicle's owner. The query produced a list that included photographs, criminal history, and driver's license status of all individuals associated with that

address, and the officer believed that one of the photographs on his screen was of defendant. The database indicated the person in the photograph had numerous charges for driving while license revoked and did not have a current driver's license. Officer Webb then sped up and pulled alongside defendant's vehicle to get a better look at defendant and compare him to the photograph. After satisfying himself that defendant matched the photograph, the officer pulled defendant over for suspicion of driving without a valid license.

Officer Webb approached the front passenger-side door of defendant's vehicle, where defendant had fully lowered the window. As soon as Officer Webb got to the open window, he smelled marijuana fumes coming from inside the vehicle. The officer obtained defendant's identifying information and subsequently determined that defendant was not actually the person whose photograph had appeared in the database. However, based on the odor of marijuana, Officer Webb decided to call another officer to the scene for assistance in searching defendant's vehicle. Before conducting the search, Officer Webb detained defendant by putting him in handcuffs in the back of his patrol car because defendant was passively resisting Officer Webb.[1] The officers found approximately 2.65 ounces of marijuana, plastic bags for packaging, and $2,450.00 in several denominations of cash in the vehicle's center

[1] Officer Webb described "passive resistance" as acting in a way that prevented him from doing his job and as a threat to officer safety.

console. Upon discovering the marijuana and cash, Officer Webb informed defendant that he was under arrest.

Defendant was indicted for possession with intent to sell or deliver marijuana, felony possession of marijuana in excess of 1.5 ounces, keeping and maintaining a vehicle for controlled substances, possession of drug paraphernalia for marijuana, and obtaining habitual felon status. Prior to trial, defendant filed a motion to suppress evidence gathered during and as a result of the traffic stop. The trial court conducted a pretrial suppression hearing in which defendant presented no evidence, while Officer Webb was the only witness to testify for the State. At the conclusion of the hearing, the court orally denied defendant's motion to suppress. The court later entered a written order to supplement the record, which was consistent with its oral order denying defendant's motion.

At trial, the State introduced the marijuana, plastic bags, and cash into evidence over defendant's objection. The jury ultimately found defendant guilty of possession with intent to sell or deliver marijuana, felony possession of marijuana in excess of 1.5 ounces, keeping and maintaining a vehicle for controlled substances, and possession of drug paraphernalia for marijuana. Defendant then pled guilty to obtaining habitual felon status. The court sentenced defendant to an active term of 24 to 41 months in the custody of the Division of Adult Correction, to include substance abuse treatment, plus costs. Defendant gave notice of appeal in open court.

II. Analysis

Defendant contends the trial court erred by denying his motion to suppress evidence seized from his vehicle because the traffic stop was based on a mere hunch that defendant was engaged in unlawful activity, in violation of the Fourth Amendment to the United States Constitution.[2] We disagree.

A. Standard of Review

When reviewing a trial court's order on a motion to suppress, this Court determines "whether the trial court's underlying findings of fact are supported by competent evidence and whether those factual findings in turn support the trial court's ultimate conclusions of law." *State v. Johnson*, ___ N.C. ___, ___, 803 S.E.2d 137, 139 (2017) (citation, internal quotation and alteration marks omitted). Unchallenged findings of facts "are deemed to be supported by competent evidence and are binding on appeal," while "[c]onclusions of law are reviewed *de novo* and are subject to full review." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citation omitted).

B. Discussion

[2] On appeal, defendant also contends that the traffic stop violated his rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. However, this argument was not made before the trial court and is therefore waived. N.C. R. App. P. 10(a)(1); *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934) ("[T]he law does not permit parties to swap horses between courts in order to get a better mount . . . .").

A traffic stop constitutes a seizure that must comport with the Fourth Amendment to the United States Constitution. *Johnson*, ___ N.C. at ___, 803 S.E.2d at 138–39. An officer may make a traffic stop if the standard of reasonable suspicion is met. *Id.*

> The reasonable suspicion standard is less demanding . . . than probable cause and requires a showing considerably less than preponderance of the evidence. Police officers must simply be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. The reasonable suspicion standard is therefore satisfied if an officer has some minimal level of objective justification for making the stop. To determine whether reasonable suspicion exists, courts must look at the totality of the circumstances, as viewed from the standpoint of an objectively reasonable police officer.

Id. (citations and internal quotation marks omitted). An officer witnessing an actual violation of the law is sufficient to make a traffic stop constitutional, but it is not necessary. *Id.* at ___, 803 S.E.2d at 141. "To meet the reasonable suspicion standard, it is enough for the officer to *reasonably believe* that a driver has violated the law." *Id.* (citations omitted).

Additionally, the seizure of a person based on a reasonable mistake as to that person's identity is constitutional. *State v. Lynch*, 94 N.C. App. 330, 333, 380 S.E.2d 397, 399 (1989) ("[A]n arrest based upon a reasonable mistake as to the arrested individual's identity is valid." (citing *Hill v. California*, 401 U.S. 797, 91 S. Ct. 1106, 28 L. Ed. 2d 484 (1971))). In *Lynch*, a police officer mistakenly believed that the

defendant was a different person for whom outstanding arrest warrants existed. *Id.* The officer made a traffic stop of the vehicle the defendant was riding in to confirm the defendant's identity. *Id.* This Court stated that "[p]ictures of defendant and the other individual show that they are sufficiently similar in appearance that the officer's mistake was not unreasonable." *Id.* Accordingly, we held that the traffic stop had a reasonable basis and was therefore valid. *Id.* We also noted that "[w]hen an officer is unsure of the identity of a suspect, he must take reasonable steps to confirm the identity of the individual under suspicion." *Id.* (citations omitted).

In this case, the trial court made the following relevant, unchallenged findings of fact:

> 1. At approximately 3:00 p.m. on July 25, 2015, Officer T. Webb, a three year veteran of the Wake Forest Police Department, was traveling on U.S. 1 North near Caviness Farms Avenue when he noted the automobile driven by the Defendant in the lane to the right of the officer's marked patrol car.
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> 2. His attention was drawn to the Defendant because as the patrol car was beside the Defendant's vehicle, the Defendant appeared abnormally tense with what Officer Webb described as a "death grip" on the steering wheel.
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> 3. Officer Webb reduced his speed, and moved in behind the Defendant's vehicle, and ran the vehicle's license plate through the CJLEADS database.
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> 4. The information from CJLEADS reported that the registered owner of the vehicle was a female. By inquiring further, Officer Webb was able to identify

> other persons associated with the address of the registered owner of the vehicle. In addition to other pertinent information, photographs of these associated persons were provided by CJLEADS.
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> 5. One person who was associated with the address of the registered owner of the vehicle appeared, by the photograph provided, to Officer Webb to be the person driving. That person, CJLEADS reported, had numerous citations for driving with license revoked, and did not have a current driver's license.
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> 6. Officer Webb moved back into a position beside the Defendant's vehicle, and compared the picture provided by CJLEADS to the driver of the vehicle, and after confirming his belief that the person driving was the same as the person listed as having no current driver's license, initiated a traffic stop of the Defendant.

There is no dispute that the officer would have been justified in stopping a vehicle driven by the individual whose photograph was displayed by CJLEADS. *Johnson*, ___ N.C. at ___, 803 S.E.2d at 141 ("To be sure, when a defendant does in fact commit a traffic violation, it is constitutional for the police to pull the defendant over."). At issue then is whether Officer Webb reasonably believed, and took reasonable steps to confirm, that defendant was the man in the photograph.

In *Lynch*, photographs of two individuals were available when reviewing whether the officer's mistaken identification was reasonable. 94 N.C. App. at 333, 380 S.E.2d at 399. Here, in contrast, no photographs were presented of the man who Officer Webb mistakenly believed was driving the vehicle he was following. While the ability to make a direct comparison may aid in our review, it is not necessary because reasonableness is "judged from the perspective of a reasonable officer on the

scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

Like the officer in *Lynch*, the officer here reasonably believed that defendant was someone else. 94 N.C. App. at 333, 380 S.E.2d at 399. In both cases, the mistake was based on the physical appearance of the defendant. *Id.* In this case — according to the trial court's unchallenged findings of fact, which are binding on appeal — Officer Webb believed that defendant was the man whose photograph was displayed by CJLEADS. Additionally, after first seeing the photograph on CJLEADS, Officer Webb pulled his patrol car alongside defendant's vehicle and confirmed his belief that defendant was the man in the photograph.

We find that the officer's belief that defendant matched a photograph based on direct comparison was reasonable. Since the man whose photograph appeared in CJLEADS did not have a valid driver's license, the officer had reasonable suspicion that defendant was driving without a valid driver's license. Further, we find that pulling alongside defendant's vehicle to get a second look at him, rather than relying on a single observation, was a reasonable step in an attempt to confirm defendant's identity.

Defendant has not advanced any arguments that the search of his vehicle was unlawful, other than his contention that it was based on an unlawful stop. Since we hold that the traffic stop was lawful, there is no reason to disturb the trial court's

judgment. N.C. R. App. P. 28(a); *State v. Earls*, 234 N.C. App. 186, 192, 758 S.E.2d 654, 658 (2014) ("It is not the role of this Court to craft defendant's arguments for him.").

III. Conclusion

We conclude the trial court's findings of fact support its conclusions that the officer had reasonable suspicion to justify a traffic stop of defendant for driving without a valid driver's license, and that the officer's mistaken belief as to the identity of the driver was reasonable. Therefore, we affirm the trial court's denial of defendant's motion to suppress.

AFFIRMED.

Judges STROUD and TYSON concur.

Report per Rule 30(e).