An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-685

Filed: 6 February 2018

Wayne County, No. 15 CRS 50840

STATE OF NORTH CAROLINA

v.

EDILZAR ROCAEL MAZARIEGOS

Appeal by defendant from judgment[1] entered 24 October 2016 by Judge Benjamin G. Alford in Wayne County Superior Court. Heard in the Court of Appeals 2 January 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Lee J. Miller, for the State.

Stephen G. Driggers for defendant appellant.

BRYANT, Judge.

Where the officer had reasonable grounds to believe defendant's faculties were appreciably impaired, the trial court did not err in denying defendant's motion to suppress, and we affirm.

[1] We note the judgment and several other documents in the record on appeal misspell defendant's first name as "Edllar."

Defendant was arrested and charged with driving while impaired ("DWI") and driving without a license on the evening of 1 March 2015. He pled guilty in district court on 21 January 2016 and gave notice of appeal to superior court.

On 26 January 2016, defendant filed a "Motion to Suppress Evidence Flowing from Illegal Arrest" asserting that Goldsboro Police Officer T.D. Meitler lacked probable cause to arrest him for DWI as required by U.S. Const. amends. IV, XIV and N.C. Const. art. 1, § 19. The trial court denied his motion by order entered 1 November 2016.

While reserving the right to appeal the denial of his motion to suppress, *see* N.C.G.S. § 15A-979(b) (2015), defendant pled guilty in superior court to DWI and driving without a license. Upon findings of three grossly aggravating factors, one aggravating factor, and no mitigating factors, the trial court imposed an Aggravated Level One punishment for DWI, sentencing defendant to twenty-four months in the Misdemeanant Confinement Program. The court entered a prayer for judgment continued on the remaining offense. Defendant gave timely notice of appeal.

In his lone argument on appeal, defendant claims the trial court erred in denying his motion to suppress the evidence obtained following his arrest by Officer Meitler on the evening of 1 March 2015.

> "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. Biber*, 365 N.C. 162, 167–68, 712 S.E.2d 874, 878 (2011). When "the trial court's findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal." *Id.* at 168, 712 S.E.2d at 8878. Conclusions of law are reviewed *de novo*. *Id.*

State v. Williams, 225 N.C. App. 636, 639, 738 S.E.2d 211, 214 (2013).

"An arrest is constitutionally valid when the officers have probable cause to make it." *State v. Streeter*, 283 N.C. 203, 207, 195 S.E.2d 502, 505 (1973); *see also* N.C.G.S. § 15A-401(b)(1) (2015). "Probable cause for an arrest has been defined to be a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty." *Streeter*, 283 N.C. at 207, 195 S.E.2d at 505 (citation omitted). Our Supreme Court has explained that

> "[p]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." This commonsense, practical inquiry is to be based upon "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."

State v. Benters, 367 N.C. 660, 664–65, 766 S.E.2d 593, 598 (2014) (quoting *State v. Riggs*, 328 N.C. 213, 219, 400 S.E.2d 429, 433 (1991) (internal citations omitted)). "Whether probable cause exists to justify an arrest depends on the 'totality of the circumstances' present in each case." *State v. Sanders*, 327 N.C. 319, 339, 395 S.E.2d 412, 425 (1990) (citations omitted) (quoting *Massachusetts v. Upton*, 466 U.S. 727, 80

L.Ed.2d 721 (1984)).

The trial court made the following findings of fact in support of its ruling:

> 2. That Officer Meitler observed the defendant fail to yield at a stop light at the intersection of Elm Street and John Street while making a left turn.
>
> 3. That the vehicle with the right of way had to apply its brakes and came within 8 feet of striking defendant's vehicle.
>
> 4. . . . [A] traffic stop was initiated by Officer Meitler for the failure to yield violation.
>
> 5. That upon approach of the defendant's vehicle, Officer Meitler immediately smelled a strong odor of alcohol when he was approximately 3 to 4 feet away from the defendant's vehicle.
>
> 6. That the defendant was driver of the vehicle, his girlfriend was seated in the front passenger area, and their minor child was in the middle passenger area.
>
> 7. That the defendant was very belligerent towards his girlfriend and the officer during the initial encounter to the point where the officer believed he was dealing with a potential domestic violence situation.
>
> 8. That another officer arrived on the scene to assist Officer Meitler.
>
> 9. That the defendant and his girlfriend were separated from each other . . . .
>
> 10. That Officer Meitler did not detect an odor of alcohol from the defendant's girlfriend.
>
> 11. That the other officer administered a portable breath test to the defendant and only acquired one sufficient

> sample.
>
> 12. That the defendant did not proficiently speak English at the time of the encounter.
>
> 13. That no Standardized Field Sobriety Tests were conducted because of the language barrier with the defendant.
>
> 14. That Officer Meitler believed that the defendant was appreciably impaired on alcohol despite the absence of any Standardized Field Sobriety Tests.
>
> 15. That the defendant continued to be belligerent and combative throughout the encounter with the officers.

Based on these findings the court concluded that, "under the totality of the circumstances, there were reasonable grounds of suspicion, supported by circumstances strong in themselves, to warrant a cautious man in believing defendant was guilty of Driving While Impaired[,]" and that "Officer Meitler had probable cause to place the defendant under arrest . . . ."

Defendant first challenges several of the trial court's findings as unsupported by the evidence. With regard to Finding of Fact No. 7, defendant takes exception to the characterization of his conduct toward his girlfriend as "very belligerent" when Officer Meitler instead described him as "very verbally combative" toward her. Officer Meitler further portrayed defendant as "batting with his hand at her hand" while his girlfriend spoke to the officer and was "very loud and very uncooperative" during this exchange. As "belligerent" is commonly defined as "[i]nclined to or

exhibiting assertiveness, hostility, truculence, or *combativeness*, "Belligerent," *Webster's Third New Int'l Dictionary* (1966) (emphasis added), we find no merit to defendant's argument.

Defendant objects to Finding of Fact No. 10 as "incomplete." He contends Officer Meitler was unable to detect an odor of alcohol on either defendant or his girlfriend once they were outside the vehicle. As a general matter, "[i]t is immaterial that the evidence may support a finding not made by the superior court. Our review is limited to whether competent evidence supports the findings that were made." *Ferguson v. Killens*, 129 N.C. App. 131, 135, 497 S.E.2d 722, 724 (1998).

The transcript reflects that, when asked if he was able to identify the source of the "strong odor of alcohol" he detected as he approached defendant's vehicle, Officer Meitler responded, "It was coming from somewhere within [defendant's] vicinity, his bubble in the seat, that's all I could tell." He later confirmed he was "not able to determine whether the alcohol smell was from [defendant.]" Although Finding of Fact No. 10 is consistent with the officer's testimony, we note the trial court purported to rely on "the odor of alcohol of the defendant" as part of its probable cause determination. In undertaking our own *de novo* review of the court's legal conclusion, we will consider the facts as stated by Officer Meitler.

Defendant next claims the evidence does not support Finding of Fact No. 11, inasmuch as the officer who administered the alco-sensor test reported to Officer

Meitler that defendant "did [only] a half blow into" the device. As the State notes in response, the officer also reported that defendant "blew a .17" on the alco-sensor, which tends to support the trial court's finding that defendant provided one "sufficient sample." We find it unnecessary to resolve this dispute, however, given the trial court's explicit decision to exclude the result of defendant's alco-sensor test from its probable cause analysis. The State likewise does not rely on the alco-sensor result in arguing in favor of probable cause. Therefore, we will disregard the contested portion of Finding of Fact No. 11 for the purpose of determining the existence of probable cause. *See State v. Maready*, 362 N.C. 614, 618–19, 669 S.E.2d 564, 567 (2008).

Defendant also contests Finding of Fact No. 15, arguing that the evidence does not show he "continued to be belligerent and combative throughout the encounter with the officers." We disagree. In his unrebutted testimony, Officer Meitler portrayed defendant as loud, argumentative, and "very uncooperative" with both officers throughout the traffic stop. Although defendant suggests the trial court "overlook[ed] the language barrier that played a part in the encounter[,]" the court made reference to the issue in Findings of Fact Nos. 12 and 13.

Having addressed defendant's exceptions to the trial court's findings, we turn to his claim that the court erred in concluding that "Officer Meitler had probable cause to place the defendant under arrest for Driving While Impaired" in violation of

N.C.G.S. § 20-138.1(a) (2015). "For a defendant to be guilty of driving while impaired . . . the State must prove 'that defendant had ingested a sufficient quantity of an impairing substance to cause his faculties to be appreciably impaired.' " *State v. Gregory*, 154 N.C. App. 718, 721, 572 S.E.2d 838, 840 (2002) (quoting *State v. Phillips*, 127 N.C. App. 391, 393, 489 S.E.2d 890, 891 (1997)).

We agree with the trial court that Officer Meitler had reasonable grounds to believe defendant's faculties were appreciably impaired. As found by the court, Officer Meitler observed defendant operate his vehicle in an unsafe manner by failing to yield to oncoming traffic when executing a left turn. After stopping defendant's vehicle, Officer Meitler detected a strong odor of alcohol emanating from defendant's location in the driver's seat. Defendant behaved in a loud and combative manner and was "very uncooperative" with Officer Meitler and a second officer who attempted to administer an alco-sensor test. Finally, although it is not reflected in the trial court's written findings, Officer Meitler testified that defendant "slurred his . . . words" in a manner suggestive of impairment. Because the evidence of defendant's slurred speech was clear and uncontested, we may consider this fact in support of our probable cause determination.[2] *See State v. Munsey*, 342 N.C. 882, 885, 467 S.E.2d

[2] Officer Meitler also testified that his fellow officer found a half-empty bottle of tequila under the passenger seat of defendant's vehicle. *See generally State v. Coffey*, 65 N.C. App. 751, 756–57, 310 S.E.2d 123, 127 (1984) ("[I]t is sufficient if the various officers who participate in an investigation and arrest have the probable cause information between them."). While this fact would contribute to probable cause, *see State v. Teate*, 180 N.C. App. 601, 607, 638 S.E.2d 29, 33 (2006), it is not clear from the testimony when the bottle was discovered. Therefore, we do not consider it.

425, 427 (1996) ("If there is no conflict in the evidence on a fact, failure to find that fact is not error. Its finding is implied from the ruling of the court." (citation omitted)); *see also Williams*, 225 N.C. App. at 640, 738 S.E.2d at 214 (2013) (considering the defendant's "slurred speech" as a factor establishing impairment); *State v. Teate*, 180 N.C. App. 601, 607, 638 S.E.2d 29, 33 (2006) (same).

Defendant cites to a series of cases in which an individual indicium of the defendant's impairment was more pronounced than in the case *sub judice*, such as the faulty driving described in *Steinkrause v. Tatum*, 201 N.C. App. 289, 295, 689 S.E.2d 379, 383 (2009), or the "extreme[ ] combative[ness]" of the defendant in *Gregory*, 154 N.C. App. at 720, 572 S.E.2d at 839. Courts have long recognized, however, that "probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *See generally Illinois v. Gates*, 462 U.S. 213, 232, 76 L. Ed. 2d 527, 544 (1983). We are satisfied the constellation of factors observed by Officer Meitler would prompt a reasonable and prudent person to believe it likely that defendant's faculties were appreciably impaired by alcohol. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges HUNTER, JR., and INMAN concur.

Report per Rule 30(e).