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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-721

Filed: 6 February 2018

Guilford County, Nos. 13-CRS-98087, 13-CRS-98092-94, 13-CRS-98097, 14-CRS-24059

STATE OF NORTH CAROLINA

v.

TIMOTHY WADDELL DAVIS, Defendant.

Appeal by Defendant from order entered 12 August 2015 by Judge Vance Bradford Long in Guilford County Superior Court. Heard in the Court of Appeals 11 January 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Daniel S. Hirschman, for the State.

Clifford Clendenin & O'Hale, LLP, by Daniel A. Harris, for the Defendant.

DILLON, Judge.

Timothy Waddell Davis ("Defendant") appeals from the trial court's order denying his motion to suppress evidence discovered by police during a traffic stop. Defendant argues that the trial court's factual findings are manifestly unsupported by the conflicting evidence presented at trial. We affirm.

I. Background

Defendant's arguments in this case rely on the contradictions between the State's recitation of the facts surrounding this case and his own. In its order denying Defendant's motion to suppress, the trial court found the following facts:

On 22 November 2013, officers from the Guilford County DWI Task Force assisted the Guilford County Sheriff's Office with a seatbelt enforcement initiative in Greensboro. An officer stood on the corner of a well-traveled intersection and served as a "spotter," looking into vehicles for seatbelt violations as they stopped at the traffic light. When the spotting officer identified a violation, he would approach the car and ask the driver to pull into a gas station just through the intersection where additional officers would cite the driver for the violation.

The spotting officer noticed a white Toyota Camry pull up to the traffic light. From behind the vehicle, the officer recognized that the driver, Defendant, was not wearing a seatbelt. The officer approached the Camry from behind and positioned himself beside the driver's side window, informed Defendant that he was being cited for a seatbelt violation, and requested that Defendant pull into the gas station to speak with the officers there. Defendant did not respond, but the spotting officer interpreted his body language as having understood the request to stop. The stopping officer radioed in to an officer at the gas station to look out for the white Camry.

When the light turned green, the Camry drove past the gas station and did not stop. An officer waiting at the gas station noticed the Camry drive by and pulled out of the station after it. The officer pulled the Camry over and initiated a traffic stop. When asked for his license and registration, Defendant gave the officer the rental information for the vehicle and a false name. The officer searched for the given name in his database, found no results, and then returned to Defendant's vehicle. When asked if the name he gave was false, Defendant responded by cursing the officer and driving away. The officer pursued Defendant in his patrol car. Defendant threw something from his window during the pursuit. The pursuing officer ultimately apprehended and arrested Defendant, and additional officers discovered that Defendant had thrown cocaine from his car.

Defendant was indicted for felony fleeing in a motor vehicle, multiple charges relating to trafficking cocaine, and having attained habitual felon status. Defendant made a motion to suppress all evidence discovered following the attempted stop, but the trial court denied the motion. Defendant entered an *Alford* plea of guilty to all charges, but reserved his right to appeal the denial of his motion to suppress. Defendant appeals.

II. Analysis

Defendant argues that his motion to suppress was improperly denied, contending that many of the trial court's findings are not supported by the evidence.

"On appeal from denial of a motion to suppress, the trial court's findings of fact are binding when supported by competent evidence, while conclusions of law are 'fully reviewable' by the appellate court." *State v. Icard*, 363 N.C. 303, 308, 677 S.E.2d 822, 826 (2009). Evidence may still be competent to support a trial court's findings of fact in the face of other, contradictory evidence. *State v. Buchanan,* 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001). Contradictions in evidence may affect the weight given to them by the fact-finding body, here the trial court, but contradictions alone do not render evidence incompetent. *See State v. Coleman*, 270 N.C. 357, 364, 154 S.E.2d 485, 490 (1967) ("Any lack of assurance or uncertainty . . . affects only the weight and credibility, and not the admissibility of [the] testimony.").

Defendant specifically challenges portions of four findings regarding certain details of the investigative stop, namely: (1) from which side of Defendant's vehicle the spotting officer saw the seatbelt violation; (2) whether Defendant's window was initially rolled up or down; (3) whether the spotting officer had a full conversation with Defendant; and (4) when Defendant actually buckled his seatbelt. Defendant points out that the spotting officer initially stated he first observed the seatbelt violation from the right side of Defendant's vehicle, through windows that were already rolled down. The officer also testified on direct examination that Defendant did not verbally respond to anything the spotting officer said, but that Defendant's body language suggested he had heard the officer. Defendant's attorney confronted

the spotting officer on cross examination with notes the officer had prepared shortly after the incident. The spotting officer then said Defendant rolled his window down only after the officer had approached the vehicle, and that Defendant put his seatbelt on as the officer approached the vehicle. Defendant also testified that he was wearing a seatbelt during his entire drive that evening, that his windows were never rolled down, and that he did not recall ever talking with the spotting officer.

Admittedly, the spotting officer's testimony regarding the details of the encounter contained contradictions. More glaringly, even, at no time during the spotting officer's testimony does he state that he addressed Defendant from outside the driver's side of the vehicle. The spotting officer testified that he spoke to Defendant from the passenger side of the vehicle, yet the trial court found as a fact that the interaction took place as the officer "[stood] immediately beside the driver's window of the white Toyota." Defendant claims that this discrepancy shows the trial court's findings of fact differ materially from the evidence presented at trial.

However, we conclude that even if the portions of the findings cited by Defendant are not supported by competent evidence, such error is harmless, because these details are immaterial. The remaining unchallenged findings support the conclusion that the spotting officer had reasonable suspicion to believe Defendant had committed a seatbelt violation. And incorrect factual findings do not void conclusions of law when other findings support those conclusions. *See In re Beck,* 109 N.C. App.

539, 548, 428 S.E.2d 232, 238 (1993) (holding that, where no evidence supported a particular finding, its inclusion was immaterial and harmless because even "[i]f the erroneous finding [was] deleted, there remain[ed] an abundance of clear, cogent, and convincing evidence" to support the conclusion of law). Regardless of whether the spotting officer spoke to Defendant from the driver side or the passenger side of the vehicle or whether Defendant's window was rolled up, etc., the trial court found that the spotting officer observed a seatbelt violation and asked Defendant to pull into the gas station. These findings are supported by the evidence.

Further, it is not problematic that the officer who ultimately stopped Defendant was acting on direction given by the spotting officer, relying on the spotting officer's assertion of reasonable suspicion. "[I]n order to have reasonable suspicion to conduct a traffic stop based on a violation that an officer allegedly observed, the officer does not need to observe an actual traffic violation." *State v. Johnson*, ___ N.C. ___, ___, 803 S.E.2d 137, 141 (2017). As long as an officer reasonably believes that an individual has violated the law, the standard for reasonable suspicion may be met. *Id.* First, the spotting officer reasonably believed that Defendant was not wearing a seatbelt, approached Defendant, and asked him to pull into the gas station. Next, the spotting officer radioed to the second officer that Defendant was not wearing a seatbelt. The second officer thereafter relied on the information given by the spotting officer in pursuing Defendant's vehicle. The second

officer then obtained his own reasonable suspicion to pursue and arrest Defendant when Defendant provided false information and fled the scene.

We conclude that the evidence presented during the hearing was competent to support the trial court's findings despite additional contradictory evidence. In light of the trial court's proper consideration of the evidence before it, we find no error.

NO ERROR.

Judges STROUD and INMAN concur.

Report per Rule 30(e).