An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-214

Filed: 6 February 2018

Mecklenburg County, Nos. 15 CRS 207188, 24438

STATE OF NORTH CAROLINA

v.

DEZONTE SHERON WHITE

Appeal by defendant from order entered 5 October 2016 by Judge Richard L. Doughton in Mecklenburg County Superior Court. Heard in the Court of Appeals 18 October 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Douglas W. Corkhill, for the State.

Patterson Harkavy LLP, by Paul E. Smith, for defendant.

ELMORE, Judge.

Dezonte Sheron White ("defendant") appeals from his convictions for possession with intent to sell or deliver marijuana, felony possession of marijuana, and attaining habitual felon status. On appeal, defendant argues that the trial court erred in denying his motion to suppress evidence discovered during a search of his vehicle because the search was not likely to produce evidence of a crime, and because

the court failed to determine whether the arresting officer's alleged mistake of fact as to defendant's insurance status was reasonable. After careful review, we affirm the trial court's order denying defendant's motion to suppress.

I. Background

On 24 February 2015, Officer Jason Grier of the Charlotte-Mecklenburg Police Department was on routine patrol when he observed a Nissan Pathfinder operated by defendant pull out of a parking lot in an unusual manner. Officer Grier ran the vehicle's tag through his onboard computer and received an alert from the DMV system that there was an insurance revocation for the vehicle; he then conducted a traffic stop to investigate the alert.

At the outset of the stop, defendant provided Officer Grier with proof of vehicle registration, but he was unable to provide his driver's license or proof of insurance. The trial court found that "[d]efendant told Officer Grier that his insurance was valid, but that was not what the DMV system indicated." Upon request, defendant provided the officer with his name, date of birth, and address, and Officer Grier used that information to search his onboard database, which indicated that defendant's driver's license was revoked.

As Officer Grier re-approached defendant's vehicle, he noticed that defendant "appeared to be nervous, and was fidgeting around in the driver's compartment of the vehicle." Based on defendant's behavior, the officer asked defendant if he had any

weapons or drugs in the vehicle. Defendant stated that he did, reached into his center console, and handed Officer Grier 16.7 grams of marijuana. The officer then requested back-up assistance and placed defendant under arrest. Officer Grier testified that upon stepping out of his vehicle, defendant told the officer that he had more marijuana. Defendant denied making this statement, and the trial court made no finding as to the alleged statement. After back-up arrived, officers conducted a search of defendant and his vehicle, where additional marijuana was discovered and seized.

On 8 March 2016, defendant filed a motion to suppress the evidence of additional marijuana discovered during the search of his vehicle after he was arrested and placed in the back of Officer Grier's patrol car. The motion came on for hearing and was denied by the trial court on 5 October 2016. On that same date, defendant pled guilty to possession with intent to sell or deliver marijuana, felony possession of marijuana, and to attaining habitual felon status. Under the plea arrangement, defendant reserved the right to appeal the trial court's denial of his pretrial motion to suppress evidence. Defendant entered notice of appeal in open court.

II. Discussion

On appeal, defendant contends the trial court erred when it concluded (1) that the search of defendant's vehicle was a valid search incident to his arrest, and (2) that the officer had reasonable suspicion to conduct the traffic stop without first

determining whether the officer's alleged mistake of fact as to defendant's insurance status was reasonable.

Because the officer had reasonable suspicion that evidence of a crime would be discovered in defendant's vehicle, and because the officer had an objectively reasonable basis to initiate the traffic stop, we hold that the trial court did not err in denying defendant's motion to suppress.

A. Standard of Review

Our review of a trial court's denial of a motion to suppress is "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). "The trial court's conclusions of law, however, are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

B. Vehicle Search Incident to Arrest

In *Arizona v. Gant*, the U.S. Supreme Court held that officers are authorized "to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search" or "when it is reasonable to believe evidence relevant to the crimes of arrest might be found in the vehicle." 556 U.S. 332, 343, 129 S. Ct. 1710, 1719, 173

L. Ed. 2d 485 (2009) (citations and internal quotation marks omitted); *see also State v. Mbacke*, 365 N.C. 403, 409–10, 721 S.E.2d 218, 222 (2012) (holding that it was reasonable for officers to believe that additional evidence of offense could be found in the defendant's vehicle, thus warrantless search of vehicle after the defendant was arrested and secured did not violate his Fourth Amendment rights). "[T]he circumstances of each case ordinarily will determine the propriety of any vehicular searches conducted incident to an arrest." *Mbacke*, 365 N.C. at 411, 721 S.E.2d at 223.

Because defendant was secured in the back of Officer Grier's patrol car at the time of the vehicle search incident to his arrest, the search can only be constitutional under *Gant* if it was reasonable for the officer to believe that evidence relevant to the crime of arrest might be found in the vehicle. Defendant contends the circumstances of his arrest do not indicate that it was reasonable for the officer here to believe that additional evidence of defendant's drug charges would be discovered in the car because, defendant argues, there was nothing suspicious about his vehicle, and there was no suspicious behavior to justify the vehicle search. We disagree.

At the suppression hearing, Officer Grier testified that defendant "appeared to be nervous, and was fidgeting and moving around in the driver's compartment of the vehicle" during the traffic stop. When asked by the officer if he had any weapons or drugs in the vehicle, defendant voluntarily produced 16.7 grams of marijuana from

his center console. Officer Grier further testified that after defendant stepped out of his car, defendant told the officer he had more marijuana. These are all circumstances indicating it was reasonable for the officer to believe that additional evidence of defendant's drug charges would be discovered in his vehicle, and the trial court properly concluded that the search of defendant's vehicle was a valid search incident to his arrest.

C. Reasonable Mistake of Fact

In examining the legality of a traffic stop, the proper inquiry is whether the objective facts support a finding that a reasonable suspicion existed to stop the defendant. *State v. Styles*, 362 N.C. 412, 414–15, 665 S.E.2d 438, 439–40 (2008). Reasonable suspicion requires that "the stop be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." *Id.* at 414, 665 S.E.2d at 439 (citations and internal quotation marks omitted). Although a search or seizure based on an officer's mistake of fact can be constitutional, "[t]he Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes — whether of fact or of law — must be *objectively* reasonable." *Heien v. N.C.*, 135 S. Ct. 530, 539, 190 L. Ed. 2d 475 (2014).

In his second assignment of error, defendant contends that Officer Grier initiated the traffic stop based on a mistake of fact as to whether or not defendant's

vehicle was properly insured. He argues that the trial court thus erred in failing to determine whether the officer's alleged mistake was objectively reasonable.

At the suppression hearing, Officer Grier testified that he discovered defendant's vehicle was uninsured when he ran the vehicle's tag through the DMV database on his computer system, prior to initiating the traffic stop. As evidence of the officer's alleged mistake of fact, defendant testified that when Officer Grier told defendant he had been stopped because of an insurance revocation alert, defendant explained to the officer that he knew he had insurance because he had recently switched insurance companies and paid his bill. On appeal, defendant asserts that the trial court failed to make a finding as to whether defendant's vehicle was in fact insured or whether the officer was able to determine that fact after initiating the traffic stop, and that the trial court's order, therefore, did not contain sufficient findings of fact to resolve the issue of reasonableness. We disagree.

Although the trial court's order did not make an explicit finding as to whether defendant's vehicle was in fact insured — and, in turn, whether the officer made a reasonable mistake of fact as to defendant's insurance status — the court did find that Officer Grier observed defendant's vehicle pull out of a parking lot in an unusual manner, at which point the officer ran the vehicle's tag through his DMV system and received a notification that the vehicle's insurance was revoked. The court further found that after Officer Grier stopped defendant's vehicle to investigate the insurance

notification, defendant voluntarily provided his name, date of birth, and address in order for the officer to search the DMV database, which indicated that defendant's driver's license was revoked.

The trial court's factual findings — supported by competent evidence and binding on appeal — establish that Officer Grier had an objectively reasonable basis to suspect that defendant was driving an uninsured vehicle prior to the stop. Thus, regardless of whether the vehicle was in fact insured, the stop did not violate defendant's Fourth Amendment rights.

III. Conclusion

Because it was reasonable for the officer to believe that evidence relevant to the crime of arrest might be found in the vehicle, the trial court properly concluded that the search of defendant's vehicle was a valid search incident to arrest. Additionally, the trial court did not err when it concluded that reasonable suspicion existed for the traffic stop without first determining whether the stop was based on a reasonable mistake of fact. Accordingly, the order of the trial court is hereby:

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).