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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-768

Filed: 17 April 2018

Iredell County, Nos. 16 CRS 50784–85, 50788, 50791, 3509

STATE OF NORTH CAROLINA

v.

CALVIN STEVEN BROOKS

Appeal by defendant from judgments entered 7 March 2017 by Judge Lori Hamilton in Iredell County Superior Court. Heard in the Court of Appeals 7 February 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Karen A. Blum, for the State.

Dylan J.C. Buffum for defendant.

DIETZ, Judge.

Defendant Calvin Steven Brooks challenges the denial of his motion to suppress evidence obtained after a state trooper stopped him at a traffic checkpoint. Brooks gave the trooper another man's expired temporary driver's license as his identification. After the trooper was unable to bring up a picture associated with that temporary identification from her patrol car, she contacted the Highway Patrol

communications center in an attempt to verify that Brooks was the person whose license he provided. The communications center then informed the trooper that the man whose license she was checking had an outstanding warrant. As the trooper returned to Brooks's vehicle, he fled and was later arrested after crashing his car following a high-speed chase.

As explained below, we hold that the trial court properly found that the trooper contacted the communications center in an effort to confirm Brooks's identity and not for any impermissible purpose. As a result, we reject Brooks's arguments, all of which ultimately turn on a determination that the trooper contacted the communications center for other reasons. We therefore affirm the trial court's judgments.

Facts and Procedural History

On 18 February 2016, several North Carolina Highway Patrol troopers conducted a license checkpoint on Brawley School Road in Iredell County. The troopers' supervisor approved the troopers to conduct a standard checking station from 10:00 p.m. on 17 February 2016 until 3:00 a.m. on 18 February 2016 for "Chapter 20 enforcement including, but not limited to, driver's license, registration, seatbelt, insurance and driving while impaired." The Highway Patrol checking station policy states that if an officer "determines there is reasonable suspicion to believe that a driver or other vehicle occupant has violated a provision of Chapter 20 or any other

provision of law, the [officer] may detain the driver or occupant for a reasonable period of time in order to investigate further."

At some point during the checkpoint, Defendant Calvin Brooks drove up. Trooper Marla Powell asked Brooks for his license and Brooks gave her an expired temporary driver's license with no photo on it, bearing the name "Daniel Holmes." Trooper Powell asked Brooks if he had any photo identification, but Brooks said he didn't have anything else. Trooper Powell then asked Brooks to pull over in front of her patrol car and wait while she went to her car to run the temporary license to see if it was active.

Trooper Powell testified that normally she would "run it on CJLEADS or DCI, which is a program we have that will show if a license is active. And normally you can see a picture of the person, but in this case my CJLEADS was not working." Because the normal program was not working, Powell ran the temporary license through DCI. DCI showed the license was active but did not show a photo associated with the license. Powell then contacted the Highway Patrol "communications center" to "attempt to confirm that the person on the paper [license] was the person in the car." The communications center has access to more sophisticated license-checking and identification-checking programs. When Trooper Powell ran the license through the communications center, she learned that Daniel Holmes had an outstanding warrant for his arrest.

Based on the outstanding warrant for Daniel Holmes—and no information indicating that Brooks was not, in fact, Daniel Holmes—Powell waited for support from other officers and then approached Brooks's car to arrest him. As Trooper Powell approached, Brooks sped away from the checkpoint.

Brooks then led officers on a high-speed chase before losing control of his car and crashing into a tree. Brooks fled on foot but was caught and arrested. Upon inspecting Brooks's wrecked car, officers found a white powdery substance inside and outside the car that tested positive for cocaine.

The State indicted Brooks on numerous charges stemming from the incident including identity theft, possession of cocaine with intent to sell or deliver, felony fleeing to elude arrest, driving while impaired, and attaining habitual felon status. Brooks filed a motion to suppress the evidence recovered during and after the checkpoint stop, arguing that the outstanding warrant check was outside the permissible scope of the checkpoint stop and therefore violated Brooks's Fourth Amendment rights.

At the hearing on the motion, Trooper Powell testified that she took the extra step to call the communications center because Brooks "gave me an expired license," didn't have any other identification, and the situation generally "didn't seem right." Powell stated that she "had experiences when people give me temp licenses, I've had

experiences where that's not them. It's happened before. It's happened numerous times, that's why I was trying to look into it a little bit more."

Powell testified that she would not do this type of thorough identification check on every license presented at the checkpoint, but would do so "if the license is expired" or if it was "[a]ny type of temporary license that [doesn't] have a photograph on it." Powell explained that she would contact the communications center in these circumstances "because they have more programs than I do in the car."

The trial court denied Brooks's motion to suppress. The court found that, by contacting the communications center for a further check of Brooks's license, Trooper Powell "was attempting to determine whether the defendant was in fact the person whose name appeared on the temporary license he provided." The court also found that Trooper Powell's actions complied with the operation plan for the checkpoint. The trial court concluded that, based on the testimony and evidence presented, the checkpoint stop was within the checkpoint's objectives, complied with Highway Patrol checkpoint policy, and did not violate Brooks's constitutional rights.

Brooks then pleaded guilty to the charges, including identity theft, driving while impaired, possession of cocaine with intent to sell or deliver, felony fleeing to elude arrest, and attaining habitual felon status. Brooks reserved the right to appeal the denial of his motion to suppress. The trial court sentenced Brooks to 80-108 months in prison. Brooks timely appealed.

Analysis

I. Trial court's order denying the motion to suppress

Brooks argues that the trial court erred in denying his motion to suppress because the officer's search for outstanding warrants exceeded the permissible scope of the license checkpoint stop. As explained below, we reject this argument.

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). We review the trial court's conclusions of law *de novo*. *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

Brooks first challenges the trial court's finding, contained in finding 25, that Trooper Powell contacted the communications center in an effort to verify Brooks's identity. Brooks contends that the only reason Trooper Powell contacted the communications center was to check for outstanding warrants, not to further check his license or verify his identity.

We reject this argument because there is competent evidence in the record supporting the trial court's finding. Trooper Powell testified that one of the license-checking programs she typically uses in her patrol car was not working, and that she

called the communications center because Brooks "gave me an expired license," did not have any other identification, and things "didn't seem right."

Trooper Powell further testified that she has had experience with drivers who had given her temporary licenses that did not belong to them. She testified that her purpose in calling the communications center was "to attempt to confirm that the person on the paper [license] was the person in the car."

Trooper Powell explained that it is her practice in these situations to contact the communications center "because they have more programs than I do in the car" and thus may be able to provide additional information to match the temporary license (which has no accompanying photo identification) with the driver.

This testimony is competent evidence to support the trial court's finding that Trooper Powell contacted the communications center because she "was attempting to determine whether the defendant was in fact the person whose name appeared on the temporary license he provided."[1] Accordingly, under the narrow standard of review applicable to the trial court's findings of fact, we must reject Brooks's argument.

[1] The trial court's finding states that Trooper Powell *testified* to this fact, rather than expressly finding that this *is* a fact. But Brooks does not challenge the finding on this basis; to the contrary, Brooks concedes in his brief that "in finding 25 the trial court found that when Powell contacted the communication center 'she was attempting to determine whether the defendant was in fact the person whose name appeared on the temporary license he provided.'"

Brooks also challenges the trial court's finding that Trooper Powell's contact with the communications center complied with the checkpoint plan. But Brooks's argument turns on his assertion that Trooper Powell contacted the communications center solely to run a warrant check, which was not within the scope of the checkpoint plan, and not to verify the driver's identity, which was well within the scope of the checkpoint plan. The trial court found otherwise in finding 25 and, as explained above, that finding is supported by competent evidence. Accordingly, we reject this argument as well.

Brooks next challenges the trial court's conclusions that "the intrusion on [his] liberty . . . was no greater than was necessary to achieve the checkpoint[']s objectives," that "the standards set forth in the North Carolina State Highway Patrol policy manual were complied with in this checkpoint," and that "the checkpoint was set up and conducted in compliance with the applicable statute and did not violate the defendant's constitutional rights." Because the trial court properly found that Trooper Powell contacted the communications center in an attempt "to determine whether the defendant was in fact the person whose name appeared on the temporary license he provided," and that Trooper Powell learned of the outstanding warrants during these efforts, the trial court's conclusions of law are entirely proper.

Finally, Brooks argues that Trooper Powell impermissibly prolonged the duration of the stop to run the warrant check. *See State v. Downey*, __ N.C. App. __,

796 S.E.2d 517 (2017), *aff'd*, __ N.C. __, __ S.E.2d __, 2018 WL 1124861 (2018). Again, this argument fails because the trial court found that Trooper Powell learned of the outstanding warrants while "attempting to determine whether the defendant was in fact the person whose name appeared on the temporary license he provided."

Brooks provided Trooper Powell with an expired temporary license that did not contain a photo, and Brooks had no other identification that could confirm his identity. It was reasonable in this circumstance, and well within the purpose of the initial stop, for Trooper Powell to contact the communications center in an attempt to verify that Brooks was the person he claimed to be. And, once Trooper Powell learned that there was an outstanding warrant for the person whose license she ran, she was justified in prolonging the stop while waiting for other officers to assist in serving the warrant. *See Downey*, __ N.C. App. at __, 796 S.E.2d at 522.

In sum, we hold that the trial court's findings in its suppression order are supported by competent evidence in the record and those findings, in turn, support the court's conclusions of law. We therefore affirm the trial court's order.

II. Brooks's petition for writ of certiorari

Brooks also petitioned for a writ of certiorari, asking this Court to review his conviction for identity theft. Brooks contends that there was an insufficient factual basis for his guilty plea to that charge because the temporary driver's license he gave

to the officer at the checkpoint was not a form of identification for purposes of the identity theft statute.

This Court has discretion to allow a petition for a writ of certiorari "to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action." N.C. R. App. P. 21(a). A writ of certiorari is not intended as a substitute for a notice of appeal. If this Court routinely issued a writ of certiorari in every case in which the appellant failed to properly appeal, it would render meaningless the rules governing the time and manner of noticing appeals. Instead, as our Supreme Court has explained, "[a] petition for the writ must show merit or that error was probably committed below." *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). Accordingly, this Court typically will exercise its discretion to issue a writ of certiorari only where the appellant has asserted a potentially meritorious issue that warrants appellate review.

The crime of identity theft requires that the defendant "knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences." N.C. Gen. Stat. § 14-113.20(a). The statute defines "identifying information" as including a "Drivers license," and a driver's license is defined to

include a temporary license like the one Brooks provided to Trooper Powell. N.C. Gen. Stat. §§ 14-113.20(b)(2), 20-4.01(17)(a).

Brooks argues that the statute governing driver's licenses states that a "temporary driving certificate shall be valid for driving purposes and shall not be valid for identification purposes." N.C. Gen. Stat. § 20-7(f)(5). Thus, he contends, he cannot be convicted of identity theft by using a temporary driver's license because, by statute, those temporary licenses are not valid for identification purposes.

This argument is meritless. The State's factual basis for the plea stated that Brooks presented a temporary driver's license to Trooper Powell when asked to provide a valid driver's license. That temporary license did not belong to him, it belonged to Daniel Holmes. Brooks fraudulently represented to Trooper Powell that he was Daniel Holmes and the temporary license belonged to him. These facts are sufficient to support Brooks's guilty plea to identity theft. Accordingly, in our discretion, we decline to issue a writ of certiorari to review this meritless claim on appeal. *Grundler*, 251 N.C. at 189, 111 S.E.2d at 9.

Conclusion

For the reasons discussed above, we affirm the trial court's judgments.

AFFIRMED.

Judges ELMORE and HUNTER, JR. concur.

Report per Rule 30(e).