An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1082

Filed: 7 August 2018

Cabarrus County, Nos. 12CRS53279; 12IFS707275

STATE OF NORTH CAROLINA

v.

DOUGLAS BARNETTE, Defendant.

Appeal by defendant from order entered 8 May 2017 by Judge C. W. Bragg in Cabarrus County Superior Court. Heard in the Court of Appeals 2 April 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Tamika L. Henderson, for the State.*

*Cynthia Everson for defendant-appellant.*

BERGER, Judge.

Douglas Barnette ("Defendant") was charged with driving while impaired and driving left of center. Defendant filed a motion to suppress in Cabarrus County Superior Court, arguing that the officer lacked reasonable suspicion to justify the traffic stop. The trial court denied Defendant's motion, and Defendant subsequently pleaded guilty to driving while impaired and driving left of center. Defendant appeals the denial of his motion to suppress, contending the findings of fact were not

supported by competent evidence, and there was no reasonable suspicion to justify the stop. We disagree.

Factual and Procedural Background

On June 20, 2012, Officer M.D. Barnhardt, Jr. ("Officer Barnhardt"), with the Concord Police Department observed Defendant operating a white Chevrolet pickup truck near the intersection of Branchview Drive and Corban Avenue. There was no visible double line or dotted line through the intersection, but Officer Barnhardt believed Defendant drove through the intersection outside of his lane of travel. When Defendant cleared the intersection, he was driving over a double yellow line.

Officer Barnhardt followed Defendant for approximately two-tenths of a mile. After witnessing Defendant driving on or crossing over the center line of the roadway multiple times, Officer Barnhardt activated his blue lights and initiated a traffic stop. Defendant pulled off the roadway and almost struck a speed limit sign.

Defendant was charged with driving while impaired and driving left of center. On March 14, 2013, Defendant was convicted of both offenses in Cabarrus County District Court. Defendant appealed to Cabarrus County Superior Court, and his motion to suppress was heard April 19, 2017. The trial court entered a written order denying the motion on May 8, 2017.

The trial court made written findings of fact based upon Officer Barnhardt's testimony and a review of the in-car dash camera video offered into evidence by the

State. The trial court found that Officer Barnhardt was assigned to the Concord Police Department's traffic division, which is responsible for investigating fatalities related to traffic accidents and enforcing motor vehicle laws. Officer Barnhardt had received extensive training on accident reconstruction and made approximately 2,500 impaired driving arrests at the time of the hearing. The trial court further found:

> 13. Officer Barnhardt was preparing to pull onto Branchview Drive, when he noticed a white pick-up truck coming through the intersection of Corban Avenue and Branchview Drive.
>
> 14. Officer Barnhardt, looking to his left, had a clear and unobstructed view of the white pick-up truck.
>
> 15. As the white pick-up truck came through the intersection of Branchview Drive and Corban Avenue, Officer Barnhardt believed the white pick-up truck was operating left of center.
>
> 16. The white pick-up truck continued North on Branchview Drive and passed directly in front of Officer Barnhardt.
>
> 17. Officer Barnhardt testified as the white pick-up truck passed in front of him he believed the white pick-up truck was again operating left of center and across the double yellow lane markers.
>
> 18. Officer Barnhardt pulled out behind the white pick-up truck and continued to observe the white pick-up truck.
>
> 19. Officer Barnhardt observed the white pick-up truck "ride" the double yellow line, move off the line towards the center of its lane and then back to the center yellow and white line lane dividers.

> 20. Officer Barnhardt after a short period of time initiated a traffic stop with his blue lights.
>
> 21. The white pick-up truck pulled off Branchview Drive onto the shoulder of the road just missing a posted speed limit sign.

The trial court concluded that there was reasonable suspicion to stop Defendant "[b]ased upon the totality of the circumstances . . . as viewed through the eyes of a reasonable[,] cautious officer[] guided by his experience and training." Defendant pleaded guilty on May 10, 2017 to driving while impaired and driving left of center, and timely entered notice of appeal.

## 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 . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

## Analysis

Defendant argues the trial court erred in denying his motion to suppress. Defendant first challenges the trial court's Findings of Fact 19 and 21 in the written order, contending they were not supported by competent evidence. We disagree.

The evidence presented by the State tended to show that Defendant drove on and over the center line multiple times during the brief observation by Officer Barnhardt, and that Defendant almost struck a posted speed limit sign when he pulled off the roadway. The relevant portions of Officer Barnhardt's testimony during the hearing on the motion to suppress was as follows:

> The Court: Well, I understand that there was no line, I mean, I understand that clearly, there's no line in the intersection that you would have been—you believe he would have been left of center if there had been a line?
>
> [Officer Barnhardt]: Yes, sir.
>
> . . .
>
> [The State:] And so you said, once the vehicle passed through the intersection, it rode on the double yellow line?
>
> [Officer Barnhardt:] That's correct.
>
> . . .
>
> [The State:] And what did you observe while you were behind the pickup?
>
> [Officer Barnhardt:] This vehicle, Your Honor, stayed on the yellow line as well as the dotted line because there was another turn lane to turn left and he stayed on that line. He came off a couple times but as well as he came back to that line. There's a distance between us that it's hard to see in the in-car, but you could tell that he was actually on the line.
>
> [The State:] How many times would you say that the truck got on the yellow line or the dotted yellow line of a turn lane in the short distance that you were behind him?

> [Officer Barnhardt:] I'd guess four times, Your Honor.
>
> [The State:] And could you estimate that distance.
>
> [Officer Barnhardt:] Again, it's a tenth to two tenths of a mile. It was very—very quick.
>
> . . .
>
> [The State:] Did you make any observations as the vehicle was pulling over?
>
> [Officer Barnhardt:] There's a speed limit sign that he come [sic] close to as he was pulling off to the right side of the road.
>
> [The State:] You said he came close to it?
>
> [Officer Barnhardt:] Yes, ma'am.
>
> [The State:] Meaning he almost hit it?
>
> [Officer Barnhardt:] Correct.

Based upon this testimony and admission of the in-car dash camera video, there was competent evidence to support Findings of Fact 19 and 21 by the trial court. Therefore, the trial court's findings that Defendant drove on the center line and almost struck a speed limit sign are binding on this Court. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619. However, Finding of Fact 21 is with regard to events occurring after the stop was initiated, and therefore, it is not relevant to the issue of whether Officer Barnhardt had reasonable suspicion to initiate the stop.

Defendant next contends the trial court erred in concluding Officer Barnhardt had reasonable suspicion to initiate the traffic stop of Defendant's vehicle. We disagree.

The Fourth Amendment to the United States Constitution protects individuals "against unreasonable searches and seizures." U.S. Const. amend. IV. Similarly, "Article I, Section 20 of the Constitution of North Carolina likewise prohibits unreasonable searches and seizures." *State v. Allman*, 369 N.C. 292, 293, 794 S.E.2d 301, 303 (2016). Our Supreme Court has stated:

> Although potentially brief and limited in scope, a traffic stop is considered a "seizure" within the meaning of these provisions. Traffic stops have been historically reviewed under the investigatory detention framework first articulated in *Terry v. Ohio*. Therefore, reasonable suspicion is the necessary standard for traffic stops. As articulated by the United States Supreme Court in *Terry*, the stop must be based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The only requirement is a minimal level of objective justification, something more than an unparticularized suspicion or hunch.

*State v. Otto*, 366 N.C. 134, 136-37, 726 S.E.2d 824, 827 (2012) (*purgandum*[1]); *see also State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008) ("Reasonable suspicion

[1] Our shortening of the latin phrase "*Lex purgandum est*." This phrase, which roughly translates "that which is superfluous must be removed from the law," was used by Dr. Martin Luther during the Heidelberg Disputation on April 26, 1518 in which Dr. Luther elaborated on his theology of sovereign grace. Here, we use *purgandum* to simply mean that there has been the removal of superfluous items, such as quotation marks, ellipses, brackets, citations, and the like, for ease of reading.

is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. The standard is satisfied by some minimal level of objective justification." (*purgandum*)).

Here, Officer Barnhardt believed Defendant was driving his white pickup truck to the left of center through an unmarked intersection. Then, as Defendant passed in front of him, Officer Barnhardt observed Defendant operate the pickup truck left of center and then cross the center line. Officer Barnhardt continued to follow Defendant for a short period of time, and he observed Defendant weaving from the center line to the white lane dividers. Based upon the evidence presented, a reasonably prudent officer could infer from observing Defendant's driving behavior that he was operating his white pickup truck while impaired, driving left of center, or both. Therefore, the trial court did not err in concluding there was reasonable suspicion to initiate the traffic stop.

## Conclusion

Because the trial court's findings of fact were supported by competent evidence and these findings support the trial court's conclusion that Officer Barnhardt had reasonable suspicion to initiate the traffic stop of Defendant's vehicle, we affirm the trial court's denial of Defendant's motion to suppress.

AFFIRMED.

Chief Judge MCGEE and Judge STROUD concur.

Report per Rule 30(e).