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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-912

Filed: 7 August 2018

Haywood County, Nos. 16CRS050695-96, 16CRS050698-99

STATE OF NORTH CAROLINA

v.

ADAN GUTIERREZ GARCIA AND SERGIO MAGANA PIEDRA, Defendants.

Appeal by Defendant from order entered 12 January 2017 by Judge J. Thomas Davis in Haywood County Superior Court. Heard in the Court of Appeals 4 April 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Nicholas W. Yates and Assistant Attorney General William A. Smith, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellant Defender Michele A. Goldman, for Defendant-Appellant Sergio Magana Piedra.

Allegra Collins Law, by Allegra Collins, for Defendant-Appellant Adan Gutierrez Garcia.

DILLON, Judge.

Defendants Adan Gutierrez Garcia and Sergio Magana Piedra appeal from the trial court's denial of their motions to suppress evidence gathered during a traffic stop. After careful consideration, we affirm the trial court's order.

I. Background

Defendants were stopped for traffic violations by a State trooper while traveling on Interstate 40. During the stop, the trooper had difficulty communicating with Defendants due to a language barrier. The trooper asked Defendant Piedra, who was the driver, to accompany him to the patrol car so he could take down information in order to issue Defendant Piedra a warning ticket.

After issuing the warning ticket, the trooper accompanied Defendant Piedra back to Defendants' vehicle and spoke with Defendant Garcia. During the course of the conversation, the trooper obtained written and oral consent from Defendant Garcia to search the vehicle. During the search, the trooper discovered a large quantity of marijuana hidden in an air compressor tank located in the truck bed of the vehicle. Based on the discovery, both Defendants were charged with trafficking marijuana.

The matters were joined for trial. Prior to trial, the trial court denied Defendants' motions to suppress the trooper's discovery of the marijuana. Both Defendants, thereafter, pleaded guilty to two counts of trafficking marijuana. Both Defendants gave timely notice of appeal.

II. Analysis

On appeal, Defendants make a number of arguments challenging the order denying their motions to suppress the trooper's discovery of the marijuana hidden in their vehicle.

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). Conclusions of law are reviewed *de novo*. *See, e.g.*, *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012).

Here, Defendants make a number of arguments contending that the fruits of the trooper's search should have been excluded, which we address in turn below.

A. The Trooper Did Not Impermissibly Prolong the Stop

Defendants argue that the trooper unlawfully prolonged the traffic stop when he directed Defendant Piedra out of the vehicle and into his patrol car during the course of writing Defendant Piedra a warning ticket. We disagree.

It is unquestioned that the trooper lawfully stopped Defendants' truck for speeding, following another vehicle too closely, and running off the side of the road. Defendants, though, contend that the trooper unlawfully extended the stop by directing Defendant Piedra, the driver, to his patrol car and patting him down for

weapons in the process. Defendants cite to a recent opinion of the United States Supreme Court which held that the duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop, *Rodriguez v. United States,* 135 S. Ct. 1612 (2015), unless reasonable suspicion of another crime arises before that mission was completed. *Id.* at 1615.

In a more recent decision, our Supreme Court held that a trooper who stopped an out-of-state driver in a rental vehicle for violating a number of traffic laws while driving on an interstate did not impermissibly extend the stop when he directed the driver out of the car, patted him down for weapons, and directed the driver to sit in the patrol car while he continued with the mission of the traffic stop. *State v. Bullock*, 370 N.C. 256, 262, 805 S.E.2d 671, 676 (2017). In so holding, our Supreme Court recognized that in that situation, "[a]sking [a] defendant to sit in the patrol car did not unlawfully extend the traffic stop," *id.*, at 262, 805 S.E.2d at 677, and that "an officer may [] take certain negligibly burdensome precautions in order to complete his mission safely," *id.* at ___, 805 S.E.2d at 673. Accordingly, based on *Bullock*, we conclude that at the time the trooper had issued the warning ticket to Defendant Piedra, he had not impermissibly extended the traffic stop.

B. The Trooper Had Reasonable Suspicion to Detain Defendant Garcia

After completing the warning ticket, the trooper told Defendant Piedra that the stop had concluded. However, the trooper returned to Defendants' vehicle and

began questioning Defendant Garcia. The State concedes that Defendant Garcia did not believe that he was free to leave during this questioning. We conclude, though, that the trial court's findings support its conclusion that the trooper had reasonable suspicion at this point to believe a crime was in commission to justify prolonging the stop.

We note that the reasonable suspicion standard is "a less demanding standard than probable cause" and a "considerably less [demanding standard] than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123, (2000). In order to meet this standard, an officer simply must "reasonably . . . conclude in light of his experience that criminal activity may be afoot." *Terry v. Ohio*, 392 U.S. 1, 30 (1968). "To determine whether reasonable suspicion exists, courts must look at the totality of the circumstances as viewed from the standpoint of an objectively reasonable police officer." *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (internal citations omitted).

Here, the trial court made a number of findings to support the trooper's reasonable suspicion: the trooper observed (1) Defendant Piedra's hands shaking when handing over his driver's license; (2) Defendant Piedra's failure to make eye contact with the trooper during the database checks; (3) Defendants were traveling in a third-party vehicle; (4) Defendants were traveling on Interstate 40, which is known to be a main travel thoroughfare used to transport illegal substances; (5)

Defendant Piedra continued nervousness even after being notified he was only receiving a warning ticket; and (6) the presence of black paint on the hands of both Defendants. Furthermore, upon re-approaching the truck to speak with Defendant Garcia, the trooper observed the smell of paint and Bondo coming from the vehicle. Through training and experience, the trooper was aware that Bondo is used to repair parts of a vehicle that may have been altered to build a location for concealing illegal controlled substances. These articulable observations all led the trooper to suspect that criminal activity was afoot.[1]

Accordingly, the trooper legally extended the duration of the traffic stop after the database check because the extension was properly justified by articulable reasonable suspicion.

C. The Trooper Conducted a Lawful Search

During the trooper's questioning of Defendant Garcia, Defendant Garcia gave both oral and written permission to search the vehicle. He had represented during the course of the stop that he was the owner of the vehicle, notwithstanding that Defendant Piedra was driving the vehicle at the time of the stop. It was during the search of the inside of the air compressor tank on the truck bed that the trooper discovered the large amount of marijuana that Defendants were transporting.

[1] Defendants argue that the evidence does not support some of the findings which gave rise to the trial court's conclusion that the trooper had reasonable suspicion to extend the stop to question Defendant Garcia. However, we have carefully reviewed the unchallenged findings, and we conclude that they are sufficient to support the trial court's conclusion.

Pursuant to the Fourth Amendment, searches and seizures without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980). However, it has been recognized that consent is "a special situation excepted from the warrant requirement, and a search is not unreasonable within the meaning of the Fourth Amendment when lawful consent to the search is given." *State v. Smith*, 346 N.C. 794, 798-99, 488 S.E.2d 210, 213 (1997).

Additionally, N.C. Gen. Stat. § 15A-221(a) provides for warrantless searches and seizures "if consent to the search is given." Pursuant to N.C. Gen. Stat. § 15A-221(b) "'consent' means a statement to the officer, made voluntarily . . . , giving the officer permission to make a search." *See also State v. McDowell,* 329 N.C. 363, 376, 407 S.E.2d 200, 207 (1991). And our Supreme Court has held that evidence seized during a warrantless search is admissible if the State proves that the defendant freely and voluntarily, without coercion, duress, or fraud, consented to the search. *State v. Long*, 293 N.C. 286, 293, 237 S.E.2d 728, 732 (1977).

But even assuming that Defendant Garcia's consent was not sufficient to authorize the search, the trooper otherwise was justified as he had probable cause to search the vehicle without a warrant based on the automobile exception. *See State v. Isleib*, 319 N.C. 634, 636-37, 356 S.E.2d 573 (1987) (explaining automobile exception to the warrant requirement). To establish probable cause, the evidence known to the trooper need not amount to proof of guilt or prima facie evidence of guilt, but, as our

Supreme Court has stated, just enough for a cautious person to believe in good faith that the accused may be guilty. *State v. Bone*, 354 N.C. 1, 10, 550 S.E.2d 482, 488 (2001).

We conclude that based on the trial court's findings, the trooper, acting cautiously, made sufficient observations to conclude in good faith that Defendants were involved in transporting narcotics, and that the trooper's good faith conclusion was objectively reasonable. For instance, in addition to findings regarding the officer's observations referenced above justifying his reasonable suspicion to extend the stop, the trial court also found that (1) both Defendants acted nervously; (2) the distinct odor of Bondo auto-body filler and automotive paint was present; (3) black paint was present on the hands of both Defendants; (4) based on trooper's training and experience, he knew that individuals involved in drug trafficking would sometimes paint the Bondo to match the vehicle or container to complete the concealment of illegal contraband; (5) Defendant Garcia informed the trooper that he and Defendant Piedra were going to Asheville from Washington State for a month to perform vehicle body work but had only a small amount of luggage for such a long trip; and (6) when questioned about the presence of various types of drugs, Defendant Garcia, who denied the presence of each type of narcotic questioned about, hesitated and looked away when questioned specifically about the presence of marijuana. Based on the totality of circumstances, we conclude that the trooper had probable

cause to believe that these Defendants were transporting illegal narcotics in the bed of their truck.

And during his search, the trooper observed the compressor on the truck bed which appeared to be freshly painted with Bondo, but noticed that there was no other equipment that would normally accompany an air compressor to make it functional. Using a punch and hammer, the trooper punctured a hole in the end of the tank. The moment the hole went through and the punch was pulled out, the trooper could smell the odor of marijuana. The air compressor tank was cut open and approximately 140 pounds of marijuana was located inside. *State v. Mitchell*, 224 N.C. App. 171, 175, 735 S.E.2d 438, 441 (2012) ("If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."). Accordingly, the trooper conducted a lawful search.

AFFIRMED.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).