IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-803

Filed: 16 April 2019

Haywood County, Nos. 17CRS051077, 51506

STATE OF NORTH CAROLINA

v.

RUSSELL ALLEN MORGAN, Defendant.

Appeal by Defendant from judgment entered 8 February 2018 by Judge Mark E. Klass in Haywood County Superior Court. Heard in the Court of Appeals 13 February 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General J. Rick Brown, for the State.

Julie C. Boyer for the Defendant.

DILLON, Judge.

Defendant Russell Allen Morgan appeals a judgment convicting him of impaired driving. After careful review, we affirm.

I. Background

One evening in April 2017, three police officers responded to an anonymous telephone call reporting a noise disturbance at an apartment complex. Upon arriving at the complex, the police officers encountered Defendant standing beside a blue and grey truck. The officers interacted with him and his companion for approximately seventeen (17) minutes. Two of the officers were of the opinion that Defendant was under the influence of some intoxicating substance based on his odor, speech, and stance.

After the officers left the scene, the police department received another complaint about Defendant. The police officers drove back to the apartment complex and observed the blue and grey truck pulling out of the parking lot. Prior to determining that it was Defendant who was the driver of the truck, one of the officers activated his blue lights and stopped the truck.

Upon being stopped, Defendant voluntarily exited the driver's side of the vehicle. Defendant was apprehended and taken into custody for driving while impaired.

Months later, Defendant moved to suppress evidence obtained by virtue of the stop. The trial court denied Defendant's motion. Defendant then pleaded guilty to impaired driving and reserved the right to appeal the denial of his motion to suppress. Defendant timely appealed.

II. Analysis

Defendant argues that the trial court erred in denying his motion to suppress evidence obtained during and following the traffic stop, contending that the officers did not have reasonable suspicion to stop his truck. Moreover, Defendant contends that it is necessary to remand the matter because the trial court failed to make any findings of fact or conclusions of law in its order denying Defendant's motion to suppress.

We review a trial court's ruling on a motion to suppress for whether the trial court's findings of fact are supported by competent evidence and whether, in turn, the findings of fact support the conclusions of law. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619-20 (1982). It is true that "the general rule is that [the trial court] should make findings of fact to show the bases of [its] ruling." *State v. Phillips*, 300 N.C. 678, 685, 268 S.E.2d 452, 457 (1980); *see also* N.C. Gen. Stat. § 15A-977(f) (2018) ("The judge must set forth in the record his findings of fact and conclusions of law."). However, our Supreme Court has stated that "[i]f there is no material conflict in the evidence . . ., it is not error to admit the challenged evidence without making specific findings of fact[.]" *Phillips*, 300 N.C. at 685, 268 S.E.2d at 457.

In his argument, Defendant cites and likens this case to *State v. Salinas*, in which the trial court failed to make "sufficient findings of fact to which this Court can apply the reasonable suspicion standard." *State v. Salinas*, 366 N.C. 119, 124, 729 S.E.2d 63, 67 (2012). However, the present case is distinguishable from *Salinas* in

that the *Salinas* court "did not resolve the issues of fact that arose during the [motion to suppress] hearing" while the underlying court in this case had consistent, uncontroverted facts and evidence regarding Defendant's impairment. *Id.* In fact, in his three pages of argument on appeal, Defendant does not allude to any specific evidentiary conflicts. Instead, he simply takes issue with the court's "flat denial" of his motion to suppress. *See State v. Braswell*, 222 N.C. App. 176, 180, 729 S.E.2d 697, 700 (2012) (stating that where a defendant makes a blanket argument that the trial court erred in failing to make written findings of fact regarding material conflicts in the evidence, but himself fails to draw the reviewing court's attention to any specific conflicting evidence, he has not challenged the evidence presented at the suppression hearing).

We conclude that the trial court was not required to make findings of fact in this case, as there was no material conflict in the evidence. Thus, based on Supreme Court precedent, we must conclude that the lack of findings does not constitute error. *Phillips*, 300 N.C. at 685, 268 S.E.2d at 457.

Regarding the lack of any written conclusions of law, we note that our Supreme Court has recently instructed that it is not always error where the trial court fails to set forth its conclusions in writing when ruling on a suppression motion. *State v. Bartlett*, 368 N.C. 309, 312, 776 S.E.2d 672, 674 (2015) ("A written determination setting forth the findings and conclusions is not necessary, but it is the better

practice."). Here, it is true that the trial court never expressly stated any conclusions when it rendered the order denying Defendant's suppression motion. However, the *only* conclusion that the trial court was asked to determine during the suppression hearing was whether the officers had reasonable suspicion to stop Defendant: Defendant's sole argument was that the uncontradicted evidence did not support a conclusion that the officers had reasonable suspicion; the State argued that this evidence did support such a conclusion.

The present case is different from *State v. McFarland* where we remanded the matter for the trial court to enter written conclusions of law. *State v. McFarland*, 234 N.C. App. 274, 283-85, 758 S.E.2d 457, 464-65 (2014). Here, the trial court's legal reasoning in denying Defendant's motion is clear from the context. However, in *McFarland*, the defendant based his suppression motion on a number of alternate legal grounds. *Id.* at 282, 758 S.E.2d at 463 ("Defendant moved to suppress his statements under the Fifth and Sixth Amendments to the United States Constitution and Article 1, sections 19, 23, and 24 of the North Carolina Constitution.").

By contrast, in *State v. Battle* we disagreed with the trial court's conclusion regarding whether police had a reasonable suspicion to justify a traffic stop; but rather than remanding to the trial court to enter different conclusions, we made our own conclusions of law. *State v. Battle*, 109 N.C. App. 367, 372-73, 427 S.E.2d 156, 160 (1993).

In sum, in this case, the failure of the trial court to enter written findings or conclusions has not hampered our ability to conduct a meaningful review of the trial court's decision. *State v. Horner*, 310 N.C. 274, 279, 311 S.E.2d 281, 285 (1984) (noting that "[f]indings and conclusions are required in order that there may be meaningful appellate review of the decision.").

We further conclude that the uncontradicted evidence supports the conclusion that the police officers did have reasonable suspicion to stop the truck. Specifically, the evidence tends to show as follows: Officers observed Defendant showing signs of impairment (odor of alcohol, slurred speech, unsteadiness, etc.) while standing next to the driver's side of his truck during the initial encounter in the parking lot. During this initial encounter, Defendant was seen getting into the driver's seat, while his companion sat in the back. A very short period of time elapsed between this initial encounter and the stop.

We note that these facts are similar to those in *Battle* where our Court reversed the trial court's suppression order based on our conclusion that the uncontroverted evidence supported a reasonable suspicion determination. *Battle*, 109 N.C. App. at 368, 427 S.E.2d at 157 (reversing the grant of defendant's motion to suppress an investigatory stop and evidence obtained therefrom where one officer observed the defendant impaired, told him not to drive, and radioed a second officer to be on the

lookout for defendant, which subsequently led to the second officer stopping defendant).

III. Conclusion

The trial court did not err in denying Defendant's motion to suppress. Further, the trial court did not commit reversible error in failing to make written findings of fact or conclusions of law to justify its denial of Defendant's motion to suppress.

AFFIRMED.

Judge INMAN concurs in result.

Judge COLLINS dissents by separate opinion.

Report per Rule 30(e).

COLLINS, Judge, dissenting.

Because I believe we are bound by case law to remand this case to the trial court to make conclusions of law, I respectfully dissent.

It is well established that appellate review of the denial of a motion to suppress is "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. Barden*, 356 N.C. 316, 340, 572 S.E.2d 108, 125 (2002) (internal quotation marks and citation omitted). The trial judge "sees the witnesses, observes their demeanor as they testify and by reason of his more favorable position, he is given the responsibility of discovering the truth." *State v. Smith*, 278 N.C. 36, 41, 178 S.E.2d 597, 601 (1971). Hence, the trial court "is entrusted with the duty to hear testimony, weigh and resolve any conflicts in the evidence, [and] find the facts . . . ." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619-20 (1982). Based upon the facts it finds, the trial court must then "render a legal decision, in the first instance, as to whether or not a constitutional violation of some kind has occurred." *Id.* at 134, 291 S.E.2d at 620.

In determining whether evidence should be suppressed, the trial court "shall make findings of fact and conclusions of law which shall be included in the record."

N.C. Gen. Stat. § 15A-974(b) (2013); *see also id.* § 15A-977(f) (2013) ("The judge must set forth in the record his findings of facts and conclusions of law."). Even though the statute's directive is imperative, current case law holds that a trial court need not enter a written determination setting forth findings and conclusions, *State v. Oates,* 366 N.C. 264, 268, 732 S.E.2d 571, 574 (2012), and need not make any findings of fact—oral or written—unless the record demonstrates a "material conflict in the evidence[.]" *State v. Bartlett*, 368 N.C. 309, 311-12, 776 S.E.2d 672, 673-74 (2015).

Our courts have confirmed, however, that the trial court must make the required legal rulings in the first instance. *State v. Salinas*, 366 N.C. 119, 123-24, 729 S.E.2d 63, 66-67 (2012); *State v. Baskins*, 247 N.C. App. 603, 609-10, 786 S.E.2d 94, 99 (2016). When the trial court has not made all the required determinations,

> [r]emand is necessary because it is the trial court that "is entrusted with the duty to hear testimony, weigh and resolve any conflicts in the evidence, find the facts, and, then based upon those findings, render a legal decision, in the first instance, as to whether or not a constitutional violation of some kind has occurred."

Salinas, 366 N.C. at 124, 729 S.E.2d at 67 (quoting *Cooke*, 306 N.C. at 134, 291 S.E.2d at 620).

At the conclusion of the suppression hearing in this case, which produced forty pages of written transcript, the trial court announced: "At this time I'd deny that motion." The trial court made no oral findings of fact, no written findings of fact, no oral conclusions of law, and no written conclusions of law. As a result, the record does

not demonstrate that the motion to suppress, the outcome of which essentially determined the outcome of the entire case, was given due consideration.

Because the record does not reveal any "material conflict" in the evidence presented, current case law does not require the trial court to have made express findings of fact, which we may infer from the record. *Bartlett*, 368 N.C. at 311-12, 776 S.E.2d at 673-74. Nonetheless, under *Salinas* and *Baskins*, I believe we remain obligated to remand here to require the trial court to perform its duty to make conclusions of law "in the first instance[.]" *Salinas,* 366 N.C. at 124, 729 S.E.2d at 67 (quotation marks and citation omitted); *see also State v. McFarland*, 234 N.C. App. 274, 284-85, 758 S.E.2d 457, 465 (2014) ("[T]he trial court failed to make adequate conclusions of law to justify its decision to deny defendant's motion to suppress his statement. Therefore, we must remand to allow the trial court to make appropriate conclusions of law based upon the findings of fact.").

I recognize that we are as capable of making conclusions of law based upon the cold record as the trial court would be upon remand. *See Bartlett*, 368 N.C. at 313, 776 S.E.2d at 674 ("a trial court is in no better position than an appellate court to make findings of fact if it reviews only the cold, written record."). Moreover, I recognize that were the case appealed again following remand, we would review the trial court's conclusions of law *de novo* and could substitute our judgment for that of the trial court.

Taken together with the case law allowing a trial court to omit findings of fact in the absence of material evidentiary conflicts, the majority's holding that this Court is to make conclusions of law in the first instance essentially obviates the trial court's statutory duties to "make findings of fact and conclusions of law" and "determin[e] whether or not evidence shall be suppressed[.]" N.C. Gen. Stat. § 15A-974(b). Instead of this Court's review being "limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence . . . and whether those factual findings in turn support the judge's ultimate conclusions of law[,]" *Barden*, 356 N.C. at 340, 572 S.E.2d at 125 (internal quotation marks and citations omitted), the majority would require this Court to assume the trial court's role of making the factual and legal determinations necessary to support judicial action.

Rather than support such an erosion of the trial court's statutory duty (and the corresponding enlargement of this Court's own), I would remand to require the trial court to revisit the record—and, in its discretion, to take additional evidence if appropriate, *see State v. Gabriel*, 192 N.C. App. 517, 523, 665 S.E.2d 581, 586 (2008)—and make express its conclusions of law, and to invite the trial court to make express findings of fact to support them as our statutes contemplate.