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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1044

Filed: 7 May 2019

Mecklenburg County, Nos. 16 CRS 205383, 16 CRS 205384

STATE OF NORTH CAROLINA

v.

BRYANT LAMONT BROWN

Appeal by Defendant from Judgment entered 23 May 2018 by Judge Gregory R. Hayes in Mecklenburg County Superior Court. Heard in the Court of Appeals 28 February 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General John A. Payne, for the State.

Arnold & Smith, PLLC, by Paul A. Tharp, for defendant-appellant.

HAMPSON, Judge.

Bryant Lamont Brown (Defendant) appeals the trial court's denial of his Motions to Suppress, resulting in his plea of guilty to one count of Misdemeanor Possession of Drug Paraphernalia and to one count of Felonious Possession with Intent to Sell or Deliver Cocaine (PWISD Cocaine). We affirm the trial court's denial of Defendant's Motions to Suppress and ensuing Judgment.

Factual and Procedural Background

The evidence presented during the suppression hearing tended to establish the following:

On 10 February 2016, an unnamed complainant (Complainant) called 911 to report alleged prostitution at the La Casa Inn, which was located in a high-crime area of Charlotte. Officers Craig Earls and Adam Jones of the Charlotte-Mecklenburg Police Department responded to this call and spoke with Complainant. During the conversation, Complainant informed Officer Jones that he had solicited two female prostitutes in room 121 of the La Casa Inn. Once inside room 121, however, the two females took Complainant's money before performing any services and left to purchase drugs. Complainant also provided the Officers with a name and phone number of one of the two females.

After talking with Complainant, Officer Earls looked up the phone number through Backpage, which Officer Earls described as a website commonly used for prostitution, and found an ad with a picture of two females, "Catherine" and "Elizabeth."[1] Officer Earls testified he recognized Catherine and Elizabeth as known drug users, based on his previous experience working on the Heroin Unit of the Charlotte-Mecklenburg Police Department. Based on this information, the two

[1] Pseudonyms have been used to protect the identities of these two women.

Officers attempted to perform a "knock-and-talk" on room 121; however, no one answered the door.

Thereafter, Officers Earls and Jones contacted Officer Charles Bolduc, who was working undercover, and asked him to conduct surveillance on room 121. At approximately 8:45 p.m. that night, while sitting in the parking lot of the La Casa Inn in an unmarked patrol car, Officer Bolduc saw a black male, later identified as Defendant, park a blue pick-up truck in a parking space close to room 121. Officer Bolduc watched as a white female exited Defendant's truck and entered room 121, while Defendant remained inside his truck. Thereafter, Officer Bolduc contacted Officers Earls and Jones and conveyed this information to the Officers.

Shortly thereafter, Officers Earls and Jones entered the parking lot of the hotel and parked diagonally behind Defendant's vehicle. The Officers approached Defendant's truck on foot with their flashlights shining. When Officer Jones initially turned on his flashlight, he inadvertently activated a flashing or strobe feature on his flashlight that remained on for a few seconds. As the Officers approached, both Officers saw Defendant turn towards the Officers, make a quick, abrupt movement towards the seat of his truck, and then shift his truck into reverse. Defendant backed up several inches before stopping.

Officer Jones approached Defendant's driver-side window and began talking with Defendant. During the course of their conversation, Officer Jones recognized

Defendant from a previous incident on 7 August 2010, where Officer Jones had arrested Defendant for possession of drug paraphernalia at a nearby gas station. Both Officers Earls and Jones testified Defendant appeared nervous and held onto a Styrofoam cup throughout the entire encounter.

While Officer Jones talked with Defendant, Officer Earls approached Defendant's passenger-side window and noticed a clear plastic baggie sitting on Defendant's front seat. The baggie had a corner missing, and the plastic around that corner was twisted up. Officer Earls immediately notified Officer Jones of this baggie. During the suppression hearing, both Officers testified in their training and experience, a baggie manipulated in this manner was "indicative of how packaging is done by drug dealers" and constituted drug paraphernalia.

Officer Jones then asked Defendant to get out of his truck. As Defendant exited, Officer Jones also asked Defendant if he owned a red Lexus, to which Defendant stated he owned a red Mercedes. Officer Jones testified he had previously received a tip from an informant that Defendant was selling drugs out of a red Mercedes. Officer Jones had asked about a red Lexus to try to confirm the informant's tip. When asked what Defendant was doing at the hotel that night, Defendant claimed he had dropped off a male who went to the second floor of the motel. Defendant's answer contradicted Officer Bolduc's statements and further raised the Officers' suspicions.

At this point, Defendant was still holding the Styrofoam cup as he stood outside his truck talking with the Officers. Defendant eventually gave Officer Earls consent to search his person and placed the Styrofoam cup on the bumper of his truck. Shortly thereafter, however, Defendant revoked his consent. After conferring with each other, Officers Earls and Jones concluded they had probable cause to continue searching Defendant. Officer Earls picked up the Styrofoam cup Defendant had been holding and found a plastic baggie, similar to the baggie found in Defendant's truck, filled with crack cocaine. Defendant was subsequently arrested and charged with one count of Misdemeanor Possession of Drug Paraphernalia and one count of PWISD Cocaine.

On 13 April 2018, Defendant filed a Motion to Suppress Stop and Seizure alleging the stop and seizure violated Defendant's constitutional rights and seeking to suppress all evidence obtained as a result of the stop. The same day, Defendant filed a Motion to Suppress Search alleging the seizure of his person and vehicle was unconstitutional and seeking to suppress all evidence and statements obtained as a result of the search. After a hearing in which Officers Bolduc, Earls, and Jones testified, the trial court denied Defendant's Motions to Suppress in open court and filed a written Order (Motion to Suppress Order) on 20 September 2018.

On 23 May 2018, Defendant pleaded guilty to both charges and preserved his right to appeal the suppression ruling. The trial court sentenced Defendant to a

minimum of 15 months and a maximum of 27 months imprisonment, suspended, with 24 months of supervised probation on condition he serve an active jail term of 30 days, pay the costs of court, and comply with other special conditions of probation. On 6 June 2018, Defendant timely filed Notice of Appeal from this Judgment.

Appellate Jurisdiction

"An order . . . denying a motion to suppress evidence may be reviewed upon an appeal from . . . a judgment entered upon a plea of guilty." N.C. Gen. Stat. § 15A-979(b) (2017). However, a defendant must (1) notify the prosecutor and the trial court of his intention to appeal during plea negotiations and (2) provide notice of appeal from the final judgment. *State v. McBride*, 120 N.C. App. 623, 625-26, 463 S.E.2d 403, 404-05 (1995), *aff'd per curiam*, 344 N.C. 623, 476 S.E.2d 106 (1996).

> Notice of *intent* to appeal prior to plea bargain finalization is a rule designated to promote a fair posture for appeal from a guilty plea. Notice of Appeal is a procedural appellate rule, required in order to give this Court jurisdiction to hear and decide a case. The two forms of notice serve different functions, and performance of one does not substitute for completion of the other.

Id. at 625-26, 463 S.E.2d at 405 (citations and quotation marks omitted).

Here, Defendant preserved his right to appeal from the denial of his Motions to Suppress, as the Transcript of Plea stated, "Defendant . . . specifically preserv[es] his right to appeal . . . his Motions to Suppress[.]" *See State v. Pimental*, 153 N.C. App. 69, 76, 568 S.E.2d 867, 871 (2002) (explaining defendant can preserve his right to appeal the denial of a suppression motion by explicitly stating so in the transcript

of plea). Although the Record does not contain a transcript of the plea hearing, Defendant's Notice of Appeal indicates Defendant gave oral notice of appeal in open court. Defendant's timely filed Notice of Appeal also satisfies our jurisdictional requirement by "memorializing his notice of appeal . . . of the *judgment* in this action[.]" *Cf. State v. Miller*, 205 N.C. App. 724, 725-26, 696 S.E.2d 542, 542-43 (2010) (dismissing a defendant's appeal for lack of jurisdiction where defendant gave notice of appeal from the denial of his motion to suppress but not from his *judgment* of conviction). Therefore, Defendant's appeal is properly before this Court.

Issues

The dispositive issues in this case are: (I) whether the trial court's Findings are supported by competent evidence; (II) whether Officers Earls and Jones had reasonable suspicion to stop Defendant's pick-up truck; (III) whether Officers Earls and Jones had probable cause to conduct the search of Defendant and his truck, including the Styrofoam cup; and (IV) whether the trial court erred in admitting evidence of Defendant's prior arrest by Officer Jones.

Analysis

I. Standard of Review

"An appellate court accords great deference to the trial court's ruling on a motion to suppress because the trial court is entrusted with the duty to hear testimony (thereby observing the demeanor of the witnesses) and to weigh and

resolve any conflicts in the evidence." *State v. Johnston*, 115 N.C. App. 711, 713, 446 S.E.2d 135, 137 (1994) (citations omitted). "Our review of a trial court's denial of a motion to suppress is strictly limited to a determination of whether [the trial court's] findings are supported by competent evidence, and in turn, whether the findings support the trial court's ultimate conclusion." *State v. Reynolds*, 161 N.C. App. 144, 146-47, 587 S.E.2d 456, 458 (2003) (citations and quotation marks omitted). The trial court's conclusions of law, however, are reviewed *de novo*. *See State v. Fernandez*, 346 N.C. 1, 11, 484 S.E.2d 350, 357 (1997). "In reviewing the denial of a motion to suppress, we examine the evidence introduced at trial in the light most favorable to the State[.]" *State v. Moore*, 152 N.C. App. 156, 159, 566 S.E.2d 713, 715 (2002) (citations omitted).

II. Trial Court's Findings

In denying Defendant's suppression motions, the trial court made nine Findings to support its Conclusions of Law. Defendant challenges six of the nine Findings, contending the emphasized portions of the following Findings are not supported by competent evidence:

> 1. That on February 10, 2016, Officers Adam Jones and Craig Earls with the Charlotte Mecklenburg Police Department were conducting patrol in the Steel Creek Division. Officer Charles Bolduc was operating in undercover surveillance capacity in the same division. All three officers were members of the Focused Mission Team (now the Crime Reduction Unit), which was tasked and trained in investigating drugs and prostitution.

2. That Officers Earls and Jones responded to a call for service regarding drugs and prostitution at the La Casa Inn, 7900 Nations Ford Road, Charlotte NC. *Both officers knew this hotel to be located in an area prevalent for prostitution and drug activity.* The complainant provided officers with a name and phone number for one of the prostitutes.

3. That Officer Earls used the name and phone number to locate an ad on Backpage, which is a website used for soliciting prostitution. Officer Earls identified the females as [Elizabeth] and [Catherine]. *Officer Earls was familiar with prior drug activity from these females.*

4. That, following an unsuccessful attempt to *conduct a knock and talk at Room 121* by Officer[s] Earls and Jones, Officer Bolduc established undercover surveillance in the parking lot. At approximately 8:45, Officer Bolduc observed a black male park a blue pick-up truck into *a space close to Room 121. He saw a white female exit the truck and enter Room 121, while the driver remained.* Officer Bolduc reported his observations to Officers Earls and Jones and left the area. Officers Earls and Jones entered the lot shortly after receiving this information.

5. That Officers Earls and Jones saw the blue pick-up still parked near Room 121 when they arrived in the lot. Defendant, a black male, was in the driver's seat as the only occupant. The officers parked their patrol car diagonal to the pick-up, in a manner that did not prevent the truck from leaving its parking space. Officers Earls and Jones then approached the vehicle on foot. During their approach, they saw a light turned on inside the cabin of the pick-up. *The driver turned and saw officers, made a quick, abrupt move towards the seat as if concealing something, turned off the light and shifted the truck in reverse.*

6. That Officer Jones approached the pick-up on the driver's side and initiated a conversation with Defendant. When he arrived at the driver's side window, Officer Jones saw Defendant *tightly* holding a Styrofoam cup. In Officer Jones' training and experience, such a cup could be used to contain illegal items. *Defendant was also very nervous.* Officer Jones obtained

Defendant's name. *He recognized Defendant from an incident that occurred August 7, 2010*, in which Officer Jones arrested Defendant at a nearby Circle K gas station for drug paraphernalia. On this earlier occasion, Defendant had a crack pipe and Brillo pad, both instruments of drug paraphernalia. *More recently, Officer Jones received a report from a confidential informant that Defendant was driving and selling drugs out of a red Mercedes.*

7. Meanwhile, Officer Earls approached on the passenger's side of the truck. In the front seat beside Defendant, Officer Earls quickly located a sandwich baggie with a corner missing and the plastic around that corner twisted up. The officer also saw a larger plastic grocery bag with more plastic baggies sticking out. Officer Earls alerted Officer Jones of his discovery, and Defendant handed Officer Jones the single torn baggie. *Officers recognized baggies manipulated in this manner as clear signs of paraphernalia used for narcotics.*

8. That after finding the baggies, officers asked Defendant to step out of the vehicle. As Defendant exited the vehicle, he confirmed to Officer Jones that he also had a red Mercedes. In following conversation, Defendant told Officer Earls that he had dropped off a male person who went to the second floor of the hotel. This statement was contradicted by what Officer Bolduc had earlier reported to Officers Earls and Jones. Defendant continued to hold onto the Styrofoam cup throughout his interaction with officers. Further, Officer Jones examined the larger shopping bag in the Defendant's front seat and saw that it had additional baggies torn in the same manner as the baggie Defendant handed him earlier.

9. After some further discussion, Defendant gave Officer Earls consent to search his person. Defendant complied with Officer Earls' request to set the Styrofoam cup down on the bumper of the vehicle. Defendant then withdrew consent, but officers conferred and determined that they had sufficient evidence to continue searching without Defendant's consent. Officer Earls picked up the Styrofoam cup, opened the lid and observed a clear plastic baggie matching the ones found in the truck, filled with crack cocaine about the size of a golf ball. Officers subsequently

> arrested Defendant, further searched his vehicle, and seized additional baggies, including some with torn corners.

Defendant first contends Finding 2 is not supported by competent evidence because Officer Earls could not recall any specific drug arrests made in the area and neither Officers' name was associated with any prostitution arrests in the area. However, Officer Jones testified he "observ[ed] prostitution activity on a regular basis" in this area, and Officer Earls testified he had conducted both drug and prostitution investigations in the area of the La Casa Inn. Both Officers also characterized the area where the hotel was located as a "high-crime area." This testimony constitutes competent evidence supporting Finding 2.

Defendant next asserts Finding 3 is not supported by competent evidence because Officer Earls could not say whether Catherine or Elizabeth had ever been arrested for drugs. However, Officer Earls testified he searched the name and phone number provided by Complainant on the Backpage website, found an ad associated with the number showing a picture of Catherine and Elizabeth, and "was familiar with both the females." Officer Earls further testified he had investigated them for narcotics in the past. In addition, Officer Earls testified he remembered Catherine and Elizabeth from when he worked on the Heroin Unit of the Charlotte-Mecklenburg Police Department, where both females "came across as being heroin users." This testimony constitutes competent evidence supporting the trial court's Finding that "Officer Earls was familiar with prior drug activity from these females."

Defendant also generally challenges Findings 2 and 3 by arguing the "tale told by [the Officers] about the ripped-off prostitute solicitor was simply not credible; *it was incredible*." However, the credibility determination is for the trial court, and it is not our duty to reweigh such a determination. *See Johnston*, 115 N.C. App. at 713, 446 S.E.2d at 137. Further, both Officers testified they received a tip from Complainant complaining that two women, whom he had allegedly solicited for prostitution, met him in room 121 of the La Casa Inn, took his money prior to performing any services, and left to purchase drugs. Officer Jones spoke with Complainant in person at the hotel, and Complainant provided the Officers with a name and phone number of one of the two females. Officer Earls looked up the phone number through Backpage and found an ad with the two females' pictures, whom he recognized as known drug users. The Officers' testimony was consistent, competent, and uncontroverted. Therefore, Findings 2 and 3 are supported by the evidence and binding on appeal.

Defendant next argues Finding 4 is not supported by competent evidence because (1) Officer Earls "could not recall if he attempted a 'knock-and-talk' at Room 121 or at another room;" (2) Officer Bolduc was unsure what room he saw Defendant parked near; and (3) Officer Bolduc first testified that a "white male" exited Defendant's vehicle, rather than a white female. After reviewing the entire transcript of the suppression hearing, we cannot agree with Defendant's contentions.

First, although Officer Earls could not remember the specific room number when first asked by the State during the suppression hearing, Officer Earls was shown his report from that night to refresh his memory, and after looking at his report, he testified that Officer Jones and he performed the unsuccessful knock-and-talk at room 121. Further, Officer Jones testified, both on direct examination and cross-examination, Officer Earls and he attempted a knock-and-talk at room 121.

As to Officer Bolduc's statements, on direct examination, when asked by the State what room he was observing, Officer Bolduc said, "I believe it was 121." On cross-examination, Officer Bolduc was shown a picture of the La Casa Inn and room 121, and when asked where Defendant parked his truck, Officer Bolduc said, "[a]lmost directly in front of the room. . . . Either -- either just to the right or just to the left [of room 121]." Further, on redirect, when asked where Defendant was parked that night, Officer Bolduc stated, "[Defendant] parked outside of the room 121. It might have been in front of room 123 or '25. I'm not sure." Because we view the evidence in the light most favorable to the State, the trial court's Finding that "Officer Bolduc observed a black male park a blue pick-up truck into a space *close to Room 121*" is supported by competent evidence. *See Moore*, 152 N.C. App. at 159, 566 S.E.2d at 715.

Turning to Officer Bolduc's second statement, Defendant asserts the following exchange between the Prosecutor and Officer Bolduc shows Finding 4 is unsupported:

> Q. What specifically did you observe [as you were watching room 121 that night]?
>
> A. I observed a pickup truck pull directly in front of the room I was observing with a black male driver and *a white male -- sorry -- white female passenger*. The pickup truck stopped. The white female exited the truck and went into the room that I was observing.

Contrary to Defendant's contentions, this exchange illustrates Officer Bolduc simply misspoke, by saying white male, and immediately corrected himself, by stating white female passenger. In addition, both Officers Earls and Jones testified Officer Bolduc informed them he observed a white female get out of Defendant's truck and enter room 121. Viewed in the light most favorable to the State, competent evidence supports Finding 4. *See id.*

Defendant next asserts the following portion of Finding 5—that "[Defendant] turned and saw officers, made a quick, abrupt move towards the seat as if concealing something, turned off the light and shifted the truck in reverse"—is unsupported by competent evidence for several reasons. Defendant contends no evidence was presented Defendant (1) made a quick movement and (2) shifted his vehicle into reverse *after* seeing Officers Earls and Jones approaching on foot.

Both Officers Earls and Jones testified upon walking up to Defendant's vehicle, they saw Defendant turn towards the Officers and then make "an abrupt motion toward the center of the vehicle." Although the Officers' testimony was somewhat unclear on exactly when Defendant began backing up, Officer Jones's admitted body

cam footage shows when the Officers arrived on scene, Defendant's truck was not moving and the reverse lights were not activated. Once the Officers got out of their vehicle and began walking towards Defendant's truck, Defendant's reverse lights activated, and Defendant began to back up several inches before stopping. It is not clear from the video whether Defendant did in fact see the Officers approaching and make a quick movement, although Officer Earls attributed this to the fact it was dark and to the "reflection from the windows." Defendant contends because the Officers' body cameras did not capture this movement, no competent evidence exists to support this Finding. However, the testimony of Officers Earls and Jones, as well as the video from Officer Jones's body cam, constitutes competent evidence supporting Finding 5.

Defendant next argues Finding 6 is unsupported by the evidence because neither Officer Earls nor Officer Jones explicitly said Defendant was holding the cup "tightly" or that Defendant was "very nervous." However, both Officers testified to the manner in which Defendant held on to the cup, with Officer Jones stating Defendant "had a tight grip on the cup." In addition, Officer Jones testified Defendant "seemed incredibly nervous." Although the trial court's Finding does not employ the exact phraseology utilized by the Officers in their testimony, Finding 6 accurately represents the substance of the Officers' testimony. *See Thompson v. Carolina Cabinet Co.*, 223 N.C. App. 352, 358, 734 S.E.2d 125, 128 (2012) ("While plaintiff may not have used the precise words of the findings in his testimony, the

findings reasonably paraphrase plaintiff's testimony or are inferences reasonably drawn from that testimony.").

Defendant also challenges the following portion of Finding 6: "Officer Jones obtained Defendant's name. He recognized Defendant from an incident that occurred August 7, 2010 . . . ." On direct examination, Officer Jones testified that *after* Defendant provided Officer Jones with his name, Officer Jones recognized him from the 7 August 2010 incident. On cross-examination, the following exchange occurred between Officer Jones and Defendant's counsel:

> Q. You asked [Defendant] what his name was; is that correct?
>
> A. Correct.
>
> Q. When you walked up to the car you did not know who this person was, correct?
>
> A. He looked familiar. He looked familiar from my prior contact, which is why I said what's your name.
>
> Q. Sure. When you pulled up, put your car in park, walked up -- turned your flashers on and walked up to the car, you didn't know who the person was at that time; is that correct?
>
> A. Not until he turned and looked at me he looked familiar to me.

Defendant claims this discrepancy, between whether Officer Jones recognized Defendant before or after asking for his name, renders this Finding erroneous. However, our Supreme Court has noted when "supported by competent evidence, the trial court's findings of fact are conclusive on appeal, *even if conflicting evidence was*

also introduced." *State v. Wilkerson*, 363 N.C. 382, 434, 683 S.E.2d 174, 205 (2009) (emphasis added) (citation omitted). "Furthermore, a trial court's resolution of a conflict in the evidence will not be disturbed on appeal[.]" *State v. Steen*, 352 N.C. 227, 237, 536 S.E.2d 1, 7 (2000) (citation omitted). Properly harmonized, Finding 6 suggests the trial court credited Officer Jones's initial statement after considering his divergent testimony during cross-examination. Acknowledging this resolution by the trial court, Finding 6 is supported by competent evidence, thus binding on appeal. *See id.*

In addition, Defendant challenges the final sentence of Finding 6—that "Officer Jones received a report from a confidential informant that Defendant was driving and selling drugs out of a red Mercedes"—arguing this portion of the Finding was not supported by competent evidence. In the video from Officer Jones's body cam, Officer Jones can be heard asking Defendant if he owned a red Lexus. Defendant replied, "No. I got a red car, Mercedes." At the suppression hearing, Officer Jones testified he had recently received a tip from a confidential informant that Defendant "was operating a red Mercedes selling narcotics in the area that this occurred in." Officer Jones stated he "asked [Defendant] if he had a red Lexus to confirm that [Defendant] had a red Mercedes." Although the Prosecutor admitted at the hearing that Officer Jones described the confidential informant as "not necessarily a reliable

[informant,]" Officer Jones's testimony and Defendant's response constitutes competent evidence to support this Finding.

Lastly, Defendant contends the following portion of Finding 7—"Officers recognized baggies manipulated in this manner as clear signs of paraphernalia used for narcotics"—is not supported by competent evidence. Defendant argues because he stated the baggies were for storing snacks and no illegal substance was inside the baggie, no competent evidence supports this Finding. However, both Officers testified that in their training and experience, baggies manipulated in this manner are indicative of paraphernalia used for packaging and selling narcotics. Specifically, the following exchange between the Prosecutor and Officer Earls, who first noticed the baggie, illustrates the Officers' understanding of its illicit nature:

> Q. That baggie with the corner that was torn out of it, what did that say to you?
>
> A. Just from my training and experience, it's indicative of how packaging is done by drug dealers. They typically put the narcotics in there, tie it off, and then pull it, and it makes a tear in it.

This testimony, along with Officer Jones's similar testimony, supports Finding 7, which is binding on appeal. Having determined the trial court's Findings are supported by competent evidence, we now address whether the Findings support the denial of Defendant's Motions to Suppress.

III. Reasonable Suspicion to Stop Defendant

In Conclusion of Law 2, the trial court concluded as a matter of law that the "Officers' initial approach of Defendant in a public area to ask questions constituted voluntary contact." The import of this Conclusion is that Defendant was not detained or "seized" during this initial approach. The trial court further concluded "Defendant was not seized until officers asked him to exit the vehicle."

Defendant contends the initial approach did not constitute voluntary contact by Defendant with the Officers. Indeed, the evidence shows once the Officers arrived, Defendant began to back his truck up, the Officers quickly got out of their car and approached either side of Defendant's pick-up truck with flashlights, and Officer Jones activated a flashing feature on his flashlight.[2] Officer Jones also testified once he told Defendant to park, Defendant was not free to leave.

Defendant further contends in the absence of voluntary contact, the Officers lacked reasonable suspicion to conduct an investigatory stop. Under our *de novo* standard of review, we conclude under the totality of the circumstances, the Officers had reasonable suspicion to conduct an investigatory stop of Defendant and affirm the trial court's Conclusion that Defendant's Fourth Amendment rights were not violated by the stop, albeit on different grounds. *See State v. Evans*, 251 N.C. App. 610, 626, 795 S.E.2d 444, 455 (2017) ("If the correct result has been reached, the

[2] Apparently, the flashing feature was activated inadvertently.

[order] will not be disturbed even though the trial court may not have assigned the correct reason for the [order] entered." (citation and quotation marks omitted)).

The Fourth Amendment of the Constitution provides the right of the people to be secure in their persons and protects citizens from unreasonable searches and seizures. U.S. Const. amend. IV.; *see also* N.C. Const. art. I, § 20; *State v. Garner*, 331 N.C. 491, 506-07, 417 S.E.2d 502, 510 (1992). These protections apply to "seizures of the person, including brief investigatory detentions such as those involved in the stopping of a vehicle." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 69-70 (1994) (citation omitted).

"An investigatory stop must be justified by 'a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.' " *Id.* at 441, 446 S.E.2d at 70 (quoting *Brown v. Texas*, 443 U.S. 47, 51, 61 L. Ed. 2d 357, 362 (1979)). "[R]easonable suspicion" requires "[t]he 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.* (citations omitted). All that is required is a "minimal level of objective justification, something more than an 'unparticularized suspicion or hunch.' " *Id.* at 442, 446 S.E.2d at 70 (quoting *United States v. Sokolow*, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 10 (1989)). A court must consider the totality of the circumstances in determining whether reasonable

suspicion to make an investigatory stop existed. *Id.* at 441, 446 S.E.2d at 70 (citation omitted).

"When determining whether an officer had reasonable suspicion to conduct an investigative stop, the trial court may properly consider such factors as: (1) activity at an unusual hour; (2) nervousness of an individual; (3) an area's disposition toward criminal activity; and (4) unprovoked flight." *State v. Blackstock*, 165 N.C. App. 50, 58, 598 S.E.2d 412, 417 (2004) (citations omitted). In addition, an officer may consider the suspect's proximity to the crime scene. *State v. Campbell*, 188 N.C. App. 701, 706, 656 S.E.2d 721, 726 (2008) (citation omitted). Standing alone, no one factor justifies a finding of reasonable suspicion; rather, all factors must be considered in context. *Blackstock*, 165 N.C. App. at 58, 598 S.E.2d at 417-18 (citations omitted).

Further, it is well established that "[a]n anonymous tip can provide reasonable suspicion as long as it exhibits sufficient indicia of reliability." *State v. Hughes*, 353 N.C. 200, 207, 539 S.E.2d 625, 630 (2000) (citations omitted). Our Supreme Court has also recognized "[an anonymous] tip that is somewhat lacking in reliability may still provide a basis for reasonable suspicion if it is buttressed by sufficient police corroboration." *Id.* (citation omitted).

Here, the trial court's Findings, which are supported by competent evidence and thus binding on this appeal, show the Officers had reasonable suspicion to conduct an investigative stop of Defendant. The Record shows Officers Earls and

Jones received a tip from Complainant, alleging he had paid two females a sum of money for prostitution services in room 121 of the La Casa Inn. Instead of performing any services, the two females took Complainant's money and left to purchase drugs. Complainant also provided the Officers with a name and phone number of one of the alleged prostitutes.

Based off of this tip, Officer Earls looked up the name and phone number through a prostitution website, Backpage, where he found an ad matching the phone number for two females, Catherine and Elizabeth. Officer Earls testified he had encountered both females in the past while working on the Heroin Unit of the Charlotte-Mecklenburg Police Department. Following an unsuccessful knock-and-talk on room 121 by Officers Earls and Jones, Officer Bolduc began surveilling room 121. At approximately 8:45 p.m., Officer Bolduc observed Defendant park his truck in a parking space close to room 121 and a white female exit Defendant's truck and enter room 121, while Defendant remained in his truck. Officer Bolduc testified this type of behavior—"[w]here the male subject stays behind, and the female subject will go into a room while the male subject waits for her outside"—is consistent with prostitution-related activity, based on his training and experience. The actions of all three Officers constitute "sufficient police corroboration" to support Complainant's tip of criminal activity—specifically, drug and prostitution-related activity—at room 121 of the La Casa Inn. *See id.*

In addition, both Officers Earls and Jones testified the La Casa Inn was a high-crime area, known for both prostitution and drug activity, which can be relevant in assessing reasonable suspicion. *See Blackstock*, 165 N.C. App. at 58, 598 S.E.2d at 417 (citations omitted). Defendant's close proximity to room 121, where the prostitutes allegedly met Complainant earlier in the night, also supports the Officers' determination that reasonable suspicion existed. *See Campbell*, 188 N.C. App. at 706, 656 S.E.2d at 726 (citation omitted). When "viewed through the eyes of a reasonable, cautious officer, guided by his experience and training[,]" and considering the totality of the circumstances, Officers Earls and Jones had reasonable suspicion, based on specific and articulable facts, that Defendant was engaged in criminal activity. *See Watkins*, 337 N.C. at 441, 446 S.E.2d at 70 (citations omitted). Therefore, the Officers' initial stop of Defendant's vehicle was a proper investigatory stop.

IV. Probable Cause to Search Defendant's Person and Truck

Generally, a warrant is required for every search and seizure. *State v. Trull*, 153 N.C. App. 630, 638-39, 571 S.E.2d 592, 598 (2002) (citation omitted). However, "[i]t is a well-established rule that a search warrant is not required before a lawful search based on probable cause of a motor vehicle . . . in a public vehicular area may take place." *State v. Downing*, 169 N.C. App. 790, 795, 613 S.E.2d 35, 39 (2005) (citations omitted). "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." *State v. Mitchell*, 224 N.C. App. 171, 175, 735 S.E.2d 438, 441 (2012) (citation and quotation marks omitted). "Probable cause exists where the facts and circumstances within their [the officers'] knowledge and of which they had reasonable trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Downing*, 169 N.C. App. at 795, 613 S.E.2d at 39 (citations and quotation marks omitted).

In addition, under the plain view doctrine, police may seize evidence without a warrant if "(1) the officer was in a place where he had a right to be when the evidence was discovered; (2) the evidence was discovered inadvertently; and (3) it was immediately apparent to the police that the items observed were evidence of a crime or contraband." *State v. Graves*, 135 N.C. App. 216, 219, 519 S.E.2d 770, 772 (1999) (citation omitted). Our Courts have defined the term "immediately apparent" as being satisfied where "the police have probable cause to believe that what they have come upon is evidence of criminal conduct." *Id.* (citation and quotation marks omitted). "The circumstances leading to [a] seizure should be viewed as a whole through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training." *Id.* (citation and quotation marks omitted). Our Court has noted this determination is "a totality of the circumstances inquiry." *State v. Green*, 146 N.C. App. 702, 707, 554 S.E.2d 834, 837 (2001) (citation omitted).

Here, the evidence supports the trial court's Conclusion that Officer Earls had probable cause to search Defendant, his truck, and the Styrofoam cup. As detailed above, Officers Earls and Jones had reasonable suspicion to believe Defendant was involved in criminal activity. As the Officers approached Defendant's truck, both Officers observed Defendant make a "quick, abrupt move towards the seat as if concealing something." When Officer Jones began talking with Defendant, he recognized Defendant from a previous incident on 7 August 2010, where Officer Jones arrested Defendant at a nearby gas station for drug paraphernalia. Both Officers testified Defendant was nervous and held on to a Styrofoam cup tightly throughout the encounter. According to both Officers, Defendant's actions raised their suspicions because in their experience, suspects have hidden illegal narcotics inside cups to avoid detection by police. When asked what Defendant was doing at the hotel, Defendant said he dropped off a male who went to the second floor of the hotel. Defendant's explanation contradicted Officer Bolduc's testimony, that he had observed a female exit Defendant's vehicle and enter room 121, and further elevated the Officers' suspicions.

Officer Jones also testified he had received a tip from an informant that Defendant was selling drugs out of a red Mercedes. When Officer Jones asked Defendant if he owned a red Lexus, Defendant replied, "No. I got a red car, Mercedes." Although the Prosecutor admitted at the hearing that Officer Jones

described this informant as "not necessarily a reliable [informant,]" Officer Jones's questioning and Defendant's response constitutes sufficient police corroboration; therefore, the trial court correctly relied on this information in assessing probable cause. *See Hughes*, 353 N.C. at 207, 539 S.E.2d at 630 (citations omitted); *see also State v. Watson*, 119 N.C. App. 395, 399, 458 S.E.2d 519, 523 (1995) (explaining "the officer's knowledge of defendant's past criminal conduct" is one factor a trial court can consider in determining whether probable cause exists (citation omitted)).

As Officer Jones talked with Defendant, Officer Earls noticed a sandwich baggie with a corner missing and the plastic around that corner twisted up. The plastic baggie was located in plain view on Defendant's front seat. Officer Earls notified Officer Jones of the baggie, and both Officers testified at the suppression hearing that a baggie manipulated in this manner was indicative of paraphernalia used for packaging and selling narcotics, based on their training and experience. Our Courts have noted the presence of clearly identified paraphernalia constitutes probable cause to search a vehicle or person. *See, e.g.*, *Green*, 146 N.C. at 708, 554 S.E.2d at 837 (holding where defendant was located in an area known for drug activity and officers observed two inches of a plastic baggie protruding from defendant's waistband, which officers believed contained narcotics based on their training and experience, officers had probable cause to search defendant); *see also State v. Martin*, 97 N.C. App. 19, 28, 387 S.E.2d 211, 216 (1990) (finding probable

cause to search defendant's vehicle based on apparent drug paraphernalia seen between the front seats).

Based on the totality of the circumstances, the Officers had probable cause to believe Defendant was in possession of illegal narcotics. *See Green*, 146 N.C. at 708, 554 S.E.2d at 837. Because the Officers had probable cause to search Defendant and his truck, "it justif[ied] the search of every part of the vehicle and its contents that may conceal the object of the search[,]" including the Styrofoam cup Defendant was holding on to. *Mitchell*, 224 N.C. App. at 175, 735 S.E.2d at 441 (citation and quotation marks omitted). Therefore, the trial court did not err in denying Defendant's Motions to Suppress.

V. Admission of Prior Arrest

Defendant contends the trial court erred in allowing the State to introduce evidence of the 7 August 2010 incident, where Officer Jones arrested Defendant for drug paraphernalia at a nearby gas station. Defendant argues this evidence was inadmissible under Rule 404(b) of our Rules of Evidence, which governs the admissibility of a defendant's prior bad act, because it was admitted to "attack the character" of Defendant. Under Rule 404, evidence of other crimes is admissible when used to show any of the following purposes: "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." N.C. Gen. Stat. § 8C-1, Rule 404(b) (2017).

However, during a hearing on a motion to suppress, "[i]t is immaterial that some of the information [the trial court] possessed might not be competent in evidence at trial." *State v. Phillips*, 300 N.C. 678, 684, 268 S.E.2d 452, 456-57 (1980) (citations omitted). Furthermore, an officer's knowledge of a defendant's past criminal conduct is relevant to determining whether probable cause existed, and Rule 404(b) is not implicated. *See id.* Here, the trial court explicitly considered Officer Jones's testimony regarding the 7 August 2010 incident for the purpose of determining whether the Officers had probable cause to search Defendant. Therefore, the admission of this testimony at the suppression hearing does not implicate Rule 404(b), and the trial court did not err in considering Officer Jones's testimony. *See id.*

Conclusion

Accordingly, based on the foregoing reasons, we affirm the trial court's denial of Defendant's Motions to Suppress and ensuing Judgment.

AFFIRMED.

Judges STROUD and TYSON concur.

Report per Rule 30(e).