IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-851

Filed: 2 July 2019

Iredell County, No. 15 CRS 55301

STATE OF NORTH CAROLINA,

v.

CHRISTOPHER LEE GOFORTH, Defendant.

Appeal by the State from order entered 16 February 2018 by Judge Tanya Wallace in Iredell County Superior Court. Heard in the Court of Appeals 12 March 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Derrick C. Mertz, for the State-Appellant.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Michele A. Goldman, for Defendant-Appellee.

COLLINS, Judge.

The State appeals from an order granting Defendant's pre-trial motion to suppress all statements made and evidence seized as a result of a seizure effectuated in violation of his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Article I, section 20 of the North Carolina

Constitution; and the provisions of North Carolina General Statutes § 15A-974, *et seq*. The State contends that the trial court erred by concluding that Defendant's statements were the result of unconstitutional questioning by law enforcement officers. Finding no error, we affirm.

I. Background

In early September 2015, law enforcement officers in the northern Iredell/Alexander County area were investigating a series of break-ins, and had received information that a black car with a crack in its windshield had been seen at or near the break-ins.

On 10 September 2015, Krista Michelle Weatherman encountered a car which she did not recognize parked in the driveway of her Statesville home. As Weatherman waited for her husband to arrive, a man came from behind the house holding what was later determined to be a hose nozzle, which he dropped. The man walked up to Weatherman's car and told Weatherman he was looking for someone named Ginger, who had told him to go to the back of Weatherman's house. Weatherman told the man that no one named Ginger lived at the house, and asked him what he had dropped. The man said that it was a hose nozzle, which he had accidentally kicked and then picked up. Weatherman then asked him to leave.

Weatherman later described the encounter (the "Weatherman incident") to a law enforcement officer. Weatherman described the car as a Black Infiniti Q with no

license tag and a crack in its windshield, and described the man as a white male with a mustache. Nothing was taken from the Weatherman property, and there was no evidence of any attempt to break into the Weatherman home.

On 11 September 2015, officers from Iredell and Alexander counties began to search for a black Infiniti with a crack in its windshield. That same day, Officer Jody Johnson of the Statesville Police Department was on patrol and searching for such a vehicle when he saw what he believed to be a black Infiniti with a crack in its windshield, driven by a white male, in the parking lot of a supermarket five miles away from the Weatherman property. Johnson could not tell whether the driver had a mustache. Johnson called a detective to confirm the description of the vehicle, and got into position on Halyburton Road to pull the vehicle over.

As the vehicle drove past him, Johnson saw that the vehicle had no driver's-side mirror. Johnson then initiated a traffic stop and the vehicle pulled over. Upon approaching, Johnson observed that Defendant, who was the vehicle's driver, had a mustache. The vehicle was a dark-green Infiniti G20 with a crack in its windshield, and had a license tag.

Johnson requested Defendant's driver's license, and Defendant volunteered that it was either suspended or revoked. Johnson left Defendant in the vehicle and returned to his patrol car to confirm Defendant's license status with dispatch. Other than the call to dispatch, Johnson took no further action to investigate the driver's-

side-mirror violation or the driving-while-license-revoked ("DWLR") violation, or to issue Defendant a citation in connection with either traffic violation.

Within five minutes of the initiation of the traffic stop, Major Andy Poteat, a detective with the Iredell County Sherriff's Department, arrived on-scene. Poteat asked Defendant to step out of the vehicle, and patted Defendant down for weapons. The pat-down produced no weapons or evidence. Poteat then asked Defendant for consent to search the vehicle, and Defendant consented to the search. The search of the vehicle produced no evidence. At some point, twelve minutes following the initiation of the traffic stop, Detective Cameron Jones arrived on-scene and began taking photographs of the vehicle.

After searching the vehicle, Poteat began to question Defendant regarding the Weatherman incident. Initially, Defendant denied being at the Weatherman property on the day of the Weatherman incident. Poteat then told Defendant that someone had seen Defendant at the Weatherman property, and asked about a hose nozzle. Defendant then admitted his presence at the Weatherman property but denied any wrongdoing. At some point thereafter, Defendant was arrested. At no time was Defendant informed of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966).

Defendant was never prosecuted in connection with the traffic offenses. On the day of his arrest, Defendant was charged with Felony Breaking and Entering,

N.C. Gen. Stat. § 14-54(A) (2015), Felony Larceny, N.C. Gen. Stat. § 14-72(B)(2) (2015), and Attempted Misdemeanor Larceny, N.C. Gen. Stat. § 14-72(A) (2015), by the Iredell County Sherriff's Office. Defendant was indicted for those offenses by an Iredell County Grand Jury on 2 November 2015.

On 8 February 2017, Defendant filed a motion to suppress evidence obtained as a result of the traffic stop. Following a hearing, the trial court granted Defendant's motion, and entered an order to that effect on 16 February 2018. The State timely appealed.

II. Standard of Review

Appellate review of a trial court's grant of a motion to suppress "is strictly limited to determining whether the trial [court]'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 [court]'s ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). Uncontested findings of fact are binding on appeal. *State v. Evans*, 251 N.C. App. 610, 613, 795 S.E.2d 444, 448 (2017). We review the trial court's conclusions of law *de novo*. *E.g.*, *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012).

III. Analysis

This case requires us to determine whether Defendant was subject to constitutionally-impermissible interrogation when he made his roadside statements

admitting his presence at the Weatherman property on the day of the Weatherman incident.

The trial court concluded that Defendant's constitutional rights were violated, and suppressed all evidence discovered as a result of those violations. The State argues that by specifically concluding that Defendant's Fifth and Sixth Amendment rights were violated,[1] the trial court implicitly concluded that Defendant's Fourth Amendment rights had not been violated. While the trial court did not specifically mention the Fourth Amendment, it is apparent from the trial court's conclusions—that there were "no reasonable grounds to stop the vehicle" to investigate the Weatherman incident, which "unreasonably delayed and extended the vehicle stop"—that the trial court concluded that Defendant's Fourth Amendment rights had been violated, rather than Defendant's Sixth Amendment rights. Moreover, even if the trial court had not found a Fourth Amendment violation, since (1) Defendant raised his Fourth Amendment rights both in his motion to suppress and on appeal and (2) we review the trial court's conclusions of law *de novo*, we may conclude that Defendant's Fourth Amendment rights were violated based upon the trial court's findings of fact that are uncontested or supported by the record. *See State v. Hester*,

[1] In the order granting Defendant's motion to suppress, the trial court concluded that "[t]he statements made by [D]efendant were a product of a violation of the [D]efendant's constitutional rights, specifically the Fifth and Sixth Amendments," and that "any statements made or evidence seized pursuant to the questioning by Poteat are in violation of the Sixth Amendment" of the U.S. Constitution.

803 S.E.2d 8, 15-16 (N.C. Ct. App. 2017) ("It is well-settled in North Carolina that the question for review is whether the ruling of the trial court was correct and not whether the reason given therefor is sound or tenable. . . . A correct decision of a lower court will not be disturbed because a wrong or insufficient or superfluous reason is assigned." (internal quotation marks, brackets, and citations omitted)).

For these reasons, we will analyze whether Defendant's rights under the Fourth or Fifth Amendments were violated.

a. Fourth Amendment

The Fourth Amendment to the U.S. Constitution protects against "unreasonable searches and seizures," U.S. Const. amend. IV, and North Carolina's Constitution provides similar protections, N.C. Const. art. I, § 20. Traffic stops are seizures within the meaning of the Fourth Amendment, "even though the purpose of the stop is limited and the resulting detention quite brief[,]" *State v. Bullock*, 370 N.C. 256, 257, 805 S.E.2d 671, 673 (2017) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)), and are reviewed under the framework first articulated in *Terry v. Ohio*, 392 U.S. 1 (1968).

Under *Terry* and its progeny, a law enforcement officer may stop a vehicle to investigate if he has "reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). If a law enforcement officer observes a vehicle violating traffic laws, the officer gains reasonable suspicion to stop the vehicle

to investigate. *State v. Jones*, 825 S.E.2d 260, 264 (N.C. Ct. App. 2019); *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). But the "tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop . . . and attend to related safety concerns." *Rodriguez*, 135 S. Ct. at 1614 (citations omitted); *Bullock*, 370 N.C. at 257, 805 S.E.2d at 673. "On-scene investigation into other crimes" undertaken during an otherwise-lawful traffic stop "detours from th[e] mission" of addressing the traffic violation that warranted the stop. *Rodriguez*, 135 S. Ct. at 1616 (citations omitted). Where such an investigation "measurably extend[s] the duration of the stop," the investigation must be supported by reasonable suspicion independent of the traffic violation, or the seizure is rendered unconstitutionally unreasonable. *Id.* at 1615 (citations omitted).

The State concedes that Defendant was seized within the meaning of the Fourth Amendment at the time he made his roadside statements, and the trial court's conclusion that Defendant's initial seizure was supported by reasonable suspicion is uncontested. The question is therefore whether the otherwise-lawful seizure was rendered unconstitutionally unreasonable because of the investigation of the Weatherman incident. The State argues that (1) the trial court erred by concluding that the investigation of the Weatherman incident measurably extended the traffic stop and, (2) even if it did, the trial court erred by concluding that the law enforcement

officers did not have independent reasonable suspicion to question Defendant regarding the Weatherman incident.

We address each argument in turn.

i. Extension of the traffic stop

A law enforcement officer who witnesses a vehicle violating traffic laws is justified in stopping the vehicle to investigate. *Rodriguez*, 135 S. Ct. at 1614. But "[b]ecause addressing the infraction is the purpose of the [traffic] stop, [the stop] may 'last no longer than is necessary to effectuate th[at] purpose.'" *Id.* (citations omitted). Addressing traffic violations involves such tasks as "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance[,]" as well as "negligibly burdensome precautions [taken by the officer] to complete his mission safely." *Id.* at 1611, 1616 (citations omitted); *see Bullock*, 370 N.C. at 257, 805 S.E.2d at 673. "A seizure justified only by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation." *Rodriguez*, 135 S. Ct. at 1612 (internal quotation marks, brackets, and citation omitted).

Defendant contests neither the trial court's conclusion that Johnson had reasonable suspicion to stop Defendant to investigate the driver's-side-mirror violation nor the trial court's conclusion that the law enforcement officers had

probable cause to investigate Defendant for DWLR. The question before us, then, is how long was reasonably necessary for the officers to complete their mission of investigating the traffic violations and issuing citations or making arrests in connection with the traffic violations. *Id.* at 1614 ("Authority for the seizure [] ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." (citations omitted)).

In determining how long is reasonably necessary to complete a traffic stop, courts should "take into account whether the police diligently pursue their investigation." *United States v. Sharpe*, 470 U.S. 675, 685 (1985). Here, the trial court found that, following Johnson's initial encounter with Defendant and his call to dispatch to confirm the status of Defendant's driver's license, no effort was undertaken to investigate the traffic violations or to issue Defendant a citation in connection therewith. Johnson testified at the hearing on Defendant's motion to suppress that Poteat's arrival and the roadside statements here at issue both took place "after [Johnson] checked [Defendant's] license." Since Johnson had finished checking Defendant's license before Poteat arrived, there was nothing left to investigate regarding the traffic violations as of the time Poteat arrived, and the

Fourth Amendment required that Johnson diligently act to cite or arrest Defendant for those violations at that time (at the latest[2]).

The State's argument that "[t]here is no requirement that police arrest a suspect the moment they have probable cause to do so" misses the point, and conflates the crimes for which there was probable cause to arrest Defendant—the traffic violations—with the purported crime the investigation of which the trial court concluded unconstitutionally extended Defendant's seizure—attempted larceny. While a law enforcement officer may not be required to arrest a suspect immediately upon gaining probable cause to do so, *Rodriguez* makes clear that if the officer does not diligently pursue completion of the mission initially justifying the seizure—here, the investigation of and citation or arrest for the traffic violations—the resulting extension of the otherwise-lawful seizure must be supported by reasonable suspicion independent of the subject rendering the seizure initially lawful, or else the seizure is rendered unconstitutional. *Rodriguez*, 135 S. Ct. at 1614-15.

The State does not contest the trial court's findings of fact, which are accordingly binding on appeal. *Evans*, 251 N.C. App. at 613, 795 S.E.2d at 448. The trial court found that Johnson did not diligently pursue his mission of investigating

[2] In fact, Johnson had no need to check Defendant's license with dispatch in order to have probable cause to arrest Defendant for DWLR, since the trial court found that Defendant admitted that his license was suspended or revoked, and Defendant does not contest that finding. *United States v. Harris*, 403 U.S. 573, 583 (1971) (holding that an admission of a crime supports a finding of probable cause).

the traffic violations and citing or arresting Defendant for them, but instead "simply awaited the arrival of detectives." The trial court found that Poteat (1) arrived "within five minutes of the [traffic] stop," (2) asked Defendant out of his vehicle and frisked him, (3) searched Defendant's vehicle, and (4) interrogated Defendant regarding the Weatherman incident, which collectively took at least seven minutes before Jones—who arrived on-scene "[a]pproximately 12 minutes" after the stop was initiated—began to take photographs of the vehicle. Only after all of the aforementioned took place was Defendant arrested for DWLR, in the presence of all three officers. The trial court further found that Johnson remained at the rear of his patrol car "except when the defendant's vehicle was searched," and Johnson testified at the hearing that "we didn't locate anything" of interest in Defendant's vehicle when it was searched. This record evidence supports the trial court's finding that Johnson was at Defendant's vehicle during the search thereof—and perhaps participated in the search—before Poteat interrogated Defendant, and did not issue Defendant a citation or arrest him for the traffic violations at that time.

The State does not argue that the search of Defendant's vehicle or Defendant's interrogation by Poteat were undertaken to investigate the traffic violations, and the record reflects that these investigatory steps were undertaken to investigate Defendant's involvement in the Weatherman incident and, by extension, the series of break-ins the officers were investigating—indeed, Poteat testified that he was "trying

to locate a suspect vehicle in some breaking and entering cases" on the day at issue. Since (1) these investigatory steps were undertaken to investigate Defendant in connection with the Weatherman incident and (2) extended the stop by at least seven minutes beyond when Defendant could have been cited or arrested for the crimes for which Johnson lawfully initiated the traffic stop, we conclude that there was a "measurabl[e] exten[sion of] the duration of the stop" in the meaning of *Rodriguez* which, if unsupported by independent reasonable suspicion, rendered the seizure unlawful. *Rodriguez*, 135 S. Ct. at 1615; *compare Bullock*, 370 N.C. at 262-63, 805 S.E.2d at 677 (holding that a nine-second frisk did not amount to a measurable extension), *with United States v. Clark*, 902 F.3d 404, 411 (3d Cir. 2018) (holding that twenty seconds of unrelated questioning was a measurable extension sufficient to sustain suppression order).

ii. Independent reasonable suspicion to investigate Weatherman incident

Because we conclude that the law enforcement officers' investigation of the Weatherman incident measurably extended the traffic stop, we must also address the State's argument that the officers had independent reasonable suspicion to detain Defendant in connection with the Weatherman incident.

A law enforcement officer may detain an individual to investigate if he has "reasonable, articulable suspicion that criminal activity is afoot." *Wardlow*, 528 U.S. at 123. Reasonable suspicion is a "less demanding standard than probable cause and

requires a showing considerably less than preponderance of the evidence[.]" *Id.* In adjudging whether reasonable suspicion existed to seize an individual, North Carolina courts look to whether the seizure was based upon "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[,]" and consider the seizure in light of "the totality of the circumstances--the whole picture[.]" *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (citations omitted). "The requisite degree of suspicion must be high enough to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *State v. Fields*, 195 N.C. App. 740, 744, 673 S.E.2d 765, 767 (2009) (internal quotation marks and citation omitted). It is the State's burden to demonstrate reasonable suspicion existed to the trial court. *See In re A.J. M.-B.*, 212 N.C. App. 586, 592, 713 S.E.2d 104, 109 (2011) (holding that "since the State did not present sufficient specific, articulable facts to warrant the stop, [the defendant's] subsequent detention and arrest were not justified").

The State argues that the law enforcement officers had reasonable suspicion to question Defendant regarding purported criminal activity on the Weatherman property. Specifically, the State points to two potential crimes that the State argues it was reasonable to suspect were committed on the day of the Weatherman incident: (1) trespassing and (2) attempted larceny of a hose nozzle. We disagree.

The trial court's findings of fact—which since uncontested are binding on appeal, *Evans*, 251 N.C. App. at 613, 795 S.E.2d at 448—are as follows: (1) Weatherman came home to see a car parked in her driveway; (2) a man came from behind the house and dropped a hose nozzle in the front yard; (3) the man came to Weatherman's car and told her that he was looking for someone named Ginger who had told him to go behind the house, and Weatherman told the man no one named Ginger lived there; (4) Weatherman asked the man about what he dropped, and he said it was a hose nozzle that he had accidentally kicked and then picked up; and (5) Weatherman asked the man to leave. The trial court made no other findings of fact regarding what happened at the Weatherman property.

The State's argument that the law enforcement officers had reasonable suspicion to investigate a trespass on the Weatherman property is both improperly raised for the first time on appeal, *State v. Benson*, 323 N.C. 318, 322, 372 S.E.2d 517, 519 (1988), and wholly unsupported by the officers' testimony where cited (or elsewhere) in the record. The State's trespassing argument accordingly fails.

Regarding the State's argument that the law enforcement officers had reasonable suspicion to investigate an attempted larceny on the Weatherman property, this Court has stated that "the essential elements of attempted larceny are: (1) An intent to take and carry away *the property of another*; (2) without the owner's consent; (3) with the intent to deprive the owner of *his or her property* permanently;

(4) an overt act done for the purpose of completing the larceny, going beyond mere preparation; and (5) falling short of the completed offense." *State v. Primus*, 227 N.C. App. 428, 430-31, 742 S.E.2d 310, 312 (2013) (emphasis added) (citations and brackets omitted). At the hearing on Defendant's motion to suppress, one of the detectives from the Iredell County Sheriff's Office read into evidence the statement Weatherman gave to him on 10 September 2015 following the Weatherman incident. All that Weatherman told the detective regarding the hose nozzle was that "when [the man she saw] came around the house, it looked like he dropped a hose nozzle." The record contains no other evidence that Weatherman told law enforcement anything else about the hose nozzle, or that law enforcement possessed any other information about the hose nozzle from any other source. Without possessing information that, if proven, would tend to establish that someone had attempted to take and carry away property belonging to another, law enforcement could not reasonably suspect that an attempted larceny had taken place. *See Brown v. Texas*, 443 U.S. 47, 51-52 (1979) (concluding no reasonable suspicion to detain defendant because of his presence in an alley frequented by drug users, explaining that "[t]he flaw in the State's case is that none of the circumstances preceding the officers' detention of appellant justified a reasonable suspicion that he was involved in criminal conduct").

Since it was the State's burden to present evidence demonstrating that reasonable suspicion existed, and the record does not contain evidence that criminal activity was afoot on the Weatherman property, we conclude that the trial court did not err in concluding that the officers lacked independent reasonable suspicion to detain Defendant to investigate the Weatherman incident.

We accordingly conclude that Defendant's Fourth Amendment rights were violated, and that all evidence discovered as a result—including, but not limited to, the roadside statements made by Defendant during his unconstitutional interrogation by Poteat, and any evidence obtained during any searches justified by the fruit of the poisonous tree[3]—were properly suppressed by the trial court. *See State v. McKinney*, 361 N.C. 53, 58, 637 S.E.2d 868, 872 (2006) ("evidence obtained in violation of an individual's Fourth Amendment rights cannot be used by the government to convict him or her of a crime.").

b. Fifth Amendment

[3] The State bore the burden as the appellant of ensuring that the record on appeal was complete. *Collins v. St. George Physical Therapy*, 141 N.C. App. 82, 89, 539 S.E.2d 356, 361 (2000). No search warrants are included in the record on appeal, as our rules require. N.C. R. App. P. 9(a)(3)(c) (2018) (the record on appeal "shall contain . . . copies of all warrants . . . upon which the case has been tried in any court"). As a result, we are unable to more specifically respond to the State's request to "clarify what evidence can be suppressed as a result" of the unconstitutional seizure beyond that provided by the trial court. *See Wong Sun v. United States*, 371 U.S. 471, 484-88 (1963) (framing the question regarding the admissibility of evidence challenged as fruit of the poisonous tree as whether "the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint" (citation omitted)).

Since we conclude that Defendant's Fourth Amendment rights were violated, we do not reach the State's Fifth Amendment arguments.

IV. Conclusion

Because we conclude that the investigation of the Weatherman incident measurably extended Defendant's seizure and that the law enforcement officers were not independently justified in detaining Defendant to investigate the Weatherman incident, we discern no error.

AFFIRMED.

Chief Judge McGEE and Judge DIETZ concur.

Report per Rule 30(e).