IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1219

Filed: 1 October 2019

Buncombe County, No. 16 CRS 93264

STATE OF NORTH CAROLINA

v.

ANDREW SCOTT VORHEIS

Appeal by defendant from judgment entered 30 October 2017 by Judge Alan Z. Thornburg in Buncombe County Superior Court. Heard in the Court of Appeals 7 August 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kevin G. Mahoney, for the State.

Gilda C. Rodriguez for defendant.

DIETZ, Judge.

Late at night, Defendant Andrew Scott Vorheis was in his car, with the headlights on and engine running, in the parking lot of a closed business. A law enforcement officer noticed Vorheis's car and pulled her patrol car behind it, without activating her blue lights or siren. She then walked up to Vorheis's car, asked to speak to the occupants, and, after speaking to Vorheis, discovered that he was impaired.

Vorheis argues that the trial court should have suppressed all evidence in this case because he was seized at the time the officer pulled up behind him and, at that point, the officer lacked reasonable suspicion. As explained below, we reject this argument because the trial court properly concluded, based on findings supported by the record, that the officer's approach, without activating her lights or siren and without displaying any show of force, was essentially a "knock and talk scenario" that was a consensual encounter. We therefore affirm the trial court's judgment.

Facts and Procedural History

In the early morning hours of 31 December 2016, Detective Laura Raymond was on patrol in Asheville. At around 2:15 a.m., while traveling eastbound on US 19/23, Detective Raymond noticed a red vehicle parked in a commercial parking lot of a closed business. The vehicle was parked, but its headlights were on and its engine was running.

Detective Raymond turned around, drove back, and pulled in diagonally behind the parked car. She did not activate her blue lights or use her loudspeaker. Raymond activated her spotlight "just to illuminate the car as [she] approached."

Defendant Andrew Scott Vorheis was in the driver's seat and rolled down his window to talk to Raymond. Raymond explained that she "was stopping to see what was going on" and asked Vorheis why he was in the parking lot of a closed business, where he was headed that night, and where he had come from. It appeared to

Raymond that Vorheis was "impaired by some substance." Raymond spoke to Vorheis for "two and a half to three minutes maybe" and then asked him for his driver's license.

Detective Raymond learned that Officer Craig, a member of the DWI Task Force and a drug recognition expert, was on his way to the scene. Raymond continued her conversation with Vorheis until Craig arrived. Officer Raymond held onto Vorheis's license until Officer Craig arrived because she "was suspecting that he might have been impaired." At that time, about six minutes after Raymond first approached Vorheis, Detective Raymond explained that Vorheis was "not free to leave the encounter" because "he had raised [Raymond's] suspicion that he might have been impaired." Officer Craig arrived at the scene about 17 minutes after Raymond called in that she was approaching Vorheis's vehicle. Officer Craig conducted field sobriety tests with Vorheis. The officers cited Vorheis for impaired driving.

Vorheis later moved to suppress the evidence obtained by the officers. At the hearing on the motion to suppress, Detective Raymond testified about her encounter with Vorheis. As she first drove up, she pulled her patrol car behind Vorheis's car but left space behind his vehicle so he could have backed up. She testified that Vorheis's car caught her eye because "one the business is closed. I knew that there shouldn't have been anyone there at that hour, just after two o'clock in the morning. So initially I turned around to stop and go make sure that someone wasn't parked there loading

up their vehicle with this outdoor inventory." Raymond testified that she did not initiate her blue lights, use her car microphone, or give any commands when she pulled up to Vorheis's vehicle. Raymond explained that "[w]hen I approached his vehicle, he rolled down the window to speak to me, and we were having just kind of like a consensual encounter there." Raymond stated that she "detained [Vorheis] for an investigation" after she spoke with him and began to suspect he was impaired. She further testified that it's "customary" to "wait for a Drug Recognition Expert or member of the DWI Task Force to arrive at the scene of an impaired driving . . . if they're on duty and available."

On 26 October 2017, the trial court filed an order denying Vorheis's motion to suppress. The trial court found and concluded that Raymond's approach of Vorheis's vehicle did not constitute a "stop" because the vehicle was already parked in a public lot and Raymond "did not activate her emergency equipment . . . nor did she utilize her loudspeaker microphone when she approached," and thus the encounter was essentially a consensual "knock and talk." The court also found that Vorheis was seized after Detective Raymond began speaking to him and requested his driver's license, but at that point Detective Raymond had reasonable suspicion that Vorheis was impaired.

On 30 October 2017, Vorheis pleaded guilty to impaired driving, reserving his right to appeal the denial of his motion to suppress. The trial court entered judgment

suspending Vorheis's sentence for 12 months of probation. Vorheis appealed.

Analysis

Vorheis argues that the trial court erred by denying his motion to suppress. He contends that, even if Detective Raymond developed reasonable suspicion after speaking to him, the officer's *initial* approach of his parked vehicle constituted an investigatory stop and seizure, and the officer did not have reasonable suspicion at that time. We reject this argument.

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). "[T]he trial court's ruling on a motion to suppress is afforded great deference upon appellate review as it has the duty to hear testimony and weigh the evidence." *State v. McClendon*, 130 N.C. App. 368, 377, 502 S.E.2d 902, 908 (1998), *aff'd,* 350 N.C. 630, 517 S.E.2d 128 (1999).

There are "three tiers of police encounters: communication between the police and citizens involving no coercion or detention and therefore outside the compass of the Fourth Amendment, brief 'seizures' that must be supported by reasonable

suspicion, and full-scale arrests that must be supported by probable cause." *State v. Sugg*, 61 N.C. App. 106, 108–09, 300 S.E.2d 248, 250 (1983).

The issue here is whether Detective Raymond's initial approach to Vorheis's vehicle falls into the first or second of these tiers; that is, whether this was a consensual encounter, or one that involved a brief seizure implicating the Fourth Amendment and requiring reasonable suspicion.

"A seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature." *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (citation omitted). "[T]he crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *Id.* at 437 (citation omitted).

Here, Detective Raymond noticed Vorheis's vehicle late at night, parked in the lot of a closed business, with its lights on and engine running. Detective Raymond pulled up behind Vorheis's parked vehicle without activating her blue lights or siren. She parked behind Vorheis, leaving some room for him to back his car up if needed. Detective Raymond then shined her spotlight on Vorheis's vehicle so that she could

see the area, but she did not draw her weapon or make any other show of force as she approached. She also did not use her loudspeaker, or issue any verbal commands as she approached Vorheis. She simply approached the car and asked if she could speak to the occupants. Based on these facts, the trial court found that Detective Raymond's actions were "similar to investigative actions of law enforcement in a 'knock and talk' scenario," meaning a situation in which law enforcement ask a person to voluntarily speak with officers with the understanding that the person is free to decline to do so.

Our Supreme Court has upheld the denial of a motion to suppress in analogous circumstances. *State v. Brooks*, 337 N.C. 132, 143, 446 S.E.2d 579, 587 (1994). In *Brooks*, the Court held that no seizure occurred and no reasonable suspicion was required where an officer approached the defendant's vehicle in a business parking lot, although the officer "walked up to the defendant who was sitting in his vehicle and shined a light into the interior." *Id.* The Court explained that, "[a]t that point, [the officer] had made no show of force or done anything else to indicate to a reasonable person in the defendant's position that he was not free to leave or otherwise terminate the encounter." *Id.* "As a result, no reasonable suspicion was required for [the officer's] initial approach and questioning of the defendant." *Id.* at 142, 446 S.E.2d at 586. In later cases, the Supreme Court has drawn a contrast between the officer in *Brooks* and officers who approach a vehicle with guns drawn or some other "show of authority." *State v. Icard*, 363 N.C. 303, 310, 677 S.E.2d 822, 827

(2009). In this case, as in *Brooks*, the officer did not make any "show of authority" as she approached and thus, under *Brooks*, this was a consensual encounter, not a seizure.

Vorheis also points to a portion of Detective Raymond's testimony in which the officer indicated that, at the time she approached Vorheis, she was suspicious and would not have let him leave the scene. That testimony is irrelevant to the legal question addressed by the trial court. The relevant inquiry is not what Detective Raymond believed she would have done if Vorheis tried to leave, but whether a reasonable person in Vorheis's position would have believed that he was free to leave. *See Bostick*, 501 U.S. at 437. The record supports the trial court's finding that this was a consensual "knock and talk" encounter that a reasonable person would understand was voluntary and could be terminated at any time.

Similarly, Vorheis points to a portion of Detective Raymond's testimony concerning his ability to drive away as the officer approached. In response to a question about whether Vorheis could "turn around out of that area," Detective Raymond explained that "I can't say for sure. I know there is room to back up, because there was additional space between our vehicles." Vorheis argues that this testimony shows that he was not free to leave because Detective Raymond "parked behind him, essentially blocking his exit from the parking lot."

As an initial matter, that is not what Detective Raymond said; she testified that she didn't know whether Vorheis had room to turn around out of that area, but that she had left space between the vehicles so that Vorheis could back up. In any event, the trial court considered this testimony, as well as other evidence concerning the position of the vehicles and the space between them, and did not find that Detective Raymond blocked any exit. To the contrary, as noted above, the court found that this was an ordinary "knock and talk scenario," meaning Vorheis was free to terminate the encounter at any time. That finding is supported by the record and we are bound by it on appeal. *Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

In sum, the trial court's factual findings are supported by the record and those findings, in turn, support the court's conclusions of law. *Id.* The trial court therefore properly denied the motion to suppress.[1]

Conclusion

The trial court properly denied the motion to suppress and we therefore affirm the trial court's judgment.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).

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[1] Vorheis also points out that the trial court incorrectly stated the date of the events at issue as October 31 instead of December 31, and stated the year as 2017 instead of 2016. These are obvious clerical errors not material to the trial court's ruling on Vorheis's motion to suppress. *See State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000).