IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-169

No. COA20-500

Filed 20 April 2021

Cabarrus County, No. 17 CRS 55462

STATE OF NORTH CAROLINA,

v.

LARRY HUNEYCUTT, Defendant.

Appeal by Defendant from order entered 5 February 2020 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 23 February 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Phillip T. Reynolds, for the State.

Crumpler Freedman Parker & Witt, by Stuart L. Brooks, for Defendant.

GRIFFIN, Judge.

¶ 1 Defendant Larry Huneycutt ("Defendant") appeals from an order denying his motion to suppress evidence. Defendant argues that (1) Officer Barbee lacked authority under N.C. Gen. Stat. § 113-136(f) to stop Defendant because Defendant was not "engaging in" hunting when Officer Barbee stopped him; (2) Officer Barbee lacked authority under N.C. Gen. Stat. § 113-136(g) to stop Defendant because they

were not on a "primary highway" and Officer Barbee lacked "clear evidence" that Defendant had recently engaged in hunting; and (3) the investigatory stop violated Defendant's rights under the Fourth Amendment of the U.S. Constitution and Article I, § 20 of the North Carolina Constitution, because Officer Barbee lacked a reasonable suspicion that Defendant was engaging in criminal activity. Upon review, we conclude that Defendant was engaging in hunting when Officer Barbee stopped him; that Officer Barbee was a protector with authority to stop Defendant under § 113-136(f) and (g); and that the totality of the circumstances showed that Officer Barbee had a reasonable suspicion that Defendant was engaged in criminal activity. Accordingly, we affirm.

I. Procedural History

¶ 2 On 22 January 2018, Defendant was indicted for one count of possession of a firearm by a convicted felon. Defendant filed a motion to suppress evidence ("Motion to Suppress") on 31 August 2018. The Motion to Suppress was heard on 23 August 2019 in Cabarrus County Superior Court before the Honorable Martin McGee. The trial court denied the Motion to Suppress, and a jury convicted Defendant on 6 February 2020. On 18 February 2020, Defendant gave written notice of appeal of the denial of his Motion to Suppress.

¶ 3 Defendant's arguments are preserved for appellate review. He filed the Motion to Suppress, together with the accompanying affidavit required by N.C. Gen. Stat. §

15A-977, on grounds that the investigatory stop violated his rights under the Fourth Amendment of the U.S. Constitution and Article I, § 20 of the North Carolina Constitution. *See* N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context."). Additionally, Defendant argued before the trial court that Officer Barbee lacked authority under N.C. Gen. Stat. § 113-136(f) and (g) to stop Defendant. *See State v. Kuegel*, 195 N.C. App. 310, 316, 672 S.E.2d 97, 101 (2009) (dismissing defendant's arguments in support of motion to suppress that "were neither raised nor argued before the trial court.") (citation omitted). These issues are preserved for review.

II. Factual Background

¶ 4 Defendant did not challenge the trial court's findings of fact; therefore, they are binding on appeal. *State v. Watkins*, 337 N.C. 437, 438, 446 S.E.2d 67, 68 (1994) (citations omitted). In its order denying the Motion to Suppress, the trial court made the following findings of fact:

> 1. That on December 1, 2017, the defendant was charged with possession of a firearm by a felon by Officer B. Barbee of the North Carolina Wildlife Resources Commission in Mount Pleasant, Cabarrus County, North Carolina.
>
> 2. That on that day, Officer Barbee was on duty within

his jurisdiction and noticed an older white model S10 Chevy pickup truck parked on the side of Lentz-Harness Sho[p] Road in Mount Pleasant.

3. Officer Barbee has been a wildlife officer in Cabarrus County since 2011. He is very familiar with the Lentz-Harness Shop Road area of the county. He is familiar, not only with the area, but the deer stands located along this stretch of road. He was aware at the time that a deer stand was located near where the white pickup truck was located but did not know the owner of the stand.

4. December 1st is the middle of firearms and deer season. In this area of the state, hunters are allowed to hunt from one half hour before sunrise until one half hour after sunset. This part of the county is the "go to place" to catch hunters year round because of the frequency of the hunters in this area.

5. Officer Barbee had received numerous complaints from anonymous sources regarding the defendant hunting with a firearm as a felon, trespassing, and hunting deer at night from a vehicle. Officer Barbee, prior to stopping the defendant, confirmed with the county's other wildlife officer that he too had received similar anonymous complaints concerning the defendant.

6. Officer Barbee, after observing the vehicle, ran the vehicle's tag, which came back to the defendant. The officer also received a picture of the defendant at the time the tag was ran.

7. Due to safety reasons and due to not wanting to interrupt lawful hunting, Officer Barbee decided not to go into the woods at that time to check the defendant's hunting license and circumstances of him being in the woods. He decided to wait on the defendant to leave which he expected to be shortly after sunset.

> 8. Officer Barbee, thereafter, observed a figure of a man leaving the woods with a wide brim hat and get into the white pickup truck and drive off. He could not see the hands of the figure or if he had a firearm.
>
> 9. Shortly after the defendant drove off, Officer Barbee activated his lights to stop the vehicle. Although the vehicle was slow to respond, it eventually stopped in a driveway. Before the officer reached the vehicle, he recognized the driver as the defendant from the photo.

¶ 5 The trial court did not make a finding as to whether Lentz-Harness Shop Road is a primary highway. However, Officer Barbee testified that Lentz-Harness Shop Road is not a primary highway, but rather is "a county road." Based on its findings of fact, the trial court made the following conclusions of law pertinent to this appeal:

> 2. Officer Barbee is a protector as defined in the North Carolina General Statute 113-128(7) and 113-128(9).
>
> 3. Officer Barbee has clear evidence the defendant was engaged in a hunting activity as provided in 113-135(a) [sic] based upon the totality of the circumstances.
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> 4. Officer Barbee has authority to stop the defendant's vehicle pursuant to 113-136(f) and (g).
>
> 5. Additionally, based upon the totality of the circumstances, Officer Barb[e]e had reasonable, articulable suspicion to stop the defendant based upon the anonymous tip, the location of the vehicle, the time of year, the area of the county, the time, the clothing and manner in which the defendant left the woods and the confirmation from the dispatcher that the defendant was a convicted felon as well as all of the fact[s] found above.
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> 6. The defendant's motion to suppress should be

denied.

III. Analysis

¶ 6 On appeal, Defendant argues that (1) Officer Barbee lacked authority under N.C. Gen. Stat. § 113-136(f) to stop Defendant because Defendant was not "engaging in" hunting when Officer Barbee stopped him; (2) Officer Barbee lacked authority under N.C. Gen. Stat. § 113-136(g) to stop Defendant because they were not on a "primary highway" and Officer Barbee lacked "clear evidence" that Defendant had recently engaged in hunting; and (3) the investigatory stop violated Defendant's rights under the Fourth Amendment of the U.S. Constitution and Article I, § 20 of the North Carolina Constitution, because Officer Barbee lacked a reasonable suspicion that Defendant was engaging in criminal activity. After careful review, we disagree and affirm.

¶ 7 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). Here, Defendant did not challenge the trial court's findings of fact, and they are therefore binding on appeal. *State v. Watkins*, 337 N.C. 437, 438, 446 S.E.2d 67, 68 (1994) (citations omitted). Accordingly, we review whether the findings of fact support the conclusions

of law.

A. Officer Barbee Had Statutory Authority to Stop Defendant Under N.C. Gen. Stat. § 113-136(f).

¶ 8 Defendant contends that Officer Barbee lacked statutory authority to stop him under N.C. Gen. Stat. § 113-136(f) because Defendant was not "engaging in" hunting when Officer Barbee stopped him. We disagree.

¶ 9 "Conclusions of law are reviewed de novo." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citations omitted).

¶ 10 N.C. Gen. Stat. § 113-136(f) provides that "protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements." N.C. Gen. Stat. § 113-136(f) (2017). Section 113-136(f) further requires that

> [i]f the person stopped is in a motor vehicle being driven at the time and the inspector or protector in question is also in a motor vehicle, the inspector or protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles under the provisions of G.S. 20-125(b) or 20-125(c).

N.C. Gen. Stat. § 113-136(f).

¶ 11 The trial court found that "Officer Barbee is a protector as defined in the North Carolina General Statute 113-128(7) and 113-128(9)." Defendant does not dispute

this conclusion of law. Rather, Defendant argues that he was not "engaging in" hunting (the regulated activity at issue here) when Officer Barbee stopped him.

¶ 12 "To [h]unt" means "[t]o take wild animals or wild birds." N.C. Gen. Stat. § 113-130(5a) (2017). In turn, "[t]o [t]ake" means "[a]ll operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any . . . wildlife resources." N.C. Gen. Stat. § 113-130(7) (2017).

¶ 13 The factual findings support that Officer Barbee reasonably believed Defendant was engaging in hunting as defined in N.C. Gen. Stat. §§ 113-130(5a) and (7). Officer Barbee saw Defendant's truck pulled to the side of the road near a deer stand. December 1 was "the middle of firearms and deer season", and the area had such a high frequency of hunters that it was the "'go to place' to catch hunters year round." Officer Barbee had heard complaints "regarding [Defendant] hunting with a firearm as a felon, trespassing, and hunting deer at night from a vehicle," and the county's other wildlife officer confirmed to Officer Barbee that he likewise had received similar complaints regarding Defendant. Officer Barbee did not need to see Defendant actually shooting an animal in order to form a reasonable belief that Defendant was hunting. *See State v. Oxendine*, 242 N.C. App. 216, 221, 775 S.E.2d 19, 23 (2015) ("[The officer's] testimony that [the defendant] was holding a shotgun while associating with a large group of dove hunters, and that [his co-defendant] shot

a dove in the presence of [the defendant], was sufficient to show that [the defendant] was engaged in the act of dove hunting.").

¶ 14 Moreover, the factual findings adequately support that Officer Barbee reasonably believed that Defendant was engaging in hunting at the specific time of the traffic stop. Although Officer Barbee stopped Defendant after Defendant returned from the woods and got into his truck, Defendant could still have been "engaging in" hunting as defined by N.C. Gen. Stat. §§ 113-130(5a) and (7). Driving a truck away from a hunting area, immediately after hunting, would constitute an "operation[] . . . immediately subsequent to an attempt . . . to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any . . . wildlife resources." N.C. Gen. Stat. § 113-130(7).

¶ 15 The fact that Defendant was in a vehicle when Officer Barbee conducted the stop is only a factor to be considered. Section 113-136(f) contemplates that a person can still be "engaging in" hunting activity while in a vehicle, because the section requires a protector to "sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles" in the situation where "the person stopped is in a motor vehicle being driven at the time." N.C. Gen. Stat. § 113-136(f).

¶ 16 The trial court did not err in concluding that Officer Barbee reasonably believed Defendant was engaging in hunting and that Officer Barbee had authority to stop Defendant under N.C. Gen. Stat. §113-136(f).

B. Officer Barbee Had Statutory Authority to Stop Defendant Under N.C. Gen. Stat. § 113-136(g).

¶ 17 The trial court concluded that "Officer Barbee has authority to stop the defendant's vehicle pursuant to . . . [§ 113-136](g)." Defendant argues that section 113-136(g) is inapplicable to his case. We disagree that the trial court erred by making this conclusion.

¶ 18 "Conclusions of law are reviewed de novo." *Biber*, 365 N.C. at 168, 712 S.E.2d at 878.

¶ 19 N.C. Gen. Stat. § 113-136(g) provides that "[p]rotectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission." N.C. Gen. Stat. § 113-136(g) (2017).

¶ 20 A criminal statute is generally construed against the State, but "is still construed utilizing 'common sense' and legislative intent." *State v. Beck*, 359 N.C. 611, 614, 614 S.E.2d 274, 277 (2005). Here, the language of section 113-136(g) is exclusionary. The section does not grant additional authority (section 113-136(f) already authorizes vehicle stops) but instead precludes wildlife officers from stopping and inspecting vehicles on primary highways "without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the

Wildlife Resources Commission." N.C. Gen. Stat. § 113-136(g). The section prevents protectors from stopping and inspecting vehicles on primary highways for activities that are not regulated by the Wildlife Resources Commission (e.g., traffic offenses). *Id.*

¶ 21 The trial court did not find that Lentz-Harness Shop Road was a primary highway. Officer Barbee testified that it was not a primary highway, and his testimony as to that fact was not contradicted by other evidence. "If there is no conflict in the evidence on a fact, failure to find that fact is not error." *State v. Smith*, 135 N.C. App. 377, 380, 520 S.E.2d 310, 312 (1999).

¶ 22 As a protector, Officer Barbee did have authority to stop vehicles under the circumstances described in section 113-136(g). However, because Lentz-Harness Shop Road was not a primary highway, Officer Barbee did not need to meet the section 113-136(g) "clear evidence" standard.

¶ 23 The trial court did not err by concluding that Officer Barbee, as a protector, had authority to stop defendant's vehicle based on N.C. Gen. Stat. § 113-136(g).

C. Officer Barbee Had a Reasonable Suspicion to Stop Defendant.

¶ 24 Defendant argues that the investigatory stop violated his rights under the Fourth Amendment of the U.S. Constitution and Article I, § 20 of the North Carolina Constitution, because the factual findings failed to support that Officer Barbee had a reasonable suspicion that Defendant was engaging in criminal activity. We disagree.

¶ 25 We review *de novo* whether a trial court's findings of fact are sufficient to support the conclusion that an "officer had reasonable suspicion to detain a defendant." *State v. Kincaid*, 147 N.C. App. 94, 97, 555 S.E.2d 294, 297 (2001).

¶ 26 The Fourth Amendment protects the "right of the people . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The Fourth Amendment is applicable to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Seizures include "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) (citing *Reid v. Georgia*, 448 U.S. 438, 440 (1980)). "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 (1979)).

¶ 27 "A court must consider 'the totality of the circumstances—the whole picture' in determining whether a reasonable suspicion to make an investigatory stop exists." *Id*. (quoting *U.S. v. Cortez*, 449 U.S. 411, 417 (1981)). "[S]ome minimal level of objective justification," rather than a mere "inchoate and unparticularized suspicion or 'hunch,'" is required to make the stop. *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989) (citations omitted). "The stop must 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." *Watkins*, 337

N.C. at 441, 446 S.E.2d at 70 (citing *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968); *State v. Thompson*, 296 N.C. 703, 706, 252 S.E.2d 776, 779, *cert. denied*, 444 U.S. 907 (1979)).

¶ 28 The facts here are similar to those in *State v. Tillett*, 50 N.C. App. 520, 274 S.E.2d 361 (1981). In *Tillett*, an officer saw the defendants in a

> vehicle on a one lane dirt road in Nags Head Woods, a heavily wooded, seasonably unoccupied area. The hour was late, approximately 9:40 p.m., and the weather was rainy. The officer knew that the dirt road led to a number of seasonal residences, only one of which was occupied at that time of the year. The officer also was aware of reports of 'firelighting' deer in that area on several previous occasions. After seeing defendants' vehicle go into the wooded area, the officer left for a short time, and when he returned, defendants' vehicle was coming out of the wooded area.

Id. at 524, 274 S.E.2d at 364. The *Tillett* Court reasoned that these facts, together with reasonable inferences, would "justify the reasonable suspicion that the occupants of the vehicle might be engaged in or connected with criminal activity." *Id.*

¶ *29* *Tillett* is analogous to the case before us. Here, Officer Barbee saw Defendant's vehicle in a time and location that would "justify the reasonable suspicion that [Defendant] might be engaged in or connected with criminal activity." *Id.* Defendant's truck was pulled to the side of the road, near a deer stand, during "the middle of firearms and deer season" in an area that had such a high frequency of hunters that it was the "'go to place' to catch hunters year round." Officer Barbee

had heard complaints "regarding the defendant hunting with a firearm as a felon, trespassing, and hunting deer at night from a vehicle."

¶ 30 Although the tips regarding Defendant were anonymous, Officer Barbee's work on the scene corroborated the tips. "An anonymous tip may provide the requisite reasonable suspicion for an investigatory stop if it is corroborated by independent police work on the scene." *Watkins*, 337 N.C. at 442, 446 S.E.2d at 70 (citing *Alabama v. White*, 496 U.S. 325, 330 (1990)). When Officer Barbee "ran the [vehicle] tag" of Defendant's truck, the results showed that the truck belonged to Defendant, a convicted felon. Officer Barbee called Cabarrus County's other wildlife officer, who confirmed that he had received complaints regarding Defendant which were similar to the anonymous tips Officer Barbee had heard. The fact that Defendant's truck was pulled to the side of the road near a deer stand, together with Officer Barbee's knowledge that this was "the middle of firearms and deer season" in the "'go to place' to catch hunters," justified an inference that Defendant was possibly hunting with a firearm as a felon on land that did not belong to him. *See Watkins*, 337 N.C. at 442, 446 S.E.2d at 70 (anonymous tip about a "suspicious vehicle" behind a business building was sufficiently corroborated by the officer's observations of a vehicle moving with its lights off in the business's parking lot at 3:00 a.m., when the business was normally closed, in a rural area).

¶ 31 Defendant misreads the facts by arguing that "[Officer Barbee's] observations foreclosed any reasonable possibility that [Defendant] came out of the woods with a firearm." On the contrary, Officer Barbee could not see "if" (i.e. *whether or not*) Defendant was holding a firearm when Defendant walked out of the woods.

¶ 32 The factual findings support that, based on the totality of the circumstances, Officer Barbee had a reasonable suspicion that Defendant was engaged in criminal activity.

IV. Conclusion

¶ 33 For the foregoing reasons, we affirm.

AFFIRMED.

Chief Judge STROUD concurs.

Judge MURPHY concurs in result only.

Report per Rule 30(e).