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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-647

No. COA21-89

Filed 16 November 2021

Wake County, No. 18CRS210299

STATE OF NORTH CAROLINA

v.

ROGER LEVERN SANDERS, Defendant.

Appeal by Defendant from judgment entered on 5 August 2020 by Judge Vinston Miller Rozier in Wake County Superior Court. Heard in the Court of Appeals 20 October 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Jodi P. Carpenter, for the State.

Daniel M. Blau for the Defendant.

JACKSON, Judge.

¶ 1 Roger Levern Sanders ("Defendant") appeals from judgment entered upon a guilty plea of one count of driving while impaired ("DWI"), a violation of N.C. Gen. Stat. § 20-138.1. On appeal, Defendant argues that the arresting officer did not have reasonable suspicion to conduct a traffic stop. We affirm the order of the trial court denying Defendant's motion to suppress.

I. Background

¶ 2 Around midnight on 4 June 2018, Defendant's wife, P. Sanders ("Ms. Sanders"), called 911 to report a domestic dispute. Sergeant M.M. Klingenmaier and Officer Gomes of the Raleigh Police Department responded to the call, arriving at Defendant's home on Delco Street in Raleigh around 12:15 a.m.

¶ 3 At the home, the officers encountered Ms. Sanders and Defendant. Ms. Sanders complained that Defendant was drunk, and they had been arguing. At the time the officers arrived, Defendant was sitting outside on the front porch steps. Sergeant Klingenmaier observed that Defendant appeared intoxicated, had slurred speech, and was argumentative. Defendant told Sergeant Klingenmaier that he had been drinking because it was his birthday.

¶ 4 The officers recommended that the couple separate for the night. Defendant refused to leave, but Ms. Sanders agreed to stay with a family member in a neighborhood close by. Sergeant Klingenmaier observed Ms. Sanders leave the home in a red sedan. The officers stayed with Defendant until Ms. Sanders had left. After Ms. Sanders drove away, the only car left at the home was a white catering van with red lettering, which Sergeant Klingenmaier observed parked in the driveway.

¶ 5 Within minutes of leaving the Sanders' home, Sergeant Klingenmaier was dispatched again. Ms. Sanders had called 911 a second time, reporting that Defendant had followed her to her family member's home. As Sergeant Klingenmaier

was responding to this second call, he observed a white catering van with red lettering travelling along Rock Quarry Road, near Ms. Sanders' new location. Sergeant Klingenmaier did not actually see Defendant driving the van, but he believed it was the same catering van he had seen parked in Defendant's driveway. Although the driver of the van had not committed any traffic violations, Sergeant Klingenmaier stopped the van because he believed the driver was Defendant who was driving while intoxicated. Defendant's identity was confirmed after initiating the stop.

¶ 6 On 4 June 2018, Defendant was arrested and charged with one count of DWI. Defendant was convicted in Wake County District Court and appealed to Wake County Superior Court, where he filed a motion to suppress. The Honorable Craig Croom conducted a hearing where Sergeant Klingenmaier testified to the above events. After the hearing, the trial court entered an order denying Defendant's motion to suppress.

¶ 7 Following a written plea agreement, Defendant pled guilty to DWI on 5 August 2020. In the plea agreement, Defendant reserved his right to appeal pursuant to N.C. Gen. Stat. § 15A-979(b). The trial court sentenced Defendant to 12 months in prison but suspended the sentence and placed Defendant on supervised probation for 24 months.

¶ 8 Defendant entered notice of appeal in open court.

II. Analysis

A. Standard of Review

¶ 9 "The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011). Unchallenged findings of fact are binding on appeal, and conclusions of law are reviewed *de novo*. *Id*. at 168, 712 S.E.2d at 878.

B. Discussion

¶ 10 The Fourth Amendment to the United States Constitution, which is incorporated into and made applicable to the State through the Fourteenth Amendment, guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. Const. amend. IV. Likewise, "Article I, Section 20 of [the North Carolina] Constitution, . . . prohibits unreasonable searches and seizures, and requires the exclusion of evidence obtained by unreasonable search and seizure[.]" *State v. Garner*, 331 N.C. 491, 506, 417 S.E.2d 502, 510 (1992) (internal citations omitted).

¶ 11 Here, Defendant argues that the trial court erred by denying his motion to suppress because Sergeant Klingenmaier did not have reasonable suspicion to conduct a traffic stop, violating Defendant's rights under the Fourth Amendment to the United States Constitution and Article I, Section 20 of our Constitution. Specifically, Defendant argues that Sergeant Klingenmaier did not have reasonable

suspicion to believe Defendant was driving while impaired because Sergeant Klingenmaier did not know before conducting the stop that Defendant was the van's driver. Defendant does not challenge the trial court's factual findings, and they are therefore binding on appeal.

¶ 12 "[I]n order to conduct a warrantless, investigatory stop, an officer must have reasonable and articulable suspicion of criminal activity." *State v. Hughes*, 353 N.C. 200, 206-07, 539 S.E.2d 625, 630 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). A court must consider "'the totality of the circumstances'" when determining whether reasonable suspicion exists for a particular investigatory stop. *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). "Reasonable suspicion is a 'less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.'" *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). Consequently, the standard requires "a minimal level of objective justification, something more than an 'unparticularized suspicion or hunch.'" *Watkins*, 337 N.C. at 442, 446 S.E.2d at 70 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). "The stop must be based on specific and articulable facts, as well as the rational inferences from those facts," *id*. at 441, 446 S.E.2d at 70, and "[t]he reasonable suspicion must arise from the officer's knowledge prior to the time of the stop[,]" *Hughes*, 353 N.C. at 208, 539 S.E.2d at 631.

¶ 13 Here, Defendant argues that the evidence available to Sergeant Klingenmaier prior to the stop did not raise a reasonable inference that Defendant was driving the van. Defendant relies on *State v. Hess*, 185 N.C. App. 530, 648 S.E.2d 913 (2007), to support his assertion that an officer must establish an ownership connection between a car and a suspect in order to conduct an investigatory stop. Specifically, Defendant argues that "[w]ithout establishing that [Defendant] owned the van, the inference that justified the traffic stop in *Hess* – [that] the registered owner was likely driving because the owner will naturally do most [of] the driving – did not exist here." We disagree with Defendant's interpretation of *Hess*.

¶ 14 In *Hess*, an on-duty police officer was driving behind the defendant's Pontiac, but because it was dark outside, the officer could not identify the driver or determine how many passengers were in the car. 185 N.C. App. at 530, 648 S.E.2d at 914. Although the officer did not observe the Pontiac driver commit any traffic violations, he ran the Pontiac's registration and discovered the car belonged to the defendant. *Id*. The officer then ran the defendant's license number and learned that the defendant's license was suspended. *Id*. Suspecting that the defendant was the driver, the officer pulled the Pontiac over, and the defendant was cited with DWI and driving with a revoked license. *Id*. at 530-31, 648 S.E.2d at 915. On appeal, the defendant argued that the officer did not have reasonable suspicion to conduct an investigatory stop. *Id*. at 531, 648 S.E.2d at 915. We disagreed, holding that when a police officer

is aware that a car being driven is "registered to an owner with a suspended or revoked driver's license, and there is no evidence appearing to the officer that the owner is not the individual driving the automobile, reasonable suspicion exists to warrant an investigatory stop." *Id*. at 534, 648 S.E.2d at 917.

¶ 15 Here, Defendant points out that, unlike the officer in *Hess*, Sergeant Klingenmaier did not verify that Defendant was the registered owner of the vehicle before conducting an investigatory stop. Defendant acknowledges that Sergeant Klingenmaier had seen the same van in Defendant's driveway that evening, but contends that this does not establish an ownership connection under his interpretation of *Hess* because there was not "any evidence" connecting Defendant to the van. However, Defendant ignores a glaring difference between this case and *Hess*. The officer in *Hess* did not interact with the defendant prior to stopping him, but here, Sergeant Klingenmaier spoke with Defendant at his home shortly before the investigatory stop. Therefore, verifying ownership of the van in this case would have been wholly unnecessary to create reasonable suspicion, unlike in *Hess* where the only facts the officer knew when initiating the stop were that the defendant was the registered owner of the Pontiac and the defendant had a suspended license.

¶ 16 Considering the totality of the circumstances, we hold that the trial court's unchallenged findings of fact support the conclusion that Sergeant Klingenmaier had reasonable suspicion to believe Defendant was driving while intoxicated before

conducting the investigatory stop. When responding to the first 911 call, Sergeant Klingenmaier observed that Defendant appeared intoxicated, and Defendant even admitted to drinking. Sergeant Klingenmaier saw a white catering van with red lettering in Defendant's driveway. After Ms. Sanders left, Sergeant Klingenmaier observed that the van was the only automobile at the home, and Defendant was now the only person at the home. Shortly after leaving, Sergeant Klingenmaier received a second 911 call from Ms. Sanders, reporting that Defendant had left the home and followed her to a different location. When responding to the second call, Sergeant Klingenmaier saw what appeared to be the same white catering van with red lettering driving along Rock Quarry Road, near Ms. Sanders' reported location. Consequently, when Sergeant Klingenmaier conducted an investigatory stop of the van, he was not relying on an unparticularized hunch, but specific and articulable facts. Sergeant Klingenmaier could rationally infer from these facts, which are unchallenged and binding on appeal, that Defendant, in an intoxicated state, drove the van parked in his driveway to Ms. Sanders' new location, which prompted her to make the second 911 call.

III. Conclusion

¶ 17 For the foregoing reasons, we conclude that the trial court did not err by finding that Sergeant Klingenmaier had reasonable suspicion when he initiated the investigatory stop. Because the unchallenged findings of fact made by the trial court

support this conclusion, the trial court did not err in denying Defendant's motion to suppress.

AFFIRMED.

Judges CARPENTER and GRIFFIN concur.

Report per Rule 30(e).