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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-722

No. COA 21-130

Filed 21 December 2021

Wake County, No. 18 CRS 220046

STATE OF NORTH CAROLINA

v.

JUSTIN REESE JONES, Defendant.

Appeal by Defendant from judgment entered 29 September 2020 by Judge Winston 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 Kellie E. Army, for the State.*

*Stephen G. Driggers for Defendant.*

GRIFFIN, Judge.

¶ 1

Defendant Justin Reese Jones appeals from the trial court's judgment entered upon his guilty plea to the charge of driving while impaired. Defendant contends the trial court erred by denying his motion to suppress because its findings of fact were unsupported by the evidence presented at the hearing, and its conclusions of law were not supported by the findings of fact as a matter of law. We affirm the ruling of the

trial court.

### **I. Factual and Procedural History**

¶ 2

This case arises from a traffic stop that turned into an impaired driving investigation. Defendant pleaded guilty in district court and appealed *de novo* to the superior court, where he moved to suppress evidence obtained during the traffic stop. Judge Croom conducted a hearing on Defendant’s motion to suppress. The evidence at the suppression hearing tended to show the following:

¶ 3

In the early morning of 26 October 2018, an officer with the Raleigh Police Department observed Defendant speeding. Using a radar, the officer confirmed Defendant was traveling at 60 mph in a 35-mph-zone. The officer pursued Defendant and saw Defendant drift twice over the line dividing the lanes, at one point causing another driver to swerve out of the way. At this point, the officer activated his “blue lights” and attempted to initiate a traffic stop. Defendant was slow to stop, passing at least one location where he could have pulled over. Defendant eventually pulled onto a side street and stopped his vehicle.

¶ 4

When the officer approached Defendant’s vehicle, he noticed that Defendant had red, glassy eyes, and that a strong odor of alcohol was coming from Defendant’s breath. When asked if he had consumed alcohol that night, Defendant first stated that “he was going home” and that he had “one drink” at a nearby bar, then denied drinking at all, then returned to his original answer. The officer asked Defendant to

step out of the vehicle to perform standardized field sobriety tests. Once Defendant was out of his vehicle, the officer “noticed that the strong odor of alcohol that [he had] observed coming from inside the vehicle was still strong on [Defendant’s] breath.”

¶ 5

Defendant had difficulty following the officer’s instructions throughout their interaction. Defendant informed the officer that he had medical issues related to military service that could impair his ability to perform the standardized field sobriety tests. Before conducting a horizontal gaze nystagmus test on Defendant, the officer “complete[d] [a] medical rule-out without any issues” and determined Defendant could perform the test. The officer was unable to complete a horizontal gaze nystagmus test on Defendant and did not administer a walk and turn test. The officer then administered a one leg stand test, which Defendant performed. On the one leg stand test, Defendant displayed two out of four possible clues indicative of impairment: he put his foot down multiple times and he used his arms to balance. The officer once again asked Defendant where he was coming from, to which Defendant responded that he had consumed an “Arnold Palmer” while “at home.” Lastly, the officer attempted to administer a portable breath test but Defendant was unable to provide two sufficient breath samples. Upon Defendant’s failure to provide a second sufficient sample on the portable breath test, the officer placed Defendant under arrest for driving while impaired.

¶ 6 The Superior Court denied Defendant’s suppression motion. On 29 September 2020, Defendant pleaded guilty and gave notice of appeal in open court, expressly reserving the right to appeal the denial of his motion to suppress.

## II. Analysis

¶ 7 Defendant argues the trial court erred by denying his motion to suppress. Defendant asserts “several of [the trial court’s] crucial findings of fact were unsupported [by competent evidence,] and the remainder failed to support [the court’s] conclusion [that there was] probable cause to arrest” him for driving while impaired.

¶ 8 We review the trial court’s denial of a motion to suppress to determine whether the court’s findings of fact were supported by competent evidence and whether those findings supported the court’s conclusions of law. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). We afford great deference to the trial court’s findings of fact because the trial court is best suited to weigh the evidence after hearing testimony and observing the demeanor of witnesses firsthand. *State v. Overocker*, 236 N.C. App. 423, 428, 762 S.E.2d 921, 925 (2014). Therefore, the trial court’s weighing of the evidence will not be disturbed on appeal. *State v. Chamberlain*, 307 N.C. 130, 143–44, 297 S.E.2d 540, 548 (1982). “A trial court’s findings of fact . . . are conclusive . . . even if the evidence is conflicting.” *State v. Eason*, 336 N.C. 730, 745, 445 S.E.2d 917, 926 (1994). “Findings of fact that are not challenged ‘are presumed

to be supported by competent evidence and are binding on appeal.” *Overocker*, 236 N.C. App. at 428, 762 S.E.2d at 924 (citation omitted). “Conclusions of law are reviewed de novo and are subject to full review.” *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citations omitted).

### **A. Findings of Fact**

¶ 9 Defendant challenges several of the trial court’s findings of fact. We hold that each of the challenged findings was supported by competent evidence.

¶ 10 Defendant first contests finding of fact 6, which found that “Defendant’s vehicle drift[ed] to the lane divider on two occasions and on one occasion affect[ed] another motorist[.]” Defendant does not dispute that he drifted toward the dividing line. Rather, Defendant provides an alternative explanation for his behavior, arguing that the officer’s dash cam footage showed that Defendant drifted out of his driving lane twice because, first, “he was following the left-hand curve of [the street]” and, second, because he was “under [the officer’s] lights . . . and preparing to stop.”

¶ 11 The State presented the officer’s dash cam footage during the hearing on Defendant’s motion. After viewing the footage, the trial judge acknowledged that “you [could] see some drifting” and you could “[see] it twice where [Defendant] would drift toward the white divider between where the officer got in behind him and where he was stopped[.]” Finding of fact 6 states only that Defendant drifted to the divider

line and affected another motorist and does not assign any particular cause for the behavior. The State presented competent evidence supporting finding of fact 6.

¶ 12 Defendant also challenges finding of fact 7, that “Defendant continued to travel and passed several appropriate locations to stop” after the officer “activated his emergency equipment and initiated a stop[.]” Defendant’s argument once again attempts to provide an alternative explanation for his behavior. Defendant argues that he did begin braking “immediately” after the officer engaged his blue lights and that he quickly switched lanes “as if considering briefly whether to turn” onto a side street. Defendant does not argue, though, that there were no appropriate locations in which Defendant could stop before he finally did come to a stop.

¶ 13 The dash cam footage showed that it took less than a minute for Defendant to pull over after the officer activated his blue lights. However, in his testimony during the hearing, the officer described the dash cam footage and pointed out when Defendant passed two side streets and several parking lot entrances that would have been suitable places to stop. This evidence was competent and supported the trial court’s finding that Defendant “passed several appropriate locations to stop.”

¶ 14 Defendant next challenges findings of fact 9, 12, and 13, that Defendant “had difficulty following . . . instructions[.]” “displayed two out of four clues” for the one leg stand test, and “would not provide two [portable breath test] samples.”

¶ 15 An officer looks for four indicators of impairment during the one leg stand test: swaying, using arms for balance, hopping, and an inability to stand on one leg alone. Evidence showed that Defendant had to be instructed multiple times not to begin the one leg stand test until instructed to do so, and ultimately could not stand on one leg alone without using his arms for balance. Defendant argues that he began following the officer's directions as the officer demonstrated the one leg stand test, and the officer mistook Defendant's "premature compliance as difficulty following instructions[.]" He also contends that, while he put his foot down three times before the officer counted to thirteen, he was able to complete the test without putting his foot down while the officer counted from fourteen to twenty-two by raising his arms for balance.

¶ 16 The evidence shows that Defendant was initially unable to stand on one leg without putting his foot down, and then Defendant had to use his arms for balance even after the officer explicitly informed Defendant to "keep [his] hands down by [his] side and not to move[.]" Evidence also showed that Defendant had difficulty following the officer's instructions for the portable breath test and failed to provide sufficient samples. The officer explained that the portable breath test requires a person to provide "a steady breath for a few seconds for it to capture a reading[.]" and a person's failure to provide a sufficient blow is "tantamount to a refusal" to take the test. The officer testified that he attempted to administer the test several times, but Defendant

failed to provide two sufficient samples due to insufficient blows by Defendant. Body cam footage viewed during the hearing showed that the officer obtained a single sufficient sample only after four attempts by Defendant. The officer tried to obtain a second breath sample after administering the one leg stand test, but Defendant appeared frustrated, and the officer was unable to obtain a second sample after two more attempts. The officer was able to collect a single sufficient breath sample from Defendant out of a total of six attempts to administer the test. Competent evidence presented at the hearing supported findings 9, 12, and 13.

¶ 17 Lastly, Defendant challenges finding of fact 14, that the officer formed an opinion as to Defendant's impairment:

[B]ased on the totality of the circumstances, [the officer] formed an opinion as to Defendant's impairment. It was his opinion that Defendant had consumed a sufficient quantity of an impairing substance as to appreciably impair his mental and/or physical faculties. He based his opinion on Defendant's driving, time it took defendant to submit to blue lights, Defendant's red glassy eyes, the strong odor of alcohol coming from his breath, Defendant's admission to drinking, his difficulty following instructions and his performance on the One Leg Stand test.

¶ 18 Finding of fact 14 summarizes the totality of the circumstances before the officer and the opinion he derived from this information. Finding of fact 14, and the officer's opinion therein, is supported by competent evidence because it was derived



from the same competent evidence supporting findings of fact 6, 7, 9, 12, and 13, as well as the trial court’s unchallenged findings of fact.

¶ 19 In summary, each of Defendant’s assignments of error to the trial court’s findings of fact point not to an absence of competent evidence supporting those findings, but to a different possible interpretation of that evidence. This Court will not reweigh the evidence on appeal where any competent evidence supports the trial court’s findings. *Chamberlain*, 307 N.C. at 143–44, 297 S.E.2d at 548.

## **B. Conclusion of Law**

¶ 20 Defendant argues that the trial court’s findings of fact do not support the conclusion of law that the officer had probable cause to arrest Defendant for driving while impaired.

¶ 21 “To be lawful, a warrantless arrest must be supported by probable cause.” *State v. Zuniga*, 312 N.C. 251, 259, 322 S.E.2d 140, 145 (1984). “The ‘common-sense, practical question’ of whether probable cause exists must be determined by applying a ‘totality of the circumstances’ test.” *State v. Benters*, 367 N.C. 660, 664, 766 S.E.2d 593, 597–98 (2014) (quoting *Illinois v. Gates*, 462 U.S. 213, 230 (1983)). “The test for whether probable cause exists is an objective one—whether the facts and circumstances, known at the time, were such as to induce a reasonable police officer to arrest, imprison, and/or prosecute another.” *Thomas v. Sellers*, 142 N.C. App. 310, 315, 542 S.E.2d 283, 287 (2001) (citation omitted).

¶ 22 “The essential elements of DWI are: (1) Defendant was driving a vehicle; (2) upon any highway, any street, or any public vehicular area within this State; (3) while under the influence of an impairing substance.” *State v. Mark*, 154 N.C. App. 341, 345, 571 S.E.2d 867, 870 (2002) (citing N.C. Gen. Stat. § 20-138.1 (2015)). The North Carolina Supreme Court has held that, “while the odor of alcohol, standing alone, is not evidence of impairment, the ‘[f]act that a motorist has been drinking, when considered in connection with . . . other conduct indicating an impairment of physical or mental faculties, is sufficient’” evidence to show that a motorist is driving while impaired. *State v. Parisi*, 372 N.C. 639, 642, 831 S.E.2d 236, 239 (2019) (citations omitted).

¶ 23 In this case, the trial court’s findings of fact showed that: (1) the officer observed Defendant traveling more than 20 mph over the speed limit; (2) Defendant had a strong smell of alcohol on his breath; (3) Defendant admitted to drinking at least one drink and then repeatedly changed his story; (4) Defendant had trouble following directions; (5) Defendant had difficulty following the officer’s instructions and completing each field sobriety test despite passing “the [horizontal gaze nystagmus test] medical rule-out without any issues”; and (6) Defendant failed to provide two sufficient samples for the portable breath test. Based on this evidence that Defendant violated traffic laws, showed several signs of impairment, and admitted to drinking, a reasonable officer would believe that Defendant had driven a

vehicle on public streets under the influence of alcohol. Therefore, the trial court did not err by concluding that the totality of the circumstances supported probable cause to arrest Defendant.

### **III. Conclusion**

¶ 24 Competent evidence supported the trial court's findings of fact, and those factual findings support the conclusion of law that there was probable cause to arrest Defendant for driving while impaired. The trial court did not err in denying Defendant's motion to suppress.

AFFIRMED.

Judges CARPENTER and JACKSON concur.

Report per Rule 30(e).