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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-249

No. COA21-90

Filed 5 April 2022

Mecklenburg County, Nos. 18CRS206212, 19CRS4889

STATE OF NORTH CAROLINA

v.

RICHARD HENRY JORDAN, JR.

Appeal by Defendant from order entered 3 January 2020 by Judge Casey Viser and judgments entered 28 January 2020 by Judge Daniel A. Kuehnert in Mecklenburg County Superior Court. Heard in the Court of Appeals 3 November 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State-Appellee.

Patterson Harkavy LLP, by Christopher A. Brook, for Defendant-Appellant.

COLLINS, Judge.

¶ 1 Defendant Richard Jordan, Jr., appeals the trial court's order denying his motion to suppress. Defendant argues that portions of a finding of fact are unsupported by the evidence and that the trial court erred in concluding that law enforcement officers did not unlawfully extend the duration of a stop of Defendant's

vehicle. As the trial court's findings of fact are supported by competent evidence, and the findings of fact support its conclusion of law that the officers did not unlawfully extend the stop, we affirm the trial court's order denying the motion to suppress.

I. Background

¶ 2 Defendant was indicted on 25 February 2019 for possession of a Schedule II controlled substance–cocaine–and for having attained habitual felon status. Defendant filed a motion to suppress evidence on 28 August 2019. The matter came on for hearing on 2 December 2019. The evidence presented at the hearing tended to show the following:

¶ 3 On 21 February 2018, Defendant was stopped by Charlotte-Mecklenburg Police Officers Scottie Carson, Erik Tran-Thompson, and Jonathan Brito. The officers worked in the Crime Reduction Unit and were targeting "hotspot areas" that were considered "high crime areas for narcotics or violent crimes." Carson was working undercover in an unmarked patrol vehicle at a Circle K gas station, while Tran-Thompson and Brito worked from a marked patrol vehicle located nearby. At approximately 10:00 PM, Carson saw a Chevrolet pull into the gas station at the convenience store, and a male exit the Chevrolet. Carson then saw a red Ford Fusion pull into the gas station parking lot and drive next to the male who had exited the Chevrolet. The driver of the Fusion "opened the car door completely and leaned out the driver's side door" and stuck his right hand out. The male from the Chevrolet

leaned down, engaged in a "hand-to-hand transaction" with the driver of the Fusion, and then threw something into the back of the Fusion through an open window. Carson radioed Tran-Thompson and Brito to report that he witnessed the hand-to-hand transaction and saw both vehicles leave the parking lot.

¶ 4 Tran-Thompson and Brito followed the Fusion and observed that the Fusion's 30-day tag had been altered. They also observed that the driver was sitting up and reaching under his seat, causing the vehicle to swerve. They initiated a traffic stop of the Fusion. Upon approaching the vehicle on foot, both officers saw Defendant in the driver's seat and "immediately recognize[d]" him from prior interactions. Brito "knew of the history of [Defendant] having weapons" and asked Defendant to step out of the vehicle to be frisked. As Defendant exited the vehicle and Brito frisked him for weapons, Brito noticed that Defendant "clenched his buttocks" and flinched several times. This led Brito to believe that Defendant was "tucking contraband" in his buttocks. Brito asked Defendant whether he had any contraband in the vehicle and asked for permission to search the vehicle; Defendant consented, and Brito searched inside the vehicle and trunk. Brito did not find drugs or weapons in the vehicle. Approximately nine minutes after frisking Defendant, Brito confronted Defendant about his suspicion that he was hiding contraband on his body. Brito testified that Defendant became less talkative, put his head down, and eventually reached into his pants and pulled out a baggie containing what was later determined to be .6 grams

of cocaine.

¶ 5 At the conclusion of the hearing, the trial court orally denied Defendant's motion to suppress. The trial court entered a written order on 3 January 2020. The trial court's findings of fact include, *inter alia*, the following:

> 3. [Officers] all identify this Circle K as a "hot-spot" for drug activity in Charlotte, North Carolina.
>
> 4. Officers Tran-Thompson and Brito were on patrol and acting as close cover for Officer Carson, while he was positioned at the Circle K. . . .
>
> 5. At approximately 10:00 p.m., Officer Carson observed Defendant's vehicle . . . pull into the gas station.
>
> 6. Officer Carson observed the driver of Defendant's vehicle engage in suspicious drug activity with another unknown male. Specifically, Officer Carson observed that Defendant's car pulled into the lot and parked in a position that would allow quick access to an exit. Additionally, Officer Carson observed the driver of Defendant's car conduct a hand to hand transaction with the unknown male, after which the unknown male threw some small object into Defendant's car.
>
> 7. Officer Carson observed the unknown male and the driver of Defendant's car enter and exit the Circle K parking lot and Officer Carson never lost sight of them there. He also observed that neither individual entered the convenience store, pumped gas, or used any other amenity at the business.
>
> 8. Officer Carson determined that the driver of Defendant's car was the dealer in this suspected drug transaction and identified Defendant's car as the target vehicle.

9. Officer Carson communicated his observations and conclusions to Officers Tran-Thompson and Brito and described the direction Defendant's car traveled on Idlewild Road, after exiting the Circle K parking lot.

. . . .

11. Within seconds of hearing Officer Carson's observations and the description of the target vehicle, Officers Tran-Thompson and Brito were able to locate the target vehicle[.]

12. While traveling behind Defendant's car, Officers Tran-Thompson and Brito noticed that Defendant's 30-day tag was illegally altered.

13. Based upon suspicion of drug activity and Defendant's fictitious tag, Officer Brito initiated a traffic stop by turning on his patrol car's blue lights.

14. Upon initiating the stop, Officers Tran-Thompson and Brito both individually observed the driver of Defendant's car make movements leaning to the right and sitting up. Both officers observed Defendant's car swerve in conjunction with the driver's movements and both officers independently concluded that the driver was attempting to tuck something under his body or sit down on top of something.

15. When Defendant's car came to a stop, Officers Tran-Thompson and Brito approached Defendant's vehicle. Defendant was the driver and sole occupant of the vehicle.

. . . .

17. Based on his personal knowledge of Defendant and Defendant's unusual movements prior to stopping his car, Officer Brito asked Defendant to step out of his car and Officer Brito conducted a frisk for weapons. While frisking Defendant, Officer Brito observed that Defendant clenched

his buttocks muscles and flinched several times.

18. In their training and experience, both Officers Tran-Thompson and Brito have personal knowledge that suspects commonly attempt to hide narcotics in and with their body parts. Specifically, Officer Brito has experience locating narcotics in buttocks, under testicles, in arm pits, in shoes, and between toes.

. . . .

20. Defendant gave Officer Brito consent to search his car.

21. Before searching Defendant's car, Officer Brito told another officer . . . that he needed to "check Defendant in the private parts more, because he might have something there or in his sock or shoe."

. . . .

24. Officer Tran-Thompson confirmed that Defendant had no outstanding warrants. Officer Tran-Thompson also confirmed that Defendant was characterized as an individual to "approach with caution" and that Defendant has a criminal history involving assaults, felonies, gang association, drugs, weapons, murder, trafficking cocaine, and possession of firearm by a felon. Officer Tran-Thompson relayed this information to Officer Brito.

. . . .

26. After searching Defendant's car, Officer Brito told Officer Tran-Thompson, "I think he has it on him, since I've known him for a little while, I'm going to see if he will get it."

27. Officer Brito re-approached Defendant and said, "Aight Jordan, if you and I didn't have history it would be a little different. Did you tuck something?" Defendant did not deny "tucking something."

> 28. When this conversation began, Officer Brito described that Defendant "changed colors." Specifically, Officer Brito observed that Defendant became less talkative and his posture changed from comfortable to having his head down.
>
> 29. Officer Brito asked Defendant if Defendant was going to make Officer Brito "go fishing" and stated "I ain't trying to violate you like that, but if I have to go fishing, I'm going to have to. You know how it works, right? So, I'm trying to get you to get it for me.
>
> 30. Defendant responded by saying, "I just want to be left alone." Officer Brito told Defendant, "It's too late for that man, too late for that."
>
> 31. Defendant did not respond verbally, but took his own jacket off, reached into his own pants, and pulled out a small red clear plastic baggie, containing 0.6 grams of suspected cocaine, from his buttocks.
>
> . . . .

¶ 6 The trial court then concluded, *inter alia*, the following:

> 2. In the present case, Officer Tran-Thompson and Officer Brito had reasonable suspicion to stop Defendant's vehicle based on the unlawfully altered 30-day tag, and independently, they had reasonable suspicion to stop Defendant's vehicle based on the suspicion of illegal narcotic activity.
>
> 3. While Officers had two lawful reasons to stop Defendant, the ultimate purpose of the stop was to investigate illegal narcotic activity. Reasonable suspicion for such offense continued to evolve as Officer Tran-Thompson and Officer Brito observed Defendant and gathered more information about Defendant from law enforcement databases. This gathering of information was a permissible task tied to the original and ultimate purpose of the stop.

> 4. Additionally, Defendant knowingly and voluntarily consented to the search of his car.
>
> 5. Officer Tran-Thompson and Officer Brito did not unlawfully extend the scope or duration of the traffic stop by searching Defendant's car and, thus, did not violate any of Defendant's Fourth Amendment rights.

¶ 7 On 3 December 2019, Defendant pled guilty to possession of cocaine while reserving his right to appeal the denial of the motion to suppress. The trial court sentenced Defendant to a term of 30 to 48 months' imprisonment. Defendant gave timely oral notice of appeal.

II. Discussion

¶ 8 Defendant appeals the trial court's denial of his motion to suppress, specifically arguing that portions of finding of fact six are not supported by competent evidence and that the trial court erred by concluding that the law enforcement officers did not unlawfully extend the duration of the stop.

¶ 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) (citation omitted). Unchallenged findings of fact "are deemed to be supported by competent evidence and are binding on appeal." *Id.* at 168, 712 S.E.2d at 878 (citation omitted). Conclusions of law are reviewed de novo. *Id.*

A. Finding of Fact 6

¶ 10 Defendant's sole challenge to the findings of fact is that portions of finding of fact six are not supported by competent evidence. Defendant specifically challenges the following italicized portions of finding of fact six:

> *Officer Carson observed the driver of Defendant's vehicle engage in suspicious drug activity* with another unknown male. Specifically, Officer Carson observed [that] Defendant's car pulled into the lot and parked in a position that would allow quick access to an exit. Additionally, Officer Carson observed the driver of Defendant's car conduct a *hand to hand transaction* with the unknown male, after which the unknown male threw some small object into Defendant's car.

¶ 11 Carson testified as follows: he was working undercover at a hotspot location for narcotic activity and drug transactions; based upon his training and experience of conducting operations at that specific Circle K gas station, the male who exited the Chevrolet and the driver of the Fusion met in a "space off to the side" which was a "pretty good spot for hand-to-hand transactions"; the driver of the Fusion "did not pull into a parking spot," which is considered by law enforcement as "a marker for drug activity"; the driver of the Fusion "opened the car door completely and leaned out of the driver's side door to make the hand-to-hand"; and that he called out via his radio that he "observ[ed] a hand-to-hand transaction."

¶ 12 This testimonial evidence supports the trial court's finding that Carson observed the driver of the Fusion engaging in suspicious drug activity and that

Carson witnessed a hand-to-hand transaction between the male who exited the Chevrolet and the driver of the Fusion. As there is competent evidence to support the finding of fact, it is binding on appeal. *Biber*, 365 N.C. at 167-68, 712 S.E.2d at 878.

B. Duration of Stop

¶ 13 Defendant next argues that the trial court erred by concluding that the officers did not unlawfully extend the duration of the stop.

¶ 14 The Fourth Amendment to the United States Constitution and Article I, Section 20, of the North Carolina Constitution prohibit unreasonable searches and seizures. U.S. Const. Amend. IV; N.C. Const. art. I, § 20. A law enforcement officer may conduct a brief investigative stop of a vehicle if the officer has reasonable, articulable suspicion that criminal activity may be afoot. *State v. Morocco*, 99 N.C. App. 421, 427, 393 S.E.2d 545, 548 (1990) (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 880 (1975); *Terry v. Ohio*, 392 U.S. 1, 27 (1968). "[R]easonable suspicion exist[s] to support an investigatory stop where law enforcement officers witnessed acts that they believed to be transactions involving the sale of illegal drugs." *State v. Travis*, 245 N.C. App. 120, 126, 781 S.E.2d 674, 677-78 (2016) (citing four cases with facts similar to the facts in the present case).

¶ 15 Once it is determined that the investigatory stop was justified at its inception by a reasonable suspicion of criminal activity, "it must further be determined whether

the subsequent detention of the defendant following the stop is reasonably related in scope to the circumstances which justified the interference in the first place." *State v. Milien*, 144 N.C. App. 335, 340, 548 S.E.2d 768, 772 (2001) (quoting *United States v. Sharpe*, 470 U.S. 675, 682 (1985) (quotation marks and citation omitted)). While the "scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case, . . . an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Id.* (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)); *see also Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (clarifying that the "tolerable duration" of a stop is "determined by the seizure's mission").

¶ 16 Here, the trial court concluded that the officers had reasonable suspicion to conduct a traffic stop of Defendant's vehicle based on the altered 30-day tags and, independently, based on the suspicion of illegal narcotic activity. The trial court found that Carson radioed Tran-Thompson and Brito to report that a hand-to-hand transaction had taken place in a known narcotic hotspot area and that Tran-Thompson and Brito observed Defendant sitting up, reaching down, and trying to "tuck something under his body" or sit down on top of something while driving. These findings support the conclusion that the officers had reasonable suspicion of

illegal narcotic activity to conduct a stop of Defendant's vehicle. *See State v. Evans*, 251 N.C. App. 610, 626, 795 S.E.2d 444, 456 (2017) (concluding that the officer's observations of a hand-to-hand transaction in a "known drug corridor" provided the requisite reasonable suspicion of criminal activity to conduct a traffic stop).

¶ 17 The trial court also found that after removing Defendant from the vehicle and frisking him for weapons, Brito observed Defendant exhibit additional suspicious behaviors: flinching several times; clenching his buttocks muscles; becoming less talkative; and his "posture changed from comfortable to having his head down." These findings supported the officers' continuing reasonable suspicion that Defendant was engaged in illegal narcotic activity and would also support a "conclusion that the officer[s] developed reasonable suspicion of illegal drug activity during the course of his investigation . . . and [were] therefore justified to prolong the stop[.]" *State v. Warren*, 242 N.C. App. 496, 499, 775 S.E.2d 362, 365 (2015).

¶ 18 The trial court further found that upon witnessing Defendant's suspicious behavior, the officers obtained Defendant's consent to search his vehicle and searched the vehicle for narcotics; conducted license and registration checks; and searched Defendant's person for narcotics. As Defendant's detention was "reasonably related in scope to the circumstances which justified the interference in the first place" and the "investigative means employed by the officers "did not last longer than [was] necessary to effectuate the purpose of the stop," *Milien*, 144 N.C. App. at 340, 548

S.E.2d at 772 (quotation marks and citations omitted), the trial court did not err by concluding that the officers "did not unlawfully extend the scope or duration of the traffic stop by searching Defendant's car and, thus, did not violate any of Defendant's Fourth Amendment rights."

III. Conclusion

¶ 19 Competent evidence supports the trial court's findings, and the findings support the trial court's conclusions of law. We affirm the trial court's order denying the motion to suppress. *Biber*, 365 N.C. at 167-68, 712 S.E.2d at 878.

AFFIRMED.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).