IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-476

No. COA21-294

Filed 5 July 2022

Cabarrus County, No. 19 CRS 54072

STATE OF NORTH CAROLINA

v.

DARRELL HOWARD, Defendant.

Appeal by Defendant from judgment entered 7 January 2021 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 14 December 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General James M. Wilson, for the State.

Stephen G. Driggers, for Defendant-Appellant.

WOOD, Judge.

¶ 1 Defendant Darrell Howard ("Defendant") appeals from his convictions pursuant to a plea agreement for felony possession of marijuana, possession with intent to sell and deliver marijuana, and possession of marijuana paraphernalia. On appeal, Defendant contends the trial court erred by denying his motion to suppress because 1) there was no reasonable suspicion to extend his traffic stop, and 2)

probable cause did not exist to justify a warrantless search of his vehicle. After careful review of the record and applicable laws, we affirm the judgment of the trial court.

I. Factual and Procedural Background

¶ 2 Detective Matthew Jamieson was monitoring traffic on Weddington Road in Concord, North Carolina on October 7, 2019. While doing so, Detective Jamieson noticed Defendant's vehicle, ran a license plate check, and determined the registered owner of the vehicle did not have a valid driver's license. Detective Jamieson initiated a traffic stop and pulled Defendant over on Weddington Road.

¶ 3 As Detective Jamieson approached Defendant's vehicle, he smelled an odor of marijuana. Detective Jamieson asked Defendant for his driver's license, and Defendant gave him an identification card. Meanwhile, he observed a half-empty Hennessy cognac bottle lying on the passenger's side floorboard. Detective Jamieson returned to his vehicle, ran Defendant's identification card number, and saw "it was not a valid driver's license." He then called for backup, and shortly afterwards, Officer Tiago DeSosa arrived on the scene.

¶ 4 Detective Jamieson approached Defendant's vehicle a second time and asked

him how much "weed" was in the vehicle.[1] Defendant stated "none." Detective Jamieson asked Defendant to exit the vehicle. As Defendant opened the vehicle door, Detective Jamieson "immediately noticed a plastic baggy of what appeared to be marijuana in the driver's side . . . door pocket." After Defendant exited the vehicle, Detective Jamieson asked him a second time if he had any "weed" in the vehicle. Defendant responded in the affirmative. Detective Jamieson proceeded to search Defendant's vehicle and located a half-empty bottle of Hennessy cognac, "quite a few THC cartridges" that were labeled "above the legal THC limit[,] . . . more marijuana in the back seat of the car[,]" and a digital scale.

¶ 5 On October 7, 2019, Defendant was indicted for possessing more than one-half ounce of marijuana, possession with the intent to sell or deliver 1.82 ounces of marijuana, and possession of drug paraphernalia. On September 24, 2020, Defendant filed a motion to suppress in which he argued because hemp and marijuana smell the same, the smell of marijuana does not give rise to reasonable suspicion or probable cause. Defendant's motion to suppress came before the trial court for a hearing on October 28, 2020. The trial court denied Defendant's motion to suppress.

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[1] On cross-examination, Detective Jamieson stated he did not remember if he said "weed" or "marijuana" the first time he inquired of Defendant if there was any "weed" in the vehicle. However, Detective Jamieson further explained "I know for sure I used the word weed the second time[] . . . ."

¶ 6 On January 6, 2021, Defendant pled guilty to felony possession of marijuana, possession of marijuana with the intent to sell or deliver, and possession of marijuana paraphernalia. Per the plea agreement, the State acknowledged "Defendant has provided the required notice of his intent to appeal the denial of his Motion to Suppress." The State, moreover, agreed that judgment should be arrested as to the conviction of possession of more than one-half ounce of marijuana. The same day, the trial court entered judgment for possession of marijuana with the intent to sell or deliver and possession of marijuana paraphernalia but arrested judgment on Defendant's charge of felony possession of marijuana. The trial court sentenced Defendant to 6 months to 17 months in custody, suspended the sentence, and placed Defendant on 24 months of supervised probation. Defendant gave oral notice of appeal at the plea hearing.

II. Standard of Review

¶ 7 We review a motion to suppress to determine "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) (citing *State v. Brooks*, 337 N.C. 132, 140-41, 446 S.E.2d 579, 585 (1994)). If the findings of facts are supported by competent evidence, they are "conclusive and binding on the appellate courts . . . ." *Brooks*, 337 N.C. at 140, 446 S.E.2d at 585 (citation omitted). "However, this Court must determine whether those findings of

fact in turn support the trial court's conclusions of law." *Id.* Competent evidence is that which a "reasonable mind might accept as adequate to support the finding." *In re Foreclosure of a Deed of Trust Executed by Worsham*, 267 N.C. App. 401, 406, 833 S.E.2d 239, 244 (2019) (quoting *City of Asheville v. Aly*, 233 N.C. App. 620, 625, 757 S.E.2d 494, 499 (2014)), *disc. review denied by* 374 N.C. 270, 839 S.E.2d 350 (2020).

¶ 8 Conclusions of law are reviewed *de novo* and subject to a full review on appeal. *Biber*, 365 N.C. at 168, 712 S.E.2d at 878 (citing *State v. Mahaley*, 332 N.C. 583, 592-93, 423 S.E.2d 58, 64 (1992)). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal quotation marks omitted) (citing *In re Greens of Pine Glen*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)); *see Mann Media, Inc. v. Randolph Cnty. Planning Bd.*, 356 N.C. 1, 13, 565 S.E.2d. 9, 17 (2002). However, this Court accords "great deference to the trial court's ruling on a motion to suppress because the trial court is entrusted with the duty to hear testimony (thereby observing the demeanor of the witnesses) and to weigh and resolve any conflicts in the evidence." *State v. Parker*, 277 N.C. App. 531, 2021-NCCOA-217, ¶24 (quotation omitted), *disc. review denied,* 378 N.C. 366 (2021).

III. Discussion

¶ 9 Defendant raises several issues on appeal; each will be addressed in turn.

A. Probable Cause

¶ 10 We begin by determining whether the trial court correctly concluded probable cause existed to search Defendant's vehicle. Both the Fourth Amendment of the United States Constitution and Article 1, Section 20 of the North Carolina Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; N.C. Const. art. I, § 20; *see State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 69 (1994) ("[The Fourth Amendment] is applicable to the states through the Due Process Clause of the Fourteenth Amendment."); *State v. Downing*, 169 N.C. App. 790, 794, 613 S.E.2d 35, 38 (2005). "These constitutional provisions apply to 'brief investigatory detentions such as those involved in the stopping of a vehicle.' " *Downing*, 169 N.C. App. at 794, 613 S.E.2d at 38 (quoting *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994)); s*ee State v. Bullock*, 370 N.C. 256, 257, 805 S.E.2d 671, 673 (2017) ("A traffic stop is a seizure even though the purpose of the stop is limited and the resulting detention quite brief." (internal quotation marks omitted)).

¶ 11 As a general rule, "a warrant is required to conduct a search unless a specific exception applies." *Parker*, at ¶25 (citing *State v. Cline*, 205 N.C. App. 676, 679, 696 S.E.2d 554, 556 (2010)). However, decisions by the United States Supreme Court have established what has become known as the "automobile exception." *See State v. Isleib*, 319 N.C. 634, 636-37, 356 S.E.2d 573, 575 (1987); *see Carroll v. United States*, 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925); *Chambers v. Maroney*, 399 U.S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419 (1970). The automobile exception provides "a search

warrant is not a prerequisite to the carrying out of a search based upon probable cause of a motor vehicle on public property." *Isleib*, 319 N.C. at 636-37, 356 S.E.2d at 575; s*ee Parker*, at ¶ 25. The logic behind this exception is that "it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought[,]" and there is a "decreased expectation of privacy which citizens may have in motor vehicles, *United States v. Ross*, 456 U.S. 798, 72 L. Ed. 2d 572 (1982), which results from the physical characteristics of automobiles and their use." *Isleib*, 319 N.C. at 637, 356 S.E.2d at 576 (citation omitted).

¶ 12 Probable cause is a "reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty." *State v. Harris*, 279 N.C. 307, 311, 182 S.E.2d 364, 367 (1971). Concerning the doctrine of probable cause as it relates to the automobile exception,

> [a] police officer in the exercise of his duties may search an automobile without a search warrant when the existing facts and circumstances are sufficient to support a reasonable belief that the automobile carries contraband materials. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

Parker, at ¶ 25 (quoting *State v. Degraphenreed*, 261 N.C. App. 235, 241, 820 S.E.2d

331, 336 (2018)); s*ee also State v. Simmons*, 278 N.C. 468, 471, 180 S.E.2d 97, 99 (1971).

¶ 13 Defendant contends the search of the vehicle was unsupported by probable cause because the scent or appearance of marijuana and industrial hemp are indistinguishable.

¶ 14 In 2015, our General Assembly enacted N.C. Gen. Stat. §§ 106-568.50 to 106-568.57, to "encourage the development of an industrial hemp industry in the State in order to expand employment, promote economic activity, and provide opportunities to small farmers for an environmentally sustainable and profitable use of crop lands that might otherwise be lost to agricultural production." N.C. Gen. Stat. § 106-568.50 (2019). The purpose of these statutes was to "establish an agricultural pilot program for the cultivation of industrial hemp in the State, to provide for reporting on the program by growers and processors for agricultural or other research, and to pursue any federal permits or waivers necessary to allow industrial hemp to be grown in the State." *Id.*

¶ 15 Prior to the legalization of industrial hemp, our appellate courts firmly established that the smell or sight of marijuana was sufficient to create probable cause. *See Parker*, at ¶ 29; *State v. Mitchell*, 224 N.C. App. 171, 175, 735 S.E.2d 438, 442 (2012); *State v. Greenwood*, 301 N.C. 705, 708, 273 S.E.2d 438, 441 (1981); *see also State v. Rivens*, 198 N.C. App. 130, 134, 679 S.E.2d 145, 149 (2009). Defendant

specifically argues our General Assembly's legalization of industrial hemp requires a change in how marijuana cases are investigated and prosecuted in this State.

¶ 16 We addressed a similar issue in *State v. Parker*. There, the defendant was pulled over by a police officer due to "not wearing a seatbelt." *Parker*, at ¶ 2. After the police officer approached the car and began speaking with the defendant, he noticed "the odor of burnt marijuana emanating from the vehicle[]" and "saw a large amount of cash scattered across [the] [d]efendant's lap." *Id.* The police officer called for backup, backup police officers arrived, and collectively they approached the defendant's vehicle. *Id.* at ¶ 3. The defendant then admitted "he had smoked a marijuana joint earlier" and pulled a partially smoked marijuana cigarette out of his sock. *Id*. (internal quotation marks omitted). The officers then proceeded to search the defendant's car, noticed the defendant was "nervous" and "fidgety[,]" and found "two black digital scales and a small round pill in a plastic bag[,] . . . an open pack of cigarillos containing a plastic bag with . . . [what the officer] believe[d] to be marijuana[,] [and] two gray, rock-like substances that . . . [the officer] believed to be narcotics." *Id.* at ¶ 4. The defendant filed a motion to suppress, asserting the officer "lacked probable cause to search the vehicle based solely on the smell of marijuana—arguing that the odor of burnt marijuana is indistinguishable from the odor of legal burnt hemp." *Id.* at ¶ 5. The trial court ultimately denied his motion to suppress. *Id.* at ¶ 7.

¶ 17 On appeal to this Court, the defendant argued the search of his vehicle was unsupported by probable cause because the scent of marijuana and industrial hemp are indistinguishable. *Id.* at ¶ 26. Although we noted the legalization of industrial hemp "raises the possibility" previous cases' holdings concerning sight and smell of marijuana "may need to be re-examined[,]" we found this determination was not necessary in the defendant's case as probable cause already existed. *Id.* at ¶ 30-31. We concluded,

> (1) the scent of what Officer Peeler believed to be burnt marijuana emanating from the vehicle; (2) Mr. Neal's admission that he had just smoked marijuana; and (3) the partially smoked marijuana cigarette which Mr. Neal produced from his sock[] . . . were sufficient to provide probable cause to search the vehicle.
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> . . .
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> Finally, Officer Peeler's own subjective belief that the substance he smelled was marijuana was additional evidence supporting probable cause—even if his belief might ultimately have been mistaken.

Id. at ¶ 32-33.

¶ 18 The facts in this case closely resemble the facts in *Parker*. Thus, "we need not determine whether the scent or visual identification of marijuana alone remains sufficient to grant an officer probable cause to search a vehicle." *Id.* at ¶ 31. Like *Parker*, Detective Jamieson possessed more than just the scent of marijuana to indicate Defendant may have illegal substances within the vehicle. *Id.* Detective

Jamieson testified he noticed the odor of marijuana as he approached Defendant's vehicle. While at Defendant's vehicle, Detective Jamieson noticed a half empty Hennessy cognac bottle on the passenger floorboard. Although Defendant initially denied possessing any "weed" or marijuana in the vehicle; after he was ordered to exit the vehicle, he subsequently admitted he had "weed" inside the vehicle. Moreover, when Defendant exited his vehicle, Detective Jamieson testified he immediately saw a plastic baggy filled with what he concluded to be marijuana. These observations by Detective Jamieson, like the evidence in *Parker*, sufficiently created probable cause to conduct a warrantless search of the vehicle.

¶ 19 We pause to note although Detective Jamieson discovered subsequent evidence giving rise to probable cause after Defendant was ordered to exit his vehicle, "the Fourth Amendment's proscription of unreasonable searches and seizures is not violated when the police order the driver of a lawfully detained vehicle to exit the vehicle." *State v. McGirt*, 122 N.C. App. 237, 239, 468 S.E.2d 833, 835 (1996) (citation omitted), *aff'd per curiam,* 345 N.C. 624, 481 S.E.2d 288 (1997); *see State v. Briggs*, 140 N.C. App. 484, 488, 536 S.E.2d 858, 860 (2000). Since it is undisputed that Defendant was stopped lawfully for failure to have a valid driver's license, Defendant's Fourth Amendment right to unreasonable searches and seizures was not violated when Detective Jamieson asked him to exit the vehicle. As such, Detective's Jamieson's testimony as to the evidence he observed while Defendant exited the

vehicle is not excluded from our analysis.

¶ 20 Accordingly, the scent of what Detective Jamieson believed to be marijuana, Defendant's admission he had "weed" in his vehicle, and Detective Jamieson's observation of a plastic baggy filled with what he concluded to be marijuana sufficiently established probable cause to search Defendant's vehicle. As we stated in *Parker*, "a person's admission of a crime to law enforcement is typically sufficient to support a finding of probable cause." *Parker*, at ¶ 32; *see United States v. Harris*, 403 U.S. 573, 583, 91 S. Ct. 2075, 2082, 29 L. Ed. 2d 723, 734 (1971) ("People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility -- sufficient at least to support a finding of probable cause to search."). Thus, Defendant's admission to possessing "weed" in his vehicle was credible evidence to bolster Detective Jamieson's belief there was marijuana within Defendant's vehicle. Likewise, an officer's subjective belief a vehicle contains an illegal substance, regardless of whether such belief is true, is further evidence supporting the officer's determination probable cause exists to conduct a search. *Parker*, at ¶ 33. Here, Detective Jamieson testified he smelled what he believed to be marijuana and observed a small plastic baggy of what he concluded was marijuana based on of his training and experience. As such, we hold Detective Jamieson had probable cause to conduct a warrantless search of

Defendant's vehicle.

B. Prolonged Traffic Stop

¶ 21 Next, Defendant contends since the odor of marijuana and industrial hemp is indistinguishable, Detective Jamieson did not have reasonable suspicion to extend the traffic stop and, therefore, the trial court erred in denying his motion to suppress.

¶ 22 Because a traffic stop is a seizure, "the duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop unless reasonable suspicion of another crime arose before that mission was completed . . . ." *State v. Bullock*, 370 N.C. 256, 257, 805 S.E.2d 671, 673 (2017) (internal citations omitted). Reasonable suspicion is "a 'less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.' " *State v. Barnard*, 362 N.C. 244, 247, 658 S.E.2d 643, 645 (2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675-76, 145 L. Ed. 2d 570, 576 (2000)).

¶ 23 Our Supreme Court has firmly established "the reasonable suspicion standard requires that 'the stop 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.' " *Id.* at 247, 658 S.E.2d at 645 (quoting *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994)). A trial court must consider " 'the totality of the circumstances -- the whole picture' in

determining whether a reasonable suspicion to make an investigatory stop exists." *Watkins*, 337 N.C. at 441, 446 S.E.2d at 70 (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 629 (1981)); *see State v. Warren*, 242 N.C. App. 496, 500, 775 S.E.2d 362, 366 (2015), *aff'd per curiam,* 368 N.C. 756, 782 S.E.2d 509 (2016).

¶ 24 Here, it is undisputed law enforcement lawfully stopped Defendant's vehicle for driving without a valid driver's license. Defendant argues, however, Detective Jamieson's continuation of the traffic stop after running his identification card, because of the presence of the odor of marijuana, constituted an unreasonable duration of a traffic stop. We are unpersuaded by Defendant's argument.

¶ 25 "The reasonable duration of a traffic stop includes more than just the time needed to write a ticket. 'Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the traffic stop.' " *State v. Bullock*, 370 N.C. 256, 257, 805 S.E.2d 671, 673 (2017) (cleaned up) (quoting *Rodriguez v. United States*, 575 U.S. 348, 355, 135 S. Ct. 1609, 1615, 191 L. Ed. 2d 492, 499 (2015)). Such inquires include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* (quoting *Rodriguez*, 575 U.S. at 355, 135 S. Ct. at 1615, 191 L. Ed. 2d at 499). In the context of this case, Detective Jamieson noticed the smell of marijuana and observed a half-empty Hennessy cognac

bottle on the passenger floorboard while conducting the traffic stop of Defendant for driving without a valid license.

¶ 26 Furthermore, traffic stops "are 'especially fraught with danger to police officers . . . .' " *Rodriguez*, 575 U.S. at 356, 135 S. Ct. at 1616, 191 L. Ed. 2d at 500 (quoting *Arizona v. Johnson*, 555 U.S. 323, 330, 129 S. Ct. 781, 786, 172 L. Ed. 2d 694, 702 (2009)). A police officer "may need to take certain negligibly burdensome precautions in order to complete his mission safely." *Id.*; *accord Bullock*, 370 N.C. at 258, 805 S.E.2d at 673. Defendant's argument his traffic stop was unreasonably prolonged is misguided in that he was not asked to exit his vehicle until after Detective Jamieson's backup arrived. This exit order was lawful because the "government's 'legitimate and weighty' interest in officer safety outweighs the '*de minimis*' additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle." *Rodriguez*, 575 U.S. at 356, 135 S. Ct. at 1615, 191 L. Ed. 2d. at 500 (quoting *Pa v. Mimms*, 434 U.S. 106, 110-11, 98 S. Ct. 330, 333, 54 L. Ed. 2d 336-37 (1977)); *accord Bullock*, 370 N.C. at 262, 805 S.E.2d at 676 ("A police officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle." (cleaned up)). Thus, "any amount of time that . . . [Detective Jamieson's] request to [Defendant] to exit the . . . car added to the stop was simply time spent pursuing the mission of the stop[,]" and therefore, did not unlawfully extend the traffic stop. *Bullock*, 370 N.C. at 262, 850 S.E.2d at 676. The plastic bag of marijuana Detective Jamieson observed while Defendant exited his

vehicle was pursuant to the mission of the stop. This, paired with Defendant's admission that there was "weed" in the vehicle, was further evidence to create reasonable suspicion to prolong the traffic stop.

¶ 27 Therefore, Detective Jamieson had three pieces of evidence from which to develop reasonable suspicion to prolong the traffic stop: 1) the odor of what he believed to be marijuana emanating from Defendant's vehicle, 2) the plastic bag of marijuana he observed as Defendant exited the vehicle; and 3) Defendant's own admission he possessed "weed" inside the vehicle. Under a totality of the circumstances, Detective Jamieson had reasonable suspicion another crime of possession of illegal substances was afoot under which to extend Defendant's traffic stop.

¶ 28 Defendant argues our Supreme Court's mandate in *State v. Ward* applies to marijuana because of the legalization of industrial hemp. We disagree. In *Ward*, Justice Brady, writing for the majority, concluded "[u]nless the State establishes before the trial court that another method of identification is sufficient to establish the identity of the controlled substance beyond a reasonable doubt, some form of scientifically valid chemical analysis is required." *State v. Ward*, 364 N.C. 133, 147, 694 S.E.2d 738, 747 (2010) [hereinafter *Ward*]. Notwithstanding this, the holding in *Ward* was specifically "limited to North Carolina Rule of Evidence 702[,]" concerning testimony by experts. *Id.*; *see* N.C. Gen. Stat. § 8C-1, R. 702 (2021). The holding in

Ward is inapplicable in the context of this case as Detective Jamieson was not testifying as an expert.

¶ 29 Assuming *arguendo*, the legalization of industrial hemp warrants an expansion of the holding in *Ward* to include requiring a scientifically valid chemical analysis on marijuana and industrial hemp, we need not make such a determination. As discussed *supra*, Detective Jamieson had ample reasonable suspicion to prolong the duration of Defendant's traffic stop. Accordingly, we hold the trial court correctly concluded reasonable suspicion existed.

C. Findings of Fact Numbers 3, 8, 9, 10, 11, 12, and 13

¶ 30 Defendant next argues findings of fact numbers 3, 8, 9, 10, 11, 12, and 13 are not supported by competent evidence. When reviewing a trial court's findings of fact, this Court "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) (citing *State v. Cooke*, 54 N.C. App. 33, 35, 282 S.E.2d 800, 803 (1981)). Should the evidence be conflicting, "the trial judge is in the best position to 'resolve the conflict.' " *State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294, (2008) (quoting *State v. Smith*, 278 N.C. 36, 41, 178 S.E.2d 597, 601 (1971)).

1. Findings of fact Numbers 3, 9, 11, and 12

¶ 31 Defendant contends findings of fact numbers 3, 9, 11, and 12 are unsupported by competent evidence. We disagree.

¶ 32 The challenged portion of finding of fact number 3 provides: "Officer Jamieson immediately recognized the odor of what he believed[] . . . to be marijuana emanating from the defendant's vehicle." The challenged portion of finding of fact number 9 states: "Officer Jamieson noticed there was a 'sizeable' bag of a green, leafy substance in the door pocket. Based on his training and experience, Officer Jamieson believed that substance to be marijuana." Finding of fact number 11 states: "Officer Jamieson began searching the defendant's vehicle and, in addition to what he believed to be marijuana in the driver's side door pocket, he located THC cartridges (labeled as having 90% THC content), additional loose marijuana in the vehicle's backseat and a digital scale." The challenged portion of finding of fact number 12 provides: "Officer Jamieson also testified that he knew what marijuana was from personal life experience, having associated with former friends of his who smoked it."

¶ 33 Specifically, Defendant contends these findings of fact are not supported by competent evidence because the smell and look of marijuana and industrial hemp are indistinguishable. Our review of Defendant's argument regarding these findings is premised on his overarching policy arguments regarding industrial hemp and marijuana, not on whether these findings are supported by competent evidence presented in the record or at the hearing. Under our Rules of Appellate Procedure

rule number 28,

> [t]he function of all briefs required or permitted by these rules is to define clearly the issues presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon. The scope of review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party's brief are deemed abandoned.

N.C.R. App. P. 28. Since Defendant provides no argument regarding whether *competent evidence* supports findings number 3, 9, 11, and 12, his assignments of error that these findings of fact are unsupported by competent evidence are deemed abandoned. Accordingly, findings of fact numbers 3, 9, 11, and 12 are binding on appeal.

2. Findings of fact Numbers 8 and 10

¶ 34 Defendant also argues findings of fact numbers 8 and 10 are not binding on appeal because the record does not support a finding that he used the word "weed." We disagree.

¶ 35 The challenged portion of finding of fact number 8 provides: "Officer Jamieson asked the defendant, who was still sitting inside his vehicle, whether there was any 'marijuana' or 'weed' in the vehicle.[]" Finding of fact number 10 states: "As Officer Jamieson was frisking the defendant before commencing the search of the defendant's vehicle, Officer Jamieson asked the defendant a second time whether he had any

'weed' in the vehicle.[] Changing his previous answer, the defendant responded there was."

¶ 36 At the suppression hearing, Detective Jamieson testified he first asked Defendant "how much weed was in the vehicle. . . . And then on the second time when he was out of the vehicle, I asked him again. And he told me that there was some in the car." On cross-examination, Detective Jamieson clarified he did not remember whether he said "marijuana" or "weed" the first time he asked Defendant but knew for sure he "used the word weed the second time[] . . . ." We conclude Detective Jamieson's testimony from the suppression hearing is competent evidence to support findings of fact number 8 and 10. As such, these findings of fact are binding on appeal.

D. Conclusion of Law Number 7

¶ 37 Lastly, Defendant argues the remaining, unchallenged findings of fact do not support the trial court's conclusion of law number 7. This court reviews a conclusion of law *de novo,* and it is subject to a full review. *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011); *see State v. McCollum*, 334 N.C. 208, 237, 433 S.E.2d 144, 160 (1993); *State v. Greene*, 332 N.C. 565, 577, 422 S.E.2d 730, 737 (1992). Conclusions of law "will be sustained on appeal if they are correct in light of the findings." *McCollum*, 334 N.C. at 237, 433 S.E.2d at 160.

¶ 38 Conclusion of law number 7 states, in relevant part, "North Carolina law

allows an officer to extend a traffic stop and conduct a search of a vehicle when that officer detects an odor of what the officer believes to be marijuana emanating from that vehicle." Specifically, Defendant argues under *Ward*, a lay identification of marijuana by a police officer is impermissible, and thus, Detective Jamieson did not have reasonable suspicion to justify prolonging the traffic stop. As we discussed above, our Supreme Court's holding in *Ward* was explicitly limited to testimony by experts under N.C. Gen. Stat. § 8C-1, R. 702. *Ward*, 364 N.C. at 147, 694 S.E.2d at 747. We decline to extend *Ward*'s holding today to the case *sub judice*.

¶ 39 Moreover, an officer's "own subjective belief that the substance he smelled was marijuana was additional evidence supporting probable cause—even if his belief might ultimately have been mistaken." *Parker*, at ¶ 33. Since reasonable suspicion is a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[,]" an officer's own subjective belief that the substance he smelled was marijuana is additional evidence for reasonable suspicion, regardless of whether this belief was correct. *State v. Barnard*, 362 N.C. 244, 247, 658 S.E.2d 643, 645 (2008) (internal quotation marks omitted) (quotation omitted). Accordingly, we hold the trial court did not err in making conclusion of law number 7.

IV. Conclusion

¶ 40 Detective Jamieson possessed reasonable suspicion to extend Defendant's

traffic stop and probable cause to conduct a warrantless search of the vehicle. Therefore, the trial court properly denied Defendant's motion to suppress. Accordingly, we affirm the judgment of the trial court.

AFFIRM.

Judge ZACHARY concurs.

Judge GRIFFIN concurs in result only.

Report per Rule 30(e).