IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-617

No. COA 21-669

Filed 6 September 2022

Wayne County, No. 19CRS50705

STATE OF NORTH CAROLINA

v.

HARNELL M. OUTLAW, Defendant.

Appeal by Defendant from judgment entered 22 March 2021 by Judge William W. Bland in Wayne County Superior Court. Heard in the Court of Appeals 24 May 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert J. Pickett, for the State.

Stephen G. Driggers for Defendant-Appellant.

INMAN, Judge.

¶ 1 Defendant appeals the denial of his motion to suppress the evidence obtained during a warrantless search following a traffic stop. Because we conclude, following precedent, that a reasonable person in Defendant's position would have felt free to leave at the conclusion of the traffic stop, we affirm the trial court.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 On 21 February 2019, Detective Tyler Kelly ("Kelly") of the Wayne County Sheriff's Office stopped Defendant Harnell Outlaw ("Defendant") for a window tint violation. Kelly was performing duties as a member of the Sheriff's Office's Aggressive Criminal Enforcement ("ACE") team. His four-officer team was tasked with deterring criminal activity in the area by increasing police presence including, as the State describes in its brief, "conduct[ing] constitutionally valid pretextual stops." Kelly recognized Defendant's vehicle, a Cadillac Escalade, as one that had been traveling up and down Durham Lake Road earlier that day.

¶ 3 Once Defendant had stopped, Kelly approached the vehicle, told Defendant the tint of his windows was too dark and prohibited by law, and requested his license and registration. He told Defendant that he only planned to write him a warning ticket, and that as long as his license and registration checked out Defendant would be free to go. Defendant remained in the car with the engine running while Kelly returned to his vehicle to check Defendant's information.

¶ 4 While Kelly was running Defendant's license and registration, the Mt. Olive chief of police pulled up and stopped next to Kelly's vehicle. Kelly assured him that he did not require assistance because his supervisor was on his way and told him they were going to try to search Outlaw's vehicle. The chief of police left and Kelly's supervisor, Corporal Travis Cox ("Cox"), and Deputy Maryssa Ebersole ("Ebersole"), another member of the ACE team, arrived and parked their vehicles behind Kelly's.

¶ 5 Ebersole approached Defendant's vehicle on the passenger side, using her flashlight to look in the backseat. She tapped on the passenger window to ask Defendant to roll it down and spoke with him. She explained that they were there as Kelly's backup and that they normally operated as a team of four but only three members of the team were on duty that day. She also told him they were an ACE team, which Defendant understood to mean they were drug enforcement officers. While they spoke, Cox got out of his vehicle and stood at the rear of Defendant's vehicle but did not engage him directly.

¶ 6 Kelly returned to Defendant's driver side window, confirmed his address, gave him a warning citation, and returned his license and registration. Defendant then asked Kelly if he needed to have the window tint removed. Kelly advised Defendant to remove the illegal tint, and the two also discussed the vehicle's faulty wiring harness. Kelly then asked for Defendant's permission to search the vehicle, and Kelly consented.

¶ 7 Kelly asked Defendant to turn off the vehicle and step outside. Kelly patted Defendant down and had him stand near Cox by the rear of the vehicle. Kelly and Ebersole searched the vehicle, and in the center console found a sandwich bag containing a white powdery substance. The officers handcuffed Defendant and asked him what substance was in the bag, and Defendant responded that it was cocaine.

¶ 8 Defendant was indicted on several charges, including trafficking, possession,

and maintaining a vehicle to keep and sell controlled substances. Defendant moved to suppress the evidence collected during the search of his vehicle.

¶ 9 At the suppression hearing, Kelly, Ebersole, and Defendant testified consistent with the above recitation of facts, and the State presented body and dash camera footage. The trial court denied the suppression motion. Defendant pled guilty, reserving his right to appeal, and was sentenced to 35 to 51 months in prison and required to pay a $50,000 fine. Defendant appeals.

II. ANALYSIS

¶ 10 Defendant argues that the purpose of the traffic stop concluded when Detective Kelly issued him a warning and returned his license and registration, that he was unlawfully detained following that point and could not consent to the search of his vehicle, and that therefore any evidence obtained during the search should be suppressed under the Fourth Amendment. The State argues that Defendant's interaction with the police following the return of his documents was voluntary. We hold, based on the record and our precedent, that a reasonable person in Defendant's position would have felt free to leave at the time officers asked to search his vehicle and that Defendant gave valid consent to the search.

A. Standard of Review

¶ 11 We review the trial court's ruling on a motion to suppress to determine whether the findings of facts are supported by competent evidence and whether the findings

support the trial court's conclusions of law. *State v. Fowler*, 220 N.C. App. 263, 266, 725 S.E.2d 624, 627 (2012). Conclusions of law are fully reviewable on appeal. *State v. Brooks*, 337 N.C. 132, 141, 446 S.E.2d 579, 585 (1994).

B. Unlawful Detention

¶ 12 The Fourth Amendment to the United States Constitution protects against "unreasonable searches and seizures." U.S. Const. Amend. IV. A traffic stop, however brief, constitutes the seizure of a person within the meaning of the Fourth Amendment. *State v. Reed*, 373 N.C. 498, 507, 838 S.E.2d 414, 421 (2020) (citing *Whren v. United States*, 517 U.S. 806, 809-10, 135 L. Ed. 2d 89, 95 (1996)). We review the reasonableness of a traffic stop by applying *Terry v. Ohio*'s dual inquiry: "(1) whether the traffic stop was lawful at its inception and (2) whether the continued stop was 'sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.' " *Id.*, 838 S.E.2d at 422 (citing *Florida v. Royer*, 460 U.S. 491, 500, 75 L. Ed. 2d 229, 238 (1983)).

¶ 13 In this case, Defendant does not challenge the validity of the initial stop for a window tint violation. But he argues the second *Terry* prong: that the officer exceeded the scope authorized by the stop after Defendant was given a warning and his documentation was returned. Defendant and the State agree that the initial purpose of the traffic stop was completed at this point. While an officer may extend a traffic stop beyond the scope of its mission if he has reasonable suspicion of additional

criminal activity, *State v. Bullock*, 370 N.C. 256, 264, 805 S.E.2d 671, 676 (2017), the State concedes that there was no reasonable suspicion to continue the investigation at this point. Instead, the State argues that Defendant consented to extend the interaction with police.

1. Requests to search during a traffic stop

¶ 14 The Fourth Amendment places restrictions on the permissible length of a traffic stop. "[A]n investigative detention must . . . last no longer than is necessary to effectuate the purpose of the stop." *Royer*, 460 U.S. at 500, 75 L. Ed. 2d at 238. "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354, 191 L. Ed. 2d 492, 498 (2015) (citation omitted). The authority to seize ends "when tasks tied to the traffic infraction are—or reasonably should have been—completed," and further prolonging the seizure beyond the completion of the mission renders a traffic stop unlawful. *Id.*

¶ 15 The officer's mission also includes "ordinary inquiries incident to the traffic stop." *Id.* at 355, 191 L. Ed. 2d at 499 (cleaned up). Because the officer's objective is the enforcement of the traffic code, checking the driver's license, running a search to determine if there are outstanding warrants against the driver, and inspecting the vehicle's insurance and registration are all part of that mission. *Id.* Officers may also

take precautions necessary to ensure their safety, such as asking the driver to step out of the vehicle. *Id.* at 356, 191 L. Ed. 2d at 500; *Pennsylvania v. Mimms*, 434 U.S. 106, 110-11, 54 L. Ed. 2d 331, 337 (1977). The officer's questions and actions do not need to be exclusively focused on the mission of the stop, and an officer may ask a detainee questions unrelated to the purpose of the stop, but unrelated investigation must not prolong the roadside detention. *Reed*, 373 N.C. at 509, 838 S.E.2d at 423.

¶ 16 Even a brief extension of a traffic stop beyond its mission is a violation of the right against unreasonable search and seizure. In *Rodriguez,* the United States Supreme Court rejected the argument that temporarily delaying a traffic stop to allow a K9 unit to arrive and perform a drug sniff constitutes only a *de minimis* intrusion on a driver's rights and is therefore permissible. 575 U.S. at 357, 191 L. Ed. 2d at 500. Although the delay was only seven or eight minutes, *id.* at 352, 191 L. Ed. 2d at 497, it prolonged the stop for a purpose unrelated to the mission and unsupported by reasonable suspicion and was therefore an illegal detention. *Id.* at 357, 191 L. Ed. 2d at 500.

¶ 17 If a driver is illegally detained after the mission of the stop is accomplished, the driver's consent to search the vehicle is invalid. In *State v. Bedient* the defendant was stopped for failing to dim her headlights. 247 N.C. App. 314, 315, 786 S.E.2d 319, 321 (2016). The officer issued a verbal warning, and then continued to question the defendant because of an issue with the address on her driver's license. *Id.* at 318, 786

S.E.2d at 323. Because this questioning was supported by reasonable suspicion, it was not a violation of the Fourth Amendment. *Id.* However, the officer then gave an additional verbal warning about maintaining the proper address on her driver's license, concluding the second mission of the stop. *Id.* at 319-20, 786 S.E.2d at 324. Before returning her license and registration, the officer asked, "Do you have anything in the vehicle?" and the defendant replied, "No. You can look." *Id.* at 320, 786 S.E.2d at 324. Because the mission of the stop was concluded and the officer did not have reasonable suspicion of additional criminal activity, we held that the officer unlawfully prolonged the duration of the stop and the defendant's consent to search her vehicle was therefore invalid. *Id.* at 326, 786 S.E.2d at 323.

¶ 18 We have also held unconstitutional an officer's request for consent to search a vehicle *before* the mission of the stop was accomplished when the request was neither related to the original mission of the stop nor supported by a reasonable articulable suspicion of criminal activity. In *State v. Johnson* the defendant was stopped for a seatbelt infraction. 279 N.C. App. 475, 2021-NCCOA-501, ¶ 2. The officer instructed the defendant to get out and walk to the officer's vehicle and then asked if he could search the defendant. *Id.* ¶ 3. The defendant agreed, and the officer found cocaine on his person. *Id.* We held that the defendant's consent was invalid because the search was "not related to the mission of the stop and wholly unsupported by any reasonable, articulable suspicion of other criminal activity afoot beyond the seatbelt infraction for

which [the officer] initially stopped Defendant." *Id.* ¶ 33.[1] Even during a legal detention, an officer may not request a search that will prolong the stop unless that request is supported by reasonable suspicion. *Id.*; *Bullock*, 370 N.C. at 262, 805 S.E.2d at 676; *Reed*, 373 N.C. at 509-10, 838 S.E.2d at 423.

¶ 19 In this case, Detective Kelly had returned Defendant's license and registration, thereby concluding the mission of the stop. At this point, Kelly would need a reasonable, articulable suspicion that criminal activity was afoot "before he prolonged the detention by asking additional questions." *Bedient*, 247 N.C. App. at 320, 786 S.E.2d at 324.

2. Consensual encounter

¶ 20 The State does not argue that Kelly or other officers had a reasonable suspicion to investigate further at the time he returned Defendant's license and registration. Instead it argues that, because Defendant's license and registration had been returned, the detention had concluded and the subsequent encounter between Defendant and the officers was consensual. While continued detention of Defendant

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[1] The language of some of our decisions appears to conflict on whether reasonable suspicion is required to request consent to search during a legal detention. *See State v. Jacobs*, 162 N.C. App. 251, 258, 590 S.E.2d 437, 442 (2004) ("Defendant argues alternatively that the State failed to establish that Officer Smith had sufficient reasonable suspicion to request defendant's consent for the search. No such showing is required.") As we noted in *Johnson*, however, the search in *Jacobs* was related to the original purpose of the stop and therefore an additional showing of reasonable suspicion was not required. *Johnson,* ¶ 31. The State also concedes in its brief that an officer may not request consent to search under these circumstances.

following the conclusion of the mission of the stop would constitute an illegal seizure rendering consent to search invalid, a consensual encounter between a public officer and a citizen is not so burdened.

¶ 21 We have recognized that, in certain circumstances, interaction between police and a motorist following the conclusion of a traffic stop can constitute a consensual encounter. "Generally, the return of the driver's license . . . indicates the investigatory detention has ended." *State v. Heien*, 226 N.C. App. 280, 287, 741 S.E.2d 1, 5-6 (2013). The officer does not lose the right to communicate with the motorist, and non-coercive conversation is allowed. *Id.* The officer may ask questions or ask to search as long as the motorist "freely and voluntarily consents to answer questions or to allow his or her property to be searched." *Id.* To determine if consent was voluntary, we must determine whether "in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." *Michigan v. Chesternut*, 486 U.S. 567, 573, 100 L. Ed. 2d 565, 572 (1988).

¶ 22 In *Heien*, for example, the defendant was a passenger in a car that was stopped for a malfunctioning brake light. 226 N.C. App. at 281, 741 S.E.2d at 3. The driver stepped out of the vehicle to talk to police. *Id.* at 284, 741 S.E.2d at 4. A second officer also requested the defendant's license and, a few minutes later, the officers returned both the defendant's and driver's documents and issued a warning citation. *Id.* at 285, 741 S.E.2d at 5. The officer then asked the driver if he would be willing to answer a

few questions and during that conversation asked to search the vehicle. *Id.* at 285-86, 741 S.E.2d at 5. The driver indicated that the vehicle belonged to the defendant, and the defendant told the officers that he had no objection to the vehicle being searched. *Id.* In our review of the evidence, we noted that the officer's tone and manner were "conversational and non-confrontational," the defendant and driver were not restrained, and no weapons were drawn. *Id.* Accordingly, we held that the return of the documentation ended the stop and that the evidence supported the trial court's finding that the encounter then became consensual. *Id.* at 287, 741 S.E.2d at 5-6.

¶ 23 Similarly, in *State v. Kincaid* the driver was stopped on suspicion of driving with a revoked license. 147 N.C. App. 94, 96, 555 S.E.2d 294, 297 (2001). While the officer ran a license check, he allowed the defendant to buy a drink at the nearby convenience store. *Id.* When the license check was complete, the officer returned the defendant's license and registration and asked if he could question the defendant concerning another matter. *Id.* We held that because there was only one officer present, who spoke to the defendant "in a regular tone of voice, even addressing him on a first-name basis," and there was "no evidence of any coercive action on the part of the officer," a reasonable person in the defendant's position would have felt free to leave once his license and registration were returned. *Id.* at 99, 555 S.E.2d at 299. Accordingly, the consent to question the defendant about matters unrelated to the

search was freely given and valid. *Id.*

¶ 24 The return of a driver's license and registration does not *per se* end a detention: "the return of documentation would render a subsequent encounter consensual only if a reasonable person under the circumstances would believe he was free to leave or disregard the officer's request for information." *Id.* (cleaned up). Evidence of a "coercive show of authority" that shows a detention is ongoing can include factors such as "the presence of more than one officer, the display of a weapon, physical touching by the officer, or his use of a commanding tone of voice indicating that compliance might be compelled." *Id.* (quoting *United States v. Elliott*, 107 F.3d 810, 814 (10th Cir. 1997)).

¶ 25 Our Supreme Court has held that a reasonable person would not have felt free to leave following the conclusion of a stop under circumstances distinguishable from the record in this case. In *Reed* the defendant was stopped for speeding and was ordered to sit in the front seat of the officer's patrol car with the door closed. 373 N.C. at 500, 838 S.E.2d at 417-18. After returning documentation to the defendant, who was still seated in the officer's patrol car, the officer said to the defendant, "This ends the traffic stop and I'm going to ask you a few more questions if it is ok with you." *Id.* at 501, 838 S.E.2d at 418. The Supreme Court distinguished the case from *Heien*, emphasizing that in *Reed* the defendant was seated in the patrol car with a second officer positioned outside the door, the permission to search the vehicle was unclear,

and the length of the traffic stop was nearly 20 minutes, significantly longer than the stop in *Heien*. *Id.* at 513, 838 S.E.2d at 425. Under the specific facts of the case, the Supreme Court held that the defendant in *Reed* was impermissibly detained following the conclusion of the traffic stop's mission. *Id.* at 518, 838 S.E.2d at 428.

¶ 26 In this case, Defendant was pulled over by Detective Kelly for a window tint violation. Kelly informed him at the beginning of the stop that he planned to write Defendant a warning ticket and then he would be free to go as long as his license and registration checked out. While Kelly was reviewing Defendant's information, several other officers arrived at the scene: the Mt. Olive police chief drove up and then departed, and the other two members of Kelly's team parked behind Kelly's vehicle and stood around Defendant's vehicle: Cox at the rear and Ebersole at the passenger side. Ebersole also spoke with Defendant through the passenger window.

¶ 27 When Kelly returned to Defendant's vehicle, he returned Defendant's documents and handed him a warning ticket through the window, explaining that there was no fine or court date. Immediately after this, Defendant asked the question that began the following exchange:

> Defendant: Do I need to remove [the window tint]?
>
> Kelly: It would be best. All right, it would be best. I know you said you bought it like that and whatnot, but you ain't gonna be able to pass . . . I don't know how you passed inspection like this thing is anyways—it looks like a rat nest right now in that wire harness but, ah, how long have

> you had it?
>
> Defendant: I've had it a year, but . . . it [wasn't] like this . . . but I had some problems with the ignition.
>
> Kelly: You trying to get it worked on?
>
> Defendant: I, um, I don't know what kind of stuff they had rigged up in here but . . .
>
> Kelly: Gracious.
>
> Defendant: I just went and got it inspected.
>
> Kelly: Gracious. Well, listen man, we've had a lot of drug complaints in this area man. I was just wondering would there be any chance I could take a look around your car and make sure everything's, er, comes back OK with that?
>
> Kelly: Ain't got a problem with that?
>
> Defendant: No.

¶ 28 The trial court found that the traffic stop concluded with the issuance of the warning ticket and that Defendant voluntarily extended the encounter by asking if he needed to remove the window tint. It therefore concluded that Defendant's consent was voluntary and not the result of coercion by law enforcement and denied his motion to suppress.

¶ 29 We look at the totality of the circumstances to determine if consent was voluntarily given, including "the characteristics of the accused (such as age, maturity, education, intelligence, and experience) as well as the conditions under which the consent to search was given (such as the officer's conduct; the number of officers

present; and the duration, location, and time of the encounter)." *U.S. v. Lattimore*, 87 F.3d 647, 650 (4th Cir. 1996).

¶ 30 The trial court found that both Kelly and Defendant spoke in a "conversational, polite, non-confrontational tone" throughout the exchange. Two other officers were positioned around the vehicle. None of the officers stood in the path of Defendant's vehicle, nor was Defendant restrained at any time. Defendant was allowed to keep his vehicle running throughout the stop. After Kelly handed Defendant a warning ticket and returned his license and registration, Defendant asked whether he needed to replace the window tint. After further conversation about the window tint and wiring harness, lasting about thirty seconds, Kelly requested to search Defendant's vehicle.

¶ 31 Under the totality of the circumstances, we believe that a reasonable person would have understood that the stop had concluded and felt free to leave. As the trial court noted, all communications between the officers and Defendant were "polite and non-confrontational." Defendant was not physically restrained or threatened with a weapon at any time. Defendant's license and registration had been returned, and Detective Kelly had noted to Defendant at the beginning of the stop that as long as his documentation checked out he would be let go with a warning. Although the presence of multiple officers can indicate a show of force and coercion, Deputy Ebersole explained to Defendant that the officers operated as a team, and none was

positioned to prevent the departure of Defendant's vehicle. Defendant's interaction with the police following the return of his license and registration was therefore voluntary, and he gave valid consent to search the vehicle.

C. Scope of Search

¶ 32 Defendant also argues that, assuming he gave valid consent to the search, Detective Kelly's search of the car exceeded the scope of the consent. Kelly asked Defendant if he could search "around" the car. Defendant argues that his consent did not extend to the "extended" search that followed. Officers searched several potential hiding spots in the car, including the door panel storage areas, under the driver's seat, and inside an Aleve bottle, before locating drugs by opening the center console of his vehicle.

¶ 33 When there is a dispute as to the extent of a consent to search, we look to the totality of the circumstances and determine what a reasonable person would have understood the exchange between the individual and officer to mean. *State v. Neal*, 190 N.C. App. 453, 456, 660 S.E.2d 586, 588 (2008). In this case, Kelly informed Defendant that there had been a number of drug complaints in the area and requested permission to search the car for drugs. Defendant consented to a search for drugs.

¶ 34 We have consistently held that consent to search a motor vehicle allowed police access to closed and hidden portions of the vehicle. *See State v. Lopez*, 219 N.C. App.

139, 723 S.E.2d 164 (2012), *State v. Schiro*, 219 N.C. App. 105, 723 S.E.2d 143 (2012). Defendant cites no authority that supports his argument that his consent to search either did not include consent to search the inside of his vehicle or only included areas within plain view of the interior of the vehicle, and his argument is meritless.

III. CONCLUSION

¶ 35 For the above reasons, we hold that the trial court did not err in concluding that a reasonable person in Defendant's position would have felt free to leave following the return of his license and registration, that his consent to search was therefore valid, and the search performed did not exceed the consent.

NO ERROR.

Judges ZACHARY and JACKSON concur.

Report per Rule 30(e).