IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-667

No. COA22-66

Filed 4 October 2022

Guilford County, Nos. 19 CRS 80930-31

STATE OF NORTH CAROLINA

v.

TAUHID ABDUL RAHMA ABDULLAH, Defendant.

Appeal by defendant from judgments entered 24 August 2021 by Judge Timothy G. Gould in Superior Court, Guilford County. Heard in the Court of Appeals 23 August 2022.

*Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Macari, for the State.*

*Edward Eldred, for defendant-appellant.*

STROUD, Chief Judge.

¶ 1 Defendant appeals the denial of his motion to suppress. We affirm.

## I. Background

¶ 2 In the winter of 2020, defendant was indicted for two counts of possession of controlled substances with intent to sell or deliver ("possession"). On or about 23 March 2021, defendant filed a motion "to suppress any physical evidence seized by

the police" arguing the seizure was without probable cause. On 17 May 2021, the trial court entered an order denying defendant's motion to suppress. Defendant pled guilty to the two charges against him, reserving his right to appeal.

## II. Motion to Suppress

¶ 3 Defendant contends "[t]he trial court should have allowed the motion to suppress because . . . [defendant] was subjected to a de facto arrest by officers lacking probable cause[.]"

### A. Standard of Review

> 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. The trial court's findings are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. Conclusions of law are reviewed *de novo* and are subject to full review. 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. Royster*, 224 N.C. App. 374, 375–76, 737 S.E.2d 400, 402–03 (2012) (citations and quotation marks omitted). "[U]nchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal." *In re R.D.B.*, 274 N.C. App. 374, 379–80, 853 S.E.2d 1, 5 (2020) (citation and quotation marks omitted).

### B. Trial Court Order

¶ 4 Defendant does not challenge any of the findings of fact, and thus they are binding on appeal. *See id.* The findings relevant to the issue on appeal are as follows:

1. On August 5, 2019, members of the Greensboro Police Department tactical narcotics team were working narcotics enforcement in the area of the NC 68 hotel corridor (near intersection of Interstate 40 and NC 68).

2. About 2-3 months prior, Detective Michael Lytle had encountered a female subject who gave him information about a person she knew as "T" who sold her drugs.

3. The informant described T as a light-skinned Black male who drove a gold Chevy Cavalier and sold heroin and crack from the vehicle. Informant told Det. Lytle that T would pick a customer up in his car, drive the customer around, make the transaction in the car, and then drop the buyer off. She also told Det. Lytle that T worked the area of the NC 68 hotel corridor. She said she knew this because she had purchased from T before. She also said the car had damage on the driver's side. Informant also told Det. Lytle that T kept drugs in the center console of his car in a Styrofoam cup in the cupholder.

4. Det. Lytle did some research into various data bases available to him (including DMV) and showed a DMV photo of Defendant Tauhid Abdullah to informant. She confirmed that Tauhid Abdullah was "T."

5. Det. Lytle also corroborated other information from informant relating to another person she had purchased from and was able to identify that person from the street name and other information informant gave him.

6. Det. Lytle believed, that based on Defendant's prior arrest record and informant's information, that Defendant was involved in narcotics sales.

7. Det. Lytle began an investigation on Defendant. He conducted surveillance on the address Defendant was court-ordered to keep. Det. Lytle observed Defendant's vehicle (gold Chevy Cavalier) and Defendant going to and

from the residence.
8. On August 5, 2019, Det. Lytle saw Defendant leave gas station on South Regional Road (part of the 68 corridor area). He recognized Defendant and his vehicle.

9. Greensboro Police Officer Chandler Bryant had observed Defendant drop two people off at the gas station/store and radioed same information to Det. Lytle.

10. Det. Lytle and Officer Mendez began mobile surveillance of Defendant while Officer Bryant and Corporal Nicholas Goughnour followed up with the two persons Defendant had dropped off at the gas station/store. All four officers maintained radio contact with each other and shared information as they learned it.

11. Bryant and Goughnour saw a man and a woman that Defendant dropped off at the store.

12. Bryant saw the two-door gold Cavalier with matching tag and body damage pull into gas station and park at far left side of business. He saw a white male and white female get out of the car and walk toward a grassy area by the store where homeless and other down and out people are known to and do hang out. Det. Lytle asked Bryant and Goughnour to speak with the two subjects.

13. As the officers were walking toward the grassy area, Bryant noticed a crack pipe and saw that one of the two was about to start smoking crack. He detained the man. Bryant knew the substance was crack from looking at the pipe and seeing the matter stuffed in the end of it. The man confirmed it was crack, told Bryant that was all (contraband) he had. Man told Bryant he had just gotten it, just picked it up.

14. Man also told Goughnour he had purchased from guy he knew as T, that T drove a gold Cavalier and told Goughnour that he (Goughnour) had probably just seen it

leave.

15. Goughnour relayed this information by radio to Det. Lytle, as Lytle was trying to locate or catch up to the Cavalier after it left the gas station.

16. The man also told Goughnour he wanted to work it off, indicating he wanted to help him with T and be an informant of sorts.

17. Meanwhile, Det. Lytle continued surveilling/following Defendant for about 7-10 minutes, learned from Chandler and Goughnour that they had recovered narcotics from the two people who got out of Defendant's car at the gas station and that . . . those two told the officers they had purchased from Defendant, who then dropped them off at the gas station.

18. Det. Lytle decided to detain Defendant. He and Officer Mendez waited until Defendant stopped and pulled into a gas station lot on Sharpe Road, east of Gate City Boulevard.

19. Det. Lytle decided, based on Defendant's prior history involving a vehicle chase, that it would be safest to encounter Defendant when he was no longer in control of his vehicle.

20. So, after Defendant pulled his car into the gas station lot on Sharpe Road, Det. Lytle and Officer Mendez pulled in, blocked his car with their vehicles and detained him.

21. Det. Lytle asked Defendant if he had any weapons on him and got consent to search person. Defendant told Det. Lytle his ID was in the car.

22. Det. Lytle looked through the open passenger door and saw Styrofoam cup in the center console cupholder with the top of said cup ripped off so that cup was flush with the

console.

23. Det. Lytle looked through windshield and could see into cup and saw that contents appeared to be narcotics. Det. Lytle is familiar with how narcotics are packaged and appear. He has been with tactical narcotics team for six years and with GPD for twelve.

24. Inside the cup, one bag appeared to have powder cocaine, one appeared to have crack cocaine and one appeared to have heroin.

25. Defendant was arrested and charged with PWIDS cocaine and PWISD heroin.

¶ 5 The trial court then concluded:

> When detailed information is provided by an informant, especially when such information goes against informant's self-interest, the minute particulars of the tip make it reliable. State v. Tickle, 37 N.C. App. 416 (1978). Further, in general, a law enforcement officer may search an automobile without a warrant, if the officer has reasonable belief that the automobile carries contraband. Chambers v. Maroney, 399 U.S. 42 (1970). All of the informant's information about Defendant checked out and was corroborated. The search of Defendant's automobile was based upon information from a reliable informant and on information based on what Chandler and Goughnour saw and relayed to Lytle. The officers had collectively seen enough to arrest Defendant without a warrant. Further, under the automobile exception to a search warrant, a search is not unreasonable if it is based on facts that would justify a warrant's issue. There is no doubt in this case that Det. Lytle would have been issued a search warrant for Defendant's car based on his and the other officer's observations and the informants' information.
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> The Court concludes, then, as a matter of law (as discussed

> above), the Motion to Suppress is without merit.
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> Therefore, it is ORDERED that Defendant's Motion to Suppress filed March 28, 2021 is DENIED.

**C. Probable Cause**

¶ 6 Defendant's brief begins with a general discussion of several points of law relevant to the issue of a search or seizure under the Fourth Amendment of the United States Constitution and then asserts the trial court should have granted the motion to suppress because he was subjected to a "de facto arrest" and not an investigatory stop for which only reasonable suspicion is required. Defendant then contends de facto arrest requires probable cause, a higher standard than the reasonable suspicion required for an investigatory stop. Defendant further argues the information provided by the confidential informant was not enough to establish probable cause for his "de facto arrest."

¶ 7 Defendant fails to explain how, considering the uncontested findings of fact which are binding on appeal, *see id.*, that the stop could be treated as a de facto arrest. Instead, defendant's brief refers to evidence such as the testimony that the officers drew their guns as they approached him, although the findings do not address this fact. The findings do address the officers' concern for safety, "based on Defendant's prior history involving a vehicle chase" and their decision that "it would be safest to encounter Defendant when he was no longer in control of his vehicle." But even if we

assume the officers did draw their guns as they approached defendant, and if we assume he was subjected to a "de facto arrest," thus requiring probable cause justification by the officers, *see State v. Thorpe*, 232 N.C. App. 468, 478, 754 S.E.2d 213, 221 (2014) (noting "a *de facto* arrest . . . must be justified by probable cause" (citation and quotation marks omitted)), we conclude that standard of probable cause was met.

> The existence of probable cause is a commonsense, practical question that should be answered using a totality-of-the-circumstances approach. Probable cause is defined as those facts and circumstances within an officer's knowledge and of which he had reasonably trustworthy information which are sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense. Probable cause does not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical probability that incriminating evidence is involved is all that is required. A probability of illegal activity, rather than a prima facie showing of illegal activity or proof of guilt, is sufficient. Probable cause encompasses factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

*Adams v. City of Raleigh*, 245 N.C. App. 330, 336-37, 782 S.E.2d 108, 113-14 (2016) (citations and quotation marks omitted).

> When probable cause is based on an informant's tip a totality of the circumstances test is used to weigh the reliability or unreliability of the informant. Several factors are used to assess reliability including: (1) whether the informant was known or

> anonymous, (2) the informant's history of reliability, and (3) whether information provided by the informant could be and was independently corroborated by the police.
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> . . . .
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> In order for a reviewing court to weigh an informant's tip as confidential and reliable, evidence is needed to show indicia of reliability. Indicia of reliability may include statements against the informant's penal interests and statements from an informant with a history of providing reliable information. Even if an informant does not provide a statement against his/her penal interest and does not have a history of providing reliable information to law enforcement officers, the Supreme Court has suggested that other indications of reliability may suffice.

*State v. Jackson*, 249 N.C. App. 642, 648–49, 791 S.E.2d 505, 510-11 (2016) (citations, quotation marks, and brackets omitted), *aff'd per curiam*, 370 N.C. 337, 807 S.E.2d 141 (2017).

¶ 8 We first note that by the time the officers stopped defendant, they had substantially more information than was provided by the confidential informant. The officers had conducted additional investigation and surveillance, all of which corroborated the information from the confidential informant and supplemented that information. Defendant's argument focuses on the man and woman at the gas station as informants, ignoring the "female subject who gave him information about a person she knew as 'T' who sold her drugs." The "female subject" was known to Det. Lytle as is evidenced in the fact that he later confirmed the identify of defendant through

her, using defendant's DMV photo. The "female subject" made statements against her own interest by admitting to purchasing drugs and provided other statements that had been corroborated about another person from whom she had purchased drugs. The officers also had many other corroborating facts about defendant including the description of defendant's car including specific damage to the car; the types of controlled substances he sold, heroin and crack; the area and manner in which defendant sold the controlled substances; and the usual placement of the controlled substances in his car. The officers then observed defendant follow the pattern as described by the informant with two other individuals who claimed defendant had sold them narcotics. Assuming, solely for purposes of argument, the stop was a "de facto arrest," the officers had probable cause to arrest defendant. Further, based upon the trial court's actual uncontested findings and its conclusion of law, the trial court did not err by concluding the officers had reasonable suspicion of criminal activity sufficient to justify the stop as detailed in the uncontested findings of fact. This argument is overruled.

## III. Conclusion

¶ 9 We conclude the trial court did not err in denying defendant's motion to suppress.

AFFIRMED.

Judges DIETZ and ZACHARY concur.

Report per Rule 30(e).