IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-770

No. COA22-425

Filed 15 November 2022

Cabarrus County, No. 19 CRS 54275

STATE OF NORTH CAROLINA

v.

ZAVON AMADEUS MARTIN, Defendant.

Appeal by Defendant from judgment entered 5 August 2021 by Judge Lori I. Hamilton in Cabarrus County Superior Court. Heard in the Court of Appeals 5 October 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert P. Brackett, Jr., for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Franke, for Defendant-Appellant.

JACKSON, Judge.

¶ 1 Defendant Zavon Amadeus Martin ("Defendant") appeals from the trial court's order denying his motion to suppress. For the reasons detailed below, we affirm.

I. Background

¶ 2 On 19 October 2019, Officer Brandon Crowe with the Kannapolis Police Department was dispatched at the request of North Carolina Highway Patrol to

investigate a report of a vehicle exhibiting poor driving. An anonymous caller had reported a black Chevrolet Impala being driven on Interstate 85 southbound in a way that that the caller believed indicated that the driver was intoxicated. The caller provided the license plate number of the vehicle.

¶ 3 Officer Crowe got onto the highway and identified two black Impalas. He was able to distinguish the vehicle reported by the anonymous caller because of the license plate. Officer Crowe had to speed up to 90 miles per hour to catch up with the vehicle and observed it weaving in between traffic without using any signals. The vehicle was almost involved in a crash due to the erratic driving. Based on these observations, Officer Crowe made a traffic stop of the vehicle.

¶ 4 Once the stop was initiated, Officer Crowe asked the driver—Defendant—to step out of the vehicle. At the suppression hearing he testified that this is what he typically does when he suspects the driver to be intoxicated due to his concern that the driver may attempt to leave before the stop can be completed. It was around this time when Officer Russell Miller with the Kannapolis Police Department arrived.

¶ 5 Officer Miller was informed that there was a passenger in the vehicle and went to speak with that individual. Officer Miller asked the passenger to roll down the car window, and as the window was rolling down, he smelled marijuana.

¶ 6 Meanwhile, Officer Crowe was with Defendant and asked him if he had any firearms in the vehicle. Defendant responded that there was a firearm in the

backseat of the car, and Officer Crowe asked if he could retrieve it. Defendant gave consent.

¶ 7 Officer Crowe removed a black Glock model 19 from the vehicle and an extended magazine from the center console. While retrieving the firearm Officer Crowe saw a loose leafy green substance in the center console that he identified as marijuana.

¶ 8 State Trooper Mitchel Geracz arrived on the scene after having received the call for service regarding a suspected impaired driver. When Trooper Geracz arrived, Defendant was speaking with the Kannapolis officers. Trooper Geracz took Defendant to his vehicle to perform standard field sobriety tests. Because of the height difference between them, Trooper Geracz had Defendant sit in his vehicle to perform a horizontal gaze nystagmus test. The impaired driving investigation took approximately three to four minutes, and Trooper Geracz ultimately determined that Defendant was not impaired. However, while the impaired driving investigation was taking place, Defendant made a statement to Trooper Geracz that he had a gram of "weed" in the vehicle.

¶ 9 Based on Defendant's statement that there was marijuana in the car, the smell of marijuana, and the visual identification of marijuana in the car's center console, Trooper Geracz and Officer Miller conducted a search of Defendant's vehicle. They located a backpack in the trunk that contained large, clear bags of bud-variety

marijuana and 15 to 20 loose Ziploc bags. Trooper Geracz also located a shoe box that contained a shoe with a scale inside.

¶ 10 Once everything was out of the vehicle, Officer Miller placed Defendant under arrest. The entire stop lasted approximately 45 minutes.

¶ 11 On 9 December 2019, Defendant was indicted on one count of possession with intent to sell or deliver marijuana, one count of felony possession of marijuana, and one count of possession of marijuana paraphernalia. On 24 September 2020, Defendant filed a motion to suppress alleging that the initial stop of Defendant was invalid, the stop was unlawfully extended to conduct an unrelated investigation based on the alleged odor of marijuana, the use of the anonymous motorist's tip violated Defendant's confrontation rights under the Sixth Amendment of the United States Constitution, and the statements given by Defendant were the product of unlawful interrogation.

¶ 12 A hearing on the motion to suppress was held on 23 March 2021 before the Honorable Martin B. McGee in Cabarrus County Superior Court. By order on 30 April 2021, the trial court denied Defendant's motion to suppress.

¶ 13 On 5 August 2021, Defendant entered an *Alford* plea before the Honorable Lori I. Hamilton. *See North Carolina v. Alford*, 400 U.S. 25 (1970). Defendant pleaded to one count of possession with intent to sell or deliver marijuana and one count of possession of marijuana paraphernalia. As part of his plea, the felony possession of

marijuana charge was dismissed, along with several misdemeanor traffic violation charges. Defendant was sentenced to six to 17 months incarceration, which was suspended for 24 months of supervised probation.

¶ 14 Defendant gave oral notice of appeal.

II. Analysis

¶ 15 Defendant raises four arguments on appeal: (1) the trial court's finding that Officer Crowe suspected that Defendant was impaired is not supported by the evidence; (2) Officer Crowe's question about Defendant having a firearm was a detour from the stop's lawful mission, and therefore the trial court's conclusion that Defendant consented to the retrieval of the firearm is not supported by the evidence; (3) the stop was unlawfully extended for an impaired driving investigation by Trooper Geracz, and therefore the trial court's conclusion that Defendant was not under arrest or the equivalent at the time he told Trooper Geracz about the gram of marijuana in his vehicle is not supported by the evidence; and (4) there was no probable cause to search Defendant's car for drugs.

A. Motion to Suppress

¶ 16 When reviewing a ruling on a motion to suppress, we analyze "whether the trial court's underlying findings of fact are supported by competent evidence and whether those factual findings in turn support the trial court's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (cleaned up).

If the findings of fact are supported by substantial competent evidence, they are binding on appeal. *State v. Gabriel*, 192 N.C. App. 517, 519, 665 S.E.2d 581, 584 (2008). We review conclusions of law *de novo*. *State v. Edwards*, 185 N.C. App. 701, 702, 649 S.E.2d 646, 648 (2007).

1. Reasonable Suspicion of Driving While Impaired

Defendant first challenges the trial court's Finding of Fact 2 which states:

> 2. Officer Crowe positioned himself at the Lane Street exit of I-85 (Exit 63). Approximately five to ten minutes after the radio call, Officer Crowe observed two black Chevrolet Impalas traveling southbound on I-85. Officer Crowe pursued both vehicles and observed one of them weaving in and out of traffic, failing to maintain its lane, and traveling at 90 miles per hour. That vehicle also nearly caused a collision with another vehicle on the interstate. Officer Crowe suspected that the driver may be impaired based upon his independent observations of the vehicle's operation.

¶ 17 Specifically, Defendant contends that the evidence does not support Officer Crowe having reasonable suspicion that Defendant was impaired. We disagree.

¶ 18 In general, "a police officer must have more than an unparticularized suspicion or hunch before he or she is justified in conducting an investigatory stop." *State v. Fields*, 195 N.C. App. 740, 744, 673 S.E.2d 765, 767-68 (2009) (internal quotations omitted). While weaving within lanes alone is not sufficient for an officer to develop reasonable suspicion that a driver is driving while impaired, weaving "coupled with additional specific articulable facts" that also indicate the driver is operating a vehicle

while impaired is sufficient. *See id.* at 744, 673 S.E.2d at 768 (citing multiple cases where observable weaving coupled with other facts such as speeding, driving excessively slowly, and driving off the road was sufficient for reasonable suspicion of driving while impaired).

¶ 19 In addition, "an anonymous tip may provide reasonable suspicion as long as it exhibits sufficient indicia of reliability." *State v. Young*, 148 N.C. App. 462, 467, 559 S.E.2d 814, 818-19 (2002) (internal citations omitted). An officer may rely on information gained from an anonymous source as long as the anonymous informant's statement is "reasonably corroborated by other matters within the officer's knowledge." *Id.* at 467, 559 S.E.2d at 819. In *Young*, we noted that "anonymous tips are one of the most important investigatory tools used by law enforcement to prevent and solve crimes." *Id.* at 468, 559 S.E.2d at 819.

¶ 20 Here, the evidence supports the trial court's finding that Officer Crowe believed that the driver of the vehicle—Defendant—was impaired.

¶ 21 Officer Crowe received information from dispatch that was provided by an anonymous caller that a black Chevrolet Impala was driving poorly, and that the caller believed the driver was impaired. The caller also specifically identified the vehicle by its license plate. Officer Crowe then personally observed the vehicle driving dangerously, weaving without signaling, speeding excessively, and almost getting into an accident. Officer Crowe was able to identify the vehicle as the one

reported by the anonymous caller because of the matching license plate. The anonymous caller's tip, corroborated by Officer Crowe's direct and independent observation, support the trial court's finding that Officer Crowe believed the driver of the vehicle was intoxicated prior to initiating the stop.

2. Officer's Crowe's Firearm Inquiry

¶ 22 Defendant next contends that the trial court's conclusion of law that Defendant consented to the retrieval of the firearm is not supported by the findings of fact or evidence before the court. Specifically, Defendant argues that Detective Crowe's questions about whether Defendant had a firearm were a detour from the lawful mission of the stop, and therefore any subsequent statements or consent to search by Defendant were involuntary. We disagree.

¶ 23 The trial court's Conclusion of Law 5 states:

> 5. The defendant gave voluntary consent to Officer Crowe to enter the vehicle to retrieve the firearm. While doing so, Officer Crowe observed what he believed to be marijuana in plain view.

¶ 24 The Fourth Amendment to the United States Constitution protects "the right of the people to be secure against unreasonable searches and seizures[.]" *State v. Johnson*, 279 N.C. App. 475, 483, 2021-NCCOA-501, ¶ 21 (2021). A traffic stop lawfully executed with reasonable suspicion may turn into an unlawful seizure if the stop "is prolonged beyond the time reasonable to complete" the mission of the stop.

State v. Williams, 366 N.C. 110, 116, 726 S.E.2d 161, 166 (2012).

¶ 25 Consent to search may provide a valid reason to detain a driver beyond the scope of the initial traffic stop. *See id.* (citing *Florida v. Royer*, 460 U.S. 491, 497-98 (1983)). However, "[i]f the officer's request for consent to search is unrelated to the initial purpose for the stop, then the request must be supported by reasonable articulatable suspicion of additional criminal activity." *State v. Parker*, 183 N.C. App. 1, 9, 644 S.E.2d 235, 241-42 (2007). Further, consent to search that is the product of an unconstitutional seizure is involuntary. *State v. Cottrell*, 234 N.C. App. 736, 752, 760 S.E.2d 274, 285 (2014).

¶ 26 "Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the traffic stop." *Johnson*, 279 N.C. App. at 484, 2021-NCCOA-501, ¶ 22 (internal quotations omitted). Negligibly burdensome inquiries and precautions taken for the purpose of officer safety are considered to "stem[] from the mission of the traffic stop." *Id.* "[T]hus, time devoted to officer safety is time that is reasonably required to complete that mission." *Id.*

¶ 27 The pertinent inquiry for us is whether Officer Crowe's question about whether Defendant had a firearm, and subsequent request for consent to retrieve that firearm, deviated from the traffic stop's mission and, if so, if that deviation measurably extended the stop's duration.

¶ 28 Defendant contends that the inquiry was unlawful because Officer Crowe had

no reason to believe that Defendant was armed. We have previously held that "during a lawful stop, an officer may conduct a pat down search, for the purpose of determining whether the person is carrying a weapon, when the officer is justified in believing that the individual is armed and presently dangerous." *State v. King*, 206 N.C. App. 585, 588, 696 S.E.2d 913, 915 (2010) (internal quotations omitted). However, here, Defendant was not frisked. Officer Crowe did not conduct a search or seize the firearm until after Defendant gave his consent.

¶ 29 We hold that Officer Crowe's inquiry was rooted in officer safety, and therefore stemmed from the mission of the traffic stop, which was an investigation into whether Defendant was driving while impaired. Given that there was a passenger in the vehicle, and that Defendant informed Officer Crowe that the firearm was loose in the backseat, it was reasonable to want to secure the weapon before proceeding with the investigation. Because Officer Crowe's request for consent to retrieve the weapon stemmed from the mission of the stop, Defendant's consent was effective and voluntary.

3. Impaired Driving Investigation

¶ 30 Defendant next asserts that the stop was unlawfully extended for Trooper Geracz to perform a DWI investigation, and that the trial court's conclusion of law that there is no legal basis to suppress Defendant's voluntary statement that he had a gram of weed in his vehicle is not supported by the findings of fact or the evidence.

Defendant contends that the trial erred in concluding that he was not under arrest or the functional equivalent at the time he made that statement. We disagree.

a. DWI Investigation

¶ 31 The knowledge and reasonable suspicion of one officer may provide the collective knowledge necessary for a second officer to perform an investigatory stop. *See State v. Battle*, 109 N.C. App. 367, 370-71, 427 S.E.2d 156, 159 (1993) ("If the officer making the investigatory stop (the second officer) does not have the necessary reasonable suspicion, the stop may nonetheless be made if the second officer receives from another officer (the first officer) a request to stop the vehicle, and if, at the time the request is issued, the first officer possessed reasonable suspicion[.]").

¶ 32 As discussed *supra* in § II.A.1, reasonable suspicion existed for Officer Crowe to stop Defendant for driving while impaired. Further, Trooper Geracz testified at the motion to suppress hearing that he also received the call for service regarding the anonymous tip about a suspected impaired driver. Because of his location and the location of the reported vehicle, the Kannapolis Police Department was asked to attempt to locate or stop the vehicle while Trooper Geracz made his way to the scene. While Trooper Geracz did not himself observe Defendant's driving, his personal knowledge of the anonymous caller's tip, combined with Officer Crowe's reasonable suspicion to stop Defendant for a suspected DWI, would have been sufficient for Trooper Geracz to perform an investigatory stop. As it was, Officer Crowe had

already stopped Defendant and Trooper Geracz simply took over the performance of the field sobriety test portion of the DWI investigation.

¶ 33 We therefore hold that it was not an unreasonable extension of the stop for Trooper Geracz to perform the DWI investigation; instead, his doing so was for the purpose of effectuating the initial mission of the stop.

b. Defendant's Statement to Trooper Geracz

¶ 34 The trial courts Conclusion of Law 7 states:

> 7. The defendant was not under arrest or the functional equivalent to being arrested when he volunteered that he had a gram of "weed" in his vehicle[.]

¶ 35 Having held, as we do above, that the stop was not unlawfully extended for Trooper Geracz to conduct a DWI investigation, we also hold that Defendant's statement during that investigation was not made during a custodial interrogation.

¶ 36 "The test for determining if a person is in custody is whether, considering all the circumstances, a reasonable person would not have thought that he was free to leave because he had been formally arrested or had his freedom of movement restrained to the degree associated with a formal arrest." *State v. Braswell*, 222 N.C. App. 176, 180, 729 S.E.2d 697, 701 (2012) (internal quotations omitted).

¶ 37 However, "[n]either *Miranda* warnings nor waiver of counsel is required when police activity is limited to general on-the-scene investigation." *State v. Kincaid*, 147 N.C. App. 94, 102, 555 S.E.2d 294, 300 (2001) (internal quotations omitted). This

includes investigations into whether an individual has been operating a vehicle while impaired. *See Berkemer v. McCarty*, 468 U.S. 420, 442 (1984) (holding that a single police officer asking the respondent a modest number of questions and requesting him to perform a simple balancing test at a location visible to passing motorists cannot fairly be characterized as the functional equivalent of formal arrest); *see also State v. Beasley*, 104 N.C. App. 529, 532, 410 S.E.2d 236, 238 (1991) (holding that even when a defendant is questioned about his alcohol consumption in the back of a patrol car, the defendant is not in custody for the purposes of *Miranda*).

¶ 38 Here, Trooper Geracz was conducting a field sobriety test in his vehicle with Defendant when Defendant made the statement that there was a gram of weed in his vehicle. Trooper Geracz testified that the entire impaired driving investigation lasted approximately three to four minutes. These circumstances are directly comparable to those articulated by the Supreme Court of the United States in *Berkemer* and by this Court in *Beasley*. Trooper Geracz was conducting an on-scene investigation of a potential DWI, not subjecting Defendant to the type of custodial interrogation that would require the reading of *Miranda* rights.

¶ 39 Further, even if Defendant was in custody at the time that he made the statement about the gram of weed in his vehicle, there is no evidence in the record that Defendant's statements were elicited by Trooper Geracz. The trial court made the following Finding of Fact:

> 9. Upon Trooper Geracz's arrival at the traffic stop, the defendant was immediately turned over to Trooper Geracz for a driving while impaired investigation, which lasted only a few minutes. During that investigation, the defendant volunteered that there was a gram of "weed" in his vehicle. The defendant was quickly determined by Trooper Geracz to not be impaired.

¶ 40 Defendant does not contest this Finding of Fact and thus it is binding on appeal. *See State v. Beveridge*, 112 N.C. App. 688, 693, 436 S.E.2d 912, 914 (1993). Custodial interrogation encompasses questioning *initiated by law enforcement officers,* not voluntary, unprompted statements. *State v. Gaines*, 345 N.C. 647, 661-62, 483 S.E.2d 396, 405 (1997).

¶ 41 We therefore hold that Defendant's statements to Trooper Geracz were made voluntarily during a DWI investigation for which there was reasonable suspicion and when Defendant was not in custody.

4. Search of Defendant's Vehicle

¶ 42 Defendant finally contends that the trial court's conclusion that there was probable cause to conduct the full search of Defendant's car is not supported by the evidence. We disagree.

¶ 43 The trial court's relevant Conclusions of Law state:

> 11. The officers' training and experience in recognizing and identifying the odor of marijuana, coupled with the defendant's voluntary admission of possessing a gram of "weed", is sufficient to provide probable cause to search the vehicle and the containers therein.

> 12. The defendant's admission of "weed" being in the vehicle, standing alone, would provide probable cause to search the vehicle and its containers. "Weed" is a slang term for marijuana.

¶ 44 "A warrantless search is lawful if probable cause exists to search and the exigencies of the situation make search without a warrant necessary." *State v. Mills*, 104 N.C. App. 724, 730, 411 S.E.2d 193, 196 (1991). "The existence of probable cause is a commonsense, practical question that should be answered using a totality-of-the circumstances approach." *State v. McKinney*, 361 N.C. 53, 62, 637 S.E.2d 868, 874 (2006) (internal quotations omitted).

¶ 45 A search may be conducted of a vehicle and any compartments therein that may conceal the object of the search "when the existing facts and circumstances are sufficient to support a reasonable belief that the automobile carries contraband materials." *State v. Degraphenreed*, 261 N.C. App. 235, 241, 820 S.E.2d 331, 336 (2018) (internal quotations and citations omitted).

¶ 46 "[A] person's admission of a crime to law enforcement is typically sufficient to support a finding of probable cause." *State v. Parker*, 277 N.C. App. 531, 542, 2021-NCCOA-217, ¶ 32 (2021). Our Supreme Court has held:

> 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 a crime carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search.

State v. Arrington, 311 N.C. 633, 641, 319 S.E.2d 254, 259 (1984) (cleaned up).

¶ 47 Accordingly, we hold that Defendant's voluntary admission to having a gram of weed in his vehicle was sufficient to support probable cause to search the vehicle, including the trunk as a compartment where the contraband could be concealed. This is especially so when combined with the visual identification of marijuana by Officer Crowe, and the scent of what Officer Miller identified as marijuana in Defendant's vehicle. *See Parker*, 277 N.C. App. at 542, 2021-NCCOA-217, ¶ 32 (the defendant's admission that he had just smoked marijuana combined with the scent of what the officer believed to be marijuana and the visual identification of a partially smoked marijuana cigarette that the defendant produced from his sock was sufficient to support the officer's probable cause to search the defendant's vehicle). We therefore need not address Defendant's argument that the scent or visual identification of marijuana alone is not sufficient to support a finding of probable cause. *See id.* at 543, 2021-NCCOA-217, ¶ 35.

III. Conclusion

¶ 48 For the aforementioned reasons we hold that there was no error in the trial court's judgment, and we affirm the denial of Defendant's motion to suppress.

AFFIRMED.

Judges WOOD and GRIFFIN concur.

Report per Rule 30(e).