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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-85

Filed 19 December 2023

Beaufort County, No. 18 CRS 51590

STATE OF NORTH CAROLINA

v.

GEORGETTE LOUISE BURRUS, Defendant.

Appeal by Defendant from judgement entered 14 July 2022 by Judge Wayland J. Sermons, Jr., in Beaufort County Superior Court. Heard in the Court of Appeals 23 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Colin Justice, for the State.

Warren D. Hynson for Defendant.

GRIFFIN, Judge.

Defendant Georgette Burrus appeals from the denial of her motion to suppress evidence obtained during a traffic stop. Defendant asserts there was insufficient evidence to support the finding that her vehicle crossed the white line and touched the grass on the shoulder of the road. Consequently, she argues reasonable suspicion did not exist for the traffic stop. We hold the motion to suppress was properly denied.

I. Factual and Procedural History

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This case arises from a driving while intoxicated (“DWI”) citation Defendant received on 7 September 2018. Trooper Blake Riggs was on patrol on that evening when he passed by Rack Time Bar in Belhaven, N.C., around 10:30 p.m. to observe the cars parked in the parking lot, in case he encountered the vehicles later. He observed a red Chevrolet S10 parked outside.

Around 11:30 p.m., Trooper Riggs was parked on the side of the highway in Pantego, N.C., approximately 6 miles from Belhaven, when he saw the red Chevrolet pass by. He followed the vehicle and observed it go over the fog line to the right, touch the grass on the shoulder of the road, and then return into the lane. Trooper Riggs initiated a traffic stop for failure to maintain lane control. Defendant was cited with a DWI.

Defendant moved to suppress all evidence from the traffic stop. The District Court granted Defendant’s motion and the State appealed. The Superior Court held a de novo hearing and ruled in favor of the State, holding that the officer had reasonable, articulable suspicion for the stop. On remand, Defendant was found guilty of DWI in a District Court bench trial and appealed to Superior Court. Defendant then pled guilty to DWI and reserved her right to appeal the denial of her motion to suppress.

Defendant entered into a plea agreement, and the State dismissed the charges for failure to maintain lane control and open container. In Superior Court, Defendant received a sentence of 6 to 12 months’ imprisonment, suspended upon 18 months of

supervised probation, and was ordered to complete seven days in jail as a term of special probation. Defendant timely appeals.

II. Standard of Review

“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. Bullock*, 370 N.C. 256, 258, 805 S.E.2d 671, 674 (2017) (citations and quotations omitted).

Additionally, “the trial court’s findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *State v. Parisi*, 372 N.C. 639, 649, 831 S.E.2d 236, 243 (2019) (internal marks and citation omitted). However, “[c]onclusions of law are reviewed de novo and are subject to full review.” *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citations omitted).

III. Analysis

Defendant asserts that her motion to suppress was improperly denied. In support of this, she argues that Findings of Fact 10 and 12 were unsupported by competent evidence. Additionally, she asserts that the trial court erroneously concluded that Trooper Riggs had reasonable suspicion to stop Defendant’s vehicle. We disagree.

A. Findings of Fact

Defendant asserts that Findings of Fact 10 and 12 were not supported by

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competent evidence. In Finding of Fact 10, the trial court found that: “Trooper Riggs observed the red Chevrolet truck cross over the fog line and drove on the edge of the grass. That the operation of the vehicle failed to maintain lane control.” Defendant further argues that the State’s Exhibits 1-4 do not support these conclusions. Exhibit 1 is Trooper Rigg’s dash cam footage, while Exhibits 2-4 are still images taken from the video footage. Finding of Fact 12 states that: “Trooper Riggs testimony was corroborated by State’s Exhibits 1-4.”

It is well-established that an appellate court accords great deference to the trial court in this respect because it is entrusted with the duty to hear testimony, weigh and resolve any conflicts in the evidence, find the facts, and, then based upon those findings, render a legal decision, in the first instance, as to whether or not a constitutional violation of some kind has occurred.

State v. Cooke, 306 N.C. 132, 134, 291 S.E.2d 618, 619–20 (1982). Furthermore, our Supreme Court has stated that “[i]n accordance with the applicable standard of review, the trial court’s findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *Parisi*, 372 N.C. at 649, 831 S.E.2d at 243 (internal marks and citation omitted).

Defendant argues the low quality of the images and video make it “essentially impossible to discern from State’s Exhibits 1-4 whether the truck’s tires in fact crossed beyond the white line and further traveled onto the edge of the grass.” Despite Defendant’s contention, the trial court is in the best position to weigh

evidence as it unfolds and make its own determination. Accordingly, we hold that the trial court did not err in making Findings of Fact 10 and 12.

B. Reasonable Suspicion

Defendant next argues the trial court erroneously concluded that Trooper Riggs had reasonable suspicion to stop Defendant's truck. Defendant asserts reasonable suspicion did not exist under the "weaving" doctrine. We disagree.

The Fourth Amendment to the United States Constitution states that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV.

It is well-established that reasonable suspicion exists when a "police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot[.]" *Terry v. Ohio*, 392 U.S. 1 (1968). Additionally, reasonable suspicion is "a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]" *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). "Moreover, [a] court must consider the totality of the circumstances—the whole picture in determining whether a reasonable suspicion exists." *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 440 (2008) (internal marks and citation omitted).

In the present case, the trial court concluded that Defendant violated N.C. Gen. Stat. § 20-146(d). The court concluded that based on this violation, Trooper Riggs

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had reasonable suspicion to stop Defendant, and the stop was accordingly lawful. Section 20-146 (d)(1) states that “[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.” N.C. Gen. Stat. § 20-146(d) (2023). “When determining if reasonable suspicion exists under the totality of circumstances, a police officer may also evaluate factors such as traveling at an unusual hour or driving in an area with drinking establishments.” *State v. Fields*, 195 N.C. App. 740, 744, 673 S.E.2d 765, 768 (2009).

In the driving while intoxicated context, the doctrine of “weaving” has been established to analyze and account for human error. In *State v. Otto*, our Supreme Court held that under the totality of the circumstances, reasonable suspicion existed when the defendant was weaving “constantly and continuously”, and the stop occurred at 11:00 P.M. on a Friday night. *State v. Otto*, 366 N.C. 134, 138, 726 S.E.2d 824, 828 (2012). Additionally, in *State v. Jacobs*, we held that reasonable suspicion of driving while impaired existed when the defendant was stopped at 1:43 a.m., slowly weaved within his lane of travel touching the designated lane markers on each side, and was traveling in an area near several bars. *State v. Jacobs*, 162 N.C. App. 251, 255, 590 S.E.2d 437, 441 (2004).

Defendant refers to *Derbyshire* as employing a “weaving plus” standard. See *State v. Derbyshire*, 228 N.C. App. 670, 681, 745 S.E.2d 886, 894 (2013). However, in *Derbyshire*, applying *Otto*, this Court concluded the totality of the circumstances did

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not rise to the level of reasonable suspicion. In particular, relevant to this case, our Court noted that, “[a]t no point did [the d]efendant cross the center line or the solid white line on the outer edge of the road.” *Id.* at 682 n.1.

In the present case, there was adequate evidence that Defendant crossed the white line on the outer edge of the road, touched the grass on the shoulder of the road, and returned to the lane of the travel. Moreover, here, Trooper Riggs noticed Defendant’s vehicle at a bar that serves alcohol and it was after 11:00 p.m. when he noticed the weaving. The time, location, and other factors were sufficient to satisfy the totality of the circumstances test. Accordingly, we hold that the trial court did not err in finding that reasonable suspicion existed to stop Defendant.

IV. Conclusion

For the aforementioned reasons, we hold that Defendant’s motion to suppress was properly denied.

AFFIRMED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).