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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-713

Filed 20 February 2024

Cleveland County, No. 21CRS54097

STATE OF NORTH CAROLINA

v.

JODY CURTIS LOCKETT, Defendant.

Appeal by defendant from judgment entered 15 December 2022 by Judge Forrest D. Bridges in Cleveland County Superior Court. Heard in the Court of Appeals 6 February 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Maria Bruner Lattimore, for the State.*

*Stephen D. Fuller, for defendant-appellant.*

FLOOD, Judge.

Jody Curtis Lockett (“Defendant”) appeals his conviction for speeding to elude arrest, arguing the trial court erred by denying Defendant’s motion to dismiss because law enforcement officers lacked reasonable suspicion to effectuate the stop. After careful review, we conclude the State presented sufficient evidence the officers

were lawfully performing their duties when making the traffic stop, and the trial court, therefore, did not err.

### **I. Factual and Procedural Background**

On 20 January 2022, a Cleveland County Grand Jury indicted Defendant for felony fleeing to elude arrest, reckless driving to endanger, driving without liability insurance, and obtaining habitual felon status. On 15 December 2022, the matter came on for trial where the State presented the following evidence.

On 5 November 2021, Detective Jeffrey Scism (“Detective Scism”) was driving west on Gardner Street at or about 7:00 p.m. in Shelby, North Carolina, when, as he approached the intersection of Gardner Street and Martin Street, he saw to his left a white Cadillac traveling south on Martin Street without its taillights illuminated. Detective Scism, who was working undercover, communicated this information via radio to other on-duty officers in the area. Officer Jordan Greene (“Officer Greene”) heard Detective Scism’s radio call and, despite observing that its taillights were illuminated, stopped Defendant’s vehicle, a white Cadillac, at 7:10 p.m. on McBrayer Street, one block west of Martin Street.

Detective Josh Turner (“Detective Turner”) and Detective Brandon Smith (“Detective Smith”) responded to the traffic stop to provide assistance. Prior to the stop, Detectives Turner and Brandon had observed the Cadillac traveling west on Gardner Street as it approached McBrayer Street, where they then saw Officer Greene initiate the stop of the Cadillac. Detective Turner approached Defendant’s

Cadillac, and Defendant handed Detective Turner a paper that Defendant purported to be insurance documentation. Detective Turner, unable to verify the purported insurance on Defendant's Cadillac, wrote Defendant a citation for lack of insurance. While Detective Turner was checking the insurance, Officer Greene and Detective Smith instructed Defendant to exit his Cadillac, but Defendant refused and sped away from the scene.

Officers pursued Defendant for five minutes before the pursuit was ended. Defendant was not apprehended in the pursuit. Officer Greene estimated that, during the pursuit, Defendant's Cadillac exceeded speeds of 100 miles per hour, failed to stop at several stop signs, passed cars left of the center line that divides directions of traffic, and drove on the wrong side of the road. A warrant for Defendant's arrest was issued that day and served on Defendant on 13 December 2021—over a month after the incident.

At the close of the State's evidence, Defendant made a motion to dismiss without making a specific argument, which the trial court denied. Defendant, without presenting any evidence, renewed his motion again without argument, which was also denied. Defendant was found not guilty of driving without liability insurance and obtaining habitual felony status. Defendant was found guilty of reckless driving to endanger and felonious fleeing to elude arrest and sentenced to thirteen to twenty-five months' imprisonment. Defendant timely appealed.

## **II. Jurisdiction**

This Court has jurisdiction to review this appeal from a final judgment pursuant to N.C. Gen. Stats. §§ 7A-27(b) and 15A-1444(a) (2023).

### **III. Analysis**

#### **A. Speeding to Elude Arrest**

The sole issue on appeal is whether the trial court erred by denying Defendant's motion to dismiss where the State presented insufficient evidence that Officer Green was in lawful performance of his duties when he effectuated the stop.

##### **1. Standard of Review**

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). A trial court's denial of a criminal defendant's motion to dismiss will be upheld if "there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of defendant's being the perpetrator of such offense." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980). Upon our review, we must view the evidence "in the light most favorable to the State with every reasonable inference drawn in the State's favor." *State v. Stroud*, 259 N.C. App. 411, 417, 815 S.E.2d 705, 711 (2018).

##### **2. Sufficiency of the Evidence**

To survive a motion to dismiss the charge of speeding to elude arrest, the State

was required to show Defendant was “(1) operating a motor vehicle (2) on a street, highway, or public vehicular area (3) while fleeing or attempting to elude a law enforcement officer (4) who is in the lawful performance of his duties.” *State v. Mulder*, 233 N.C. App. 82, 89, 755 S.E.2d 98, 103 (2014) (citing N.C. Gen. Stat. § 20-141.5(a)). Defendant contends Officer Greene was not lawfully performing his duties because he lacked reasonable suspicion to stop Defendant after he observed the Cadillac’s taillights were illuminated. The sole issue before us, therefore, is whether Officer Greene had the reasonable suspicion required by the Fourteenth Amendment to lawfully effectuate the traffic stop. After careful review, we conclude he did.

Under our Fourth Amendment jurisprudence, “[a] police officer may effect a brief investigatory seizure of an individual where the officer has reasonable, articulable suspicion that a crime may be underway.” *State v. Barnard*, 184 N.C. App. 25, 29, 645 S.E.2d 780, 783 (2007). “[T]his Court considers the totality of the circumstances, both before and after an officer signals his intention to stop a defendant, in determining whether there was reasonable suspicion of criminal activity to justify a traffic stop.” *State v. Mahatha*, 267 N.C. App. 355, 359, 832 S.E.2d 914, 918 (2019). “[R]easonable suspicion must 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 359, 832 S.E.2d at 918 (citation omitted).

When determining whether one officer’s reasonable suspicion can be imputed

to another officer, this Court has held:

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 a reasonable suspicion that criminal conduct had occurred, was occurring, or was about to occur.

*State v. Battle*, 109 N.C. App. 367, 370–71, 427 S.E.2d 156, 159 (1993). “Where there is no request from the first officer that the second officer stop a vehicle, the collective knowledge of both officers may form the basis for reasonable suspicion by the second officer, if . . . the knowledge possessed by the first officer is communicated to the second officer.” *Id.* at 371, 472 S.E.2d at 159 (holding that, although the second officer lacked reasonable suspicion to stop the defendant, the first officer had the requisite reasonable suspicion and the stop, therefore, was constitutional).

Here, Detective Scism had reasonable suspicion Defendant had committed a crime because Detective Scism observed Defendant driving the Cadillac with its taillights off after dark. *See* N.C. Gen. Stat. § 20-129 (2023) (All vehicles on the highway must be “equipped with lighted headlamps and rear lamps as required for different classes of vehicles” from “sunset to sunrise.”); *see also Barnard*, 184 N.C. App. at 29, 645 S.E.2d at 783. When Officer Greene pulled over Defendant, Officer Greene did not have reasonable suspicion on his own to effectuate the stop because he observed the Cadillac’s taillights were illuminated. Just like in *Battle*, however,

the Cadillac pulled over by Officer Greene exactly matched the description of the Cadillac communicated by Detective Scism. *See* 109 N.C. App. at 368–69, 427 S.E.2d at 157–58. Further, the white Cadillac was pulled over on McBrayer Street, just one block over from Martin Street, where Detective Scism reported a white Cadillac being driven without its taillights illuminated. Because Officer Greene stopped Defendant based on the information communicated by Detective Scism, and Detective Scism had reasonable suspicion to stop Defendant, the stop by Officer Greene was constitutional. *See id.* at 372, 427 S.E.2d at 159–60.

While Officer Greene himself lacked reasonable suspicion to stop Defendant, because Detective Scism had reasonable suspicion, Detective Scism’s reasonable suspicion was imputed to Officer Greene, and he was therefore lawfully performing his duties when effectuating the stop. *See id.* at 370–71, 427 S.E.2d at 159; *see Mulder*, 233 N.C. App. at 89, 755 S.E.2d at 103. Accordingly, the State presented sufficient evidence to survive Defendant’s motion to dismiss the charge of speeding to elude arrest. *See Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

#### **IV. Conclusion**

We hold that the trial court did not err in denying Defendant’s motion to dismiss because there was sufficient evidence law enforcement officers were lawfully performing their duties when making the traffic stop.

NO ERROR.

Chief Judge DILLON and Judge ZACHARY concur.

STATE V. LOCKETT

*Opinion of the Court*

Report per Rule 30(e).