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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-196

Filed 3 December 2024

Rockingham County, No. 21CRS50634

STATE OF NORTH CAROLINA

v.

ANTONIO TOBIAS GREENE, Defendant.

Appeal by defendant from judgment entered 5 June 2023 by Judge John M. Morris in Rockingham County Superior Court. Heard in the Court of Appeals 23 October 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Steven C. Wilson, for the State-appellee.*

*Patterson Harkavy LLP, by Christopher A. Brook, for defendant-appellant.*

GORE, Judge.

On 9 March 2021, Officer Alvarez of the Reidsville Police Department (“RPD”) received a “be on the lookout” (“BOLO”) for a vehicle driving recklessly, speeding, and failing to maintain its lane on Freeway Drive. Detective Wade, who was undercover, issued the BOLO after nearly being run off the road by the vehicle. Officer Alvarez, along with Officer Clark, stopped the vehicle on Vance Street and identified the driver

as defendant.

Upon contact, Officer Alvarez observed defendant had red, glassy eyes and smelled of alcohol. Defendant claimed his eyes were irritated by a battery explosion, but there were no signs of burns or injuries. Officer Alvarez observed defendant had trouble stepping out of the vehicle and had “a bit of an unsteady gait.” Officer Clark, who was on the scene observing and assisting as a secondary “back-up” officer, noticed defendant “struggled heavily” to open the driver’s door—failing twice to open the door before eventually managing to exit the vehicle.

A portable breath test (“PBT”) twice indicated alcohol presence, leading to the defendant’s arrest for driving while impaired (“DWI”). The PBT was later ruled inadmissible, however, due to improper calibration.

Defendant was cited for DWI and convicted in District Court, Rockingham County. He appealed to superior court, where his motion to suppress was denied. Defendant pled guilty to DWI, reserving the right to appeal the denial of his motion. The trial court sentenced him to 120 days’ imprisonment, suspended for 12 months of unsupervised probation. Defendant appealed, preserving his right to challenge the suppression ruling consistent with *State v. Reynolds*, 298 N.C. 380, 397 (1979).

This Court has jurisdiction under N.C.G.S. §§ 7A-27(b), 15A-979(b), and 15A-1444(a). The sole issue on appeal is whether the trial court erred in denying the motion to suppress. We discern no error.

“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." *State v. Biber*, 365 N.C. 162, 167–68 (2011). "Conclusions of law are reviewed de novo and are subject to full review." *Id.* at 168. On appeal, the defendant argues the trial court relied on Officer Clark's observations, which were not communicated to Officer Alvarez (the arresting officer), and that Alvarez's observations alone were insufficient to establish probable cause as a matter of law. We disagree.

Probable cause "deals with probabilities and depends on the totality of the circumstances." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citations omitted). The standard for determining probable cause is objective, asking whether a reasonable officer, given the known facts and conditions, would decide to arrest, detain, or prosecute. *Moore v. Evans*, 124 N.C. App. 35, 43 (1996) (citation omitted). "An officer has probable cause to arrest for impaired driving when, under the totality of the circumstances, he reasonably believes that a motorist consumed alcoholic beverages and drove in a faulty manner or provided other indicia of impairment." *State v. Woolard*, 385 N.C. 560, 571 (2023) (cleaned up).

Our precedents outline what evidence can support this reasonable belief: erratic driving strongly suggests impairment, as does evidence of alcohol consumption. Additional signs, such as the smell of alcohol or red, glassy eyes, can also indicate impairment. *Id.* at 571–72; *see also State v. Parisi*, 372 N.C. 639, 650–51 (2019) (compiling cases). No single fact may, in isolation, be sufficient to establish

probable cause—but when combined, they can meet the threshold. Probable cause is cumulative. *Woolard*, 385 N.C. at 572.

Probable cause can also “rest upon the *collective* knowledge of the police, rather than solely on that of the officer who actually makes the arrest.” *State v. Coffey*, 65 N.C. App. 751, 757 (1984) (citation omitted). Defendant correctly notes, however, that collective knowledge must be communicated, i.e., “when a group of agents *in close communication* with one another determines that it is proper to arrest an individual, the knowledge of the group that made the decision may be considered in determining probable cause, not just the knowledge of the individual officer who physically effected the arrest.” *State v. Bowman*, 193 N.C. App. 104, 109 (2008) (citation omitted).

Here, Officer Clark’s observations of defendant struggling to open the door are not necessary to establish probable cause to arrest for DWI, but there is a reasonable basis for imputing those observations to Officer Alvarez. To impute Officer Clark’s observations to Officer Alvarez—the arresting officer—it suffices that both officers were cooperating on the investigation together and that there was some degree of communication between them. *See Coffey*, 65 N.C. App. at 757. There was undoubtedly some degree of communication between Officer Clark and Officer Alvarez because Officer Clark testified as to what Officer Alvarez told him.

In any event, Officer Alvarez had probable cause to arrest defendant regardless of Officer Clark’s observations. Officer Alvarez formed a reasonable belief that

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defendant consumed alcoholic beverages (red, glassy eyes, smelled of alcohol, trouble stepping out of the vehicle, and “a bit of an unsteady gait”), *see* Woolard, 385 N.C. at 571, and he formed a reasonable belief that defendant drove in an erratic manner, *see State v. Gray*, 55 N.C. App. 568, 570 (1982) (officer’s investigatory stop of vehicle was justified when the officer observed the defendant’s vehicle being operated on the highway and shortly thereafter heard a radio report from another officer that the defendant’s vehicle had expired license tags). There was sufficient probable cause to arrest based solely on Officer Alvarez’s knowledge of the BOLO information combined with his own observations of defendant.

For the above stated reasons, the trial court properly denied defendant’s motion to suppress.

NO ERROR.

Judges STADING and THOMPSON concur.

Report per Rule 30(e).