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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-357

Filed 3 December 2024

New Hanover County, No. 22CRS53029

STATE OF NORTH CAROLINA

v.

CLIFFORD L. MATTISON, Defendant.

Appeal by defendant from judgment entered 29 June 2023 by Judge R. Kent Harrell in New Hanover County Superior Court. Heard in the Court of Appeals 9 October 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General G. Mark Teague, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for defendant-appellant.

FLOOD, Judge.

Defendant, Clifford Mattison, appeals from the trial court's judgment finding him guilty of possession of cocaine. On appeal, Defendant argues (A) the trial court erred in denying his motion to suppress evidence of cocaine seized from his truck, where officers unlawfully extended the traffic stop. Defendant alternatively argues (B) the trial court plainly erred in allowing the evidence to be admitted, or (C) such

admission was the result of ineffective assistance of counsel (“IAC”). Upon careful review, we conclude the trial court did not err, and certainly did not plainly err, in denying Defendant’s motion to suppress the evidence, because the findings of fact are supported by competent evidence and the traffic stop was not unlawfully extended. As the trial court did not plainly err, Defendant was not prejudiced, and we therefore dismiss Defendant’s IAC claim.

I. Factual and Procedural Background

On 27 April 2022, Officer Matthew Cheseck was conducting surveillance outside the Carolinian Inn on Market Street in Wilmington, North Carolina. The Carolinian Inn was known to law enforcement as a place where illicit drug activity and drug deals occurred. At approximately 9:30 p.m., after conducting surveillance for about fifteen minutes, Officer Cheseck observed a white pickup truck leave the back entrance of the Carolinian Inn. Officer Cheseck followed the truck and ran its license plate, which was reported as lost or stolen. Dispatch notified Officer Cheseck that the truck was also flagged for a weapons incident and narcotic activity.

Officer Cheseck activated his lights and initiated a traffic stop of the truck, and Defendant immediately pulled over. Officer Cheseck approached the passenger’s side door of the truck and saw Defendant was the only occupant of the truck. Officer Cheseck obtained Defendant’s driver’s license and registration, and informed Defendant the “tags are saying that they’re not assigned to this vehicle.”

Soon thereafter, Officer Jacob Zentner arrived at the traffic stop. Officer Zentner had previously made several drug-related arrests at the Carolinian Inn. Officer Zentner approached the driver's side window and spoke with Defendant, while Officer Cheseck returned to his vehicle. Defendant informed Officer Zentner that Defendant had just left the Carolinian Inn after visiting a friend and sharing the news with him that Defendant "had just received his disability." Defendant also informed Officer Zentner the friend had let Defendant stay with him for two months during a period when Defendant was homeless. Officer Zentner asked Defendant if he had reported the tags as lost or stolen; Defendant replied he had not, but told Officer Zentner his truck had been impounded when he was hospitalized following a traffic accident.

Meanwhile, Officer Cheseck searched for outstanding warrants for Defendant, checked Defendant's driver's license, ran the truck's license plate, and reconfirmed with dispatch that the license plate was reported as lost or stolen. Defendant had a valid driver's license and no outstanding warrants. Officer Zentner then radioed Officer Cheseck the last four digits of the truck's vehicle identification number ("VIN"), which matched the license plate. Officer Cheseck was, however, "still trying to figure out why [the license plate] was coming back [] as lost or stolen[.]"

Officer Cheseck then returned to the truck and requested Defendant exit the vehicle, to which Defendant consented, and Officer Zentner opened the door for Defendant. Defendant followed Officer Cheseck to the back of the truck and left the

STATE V. MATTISON

Opinion of the Court

driver's side door open. Officer Cheseck asked Defendant why the license plate was reported as lost or stolen; Defendant replied he had reported it as stolen. Officer Cheseck then asked Defendant if he had informed authorities that the truck had been recovered; Defendant replied he had not, but he had paid approximately \$2,000 to recover the truck after it had been impounded. Officer Cheseck then asked whether Defendant had any weapons or heroin, cocaine, meth, or marijuana in the truck; Defendant replied no to each question.

Following these questions, Officer Cheseck returned Defendant's documents, and asked whether he could search the truck to ensure there were no illegal narcotics or weapons. Defendant refused to consent to the search and complained the stop was racially motivated. Officer Cheseck reiterated he had stopped Defendant to investigate the reported lost or stolen license plate and that the stop was not racially motivated. While Officer Cheseck spoke with Defendant at the back of the truck, Officer Zentner, using a flashlight, observed the interior of the truck through the open driver's side door. Before Officer Cheseck could "explain to [Defendant] the steps that needed to be taken so he didn't constantly get pulled over for having his own license plate on his truck[,]” Officer Zentner observed drug paraphernalia, known as a “Chore-Boy,” on the floorboard of the truck's cab, clearly visible, between the driver and passenger seat. Officer Zentner later testified that Chore Boys—cleaning pads made of copper—are used as filters to smoke crack cocaine through a glass pipe.

STATE V. MATTISON

Opinion of the Court

Following Officer Zentner's observation of the Chore Boy, both officers searched Defendant and the truck. Officer Cheseck found a rock of cocaine, weighing approximately 0.259 grams, in an open storage compartment beneath the truck's radio. The officers also discovered a bag of a marijuana-type substance on the back seat of the truck, although later at trial, it could not be determined whether the substance contained a legal or illegal genus of cannabis under North Carolina law.

On 28 November 2022, Defendant was indicted by a New Hanover County grand jury for possession of cocaine, marijuana, and drug paraphernalia. On 28 June 2023, the matter came on for trial. Defendant filed a motion to suppress and an amended motion to suppress, which was heard on the first day of trial before opening statements. Defendant's motion to suppress was denied, and the trial court subsequently entered an order on the motion. In its order, the trial court made, in relevant part, the following findings of fact:

8. Officer Zentner continued to converse with [] Defendant while Officer Cheseck ran [] Defendant's license, registration[,] and checked for any outstanding warrants. Officer Cheseck also attempted to confirm the lost or stolen status of [] Defendant's license plate.

9. Upon confirming that the VIN number on the vehicle matched the VIN number for the registration plate, Officer Cheseck approached the vehicle and asked [] Defendant to step out of the vehicle to discuss the issues with his license plate.

. . . .

11. While Officer Cheseck and [] Defendant were discussing issues with his license plate, Officer Zentner was observing the interior of the truck through the open driver's side door.

On the second day of trial, at the conclusion of the State's evidence, Defendant moved to dismiss the marijuana possession charge, and the motion was granted. The jury found Defendant guilty of possession of cocaine, and not guilty of possession of drug paraphernalia. Defendant was sentenced to six to seventeen months' imprisonment, suspended for twelve months of supervised probation. Defendant timely appealed.

II. Jurisdiction

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

III. Standard of Review

"In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion[.]" N.C.R. App. P. 10(a)(1); *see also State v. Eason*, 328 N.C. 409, 420, 402 S.E.2d 809, 814 (1991). "[T]he defendant must make an objection at the point during the trial when the State attempts to introduce the evidence. A defendant cannot rely on his pretrial motion to suppress to preserve an issue for appeal." *State v. Golphin*, 352 N.C. 364, 463, 533 S.E.2d 168, 232 (2000).

Here, the trial court denied Defendant's motion to suppress on the first day of trial. When the previously-challenged evidence was introduced, however, defense counsel did not object; rather, defense counsel objected to the introduction of the evidence the following morning, and only then was the objection overruled. Although Defendant had objected to the introduction of the evidence, he did not do so "at the point during the trial when the State attempt[ed] to introduce the evidence[.]" thus failing to properly preserve his objection, and limiting our review to plain error. *Id.* at 463, 533 S.E.2d at 232; *see Eason*, 328 N.C. at 420, 402 S.E.2d at 814; *see also State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996) (holding that unpreserved issues involving "rulings on the admissibility of evidence[]" are reviewed for plain error). "Under the plain error rule, [the] defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993).

"In conducting our review for plain error, we must first determine whether the trial court did, in fact, err in denying Defendant's motion to suppress." *State v. Walters*, 286 N.C. App. 746, 752, 881 S.E.2d 730, 735 (2022) (citation and internal quotation marks omitted). "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. Jackson*, 368 N.C. 75, 78, 772 S.E.2d 847, 849 (2015) (citation and internal quotation marks omitted). "Competent evidence is evidence that a reasonable mind might

accept as adequate to support the finding.” *State v. Ashworth*, 248 N.C. App. 649, 651, 790 S.E.2d 173, 176 (2016) (citation omitted). “[T]he trial court’s findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (cleaned up). “Conclusions 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). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *Id.* at 168, 712 S.E.2d at 878 (citation and internal quotation marks omitted).

Under our plain error review, if this Court finds “the trial court erred, we then determine whether that error had a probable impact on the jury’s finding that the defendant was guilty[,]” which must be demonstrated to show that the error was prejudicial. *Walters*, 286 N.C. App. at 753, 881 S.E.2d at 735–36 (citation and internal quotation marks omitted); see *State v. Lawrence*, 365 N.C. 506, 517, 723 S.E.2d 326, 334 (2012).

IV. Analysis

On appeal, Defendant argues (A) the trial court erred in denying his motion to suppress evidence of cocaine seized from his truck because several findings of fact are unsupported or misleading, and the traffic stop was unlawfully extended in scope and duration once the officers confirmed Defendant’s license plate was not stolen. Defendant alternatively argues (B) the trial court plainly erred in allowing the

evidence to be admitted, or (C) such admission was the result of IAC. We address each argument, in turn.

A. Findings of Fact

Defendant first contests Findings of Fact 8, 9, and 11, arguing they are not supported by competent evidence, are misleading, and that the trial court omitted relevant facts. We disagree.

First, Defendant argues the latter portion of Finding of Fact 8, that “Officer Cheseck also attempted to confirm the lost or stolen status of [] Defendant’s license plate[,]” is misleading because it suggests Officer Cheseck only “attempted” to confirm the status of Defendant’s license plate, although he had already confirmed the status while in his patrol car. Defendant’s assertion, however, is unfounded. The Record demonstrates that while Officer Cheseck did eventually confirm the license plate belonged to the truck, he was *also* in the process of attempting to confirm this information while Officer Zentner “continued to converse with [] Defendant[,]” as set forth in the full Finding of Fact 8. Further, Finding of Fact 9 provides that Officer Cheseck confirmed the VIN, which was part of the process of confirming the lost or stolen status of Defendant’s license plate; thus, Officer Cheseck was still attempting to confirm the status of the license plate while Officer Zentner spoke to Defendant, as described in Finding of Fact 8. Finding of Fact 8 is therefore not misleading, because it accurately states the chronology of events, and thus is supported by competent Record evidence. *See Ashworth*, 248 N.C. App. at 651, 790 S.E.2d at 176.

Next, Defendant argues the latter portion of Finding of Fact 9, that “Officer Cheseck approached the vehicle and asked [] Defendant to step out of the vehicle to discuss the issues with his license plate[,]” is partially unsupported by evidence because Finding of Fact 9 suggests Officer Cheseck told Defendant to get out of the car for the purpose of discussing the license plate. Defendant asserts that Officer Cheseck, in asking Defendant to get out of the car, provided no reason for the request. Although the Record demonstrates Officer Cheseck did not explicitly ask Defendant to exit the vehicle for purposes of discussing the license plate, Officer Cheseck’s purpose was in fact to discuss the license plate, as demonstrated by Record evidence showing the first question Officer Cheseck asked Defendant was why his license plate was reported as lost or stolen, and by Officer Cheseck’s reiteration to Defendant asserting the purpose of the stop was to investigate the stolen status of the license plate. As such, competent Record evidence supports Finding of Fact 9, and Defendant’s argument lacks merit. *See id.* at 651, 790 S.E.2d at 176.

Finally, Defendant argues Findings of Fact 9 and 11 are misleading, because they suggest Officer Cheseck and Defendant only discussed the license plate, and do not provide that Officer Cheseck had questioned Defendant about drugs and weapons; Defendant relatedly argues the trial court omitted relevant facts concerning the scope and duration of the traffic stop. The trial court, however, is not required to “summarize [a]ll the evidence presented at Voir dire.” *State v. Dunlap*, 298 N.C. 725, 730, 259 S.E.2d 893, 896 (1979). While Findings of Fact 9 and 11, along with the

findings of fact in their totality, do not reference Officer Chesek's questioning Defendant about drugs or weapons, they correctly summarize and state the facts and chronology of events. *See id.* at 730, 259 S.E.2d at 896. Per our standard of review, findings of fact need only be supported by competent evidence, and Findings of Fact 9 and 11 are supported by competent Record evidence. *See Ashworth*, 248 N.C. App. at 651, 790 S.E.2d at 176; *see also State v. Palacio*, 287 N.C. App. 667, 685, 884 S.E.2d 471, 484 (2023) (concluding that "it is enough that the findings are supported by substantial and uncontradicted evidence[]" to overrule the defendant's argument that the trial court's findings of fact were "incomplete").

Accordingly, because Findings of Fact 8, 9, and 11 are not misleading, accurately state the facts, and are supported by competent evidence, the trial court's Findings of Fact are conclusive on appeal. *See Jackson*, 368 N.C. at 78, 772 S.E.2d at 849; *see Buchanan*, 353 N.C. at 336, 543 S.E.2d at 826.

B. Scope and Duration of the Traffic Stop

Defendant next argues that, under the totality of the circumstances, the traffic stop was unlawfully extended in violation of Defendant's Fourth Amendment rights. Defendant specifically contends, once Officer Chesek confirmed the license plate belonged to Defendant and matched the truck, Officer Chesek's further questioning of Defendant unlawfully extended the scope and duration of the traffic stop. We disagree.

“A traffic stop is a seizure even though the purpose of the stop is limited and the resulting detention quite brief.” *State v. Barnard*, 362 N.C. 244, 246, 658 S.E.2d 643, 645 (2008) (citation and internal quotation marks omitted). “[R]easonable suspicion is the necessary standard for traffic stops[.]” *State v. Styles*, 362 N.C. 412, 415, 665 S.E.2d 438, 440 (2008). “An officer has reasonable suspicion if a reasonable, cautious officer, guided by his experience and training, would believe that criminal activity is afoot based on specific and articulable facts, as well as the rational inferences from those facts[.]” based on “the totality of the circumstances[.]” *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 167 (2012) (citation and internal quotation marks omitted).

“[T]he duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop.” *State v. Bullock*, 370 N.C. 256, 257, 805 S.E.2d 671, 673 (2017). The United States Supreme Court has held that the mission, or purpose, of a traffic stop is “to address the traffic violation that warranted the stop, and attend to related safety concerns.” *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 1614, 191 L.E.2d 492, 498 (2015). “[A]n officer’s mission includes ordinary inquiries incident to the traffic stop.” *Bullock*, 370 N.C. at 257, 805 S.E.2d at 673 (citation omitted and cleaned up). “These inquiries include checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Id.* at 257, 805 S.E.2d at 673 (citation and internal quotation marks

omitted). Additionally, “investigations into unrelated crimes during a traffic stop, even when conducted without reasonable suspicion, are permitted if those investigations do not extend the duration of the stop.” *Id. at* 258, 805 S.E.2d at 674 (citation omitted); *see also State v. France*, 279 N.C. App. 436, 442, 865 S.E.2d 707, 712 (2021) (“[A]n officer may question the occupants of a car on unrelated topics without impermissibly expanding the scope of a traffic stop[.]”).

A traffic stop “can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834, 837, 160 L.E.2d 842, 846 (2005). In order to “detain a driver beyond the scope of the traffic stop, the officer must have the driver’s consent or reasonable articulable suspicion that illegal activity is afoot.” *Williams*, 366 N.C. at 116, 726 S.E.2d at 167. “After a lawful [traffic] stop, an officer may ask the detainee questions in order to obtain information confirming or dispelling the officer’s suspicions.” *Id. at* 116, 726 S.E.2d at 166 (citation omitted). For a driver’s consent to be proper, the driver must have given consent voluntarily: “To be voluntary the consent must be unequivocal and specific, and freely and intelligently given.” *State v. Reed*, 373 N.C. 498, 510, 838 S.E.2d 414, 423 (2020) (citation and internal quotation marks omitted).

In *State v. Moua*, the defendant was stopped for speeding. 289 N.C. App. 678, 689, 891 S.E.2d 14, 22 (2023). On appeal, this Court held that after the officer “ran the driver’s information through different law enforcement databases[.]” confirmed there were no active warrants, and upon the officer’s return of documentation to the

defendant and the defendant being “given a verbal warning about speeding, the authority for the seizure ended.” *Id.* at 689, 891 S.E.2d at 22. Similarly, in *State v. Jackson*, where the officer was trying to confirm or dispel his suspicion that the defendant was “operating his vehicle without a license[,]” this Court held: “Once [the officer] determined that [the defendant] had a valid license and explained ‘the things [the defendant] needed to do with [the Department of Motor Vehicles],’ the original purpose of the stop had been addressed.” 199 N.C. App. 236, 242, 681 S.E.2d 492, 496 (2009).

Here, the traffic stop was not unlawfully extended when Officer Cheseck asked Defendant to exit the vehicle, questioned Defendant about the stolen license plate, and asked whether he could search Defendant’s truck to ensure there were no illegal narcotics or weapons. As a preliminary matter, Officer Cheseck’s request for Defendant to exit the vehicle, pursuant to a lawful traffic stop, was not a Fourth Amendment violation. *See State v. McGirt*, 122 N.C. App. 237, 239, 468 S.E.2d 833, 835 (1996) (“[T]he Fourth Amendment’s proscription of unreasonable searches and seizures is not violated when the police order the driver of a lawfully detained vehicle to exit the vehicle.”). When Officer Cheseck asked Defendant to step out of the truck, Officer Cheseck still did not know why the license plate was reported as lost or stolen, given the license plate, truck, and VIN matched, and only ascertained that Defendant had reported the license plate as stolen upon questioning Defendant outside of the truck.

Unlike in *Moua* and *Jackson*, where the officers had either given a warning or explained the next steps, Officer Cheseck had not yet finished his conversation with Defendant. *See Moua*, 289 N.C. App. at 689, 891 S.E.2d at 22; *Jackson*, 199 N.C. App. at 242, 681 S.E.2d at 496. Officer Cheseck was “[t]rying to explain to [Defendant] the steps that needed to be taken so he didn’t constantly get pulled over for having his own license plate on his truck[]” when Officer Zentner discovered the Chore Boy. Officer Cheseck had also not yet resolved the issue of dispatch’s flagging the license plate for a weapons incident or narcotic activity. Because Officer Cheseck was conducting additional inquiries and was in the process of explaining additional information, both incident to the traffic stop, the traffic stop was not unlawfully prolonged. *See Bullock*, 370 N.C. at 258, 805 S.E.2d at 674.

Even assuming, *arguendo*, the traffic stop was unlawfully extended, Officer Cheseck had reasonable suspicion that criminal activity was afoot, justifying his brief detention of Defendant beyond the scope of the original traffic stop. *See Williams*, 366 N.C. at 116, 726 S.E.2d at 166–67. As previously discussed, Defendant had been observed leaving the Carolinian Inn, known to law enforcement as a location with drug activity. Although “[a]n individual’s presence in a high-crime area alone is insufficient to create reasonable suspicion that the person is involved in criminal activity[,]” *State v. Holley*, 267 N.C. App. 333, 343, 833 S.E.2d 63, 72 (2019) (citation and internal quotation marks omitted), Defendant’s truck was flagged for a weapons incident or narcotic activity by dispatch, and Officer Cheseck had not yet confirmed or

dispelled his suspicions as to whether Defendant possessed weapons or illegal drugs. *See Williams*, 366 N.C. at 116, 726 S.E.2d at 166. Further, Defendant gave inconsistent answers to Officers Zentner's and Chesek's questioning, stating to Officer Zentner that he had not reported the license plate as lost or stolen, while stating to Officer Chesek that he had in fact reported the license plate as stolen. Thus, dispatch's flagging of the truck and the inconsistent statements by Defendant constituted "other incriminating circumstances[]" so that, under the totality of the circumstances, a reasonable officer would have reasonable suspicion criminal activity was afoot. *Holley*, 267 N.C. App. at 344, 833 S.E.2d at 73; *see Williams*, 366 N.C. 116, 726 S.E.2d at 167. Officer Chesek, therefore, was justified in asking Defendant additional questions to confirm or dispel his suspicions, as he did here by asking Defendant whether he had weapons and drugs in the truck, and asking for Defendant's consent to search the vehicle. *See Williams*, 366 N.C. at 116, 726 S.E.2d at 167. Finally, this additional questioning lasted a very short duration, no more than approximately one minute. *See, e.g., State v. Jacobs*, 162 N.C. App. 251, 256, 590 S.E.2d 437, 441 (2004) (concluding that the officer was permitted to "ask[the] defendant questions specifically focused on alleviating[]" his concerns about the defendant's involvement in illegal activity, which lasted "three to five minutes[]").

Accordingly, because the traffic stop was not measurably extended beyond the initial purpose or scope of the stop, the trial court did not err in denying Defendant's motion to suppress, and certainly did not prejudicially err. *See Bullock*, 370 N.C. at

257, 805 S.E.2d at 673; *see also Walters*, 286 N.C. App. at 752–53, 881 S.E.2d at 735. Because the trial court did not prejudicially err, Defendant cannot show prejudice, and therefore cannot succeed on an IAC claim. *See State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006) (“To prevail on a claim of [IAC], a defendant must first show that his counsel's performance was deficient and then that counsel's deficient performance prejudiced his defense.”). Thus, we do not need to address Defendant’s remaining argument as to his IAC claim.

V. Conclusion

Upon review, we conclude the trial court did not err, and certainly did not plainly err, in denying Defendant’s motion to suppress evidence of cocaine seized from his truck, because the findings of fact are supported by competent evidence and the traffic stop was not unlawfully extended. Because Defendant cannot show he was prejudiced, we dismiss Defendant’s IAC claim.

NO ERROR In Part, and DISMISSED In Part.

Judges TYSON and GORE concur.

Report per Rule 30(e).