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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-841

Filed 7 May 2025

Stanly County, Nos. 22CRS050806-830; 22CRS050807-830

STATE OF NORTH CAROLINA

v.

MERVIN DAVENPORT HINSON, II
(a/k/a MERVIN HINSON-BEY)

Appeal by Defendant from order entered 5 March 2024 by Judge Claire V. Hill
in Stanly County Superior Court. Heard in the Court of Appeals 19 March 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Phillip T.
Reynolds, for the State.*

BJK Legal, by Benjamin J. Kull, for the Defendant.

WOOD, Judge.

Mervin Hinson-Bey (“Defendant”) was indicted for driving without a license, possession with intent to sell or deliver marijuana, felony possession of marijuana, and resisting a public officer. His charges stem from the seizure of evidence found in his vehicle subsequent to a traffic stop. Defendant filed a motion to suppress, alleging the evidence discovered in his vehicle was the result of an unconstitutional search

and seizure. The trial court denied Defendant's motion to suppress, which he appealed. For the reasons discussed herein, we affirm the trial court's denial of Defendant's motion to suppress.

I. Factual and Procedural Background

On 22 April 2022, Officer A.L. Hartsell ("Officer Hartsell") of the Albermarle Police Department was on routine patrol. While on duty, Officer Hartsell observed a vehicle traveling North on US Highway 52 in Albemarle, North Carolina at approximately 9:00 p.m. Officer Hartsell ran the license plate of the vehicle through the law enforcement database and learned that the vehicle was registered to "Linda Dodd." According to the database, Ms. Dodd did not have a valid driver's license, only an identification card. Based on this information, Officer Hartsell initiated a traffic stop of the vehicle.

Officer Hartsell approached the driver's side from the rear of the vehicle, and noticed the license plate was expired and observed that the windows were tinted and rolled up. Officer Hartsell first knocked on the rear passenger window and requested the driver to roll it down. The driver complied, and Officer Hartsell observed a front passenger, and two passengers seated in the back. She also observed Defendant in the driver's seat and smelled an odor of marijuana emanating from the vehicle. Officer Hartsell informed Defendant that she pulled him over because the registered owner of the vehicle did not have a valid driver's license and then asked for his

driver's license. Defendant responded that he was traveling and did not need a license to drive the vehicle.

The next few minutes involved a back-and-forth exchange between Officer Hartsell and Defendant. She again requested Defendant's driver's license, but Defendant refused, insisting that he did not need one. He repeatedly asked that Officer Hartsell's supervisor be called to the scene. During this exchange, Defendant rolled up the windows to the vehicle and locked the doors. Officer Hartsell continued speaking with Defendant through the slightly lowered window. At one point, she attempted to open the door, but it was locked. After Defendant further refused to cooperate, Officer Hartsell notified her supervisor.

Not long after, Officer Hartsell's supervisor, Sergeant Myers, arrived. Officer Hartsell told him the reason for the traffic stop, that she had detected an odor of marijuana upon her approach of the vehicle, and that Defendant refused to provide his driver's license. Sergeant Myers then approached Defendant, identified himself as the supervisor, and informed him that he needed to see his identification. Defendant refused, and Sergeant Myers asked several more times. He also tried to open Defendant's door, but the vehicle was locked.

After Defendant repeatedly refused to comply with his requests, Sergeant Myers used his baton to break Defendant's window. The officers then removed Defendant from the vehicle and placed him in custody. Subsequently, the officers determined that the front seat passenger was Ms. Dodd.

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Based upon the odor of marijuana, Officer Hartsell then conducted a search of the vehicle. During the search, she found a glass jar containing approximately nine grams of marijuana, a backpack containing scales, sandwich bags, a jar containing nineteen and a half grams of marijuana, and another jar containing ninety-nine grams of marijuana.

On 10 October 2022, Defendant was indicted for driving without a license, possession with intent to sell or deliver marijuana, felony possession of marijuana, and resisting a public officer. On 29 February 2024, Defendant filed a motion to suppress, arguing that the evidence seized was the result of an unlawful stop and unlawful search of the vehicle, and as such, must be suppressed. Specifically, Defendant contended Officer Hartsell did not have a reasonable, articulable suspicion when she initiated the traffic stop and had insufficient probable cause to search the vehicle.

A hearing on Defendant's motion was held on 4 March 2024. At the hearing, Officer Hartsell testified about her encounter with Defendant, and the body camera footage capturing their interaction was admitted into evidence. Her testimony and video footage showed the grounds for the traffic stop: the detection of an odor of marijuana as she approached the vehicle, Defendant's refusal to provide a driver's license, and his uncooperativeness.

On 5 March 2024, the trial court entered a written order denying Defendant's motion to suppress. The trial court found

1. The officer had reasonable suspicion to stop the vehicle and make an investigatory stop. Viewing the totality of the circumstances, the officer's subsequent actions fell within the mission of the traffic stop. Hartsell was entitled to ask the driver for his license as he was driving a motor vehicle on a public street or highway.

2. The officer further had probable cause for a search based on the odor of marijuana at the time the window was rolled down, along with his refusal to comply with the officers' requests to produce his ID and get out of the vehicle.

Thus, it denied Defendant's motion to suppress the traffic stop and the vehicle search.

That same day, Defendant entered a plea of no contest to all charges. Thereafter, the trial court entered judgment and sentenced Defendant to a term of eight to nineteen months of imprisonment, suspended for twenty-four months of supervised probation. The trial court further imposed an active term of four days of imprisonment as a condition of special probation. Defendant filed *pro se* notice of appeal on 14 March 2024.

II. Analysis

Generally, a defendant who enters a guilty plea must give notice of their intention to appeal during the plea negotiations or before the plea negotiations are finalized. *State v. Jonas*, 386 N.C. 137, 140, 900 S.E.2d 915, 918 (2024). Otherwise, they waive their appeal of right. *Id.*

However, a defendant who enters an open plea is not required to provide notice of their intent to appeal prior to the entry of the guilty plea in order to preserve the right to appeal a denial of a suppression motion. *Id.* at 141, 900 S.E.2d at 921

(defining open plea as “a guilty plea entered without the benefit of an agreement with the State.”). Here, Defendant entered an open plea because he did not receive any benefit from an agreement with the State in exchange for his plea of no contest.

Defendant’s sole argument on appeal asserts that the trial court’s order denying his motion to suppress must be vacated and remanded for additional findings of fact because the trial court failed to determine at what point Officer Hartsell’s initial suspicions were dispelled and the original purpose of the stop concluded.

As a preliminary matter, Defendant does not challenge any of the trial court’s findings of fact; rather, Defendant argues the trial court failed to make specific, necessary findings. Because the trial court’s fourteen findings of fact are left unchallenged, those findings are binding and deemed supported on appeal. *See State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (“[W]hen, as here, the trial court’s findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal.”).

III. Standard of Review

Thus, for purposes of this Court’s review, we must determine whether those fourteen, binding findings of fact “support the judge’s ultimate conclusions of law.” *State v. Cobb*, 381 N.C. 161, 164, 872 S.E.2d 21, 25 (2022). “Conclusions of law are reviewed *de novo* and are subject to full review.” *Biber*, 365 N.C. at 168, 712 S.E.2d at 878 (cleaned up). “‘Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v.*

Williams, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008).

It is well-established that the Fourth Amendment protects individuals against unreasonable searches and seizures, and that this protection extends to traffic stops by law enforcement. *See State v. Bullock*, 370 N.C. 256, 257, 805 S.E.2d 671, 673 (2017) (“A traffic stop is a seizure even though the purpose of the stop is limited and the resulting detention quite brief.”) (cleaned up). This protection provides that, “in order to conduct a warrantless, investigatory stop, an officer must have reasonable and articulable suspicion of criminal activity.” *State v. Hughes*, 353 N.C. 200, 206-07, 539 S.E.2d 625, 630 (2000). A reasonable and articulable suspicion of criminal activity includes law enforcement’s observations of a traffic violation. *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 1614 (2015); *see also State v. Jones*, 264 N.C. App. 225, 230, 825 S.E.2d 260, 264 (2019) (“A traffic stop is a reasonable seizure under the Fourth Amendment when the police have reasonable suspicion ‘to believe that a traffic violation has occurred.’”).

In this context, the scope of a traffic stop is limited, “to address the traffic violation that warranted the stop, and attend to related safety concerns.” *Rodriguez*, 575 U.S. at 354, 135 S. Ct. at 1614 (citation omitted). Our Supreme Court has articulated that “[b]eyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary inquiries incident to the traffic stop.” *Bullock*, 370 N.C. at 257, 805 S.E.2d at 673 (cleaned up). Including, “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.*

However, "[o]nce the original purpose of the stop has been addressed, there must be grounds which provide a reasonable and articulable suspicion in order to justify further delay." *State v. Falana*, 129 N.C. App. 813, 816, 501 S.E.2d 358, 360 (1998). In other words, "the duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission . . . unless reasonable suspicion of another crime arose before the mission was completed." *State v. Campola*, 258 N.C. App. 292, 298, 812 S.E.2d 681, 687 (2018) (cleaned up). Reasonable suspicion of another crime arises when 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." *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 167 (2012) (cleaned up).

Defendant does not dispute Officer Hartsell's grounds for the initial traffic stop. On the night of 22 April 2022, Officer Hartsell was on routine patrol when she observed a vehicle traveling down the road. She ran the license plate on the vehicle and learned the registered owner, Ms. Dodd, did not have a valid driver's license. Based on this information, Officer Hartsell initiated a traffic stop of the vehicle. At the time of the stop, Officer Hartsell was not aware someone other than Ms. Dodd was, in fact, driving the vehicle, due to the time of night and its tinted windows. However, "[t]o meet the reasonable suspicion standard, it is enough for the officer to *reasonably believe* that a driver has violated the law." *State v. Johnson*, 370 N.C. 32,

38, 803 S.E.2d 137, 141 (2017). In other words, reasonable suspicion was established when she learned the registered owner of the vehicle did not have a valid driver's license, observed the vehicle in operation, and was unaware who was driving the vehicle at that time. Thus, Officer Hartsell's investigatory stop of the vehicle constituted a reasonable seizure, as she had a reasonable suspicion to believe that a traffic violation, driving without a license, had occurred. *Jones*, 264 N.C. App. at 230, 825 S.E.2d at 264.

Defendant contends, however, that the trial court's denial of his motion to suppress lacks findings of fact regarding when Officer Hartsell completed the original purpose of her stop, specifically, the point in time at which her initial suspicion of Ms. Dodd driving without a license was dispelled. Defendant reasons that if Officer Hartsell had dispelled her initial suspicion, meaning she completed the original mission of the stop, *before* she smelled an odor of marijuana and noticed the vehicle's expired license plate, then the traffic stop would have been unconstitutionally prolonged. Thus, Defendant argues that the trial court's findings of fact fail to establish the requisite timeline of events. We disagree.

The trial court's unchallenged findings of fact, coupled with long standing Fourth Amendment jurisprudence, affirm the constitutionality of this traffic stop. Upon Officer Hartsell's approach of the vehicle, the windows were rolled up and she could not determine how many people were in the car because of the tint on the windows. To "attend to related safety concerns" she knocked on the rear passenger

window and requested that the window be rolled down. *Rodriguez*, 575 U.S. at 354, 135 S. Ct. at 1614. As the window was lowered, she detected an odor of marijuana emanating from the vehicle. Officer Hartsell then told Defendant the reason for the traffic stop and asked him to see his driver's license. Prior to this initial interaction, Officer Hartsell was unaware that the driver of the vehicle was someone other than its registered owner. Thereafter, Defendant repeatedly refused to provide his license as requested while maintaining that he did not need one to travel.

In sum, these events are directly related to Officer Hartsell's actions and were directly related to the original purpose of the stop: namely, to address the suspected traffic violation and attend to her safety concerns. Likewise, Officer Hartsell was permitted to perform "ordinary inquiries" during the mission of the traffic stop, including "checking the driver's license." *Bullock*, 370 N.C. at 257, 805 S.E.2d at 673. We note that while Defendant asserts that the stop was unconstitutionally prolonged, it was in fact Defendant who through his uncooperativeness and continuous refusal to provide his driver's license to Officer Hartsell extended the length of the stop. Officer Hartsell's requests to see Defendant's license was an ordinary inquiry permitted within the parameters of performing what is necessary to accomplish the purpose of the original mission, and Defendant's repeated refusals extended the time required to complete such a mission. The trial court's findings unquestionably establish the timeline by which the trial court determined the lawfulness of the traffic stop.

Moreover, Officer Hartsell had “a reasonable and articulable suspicion in order to justify further delay.” *Falana*, 129 N.C. App. at 816, 501 S.E.2d at 360. She detected an odor of marijuana from the vehicle when the rear passenger window was rolled down.

In *State v. George*, this Court considered whether the sight or smell of marijuana meets the standard of reasonable suspicion to extend the traffic stop beyond the length required to complete the original purpose of the mission. *State v. George*, 292 N.C. App. 606, 613, 898 S.E.2d 801, 805-06 (2024). There, the officer initiated a traffic stop of the defendant’s vehicle for speeding. *Id.* at 608, 898 S.E.2d at 803. Upon speaking with the defendant, the officer noticed, what appeared to be, marijuana residue on the floorboard of the vehicle and a faint odor of marijuana. *Id.* Following an exchange of the defendant’s license and registration and further conversation, the officer deployed a canine to perform a free-air sniff of the defendant’s vehicle. *Id.* at 609, 898 S.E.2d at 803. The canine alerted the officer to the presence of narcotics in the vehicle. *Id.* On appeal, the defendant challenged the length of the traffic stop, arguing that it was unconstitutionally prolonged. *Id.* at 612, 898 S.E.2d at 806. The Court in *George* recognized, “[t]he reasonable suspicion standard is a less demanding standard than probable cause and a considerably less demanding standard than preponderance of the evidence.” *Id.* at 613, 898 S.E.2d at 806 (cleaned up). Further, “it is unlawful for any person . . . to possess a controlled substance. And marijuana remains a controlled substance under N.C. Gen. Stat. §

90-94.” *Id.* at 614, 898 S.E.2d at 806 (citation omitted). This Court held that the sight or smell of marijuana provides “at least ‘a minimal level of objective justification, something more than an unparticularized suspicion or hunch’ of completed criminal activity—possession of marijuana.” *Id.* at 615, 898 S.E.2d at 807.

Consistent with *George*, we conclude Officer Hartsell’s detection of an odor of marijuana emanating from Defendant’s vehicle was sufficient under the reasonable suspicion standard. We hold that the trial court’s order denying Defendant’s motion to suppress articulated sufficient findings of fact detailing the necessary timeline of the traffic stop to determine the constitutionality of the stop. Officer Hartsell attempted to address the traffic violation, attend to her safety concerns, and perform ordinary inquiries. Defendant’s refusal to provide his identification caused the stop to be extended. Moreover, the officer detected an odor of marijuana upon her initial approach to the vehicle thereby providing a reasonable and articulable suspicion to extend the traffic stop beyond the length required to complete the original purpose of the mission. The trial court’s denial of Defendant’s motion to suppress is affirmed.

IV. Conclusion

For the foregoing reasons, we hold the trial court made sufficient findings of fact to determine the constitutionality of the traffic stop. The trial court’s denial of Defendant’s motion to suppress is affirmed.

AFFIRMED.

Judges ARROWOOD and FLOOD concur.

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Report per Rule 30(e).