NO. COA10-132

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

STATE OF NORTH CAROLINA

v. Wake County
No. 09 CRS 9885-6

ARIC DEVON BLACKWELL

Appeal by the State of North Carolina from order entered 22 September 2009 by Judge Henry W. Hight, Jr. in Wake County Superior Court. Heard in the Court of Appeals 30 August 2010.

Attorney General Roy Cooper, by Assistant Attorney General Derrick C. Mertz, for State.

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Barbara S. Blackman, for Defendant.

ERVIN, Judge.

The State appeals from an order entered by the trial court suppressing certain evidence seized as the result of a search of Defendant's vehicle in the aftermath of a traffic stop. After carefully considering the State's arguments in light of the record and the applicable law, we find that the trial court erred by granting Defendant's suppression motion and remand this case to the Wake County Superior Court for further proceedings not inconsistent with this opinion.

I. Factual Background

A. Substantive Facts

On 29 January 2009, Officer Larry Houpe of the Wendell Police Department and Officer J.J. McDonough of the Durham Police Department were parked on Highway 64 at the Rolesville Road exit in Officer Houpe's patrol cruiser "looking at traffic that was going eastbound." Officers Houpe and McDonough were participating in a training session involving the Wendell Police Department, the Durham Police Department, and the Henderson Police Department as part of a larger "highway interdiction" effort, the objective of which was to "go out on Highway 64 and try to detect some of the criminal activity that's been going on out there" by conducting "high volume traffic stops to detect criminal activity."

While parked at the Rolesville Road exit, the officers noticed a Dodge Durango driven by Defendant abruptly change lanes without signaling. After making that observation, Officer Houpe pulled his patrol vehicle onto Highway 64 and began following Defendant's Durango. As the Durango approached the Edgemont Road overpass, Officer Houpe observed it make a second abrupt lane change without signaling, move into the right lane, and "tuck[] in between two cars that were kind of close together." Officer McDonough noted that there was "really no reason [for the Durango] to change lanes" other than as part of a reaction to "com[ing] up to [a] police car." At that point, Officer Houpe initiated a traffic stop in order to investigate the vehicle's repeated "failure to signal and the getting in behind [the other vehicle] that tightly."

After Defendant's vehicle came to a stop, Officer Houpe approached the Durango and asked Defendant for his license and

registration. While looking for his registration, Defendant informed Officer Houpe that "he had been in Raleigh looking for some pressure washing jobs." Officer Houpe noted that a passenger, Defendant's girlfriend, was present in Defendant's vehicle. In addition, Officer Houpe observed a can of Black Ice air freshener on the console of Defendant's vehicle. According to Officer Houpe, air freshener is "used to mask the odor of narcotics," and can be an "indicator for the presence of narcotics."

Once Defendant located his registration, Officer Houpe requested that Defendant accompany him to the patrol vehicle so that he could "run [Defendant's] license . . . [and] make sure everything was correct." Upon re-entering the patrol vehicle, Officer Houpe ran Defendant's license and registration, checked for outstanding warrants, and obtained Defendant's criminal history. During this process, Officer Houpe learned that Defendant had been previously charged with several narcotics violations and that he was currently on probation for such an offense. According to Officer Houpe, Defendant was "visibly nervous," "moving around and . . . not sitting still." Defendant told Officer Houpe that "he was in a hurry" since "[h]e was going to Wendell to drop his girlfriend off at work, because she was a CNA worker and she was taking care of some lady in Wendell."

While Defendant and Officer Houpe sat in the patrol vehicle, Officer McDonough walked over to Defendant's Dodge and spoke with Defendant's girlfriend. Defendant's girlfriend told Officer McDonough that she and Defendant had been in Raleigh "eating at her

sister's house" and "just kind of hanging out," that they were returning home to "hang out," and that she had been unemployed for "a couple months." At the conclusion of this conversation, Officer McDonough returned to the patrol vehicle and spoke with Defendant, who told Officer McDonough that he was taking his girlfriend to work, where she was scheduled to arrive at 2:00 p.m. According to Officer McDonough, Defendant was breathing rapidly and "you could see his . . . heart beat in his stomach . . . going up and down."

At that point, Officer Houpe spoke with Officer McDonough. During this conversation, Officer McDonough informed Officer Houpe of the inconsistencies between the information that he had received from Defendant and his girlfriend. After speaking with Officer McDonough, Officer Houpe re-entered the patrol vehicle, returned Defendant's license and registration, and informed Defendant that he "wasn't going to write [Defendant] a ticket for the traffic offenses." Officer Houpe then requested Defendant's consent to search the Durango. After Defendant refused, he informed Officer Houpe that there "was nothing illegal in the vehicle" and reiterated that "he was in a hurry to get [his girlfriend] to work" and "didn't have time" for the search.

As a result of their interactions with Defendant, both Officer Houpe and Officer McDonough believed that they had sufficient basis to investigate the situation more thoroughly.[1] For that reason,

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[1] At the suppression hearing, Officer Houpe testified that he believed that "enough indicators [existed] to give [him] a reasonable suspicion that criminal activity was afoot." Similarly, Officer McDonough testified that, based on his training and experience and the "indicators that [he] had observed . . . [,]

Officer Houpe called Sergeant Shawn Spence of the Henderson Police Department and requested that he bring his drug-sniffing dog to the scene of the traffic stop. Sergeant Spence arrived at the scene of the traffic stop in "less than two minutes." Upon arriving, Sergeant Spence had his drug dog perform a sniff of Defendant's Durango.

B. Procedural Facts

On 29 January 2009, warrants for arrest charging Defendant with possession with intent to sell or deliver marijuana were issued. On 19 May 2009, the Wake County grand jury returned bills of indictment charging Defendant with possession with intent to sell or deliver marijuana in violation of N.C. Gen. Stat. § 90-95(a)(1) and maintaining a vehicle for keeping and selling controlled substances in violation of N.C. Gen Stat. § 90-108(a)(7).

On 8 July 2009, Defendant filed a motion seeking to suppress any and all physical evidence collected by investigating officers as a result of the 29 January 2009 search of Defendant's vehicle. On 31 August 2009, Defendant's suppression motion came on for hearing before the trial court. At the close of this hearing, the trial court orally granted Defendant's suppression motion. A written order granting Defendant's motion was filed on 22 September 2009. In its written order, the trial court made the following findings of fact:

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there was more than a traffic violation, there was criminal activity in the car."

7. That Larry Houpe is a patrol officer with the Wendell Police Department and has law enforcement experience with that department for four years and eight months.

8. That upon the hiring of a new Police Chief, the Wendell Police Department got into highway interdiction.

9. That as testified to by Officer Houpe, the new Chief decided that Wendell Patrol Officers "should go out on Highway 64 and try to detect some of the criminal activity that's been going on out there, involves high volume traffic stops to detect criminal activity."

10. That highway interdiction involves stopping cars to investigate traffic violations and to determine if other criminal violations might be occurring.

11. That the Wendell Police Department requested the aid and assistance of other police departments (Henderson Police Department, Durham Police Department, High Point Police Department and Archdale Police Department) in an effort to train the Wendell Police Officers on highway interdiction procedures.

. . .

14. That on January 29, 2009, Officer Houpe participated in a two day training session on Highway 64.

. . .

16. That Officer Houpe was being assisted and trained by Officer J.J. McDonough with the Durham Police Department who accompanied Officer Houpe in his patrol vehicle on this date.

. . .

18. That Officers Houpe and McDonough were sitting on the exit ramp at Rolesville Road which leads to Highway 64 looking at the traffic.

19. That Officer Houpe observed a light colored Dodge Durango heading east on Highway 64.

20. That the Durango made an abrupt lane change without signaling.

. . .

22. That Officer Houpe pulled his vehicle onto Highway 64 and followed the Durango because of the lane change.

23. That as the vehicles approached the Edgemont Road overpass, the Durango quickly pulled over to the right hand side "tucking in between two cars that were kinda close together."

24. That Officer Houpe decided to stop the Durango for failing to signal and "getting in behind that car that tightly."

25. That Officer Houpe testified that he decided to stop the Durango because "we have a lot of traffic accidents right there in front of the Coyote Tractor Plant as it comes down from four lanes down to two lanes."

26. That after stopping the Durango, Officer [Houpe] approached the Durango and asked the defendant, the driver, for his license and registration.

27. That the defendant complied but had a little trouble finding his registration card.

28. That Officer Houpe advised the defendant that he stopped him for the lane change without signaling and for "tucking in between the vehicles."

29. That Officer Houpe engaged the defendant in conversation and the defendant advised him that he had been in Raleigh looking for pressure washing jobs.

30. That there was a passenger in the Durango.

31. That Officer Houpe noticed an aerosol can, air freshener, sitting on the console of the Durango.

. . .

33. That Office Houpe had the defendant step back to the patrol vehicle.

34. That Officer Houpe testified that from his training and experience, air freshener is "used to mask the odor of narcotics, especially if you got like-if you spr[a]y a lot in the vehicle, smells real heavy with air fresheners, that's an indication for the presence of narcotics."

35. That the defendant came back to the patrol vehicle and Officer McDonough got out of the vehicle and let the defendant sit in the passenger seat.

36. That Officer McDonough proceeded to the Durango and talked with the passenger.

37. That Officer Houpe ran the defendant's license and registration and checked for warrants and a criminal history.

38. That Officer Houpe discovered that the defendant had been charged with the sale and delivery of some narcotics and asked the defendant about it.

39. That the defendant admitted that he had gone to prison but it was really someone else who was guilty of the offense.

40. That the defendant advised Officer Houpe that he was on probation.

41. That Officer McDonough came back to the patrol vehicle and listen[ed] to the conversation between Officer Ho[u]pe and the defendant.

42. That the defendant said that he was going to Wendell to drop his girlfriend off at work, because she was a CNA worker and she was taking care of some lady in Wendell.

43. That the defendant said he was in a hurry to get his girlfriend to work.

44. That the defendant seemed really nervous to Officer Houpe.

45. That Officer Houpe exited the patrol vehicle and talked with Officer McDonough who advised him that the passenger had told him that she was not employed and that the defendant was taking her home and not to work.

46. That upon return to the vehicle, Officer Houpe told the defendant that he was going to give him a warning, was not going to write him a ticket and returned his license and registration to the defendant.

47. That Officer Houpe testified that at this point he was finished dealing with the traffic violation.

48. That Officer McDonough testified that at this point Officer Houpe had completed the traffic stop and returned to the defendant his driver's license and registration.

49. That Officer Houpe then asked the defendant if he had anything illegal in his car like narcotics or weapons.

50. That Officer Houpe also asked the defendant if he could search his vehicle.

51. That the defendant declined and said that he didn't have the time, he was in a hurry to get his girlfriend to work, and there was nothing illegal in his car.

52. That Officer Houpe testified that the defendant was not free to leave at this point because he had enough indicators of criminal activity that there might be more to it.

53. That Officer Houpe contacted Sergeant Spence and Sergeant Gill to bring the dog.

> 54. That Officer Houpe did not articulate with specificity as to what specific indicators of criminal activity he observed which might provide him with reasonable suspicion that criminal activity was afoot.

Based on these findings of fact, the trial court determined that it could not "conclude that Officer Houpe had reasonable suspicion that criminal activity was afoot that justified the defendant and his passenger being further detained by officers (waiting for a drug dog) once and after the reason for the initial stop had been addressed and concluded," that "the extension of the stop without more [wa]s an unconstitutional seizure of the defendant and his motor vehicle," that "any illegal substance which might thereafter be seized by officers is the fruit" of the poisonous tree, and that "the defendant's motion to suppress should be allowed." The State noted an appeal to this Court from the trial court's order.

II. Legal Analysis

A. Standard of Review

A trial court order granting a suppression motion is reviewed on appeal for the purpose of determining whether the trial court's findings of fact are supported by competent evidence and whether, in turn, the trial court's findings of fact support its ultimate conclusion. *State v. White*, 184 N.C. App. 519, 523, 646 S.E.2d 609, 611-12 (quoting *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36, *disc. review denied*, 358 N.C. 240, 594 S.E.2d 199 (2004)), *disc. review denied*, 361 N.C. 702, 653 S.E.2d 160 (2007). "Findings of fact are 'conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.'"

State v. Robinson, 189 N.C. App. 454, 458, 658 S.E.2d 501, 504 (2008) (quoting *State v. Eason*, 336 N.C. 730, 745 445 S.E.2d 917, 926 (1994), *cert. denied*, 513 U.S. 1096, 130 L. Ed. 2d 661, 115 S. Ct. 764 (1995)). . "[F]indings of fact to which defendant failed to assign error are binding on appeal." *State v. Campbell*, 188 N.C. App. 701, 704, 656 S.E.2d 721, 724, *app. dismissed*, 362 N.C. 364, 664 S.E.2d 311 (2008). However, the trial court's conclusions of law are reviewed *de novo*. *Robinson*, 189 N.C. App. at 458, 658 S.E.2d at 504 (stating that "'the trial court's conclusions of law are fully reviewable on appeal'") (quoting *State v. McArn*, 159 N.C. App. 209, 212, 582 S.E.2d 371, 374 (2003)). "'[T]he trial court's conclusions of law must be legally correct, reflecting a correct application of applicable legal principles to the facts found.'" *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001)(quoting *State v. Golphin*, 352 N.C. 364, 409, 533 S.E.2d 168, 201 (2000), *cert denied*, 532 U.S. 931, 149 L. Ed. 2d 305, 121 S. Ct. 1379 (2001)). For that reason, we examine whether the "trial court's findings support its conclusion[] that an officer had [or did not have] reasonable suspicion to detain a defendant . . . *de novo*." *State v. Crenshaw*, 144 N.C. App. 574, 576-77, 551 S.E.2d 147, 149 (2001)(citing *State v. Munoz*, 141 N.C. App. 675, 541 S.E.2d 218, 222, *cert. denied*, 353 N.C. 454, 548 S.E.2d 534 (2001)); *see also, State v. Wilson*, 155 N.C. App 89, 93-94, 574 S.E.2d 93, 97 (2002) (stating that "'a trial court's conclusions of law regarding whether the officer had reasonable suspicion . . . to detain a defendant [are] reviewable *de novo*'") (quoting *State v.*

Young, 148 N.C. App. 462, 466, 559 S.E.2d 814, 818, *disc. review denied*, 355 N.C. 500, 564 S.E.2d 233 (2002) *disc. review denied and app. dismissed*, 356 N.C. 693, 579 S.E.2d 98, *cert. denied*, 540 U.S. 843, 157 L. Ed. 2d 78, 124 S. Ct. 113 (2003). As a result of the fact that the State has not challenged any of the trial court's findings of fact as lacking sufficient record support, our review of the trial court's order is limited to determining whether the trial court's conclusions of law reflect a correct understanding of the applicable law and are supported by its findings of fact. *State v Allison*, 148 N.C. App. 702, 704, 559 S.E.2d 828, 829 (2002).

B. Reasonable Suspicion

On appeal, the State argues that the trial court erred by granting Defendant's suppression motion on the grounds that the investigating officers possessed the reasonable suspicion necessary to justify Defendant's detention during the interval required to effectuate a canine sniff of Defendant's vehicle. We agree.

Although the United States Constitution and the North Carolina Constitution prohibit unreasonable searches and seizures, U.S. Const. amend. IV; N.C. Const. art. I, § 20, canine sniffs do "not constitute a 'search'" for federal and state constitutional purposes due to the minimal level of intrusion involved in such events. *United States v. Place*, 462 U.S. 696, 707, 77 L. Ed. 2d 110, 121, 103 S. Ct. 2637, 2644-45, (1983)(stating that "[w]e are aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the

content of the information revealed by the procedure," leading the Court to "conclude that [a canine sniff does] not constitute a 'search' within the meaning of the Fourth Amendment"). For that reason, "once the lawfulness of a person's detention is established[,] . . . officers need no additional assessment under the Fourth Amendment before walking a drug-sniffing dog around the exterior of that individual's vehicle." *State v. Branch*, 177 N.C. App. 104, 108, 627 S.E.2d 506, 509 (2006), *disc. review denied*, 360 N.C. 537, 634 S.E.2d 220 (2006). As long as the person under investigation was properly detained at the time of the canine sniff, the use of that procedure does not implicate any state or federal constitutional concerns.

The category of constitutionally-limited seizures encompasses "brief investigatory detentions such as those involved in the stopping of a vehicle." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67,70 (1994); *see also, Delaware v. Prouse*, 440 U.S. 648, 653, 59 L. Ed. 2d 660, 667, 99 S. Ct. 1391, 1396 (1979)(stating that "stopping an automobile and detaining its occupants constitute[s] a 'seizure' . . . even though the purpose of the stop is limited and the resulting detention quite brief") (citing *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58, 49 L. Ed. 2d 1116, 1127-29, 96 S. Ct. 3074, 3082-83 (1976)). An investigatory stop of a vehicle complies with constitutional requirements in the event that it is based upon an officer's reasonable suspicion that a traffic violation has occurred. *Watkins*, 337 N.C. at 441, 446 S.E.2d at 70.

Officer Houpe observed Defendant making two abrupt lane changes without signaling before positioning his vehicle between two vehicles that were already in close proximity to each other. These actions violated a number of North Carolina's statutory provisions governing the operation of a motor vehicle. As a result, the initial investigatory stop of Defendant's vehicle was clearly supported by the officers' reasonable suspicion that Defendant had committed multiple traffic violations. Defendant does not appear to contend otherwise.[2]

The validity of the initial investigatory traffic stop of Defendant does not, however, shield the investigating officers' subsequent actions from constitutional scrutiny. *Terry v. Ohio*, 392 U.S. 1, 19-20, 20 L. Ed. 2d 889, 905, 88 S. Ct. 1868, 1879, (1968). The only police actions deemed constitutionally valid are those "reasonably related in scope to the circumstances which justified the interference in the first place." *Id.*

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[2] Defendant devotes considerable attention in his brief to a discussion of the highway interdiction program and appears to suggest that the nature and purpose of the program somehow tainted the initial traffic stop, Defendant's subsequent detention, or both. Defendant's suggestion is entirely without merit. In *Whren v. United States*, 517 U.S. 806, 135 L. Ed. 2d 89, 116 S. Ct. 1769 (1996), the United States Supreme Court held that, "[p]rovided objective circumstances justify the action taken, any 'ulterior motive' of the officer is immaterial" in determining the lawfulness of a seizure. *State v. McClendon*, 350 N.C. 630, 635, 517 S.E.2d 128, 131 (1999). "*Whren* conclusively established that the inquiry is no longer what a reasonable officer *would* do but what a reasonable officer *could* do, and in effect put an end to issues involving whether the existence of probable cause for a traffic stop has been used by officers as a pretext for stopping defendant for other reasons." *Id.* As a result, the fact that Officer Houpe stopped Defendant as part of a larger interdiction program has no relevance in our examination of whether the trial court's order rests upon an error of law.

> The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. This much, however, is clear: an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.

Florida v. Royer, 460 U.S. 491, 500, 75 L. Ed. 2d 229, 238, 103 S. Ct. 1319, 1325-26 (1983). Although, as we have already noted, police officers may execute a canine sniff during any otherwise lawful detention without exceeding constitutional bounds, *Branch*, 177 N.C. App. at 107, 627 S.E.2d at 508, the initial investigatory stop stemming from Defendant's traffic violations ended prior to the beginning of the canine sniff of his vehicle. In light of that fact, Defendant argues that his continued detention after the conclusion of the initial investigatory stop was proper only to the extent that the canine sniff was supported by reasonable suspicion separate from and in addition to that which justified the initial stop. *See Illinois v. Caballes*, 543 U. S. 405, 409, 160 L. Ed. 2d 842, 845-46, 125 S. Ct. 834, 838 (2005) (stating that "[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission"); *McClendon*, 350 N.C. at 636, 517 S.E.2d at 132 (stating that additional reasonable suspicion was needed to justify the defendant's detention for the fifteen to twenty minutes that elapsed between the termination of a traffic stop and the execution of the canine sniff); *State v. Euceda-Valle*, 182 N.C. App. 268, 274, 641 S.E.2d

858, 863 (stating that, "[b]ecause the canine sniff occurred after defendant was handed the warning ticket, we analyze this case in accordance with *McClendon*"), *disc. review denied*, 361 N.C. 698, 652 S.E.2d 923 (2007) *Branch*, 177 N.C. App. at 105-08, 627 S.E.2d at 507-09 (holding that, once the defendant was stopped at a routine license checkpoint, law enforcement officers could lawfully verify defendant's driver's license, check for outstanding warrants, and execute a canine sniff of defendant's vehicle while emphasizing that these activities were conducted simultaneously). The State responds, however, that no additional reasonable suspicion was necessary to support the lawfulness of Defendant's detention past the end of the initial stop because the consequent prolongation of Defendant's detention resulted in a *de minimis* interference with his right to be protected from unreasonable searches and seizures. *See generally, State v. Brimmer*, 187 N.C. App. 451, 455-57, 653 S.E.2d 196, 198-99 (2007)(holding that no additional reasonable suspicion was necessary to support the prolongation of the defendant's detention past the termination of the traffic stop when "the stop was extended only for the time necessary to explain about the dog sniff and the one-and-a-half minutes of the actual sniff" since "this very brief additional time did not prolong the detention beyond that reasonably necessary for the traffic stop."); *United States v. $404,905.00 in U.S. Currency*, 182 F.3d 643, 649 (8th Cir. 1999) (holding that the extension of the defendant's detention in order to permit a canine sniff did not violate applicable constitutional protections in a situation when "the

canine sniff was [executed] thirty seconds or two minutes [after the termination of the initial traffic stop]" because, "[w]hen the constitutional standard is reasonableness measured by the totality of the circumstances, we should not be governed by artificial distinctions" and "a two-minute canine sniff [is] a *de minimis* intrusion"), *cert. denied sub nom. Alexander v. United States*, 528 U.S. 1161, 145 L. Ed. 2d 1083, 120 S. Ct. 1175 (2000). We need not resolve this particular point of dispute between Defendant and the State, however, because even if one assumes, without in any way deciding, that the continued detention of Defendant beyond the termination of the initial traffic stop required separate reasonable suspicion, we hold that sufficient separate and additional reasonable suspicion existed in this case.

As we have already noted, the detention of a suspect following the conclusion of a traffic stop is lawful if there is "'reasonable suspicion, based on specific and articulable facts, that criminal activity is afoot.'" *Euceda-Valle*, 182 N.C. App. at 274, 641 S.E.2d at 863 (quoting *McClendon*, 350 N.C. at 636, 517 S.E.2d at 132); *see also, Watkins*, 337 N.C. at 441, 446 S.E.2d at 70 (stating that "[a]n investigatory stop must be justified by 'a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity'") (quoting *Brown v. Texas*, 443 U.S. 47, 51, 61 L. Ed. 2d 357, 362, 99 S. Ct. 2637, 2651 (1979)). The specific and articulable facts needed to support the extended detention may be discovered by investigating officers during the initial traffic stop. *McClendon*, 350 N.C. at 636, 517 S.E.2d at

132-33 (stating that, "[a]fter a lawful stop, an officer may ask the detainee questions in order to obtain information;" "defendant's responses to questions asked during such inquiry" may, in turn, support a reasonable suspicion that criminal activity is afoot). "'The specific and articulable facts, and the rational inferences drawn from them, are to be "viewed through the eyes of a reasonable, cautious officer, guided by his experience and training."'" *State v. Hernandez*, 170 N.C. App. 299, 308, 612 S.E.2d 420, 426 (2005)(quoting *Watkins*, 337 N.C. at 441, 446 S.E.2d at 70). In assessing whether a reasonable suspicion arises from a particular set of facts, "the court must consider the totality of the circumstances." *Id.* (quoting *Munoz*, 141 N.C. App. at 682, 541 S.E.2d at 222; *see also, Campbell*, 188 N.C. App. at 706, 656 S.E.2d at 725 (stating that "it is well-settled that factors supporting reasonable suspicion are not to be viewed in isolation")(citing *United States v. Arvizu*, 534 U.S. 266, 274, 151 L. Ed. 2d 740, 750 122 S. Ct. 744, 751 (2002)). Thus, while "'individually, any one of the factors cited . . . might not justify [a finding of reasonable suspicion], one cannot piecemeal this analysis. One piece of sand may not make a beach, but courts will not be made to look at each grain in isolation and conclude there is no seashore.'" *Crenshaw*, 144 N.C. App. at 577, 551 S.E.2d at 150 (2001)(quoting Robert G. Lindauer, Jr., *State v. Pearson and State v. McClendon: Determining Reasonable, Articulable Suspicion from the Totality of the Circumstances in North Carolina*, 78 N.C.L. Rev. 831, 849 (2000)). At bottom, reasonable suspicion requires "'only

. . . a minimal level of objective justification, something more than an unparticularized suspicion or hunch.'" *Campbell*, 188 N.C. App. at 705, 656 S.E.2d at 725 (quoting *Watkins*, 337 N.C. at 441-42, 446 S.E.2d at 70).

In *Euceda-Valle*, this Court held that there was a "basis for a reasonable and cautious law enforcement officer to suspect that criminal activity [was] afoot" so that "law enforcement had [the] reasonable suspicion necessary to conduct the [canine sniff]" when defendant "was extremely nervous," "refused to make eye contact," "there was [a] smell of air freshener coming from the vehicle," "the vehicle was not registered to the occupants," and "there was disagreement between defendant and the passenger about [their destination]." *Euceda-Valle*, 182 N.C. App. at 274-75, 641 S.E.2d at 863. In *Wilson*, we held that an officer had a "reasonable suspicion to further delay defendants" after the termination of a traffic stop when the vehicle smelled of air freshener, an atlas was seen in the vehicle, screws were missing from the vehicle's dashboard, the vehicle was registered in Florida despite the fact that the driver was from Ohio, the driver and passenger told inconsistent stories regarding their travel plans, and the driver was nervous. *Wilson*, 155 N.C. App at 96-97, 574 S.E.2d at 99.[3] In

[3] In *McClendon*, the Supreme Court treated defendant's nervousness as one of "several factors that gave rise to reasonable suspicion under the totality of the circumstances." *McClendon*, 350 N.C. at 637, 517 S.E.2d at 133. In doing so, the Supreme Court "revist[ed]" and "clarif[ied]" its decision in *State v. Pearson*, 348 N.C. 272, 498 S.E.2d 599 (1998), a case upon which Defendant relies in defending the trial court order at issue here. *Id.* In *Pearson*, the court stated that "the nervousness of the defendant is not significant," and explained that "[m]any people become nervous

Hernandez, we held that "specific articulable facts supporting a reasonable suspicion of criminal activity existed" because defendant was nervous, made conflicting statements, and an odor of air freshener emanated from defendant's vehicle. *Hernandez*, 170 N.C. App. at 309, 612 S.E.2d at 426-27.

The trial court found as fact in this case that:

> . . . [I]n the light most favorable to the State, the Officer testified that the defendant was nervous after being stopped by a police vehicle, there was a can of air freshener in the defendant's car, there was a puppy in the defendant's car, there was a female passenger in the defendant's car, the defendant admitted to having a prior drug conviction and the defendant told officers that he was in a hurry to get his girlfriend to work when his girlfriend told another Officer that she was unemployed.

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when stopped by a state trooper." *Pearson*, 348 N.C. at 276, 498 S.E.2d at 601. However, the *McClendon* Court explained that the Supreme Court "did not mean to imply [in *Pearson*] that nervousness can never be significant in determining whether an officer could form a reasonable suspicion that criminal activity is afoot" and stated that, even though "many people do become nervous when stopped by an officer of the law[,]" "nervousness is an appropriate factor to consider when determining whether a basis for a reasonable suspicion exists." *McClendon*, at 638, 517 S.E.2d at 134 (citing *State v. Butler*, 331 N.C. 227, 415 S.E.2d 719 (1992); *see also, United States v. Perez*, 37 F.3d 510, 514 (9th Cir. 1994) (stating that nervousness and profuse sweating were included in the list of factors giving rise to reasonable suspicion), *overruled in part on other grounds in United States v. Mendez*, 476 F. 3d 1077, 1080 (9th Cir. 2007), *cert. denied*, 550 U.S. 946, 167 L. Ed. 2d 122, 127 S. Ct. 2277 (2007)); *United States v. Nikzad*, 739 F.2d 1431, 1433 (9th Cir. 1984)(fact that defendant was nervous and failed to make eye contact gave rise to reasonable suspicion). As a result, despite his apparent contention to the contrary, Defendant's nervousness is relevant to the reasonable suspicion determination.

When these specific and articulable facts, and the rational inferences drawn from those facts,[4] are viewed in their totality and through the eyes of a reasonable, cautious officer, guided by his experience and training, it is clear that they establish that the investigating officers had a reasonable suspicion that Defendant was engaged in criminal activity. The facts found by the trial court in this case are essentially indistinguishable from those we held sufficient to establish the existence of the necessary reasonable suspicion in *Hernandez*. In addition, in this case, Officer Houpe knew of Defendant's prior drug conviction. Although minor differences exist between the facts at issue here and those under consideration in *Euceda-Valle* and *Wilson*, we believe that those decisions reinforce our conclusion that the extension of Defendant's detention was not unlawful. For example, the fact that a vehicle is not registered to its occupants, the

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[4] The parties have debated in their briefs the extent to which the quoted language, which the trial court described as a mixed finding of fact and conclusion of law, is a finding of fact or a conclusion of law and the extent to which the lawfulness of Defendant's detention hinges upon the reasons stated by the investigating officers at the time they continued to detain Defendant after the conclusion of the initial traffic stop. We need not address these issues, except to note that the ultimate reasonable suspicion determination is a question of law, *State v. Rogers*, 124 N.C. App. 364, 368, 477 S.E.2d 221, 223 (1996), *disc. review denied*, 345 N.C. 352, 483 S.E.2d 187 (1997) (stating that "whether the facts so found by the trial court or shown by uncontradicted evidence are such as to establish probable cause in a particular case, is a question of law . . . .") (quoting *In re Gardner*, 39 N.C. App. 567, 571, 251 S.E.2d 723, 726 (1979), since we believe that, under well-established principles of North Carolina search and seizure jurisprudence, these factors suffice to establish that the investigating officers had the necessary reasonable suspicion to extend their detention of Defendant to allow a canine sniff.

only fact present in *Euceda-Valle* that does not appear in this case, does not defeat the existence of reasonable suspicion, particularly given Officer Houpe's knowledge of Defendant's prior drug conviction. Similarly, the presence of an atlas, the fact that certain screws were missing, and the fact that the vehicle was registered in a different state from the one in which the driver resided, *Wilson*, 155 N.C. App at 96-97, 574 S.E.2d at 99, does not suffice to justify reaching a different result here than was reached in *Euceda-Valle* and *Wilson*. Our determination that the facts present in this case are so similar to those found sufficient to justify finding the existence of reasonable suspicion in our earlier decisions compels the conclusion that the trial court erred by deciding to the contrary in this case. As a result, after considering the facts found by the trial court in light of *Hernandez*, *Euceda-Valle*, and *Wilson*, we conclude that the trial court failed to correctly apply the applicable legal standard to the relevant facts and that, had the trial court considered the relevant facts "through the eyes of a reasonable, cautious officer, guided by his experience and training," it would have concluded that a reasonable suspicion that criminal activity was afoot existed, and that the investigating officers had the authority to detain Defendant for an additional period in order to permit the execution of a canine sniff.

III. Conclusion

Thus, for the reasons set out above, we conclude that the trial court erred by granting Defendant's suppression motion. As

a result, we remand this case to the Wake County Superior Court for further proceedings not inconsistent with our decision.

REVERSED AND REMANDED.

Chief Judge MARTIN and Judge STROUD concur.

Report per Rule 30(e).