NO. COA14-709

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2015

MYRA LYNNE COMBS,
Plaintiff,

v. Surry County
No. 13 CVS 1256

MICHAEL D. ROBERTSON,
COMMISSIONER OF NORTH CAROLINA
DIVISION OF MOTOR VEHICLES,
Defendant.

Appeal by respondent from order entered 4 April 2014 by Judge L. Todd Burke in Surry County Superior Court. Heard in the Court of Appeals 5 November 2014.

Randolph & Fischer, by J. Clark Fischer, for petitioner-appellee.

Attorney General Roy Cooper, by Assistant Attorney General Christopher W. Brooks, for respondent-appellant.

DIETZ, Judge.

This case serves as a reminder that, unless our Supreme Court holds otherwise, the Fourth Amendment's exclusionary rule does not apply in civil proceedings such as driver's license revocation hearings, even if those proceedings could be viewed as quasi-criminal in nature.

In 2013, police violated Petitioner Myra Lynne Combs's Fourth Amendment rights by stopping her car without reasonable suspicion. Combs smelled of alcohol, had bloodshot eyes, and failed a field sobriety test. But she refused to submit to a breath test both at the stop and later at the police station. The State then charged her with driving while impaired.

Because the traffic stop was unconstitutional, all evidence derived from the stop was suppressed in Combs's criminal case, resulting in dismissal of the charges. But the Division of Motor Vehicles (DMV) pressed ahead, revoking Combs's driver's license for her refusal to submit to a breath test. Combs challenged that revocation, arguing that the officer did not have "reasonable grounds" to believe she was impaired (the standard for license revocation under the implied consent laws). The gist of Combs's argument is that, because the stop was unconstitutional, DMV should not be permitted to rely on evidence gathered from that stop to revoke her driver's license.

Combs's argument poses a fair question: how can law enforcement use evidence that was suppressed because of a Fourth Amendment violation to later revoke her driver's license? The answer, according to several published decisions of this Court,

is that the exclusionary rule—a bedrock principle of criminal law—does not apply to license revocation proceedings.

Without the exclusionary rule, we must reverse the trial court and affirm DMV's revocation of Combs's driver's license. During the traffic stop, there was ample evidence from which an officer could find reasonable grounds to believe Combs was driving while impaired. Thus, Combs can prevail on appeal only if this evidence were excluded from consideration and, under our Court's precedent, it is not. Accordingly, we reverse the trial court and affirm the final agency decision revoking Combs's driving privileges.

Facts and Procedural History

On 6 January 2013, Officer David Grubbs of the Mount Airy Police Department received an anonymous report of a possible drunk driver on Highway U.S. 52 North. The caller reported that a blue Ford Explorer had been weaving in the roadway. Officer Grubbs proceeded to the intersection of Rockford Street and U.S. 52 to intercept the vehicle as it exited the highway. At the intersection, Officer Grubbs observed a vehicle matching the description given by the caller. Officer Grubbs and a second officer got behind the suspect vehicle and followed it. While he followed the vehicle, Officer Grubbs did not observe it

weaving in the roadway as the anonymous caller had described. But after several turns, Officer Grubbs saw the vehicle make what he believed was a "slight cross of the center" line of the roadway (this side road did not have a painted center line). Officer Grubbs continued to follow the vehicle until it turned into a driveway. At that point, Officer Grubbs initiated a traffic stop.

Officer Grubbs approached the vehicle and spoke to the driver, Petitioner Myra Lynne Combs. There were no other passengers in the vehicle. Officer Grubbs detected a strong odor of alcohol and observed that Combs's eyes were bloodshot. Officer Grubbs asked Combs if she had been drinking, and she admitted that she had a beer earlier in the evening. He then asked her to step out of her vehicle to perform field sobriety tests. As Combs exited her vehicle, Officer Grubbs noticed that she swayed. The officer conducted several field sobriety tests with Combs and noted that she did not perform to NHTSA standards. During the "horizontal gaze nystagmus" test, Officer Grubbs noted that Combs displayed lack of smooth pursuit, maximum deviation, and onset prior to forty-five degrees with both eyes. During the walk and turn test, Combs stopped walking, missed heel to toe, stepped off the line, and used her

arms for balance. And during the one leg stand test, Combs swayed while balancing, used her arms for balance, and put her foot down.

Based on her performance in the field sobriety tests, Officer Grubbs asked Combs to take a portable breath test. She refused. Officer Grubbs then placed Combs under arrest for the implied consent offense of impaired driving and took her to the Mount Airy Police Department. At the Police Department, Officer Evans, a certified chemical analyst, informed Combs of her implied consent rights pursuant to N.C. Gen. Stat. § 20-16.2(a) (2013), and Combs signed an implied consent rights form. Combs advised Officer Evans that she wished to contact a witness or attorney. Officer Evans provided her with a phone book and gave her thirty minutes to make phone calls. Combs was unable to get in contact with anyone. At the end of the thirty minute period, Officer Evans activated the testing instrument to perform a chemical analysis of Combs's breath. Once the instrument was ready, Officer Evans asked Combs to submit a sample of her breath for chemical analysis. Combs refused to do so.

Ultimately, the State charged Combs with driving while impaired. On Combs's motion, the Surry County District Court suppressed all evidence from the traffic stop. The court

concluded that Officer Grubbs violated Combs's Fourth Amendment rights because he "lacked a reasonable articulable suspicion to stop defendant's vehicle." As a result, the court ruled that all evidence obtained during the stop was subject to the exclusionary rule. With all evidence from the stop excluded, the State dismissed its case.

DMV then sent Combs a letter notifying her that it was revoking her driving privileges based on her willful refusal to submit to chemical analysis under N.C. Gen. Stat. § 20-16.2. Combs requested an administrative hearing before DMV, which was held on 27 September 2013. There, Combs's counsel argued that DMV was estopped from revoking Combs's license because the evidence justifying the breath test resulted from an unconstitutional traffic stop. The hearing officer rejected this argument and continued with the hearing. DMV issued its final order on 7 October 2013, affirming the revocation of Combs's driving privilege based on detailed findings of fact and conclusions of law.

On 16 October 2013, Combs filed a Complaint and Petition in Surry County Superior Court seeking review of DMV's order. After hearing arguments, the trial court entered an order on 4 April 2014 reversing DMV's decision. The order contains no

analysis, simply stating that "there is insufficient evidence in the record to support the Findings of Fact of Respondent's decision." DMV timely appealed on 21 April 2014.

Analysis

DMV argues that the trial court erred in reversing the final agency decision because the agency record plainly contains sufficient evidence to support the findings of fact. We agree.

In an appeal from a DMV hearing to superior court under N.C. Gen. Stat. § 20-16.2(e), the superior court acts not as the trier of fact, but as "an appellate court." *Johnson v. Robertson*, ___ N.C. App. ___, ___, 742 S.E.2d 603, 607 (2013). The superior court's review "shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license." N.C. Gen. Stat. § 20.16-2(e).

Here, the trial court made a general statement that there was "insufficient evidence in the record to support the Findings of Fact," but did not specify which of DMV's forty-six findings of fact was not supported by sufficient evidence. Combs focused her argument on whether the officer had reasonable grounds to

believe she had committed an implied consent offense. Combs contended that, because the district court in her criminal case found that the officer lacked reasonable suspicion to stop her and excluded all evidence resulting from the stop, the officer did not have reasonable grounds to believe she had committed an implied consent offense. Although the trial court did not explain which particular agency fact findings were unsupported, we assume it agreed with Combs's argument.

This argument is precluded by our case law. This Court has held that whether an officer had "reasonable and articulable suspicion for the initial stop is not an issue to be reviewed" in a license revocation hearing. *Hartman v. Robertson*, 208 N.C. App. 692, 695, 703 S.E.2d 811, 814 (2010). "[T]he only inquiry with respect to the law enforcement officer is the requirement that he ha[ve] reasonable grounds to believe that the person had committed an implied-consent offense." *Id.* (internal quotation marks omitted). "[T]he propriety of the initial stop is not within the statutorily-prescribed purview of a license revocation hearing." *Id.* at 696, 703 S.E.2d at 814.

Thus, the exclusionary rule, which the district court applied in Combs's criminal case, is inapplicable here. Indeed, this Court repeatedly has rejected attempts to invoke the

exclusionary rule in a license revocation proceeding. *See Hartman*, 208 N.C. App. at 698, 703 S.E.2d at 816; *Quick v. N.C. Div. of Motor Vehicles*, 125 N.C App. 123, 127, 479 S.E.2d 226, 228 (1997). As this Court explained in *Quick*, "[w]hen determining whether revocation of petitioner's license was proper, we are not concerned with the admissibility or suppression of evidence." 125 N.C. App. at 125-26, 479 S.E.2d at 228 (internal quotation marks omitted). "The question of the legality of his arrest . . . [is] simply not relevant to any issue presented in the hearing to determine whether [the respondent's] license was properly revoked." *Id.* at 126, 479 S.E.2d at 228 (internal quotation marks omitted).

In light of this precedent, this appeal presents only a single, permissible question: whether there is sufficient evidence in the record to support the agency's finding that Officer Grubbs had reasonable grounds to believe an implied consent offense occurred—*i.e.*, whether there were reasonable grounds for the officer to believe Combs had been driving while impaired. We hold that there is ample evidence in the record to support that finding.

Officer Grubbs testified that he smelled a strong odor of alcohol when he approached Combs in her vehicle. He also

testified that Combs's eyes were bloodshot. Combs admitted that she had been drinking earlier in the evening. When Combs exited her vehicle to perform a field sobriety test, she swayed noticeably. Finally, Officer Grubbs testified that Combs failed all three parts of the sobriety test. This evidence readily supports the hearing officer's finding that reasonable grounds existed to believe Combs was drunk. On appeal, Combs points to several facts, such as the presence of white-out in certain areas of the officer's initial report, to challenge the credibility of the officer's testimony at the hearing. But neither the superior court nor this Court is permitted to weigh the credibility of witnesses. *See Williamson v. Williamson*, 217 N.C. App. 388, 392, 719 S.E.2d 625, 628 (2011). The hearing officer found Officer Grubbs's testimony credible, and we are bound by that fact finding. As a result, we must reverse the trial court and affirm the final agency decision.

We pause to note that the question of whether the exclusionary rule applies to license revocation proceedings has divided our sister states. *Compare Fishbein v. Kozlowski*, 743 A.2d 1110, 1119 (Conn. 1999) (concluding that due process does not require application of exclusionary rule); *Martin v. Kansas Dep't of Revenue*, 176 P.3d 938, 949-53 (Kan. 2008) (holding that

the exclusionary rule should not apply); *Powell v. Sec'y of State*, 614 A.2d 1303, 1306-07 (Me. 1992) (holding that the exclusionary rule should not be applied); *Riche v. Dir. of Revenue*, 987 S.W.2d 331, 334-35 (Mo. 1999) (holding that the exclusionary rule should not be applied); *Holte v. North Dakota State Highway Comm'r*, 436 N.W.2d 250, 252 (N.D. 1989) (refusing to extend the exclusionary rule to civil proceedings); *and Dep't of Trans. v. Wysocki*, 535 A.2d 77, 79 (Pa. 1987) (holding that the exclusionary rule does not apply); *with Olson v. Comm'r of Pub. Safety*, 317 N.W.2d 552, 556 (Minn. 1985) (holding Fourth Amendment protections applied to license revocation proceeding); *Pooler v. Motor Vehicles Div.*, 755 P.2d 701, 703 (Or. 1988) (holding validity of arrest within the scope of administrative license suspension proceeding); *and Vermont v. Lussier*, 757 A.2d 1017, 1025-27 (Vt. 2000) (holding that the exclusionary rule applies in civil license suspension proceedings). All of these cases were decided by the states' highest courts. Our Supreme Court has not yet addressed this issue but, as explained above, this Court has. Because one panel of this Court cannot overturn another, *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989), if the application of the exclusionary rule to these

civil proceedings warrants further consideration, it must be done in our Supreme Court.

Conclusion

For the reasons discussed above, we must reverse the trial court.

REVERSED.

Judges BRYANT and DILLON concur.