

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1284

Filed: 17 September 2019

Forsyth County, Nos. 17 CRS 53907-08

STATE OF NORTH CAROLINA

v.

BOBBY LINDBERG CADDELL

Appeal by Defendant from Judgments entered 8 May 2018 by Judge Eric C. Morgan in Forsyth County Superior Court. Heard in the Court of Appeals 21 August 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Zachary Padgett, for the State.

Patrick S. Lineberry, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural History

Bobby Lindberg Caddell (Defendant) appeals from the trial court's Order denying his Motion to Suppress (Motion to Suppress Order), and from Judgments entered on 8 May 2017 after Defendant entered *Alford*¹ pleas for one count of Felonious Trafficking in Opium/Heroin, two counts of Felonious Possession with

¹ See *North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970).

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Intent to Sell or Deliver a Schedule II Substance, three counts of Felonious Maintaining Dwelling Used for Controlled Substances, one count of Misdemeanor Possession of Drug Paraphernalia, two counts of Felonious Possession with Intent to Sell or Deliver a Schedule I Substance, and attaining Habitual-Felon status. The Record in this matter shows the following:

On 26 April 2017, Detective E.M. Branson (Detective Branson) from the Winston-Salem Police Department filed an Application for Search Warrant for 2309 Urban Street (the Residence). In support of the application, Detective Branson attached an Affidavit. The Affidavit set forth the following:

During the month of March 2017, your AFFIANT received information from a confidential source “crack” cocaine, heroin, and marijuana was being sold by a white male they know as Bobby Caddell. Information was received that CADDELL lives and sells “crack” cocaine, heroin, and marijuana from 2309 Urban Street. . . . Your AFFIANT was able to identify Bobby Caddell through the Winston Salem Police PISTOL records.

During the last 72 hours, your AFFIANT met with the confidential reliable and compensated informant in an attempt to purchase “crack” cocaine from CADDELL. . . . The informant was provided with U.S. Currency from the Alcohol, Tobacco, Firearms and Explosives (ATF) buy fund and instructed to go directly to 2309 Urban Street to purchase “crack” cocaine from CADDELL. . . . The informant was observed making contact with CADDELL in the front yard of the residence. A short time later, the informant was observed exiting the front door of the residence followed by CADDELL. The informant responded to the predetermined location. The informant produced a quantity of “crack” cocaine that they advised they purchased from CADDELL inside of 2309 Urban Street. . . . The substance was subjected to

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a preliminary field test and showed a positive reaction to the schedule II controlled substance cocaine.

The confidential informant who was used to make the controlled buys is of proven reliability. The informant has provided information in the past that has led to the seizure of narcotics. The informant has never mislead or provided false information in the past.

.....

Your AFFIANT, Detective E. M. Branson, has been a Police Officer with the Winston-Salem, North Carolina Police Department for over sixteen (16) years and has been assigned to the Special Investigations Division for approximately 5 years. Your AFFIANT has received approximately 200 hours of specialized training in the identification and investigation of narcotics. Furthermore, your AFFIANT has made in excess of 150 arrests for narcotic violations at both the State and Federal levels.

That same day, a Superior Court Judge issued the Warrant. The search was executed on 27 April 2017. As a result of the search, the Winston-Salem Police Department seized heroin, fentanyl, “crack” cocaine, and other paraphernalia including digital scales, syringes, and plastic baggies. On 23 October 2017, Defendant was indicted on: one count of Felonious Trafficking in Opium/Heroin; Felonious Possession with Intent to Sell or Deliver a Schedule II Substance; Felonious Maintaining Dwelling Used for Controlled Substances; Misdemeanor Possession of Drug Paraphernalia; Felonious Possession with Intent to Sell or Deliver a Schedule I Substance; and, attaining Habitual-Felon status. On 7 May 2018, prior to trial, Defendant filed a Motion to Suppress evidence of the items seized from the Residence

alleging they were obtained as a result of an unlawful search and seizure under the United States and North Carolina Constitutions.

At a pretrial hearing also on 7 May 2018, the trial court conducted a hearing on Defendant's Motion to Suppress. The trial court denied Defendant's Motion and entered the Motion to Suppress Order. In the Motion to Suppress Order, the trial court made Findings of Fact. The relevant Findings of Fact are as follows:

4. As is set out in the application for the search warrant, in March 2017, Detective Branson received information from a confidential source that three types of drugs: "crack" cocaine, heroin, and marijuana were being sold by a white male known as Bobby Caddell, from a house located at 2309 Urban Street. Detective Branson also received information that the defendant was in possession of a .380 caliber handgun, a 9 mm handgun, and two shotguns.
5. After receiving this information, [D]etective Branson began an investigation, and checked the Winston-Salem Police data system known as PISTOL, and she was able to identify defendant through these records.
6. Thereafter, and as recited by the application for the search warrant, within 72 hours prior to applying for the warrant, Detective Branson met with a confidential reliable and compensated informant ("CI") in an effort to purchase "crack" cocaine from the defendant, Mr. Caddell.
7. Detective Branson had performed drug buys with this CI on three or four occasions prior, and the CI had never misled Detective Branson or provided false information, and had provided information in the past that led to the seizure of narcotics.
8. Prior to the drug purchase, the CI was searched, and was found to have no drugs, money, or contraband on their person.

9. The CI was provided with money from the ATF buy fund, and instructed to go to [the Residence] to purchase “crack” cocaine from defendant and then meet officers at a predetermined location after the controlled purchase.
10. Detective Branson parked approximately 100 yards away, and watched the CI make contact with defendant in the front yard of [the Residence].
11. A short time later, the CI was observed by Branson exiting the front door of the residence followed by defendant, and the length of time that the CI and the defendant stayed in the residence is consistent, in Detective Branson’s experience, with drug activity.
12. The CI thereafter provided Detective Branson with a quantity of “crack” cocaine that the CI stated was purchased from defendant inside [the Residence]. The informant was again searched and found to have no drugs, money, or contraband on their person.
13. The substance was subjected to a field test and tested positive for cocaine.

Based on the Findings of Fact, the trial court concluded, “on the totality of the circumstances, there was a sufficiently strong showing of probable cause for the issuance of the search warrant” and that “[t]he defendant’s rights under the U.S. and North Carolina Constitutions and applicable statutes were not violated.”

The following day, on 8 May 2018, Defendant entered into *Alford* pleas to one count of Felonious Trafficking in Opium/Heroin, two counts of Felonious Possession with Intent to Sell or Deliver a Schedule II Substance, three counts of Felonious Maintaining Dwelling Used for Controlled Substances, one count of Misdemeanor

Possession of Drug Paraphernalia, two counts of Felonious Possession with Intent to Sell or Deliver a Schedule I Substance, and attaining Habitual-Felon status. On 16 May 2018, Defendant filed a written Notice of Appeal with the Forsyth County Superior Court.

Appellate Jurisdiction

“An order finally denying a motion to suppress evidence may be reviewed upon an appeal from . . . a judgment entered upon a plea of guilty.” N.C. Gen. Stat. § 15A-979(b) (2017). To preserve the right to appeal, the defendant must notify his intent to appeal to both the State and trial court before plea negotiations are finalized. *State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979). Defendant’s trial counsel and counsel for the State orally confirmed at the suppression hearing that Defendant gave prior notice to the State. Additionally, the Transcript of Plea states: “Defendant . . . reserves his right to appeal the ruling on the motion to suppress made in this case . . . if unfavorable to the defendant.” Thus, this appeal is properly before this Court.

Issue

The sole issue on appeal is whether the trial court erred in denying Defendant’s Motion to Suppress in finding the Warrant was supported by probable cause. Defendant specifically argues that under the standard applicable to anonymous tips, the Warrant was unsupported by a sufficient showing of probable cause.

Analysis

I. Standard of Review

When reviewing the denial of a motion to suppress, “the reviewing court must determine whether competent evidence supports the trial court’s findings of fact and whether the findings of fact support the conclusions of law.” *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012) (citations and quotation marks omitted). “The trial court’s findings of fact on a motion to suppress are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *Id.* (citations and quotation marks omitted). Conclusions of law are reviewed *de novo*. *Id.* (citation omitted).

II. Motion to Suppress

A. Findings of Fact

Defendant challenges the trial court’s Findings of Fact 7, 8, 10, 11, 12, and 13, asserting that they are not based on competent evidence. We conclude there is sufficient evidence to support the trial court’s Findings of Fact and therefore they are binding on appeal. *Id.* (“The trial court’s findings of fact on a motion to suppress are conclusive on appeal[.]” (citations and quotation marks omitted)).

Defendant challenges Findings of Fact 7, 10, and 11 on the grounds they contain information not asserted in the Affidavit. It is error for a reviewing court to rely upon facts elicited at a suppression hearing that go beyond the four corners of

the warrant in determining probable cause. *See State v. Benters*, 367 N.C. 660, 673-74, 766 S.E.2d 593, 603 (2014).

Finding of Fact 7 states: “Detective Branson had performed drug buys with this CI on three or four occasions prior, and the CI had never misled Detective Branson or provided false information, and had provided information in the past that led to the seizure of narcotics.” The statement “Detective Branson had performed drug buys with this CI on three or four occasions prior[.]” comes from Detective Branson’s testimony at the suppression hearing and is not expressly included in the Affidavit. Assuming it was error for the trial court to consider the facts elicited from Detective Branson at the suppression hearing in Finding of Fact 7, we conclude Defendant was not prejudiced. *See id.* The remaining Findings of Fact support the Conclusions of Law and the magistrate’s finding of a substantial basis for probable cause. *See State v. McPhaul*, ___ N.C. App. ___, ___, 808 S.E.2d 294, 301 (2017). Moreover, the remaining portion of Finding of Fact 7 is consistent with the Affidavit, which states the CI “who was used to make the controlled buys is of proven reliability[.] . . . has provided information in the past that has led to the seizure of narcotics [and] has never mislead or provided false information in the past.”

Defendant argues Findings of Fact 10 and 11 are not supported by competent evidence because “[t]here were no circumstances in the affidavit indicating that the visual identifications of Mr. Caddell outside the residence, before and after the

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controlled purchase, were reliable.” The Affidavit unambiguously states: “The informant was observed making contact with CADDELL in the front yard of the residence. A short time later, the informant was observed exiting the front door of the residence followed by CADDELL.” The Defendant, challenging these Findings of Fact, did not present conflicting evidence, and even so, “[t]he trial court’s findings of fact on a motion to suppress are conclusive on appeal if supported by competent evidence, *even if the evidence is conflicting.*” *Williams*, 366 N.C. at 114, 726 S.E.2d at 165 (emphasis added) (citations and quotation marks omitted). Thus, we conclude Findings of Fact 10 and 11 are supported by competent evidence in the Record.

Defendant challenges Findings of Fact 8, 12, and 13 on the grounds that Detective Branson’s use of the passive voice in the Affidavit “did not attribute these observations to any particular source[.]” However, to conclude from her use of the passive voice that Detective Branson lacked knowledge of the events described therein would amount to a hypertechnical, rather than a commonsense, reading of her Affidavit. *See State v. Allman*, 369 N.C. 292, 294, 794 S.E.2d 301, 303 (2016) (“Reviewing courts should *not* invalidate warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner.” (emphasis added) (citations and quotation marks omitted)). Detective Branson’s Warrant indicated she received an anonymous tip and thereafter described her observations of the controlled purchase by the CI at the Residence to be searched. We decline to apply a

hypertechnical reading to the Affidavit and hold that Findings of Fact 8, 12, and 13 are supported by competent evidence. Because we hold the trial court's Findings of Fact are supported by competent evidence, they are binding on appeal. *See Williams*, 366 N.C. at 114, 726 S.E.2d at 165.

B. Conclusions of Law

Defendant further argues the challenged Findings of Fact ultimately do not support Conclusions of Law 2 and 3—that probable cause for the search existed under the totality of the circumstances. Reviewing the trial court's Conclusions of Law *de novo*, we conclude under the totality of the circumstances, the Findings of Fact support the trial court's conclusion there was a sufficient basis to find probable cause to support issuance of the Warrant.

The Fourth Amendment of the U.S. Constitution and Article 1, Section 20, of the Constitution of North Carolina protect against unreasonable searches and seizures by requiring the issuance of a warrant only on a showing of probable cause. *See Allman*, 369 N.C. at 293, 794 S.E.2d at 302-03. A court determines whether probable cause exists under the Fourth Amendment of the U.S. Constitution and Article 1, Section 20, of the Constitution of North Carolina with a totality-of-the-circumstances test. *Id.* (“[T]he probable cause analysis under the federal and state constitutions is identical.” (citing *Illinois v. Gates*, 462 U.S. 213, 230-31, 76 L. Ed. 2d

527, 543-44 (1983); *State v. Arrington*, 311 N.C. 633, 643, 319 S.E.2d 254, 260-61 (1984))).

A determination of probable cause is made by a “neutral and detached magistrate,” *id.* at 294, 794 S.E.2d at 303 (citations and quotation marks omitted), and is “based on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *State v. Riggs*, 328 N.C. 213, 219, 400 S.E.2d 429, 433 (1991) (citations and quotation marks omitted). “To determine whether probable cause exists under the totality of the circumstances, a magistrate may draw [r]easonable inferences from the available observations.” *Allman*, 369 N.C. at 294, 794 S.E.2d at 303 (quoting *Riggs*, 328 N.C. at 221, 400 S.E.2d at 434).

North Carolina law requires that all applications for search warrants contain “[a] statement that there is probable cause to believe that items subject to seizure . . . may be found in or upon a designated or described place” and “[a]llegations of fact supporting the statement” that are “supported by one or more affidavits particularly setting forth the facts and circumstances establishing probable cause[.]” N.C. Gen. Stat. § 15A-244(2), (3) (2017). “A magistrate must make a practical, common-sense decision, based on the totality of the circumstances, whether there is a fair probability that contraband will be found in the place to be searched.” *State v. McKinney*, 368 N.C. 161, 164, 775 S.E.2d 821, 824 (2015) (citations and quotation marks omitted).

Defendant contends that we should apply the “anonymous tip standard” to the probable-cause analysis.

When sufficient indicia of reliability are wanting, . . . we evaluate the information based on the anonymous tip standard. An anonymous tip, standing alone, is rarely sufficient, but the tip combined with corroboration by the police could show indicia of reliability that would be sufficient to pass constitutional muster.

Benters, 367 N.C. at 666, 766 S.E.2d at 598-99 (alterations, citations, and quotation marks omitted). The anonymous-tip standard applies when the affiant has “nothing more than [a] conclusory statement that the informant was confidential and reliable[.]” *Id.* at 668, 766 S.E.2d at 600 (citations and quotation marks omitted).

The North Carolina Supreme Court, in *Benters*, declined to hold probable cause supported a warrant under the anonymous-tip standard. *Id.* at 673, 766 S.E.2d at 603. In *Benters*, the anonymous tip, stating the defendant was growing marijuana, was provided to the affiant from another detective who received the tip from a “confidential and reliable source of information[.]” *Id.* at 662, 766 S.E.2d at 596. The affidavit in *Benters* “[did] not suggest [the affiant] was acquainted with or knew *anything* about Detective Hasting’s source or could rely on anything other than Detective Hasting’s statement that the source was confidential and reliable.” *Id.* at 668, 766 S.E.2d at 600 (emphasis added). Moreover, the affidavit “fail[ed] to establish the basis for Detective Hasting’s appraisal of his source’s reliability[.]” *Id.* Therefore, the affiant had no personal knowledge about the reliability of the source. Based on

the assertions in the affidavit, the Court concluded the tip “amount[ed] to little more than a conclusory rumor” and was an anonymous tip. *Id.* at 669, 766 S.E.2d at 600.

When an anonymous tip is the source of information supporting a warrant, “the officers’ corroborative investigation must carry more of the State’s burden to demonstrate probable cause.” *Id.* The corroboration of the tip in the *Benters* affidavit amounted to: statements on two years of the defendant’s utility records, the expertise and experience of Detective Hastings, and the observation of “multiple gardening items on defendant’s property in the absence of exterior gardens or potted plants.” *Id.* at 671-72, 766 S.E.2d at 602. Under the totality of the circumstances, our Supreme Court concluded the “verification of mundane information, Detective Hastings’s statements regarding defendant’s utility records, and the officers’ observations of defendant’s gardening supplies are not sufficiently corroborative of the anonymous tip or otherwise sufficient to establish probable cause[.]” *Id.* at 673, 766 S.E.2d at 603.

In contrast, in *State v. Lowe*, the North Carolina Supreme Court, citing *Benters*, held that there was a sufficient showing of probable cause. 369 N.C. 360, 365, 794 S.E.2d 282, 286 (2016) (citations omitted). In *Lowe*, “the anonymous tip was that the [suspect] was selling, using, and storing narcotics at his house.” *Id.* (quotation marks omitted). The affidavit in support of the warrant listed the detective’s training and experience, the history of the suspect’s drug-related arrests,

and stated that the detective “discovered marijuana residue in trash from [the suspect’s] residence, along with correspondence addressed to [the suspect].” *Id.* at 365, 794 S.E.2d at 286. “[U]nlike in *Benters*, the affidavit presented the magistrate with direct evidence of the crime for which the officers sought to collect evidence.” *Id.* (citations and quotation marks omitted). Therefore, our Supreme Court concluded “under the totality of the circumstances there was a substantial basis for the issuing magistrate to conclude that probable cause existed.” *Id.* at 366, 794 S.E.2d at 286.

Further, this Court held the circumstances were sufficient to support probable cause when a CI’s tip was substantiated by a controlled purchase. *State v. Ledbetter*, 120 N.C. App. 117, 123-24, 461 S.E.2d 341, 345 (1995). In *Ledbetter*, the detective’s affidavit “contained the statement he had received information from a confidential informant and thereafter described the controlled purchase of narcotics at the premises to be searched.” *Id.* at 123, 461 S.E.2d at 345. This Court articulated the “statement [the detective] had received information was not the focal point of his affidavit, but rather his precise and detailed recitation of his observations regarding the controlled purchase.” *Id.* (quotation marks omitted). The Court concluded “the search warrant herein was issued in reliance upon recitation in the affidavit of a controlled purchase of cocaine.” *Id.* at 122, 461 S.E.2d at 344. Therefore, this Court determined the affidavit was sufficient “to establish that the warrant was issued upon probable cause.” *Id.* at 124, 461 S.E.2d at 345.

Unlike in *Benters*, in the case *sub judice*, the Affidavit is supported by “more than [a] conclusory statement that the informant was confidential and reliable[.]” *Benters*, 367 N.C. at 668, 766 S.E.2d at 600 (citations and quotation marks omitted). In *Benters*, the affidavit was based on information provided to the affiant from another detective, and there was no basis for the appraisal of the source’s reliability. *Id.* In contrast, the Affidavit in the instant case is supported by the Affiant’s knowledge of the events therein, including the controlled purchase of “crack” cocaine, and her credibility determination of the CI, whom she met with both before and after the controlled purchase and had worked with previously. The trial court’s Findings of Fact establish Detective Branson, as Affiant, had personal knowledge of the CI’s reliability and witnessed the events averred to in the Affidavit. Therefore, in this case, we conclude there exist sufficient indicia of reliability and decline to apply the anonymous-tip standard set forth in *Benters*. *See id.* at 666, 766 S.E.2d at 598-99.

Furthermore, unlike *Benters*, where the corroboration of the anonymous tip consisted of “verification of mundane information, . . . statements regarding defendant’s utility records, and the officers’ observations of defendant’s gardening supplies” *id.* at 673, 766 S.E.2d at 603, the Affidavit here “presented the magistrate with direct evidence of the crime for which the officers sought to collect evidence.” *Lowe*, 369 N.C. at 365, 794 S.E.2d at 286 (citations and quotation marks omitted). Defendant was suspected of selling narcotics at the Residence. The magistrate was

presented with direct evidence of the crime with Detective Branson's observations of the CI's controlled purchase of "crack" cocaine. Thus, as our Supreme Court held in *Lowe*, there was a sufficient basis for the magistrate's conclusion that probable cause existed under the totality of the circumstances. *Id.* at 366, 794 S.E.2d at 286.

Moreover, as this Court reasoned in *Ledbetter*, the initial tip here was not the focal point of Detective Branson's Affidavit. 120 N.C. App. at 123-24, 461 S.E.2d at 345 (holding that there was a substantial basis for concluding that probable cause existed where the focal point of the affidavit in question was the "recitation of [the affiant's] observations regarding the controlled purchase" and not an initial anonymous tip). The focal point of Detective Branson's Affidavit was her recitation of the controlled purchase of "crack" cocaine by the CI at the Residence to be searched, which in turn presented the magistrate with "direct evidence of the crime for which the officers sought to collect evidence." *Lowe*, 369 N.C. at 365, 794 S.E.2d at 286 (citations and quotation marks omitted). Thus, we conclude, as this Court held in *Ledbetter*, that the Warrant was issued upon a sufficient showing of probable cause. *See Ledbetter*, 120 N.C. App. at 123-24, 461 S.E.2d at 345.

Reviewing the trial court's Conclusions of Law *de novo*, we conclude "under the totality of the circumstances there was a substantial basis for the issuing magistrate to conclude that probable cause existed." *Lowe*, 369 N.C. at 366, 794 S.E.2d at 286.

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Therefore, we affirm the trial court's denial of Defendant's Motion to Suppress and the Judgments entered as a result of his *Alford* pleas.

Conclusion

Accordingly, based on the foregoing reasons, we affirm the trial court's denial of Defendant's Motion to Suppress and Judgments entered pursuant to Defendant's *Alford* pleas.

AFFIRMED.

Judges INMAN and BROOK concur.