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NO. COA05-1553

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

STATE OF NORTH CAROLINA

v.

Robeson County
Nos. 02 CRS 13621, 13622,
13625

ANTONIO RAMIREZ PENALOSA

Appeal by defendant from judgments entered 28 March 2005 by Judge Thomas D. Haigwood in Robeson County Superior Court. Heard in the Court of Appeals 23 August 2006.

Attorney General Roy Cooper, by Assistant Attorney General Jane Ammons Gilchrist, for the State.

Paul F. Herzog for defendant-appellant.

CALABRIA, Judge.

Antonio Ramirez Penalosa ("defendant") appeals from a judgment entered pursuant to a plea agreement for convictions of possession of cocaine with intent to sell and/or deliver, trafficking cocaine by possession, and trafficking cocaine by manufacturing. We affirm.

On the evening of 8 August 2002, Detective Kevin Meares ("Detective Meares") and Agent Paul Pittman ("Agent Pittman") responded to a tip involving drug dealing at a home in Shannon, North Carolina. Agent Pittman knocked on the door, and Julio Gabriel Guzman ("Guzman") answered. Agent Pittman asked for

consent to search the home in English, but Guzman answered he "didn't stay there." Another person, Octavio Rojas-Galicia ("Galicia"), then joined Guzman at the door. Agent Pittman, who earlier that day completed a three-day course in Spanish, asked Galicia if he spoke English. When Galicia failed to respond, Agent Pittman read from a note he had written himself and asked in Spanish whether he and Detective Meares could have consent to search the house. Galicia replied "si," which means "yes" in Spanish.

Following this exchange, Galicia and Guzman stepped back and did not object, while Agent Pittman and Detective Meares entered and searched the house. After discovering a bag of cocaine in a suitcase, Agent Pittman and Detective Meares arrested Galicia and Guzman as well as the defendant, who had been sitting at the kitchen table. A search of defendant produced a bag of cocaine and a key that matched one found hanging on a wall, which Detective Meares and Agent Pittman used to open a locked bedroom containing six kilograms of cocaine. When State Interpreter Ingrid Russ ("Interpreter Russ") arrived, she read the suspects their *Miranda* rights in Spanish.

The State indicted defendant for, *inter alia*, possession of cocaine with intent to sell and/or deliver, trafficking cocaine by possession, and trafficking cocaine by manufacturing. On 25 December 2002, defendant filed a motion to suppress statements and evidence obtained without a search warrant. At the motion to suppress hearing, Detective Meares and Agent Pittman testified for

the State. Interpreter Russ translated the phrase Agent Pittman read to Galicia as "could we have the consent to search your house. Drugs, cocaine, marijuana, pistols or firearms." The interpreters for Galicia, Guzman, and defendant disagreed with Interpreter Russ on the best English translation of Agent Pittman's handwritten note. The interpreters for the defense maintained a better translation for the word "radisio" or "radiso" used in Agent Pittman's request for consent to search the home would have been "look" rather than "search." One of the interpreters also asserted that the first word in Agent Pittman's request to search the home should be translated as "rotten" rather than "could we," producing a partially nonsensical sentence. The trial court denied the motion to suppress.

Defendant then pled guilty pursuant to a plea agreement, and the trial court sentenced him to a minimum of 70 months to a maximum of 84 months in the North Carolina Department of Correction. However, defendant reserved the right to appeal the denial of his motion to suppress evidence discovered as a result of the search. Defendant now appeals the denial of his motion to suppress.

In his sole argument on appeal defendant argues the police violated his "rights to be free from unreasonable search and seizure," guaranteed by the federal and state constitutions. Consent searches have long been recognized as valid exceptions to the Fourth Amendment's warrant requirement. *State v. Graham*, 149 N.C. App. 215, 218, 562 S.E.2d 286, 288 (2002) (citation omitted).

"The only requirement for a valid consent search is the voluntary consent given by a party who had reasonably apparent authority to grant or withhold such consent." *State v. Houston*, 169 N.C. App. 367, 371, 610 S.E.2d 777, 780 (2005) (citations omitted). See also, N.C. Gen. Stat. § 15A-221, and § 15A-222 (2005). The fact that a defendant "understood [the request for consent]," combined with the finding "that no force or coercion was used against him or any promises made to him . . . support[s] the legal conclusion that defendant voluntarily, willingly[,] and understandingly consented to the search." *State v. Fincher*, 309 N.C. 1, 9, 305 S.E.2d 685, 691 (1983). Further, "[a] tenant in possession of the premises" is "a person who by ownership or otherwise is reasonably apparently entitled to give or withhold consent to a search of premises" within the meaning of N.C. Gen. Stat. § 15A-222. *State v. Reagan*, 35 N.C. App. 140, 142, 240 S.E.2d 805, 807 (1978) (internal quotations omitted).

Our standard of review of an order denying a motion to suppress is "strictly limited to determining whether the . . . findings of fact are supported by competent evidence . . . and whether those factual findings in turn support the [trial court's] ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). Because defendant did not assign error to any findings of fact, "our review [of the motion to suppress] is limited to the question of whether the trial court's findings of fact, which are presumed to be supported by competent evidence,

support its conclusions of law and judgment." *State v. Pickard*, __ N.C. App. __, __, 631 S.E.2d 203, 206 (2006).

In the instant case, the trial court's finding of fact number six states that Guzman told Agent Pittman that Galicia lived at the residence. In finding of fact number seven, the trial court found that Galicia answered affirmatively when Agent Pittman asked for consent to search "your house." Under *Reagan*, these findings sufficiently support a conclusion that Galicia was a tenant in possession of the premises who was competent to consent to the search. *Reagan*, 35 N.C. App. at 142, 240 S.E.2d at 807. The trial court's finding of fact number seven further establishes that after Galicia responded "yes" in Spanish when asked for consent to search, Galicia backed out of the doorway and did not object to the search. Additionally, in finding of fact number eight, the trial court found that neither Agent Pittman nor Detective Meares "ever threatened, harassed, [or] made any promises to the defendants . . . nor did they ever draw their weapons." Therefore, pursuant to *Fincher*, the trial court's findings regarding Galicia's affirmative response and the lack of any threatening action or statement from Agent Pittman or Detective Meares sufficiently establish that consent was voluntary. *Fincher*, 309 N.C. at 9, 305 S.E.2d at 691. Consequently, since the findings illustrate that Galicia's consent was voluntarily given by a person competent to consent pursuant to N.C. Gen. Stat. § 15A-222, we affirm the trial court's conclusion that the search of the residence was lawful.

Affirmed.

Judges GEER and JACKSON concur.

Report per Rule 30(e).