NO. COA05-825

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

STATE OF NORTH CAROLINA

v. Dare County
No. 04 CRS 50220

BENJAMIN RICHARD CARIGNAN,
Defendant.

Appeal by defendant from judgment entered 12 January 2005 by Judge J. Richard Parker in Dare County Superior Court. Heard in the Court of Appeals 9 February 2006.

Attorney General Roy Cooper, by Assistant Attorney General Angel E. Gray, for the State.

M. Jason Williams for defendant-appellant.

GEER, Judge.

Defendant Benjamin Richard Carignan appeals from his convictions for possession of less than one and one-half ounces of marijuana and for possession of drug paraphernalia. Defendant contends that the trial court erred by denying his motion to dismiss the charges as violating his constitutional rights to freedom of religion and speech and by denying his motion to suppress evidence seized from his bedroom following a warrantless search. We hold that the imposition of North Carolina's controlled substances laws upon defendant does not violate his constitutional rights and that the trial court did not err when it found that

defendant's girlfriend, with whom he shared a home, voluntarily consented to the search of their bedroom.

Facts

At trial, the State's evidence tended to show the following facts. On the evening of 31 January 2004, Officer Adam Boyd of the Kill Devil Hills Police Department noticed an illegally parked car in front of defendant's residence. When Officer Boyd checked the car's license plate number, he discovered that there was an arrest warrant out for the car's owner, Chris Atkinson. When a woman, Ruth Schaffer, emerged from the residence, Officer Boyd asked her whether Mr. Atkinson was inside. She said that he was, and Officer Boyd arrested Mr. Atkinson without incident outside of the home.

As a result of a conversation with Mr. Atkinson, Officer Boyd knocked on the door of the house, and, when defendant answered, asked defendant if he had a water bong in his bedroom. Although defendant initially denied it, he eventually went inside and returned to the door with a water bong. Corporal Holland, another Kill Devil Hills police officer who had arrived, seized the bong and arrested defendant for possession of drug paraphernalia. Defendant was then placed in the back of Officer Boyd's patrol car.

When Officer Boyd again knocked on the door, no one responded, even though Officer Boyd could see Ms. Schaffer, defendant's girlfriend, through the window. He knocked on the window and "pointed for her to come to the door." After Ms. Schaffer, who also lived in the house, then opened the door, the officers told her that defendant had been arrested and "advised her [that] if

there was [sic] any other illegal narcotics in the residence or paraphernalia to go in the bedroom and get it and bring it out . . . ." Ms. Schaffer returned with a box of paraphernalia, including scales, a "vaporiz[ing] machine," pipes, and rolling papers. She placed these items in front of the officers, who entered the residence and seized them. The officers told her to bring out "anything else," and Ms. Schaffer asked if she had to comply. Officer Boyd responded: "No, ma'am, you don't but we'll apply for a search warrant and come back."

Ms. Schaffer retreated to the bedroom and returned with more paraphernalia. The officers again advised her that if there was anything else, she should bring it out. Ms. Schaffer again asked if she had to comply, and the officers responded that if she did not they would "apply for a search warrant and come back and seize the items." In response, Ms. Schaffer escorted the officers to the bedroom and began pulling marijuana plants out of the closet. The officers seized the plants, along with various items used to grow them. Officer Boyd then "had [Ms. Schaffer] write out a statement" in which she stated that "[t]he police officers were given permission to search my room."

After his arrest, defendant provided the police with a lengthy hand-written statement in which he claimed that he smoked marijuana for religious reasons. Defendant's statement explained that marijuana "was used by Jesus Christ in his holy anointing oil" and that defendant was growing marijuana because he wished to "supply [him]self with an organic, pesticide free, and powerful

sacrament."[1] Defendant stated that he had grown "tired of all of the dirty mexican brick weed that [he] had to choke down over the years so [he] decided to grow [his] own . . . ." The statement went on to detail defendant's growing operation.

Defendant was indicted for possession with intent to sell and deliver marijuana, maintenance of a dwelling house to keep and sell marijuana, manufacture of marijuana, and possession of drug paraphernalia. At the close of the State's evidence, the trial court granted defendant's motion to dismiss the counts of maintaining a dwelling and possession with intent to sell and deliver marijuana. A jury subsequently found him guilty of possession of marijuana and drug paraphernalia, but not guilty of manufacturing marijuana. The trial court sentenced defendant to 45 days in the Dare County jail, but suspended the sentence and placed defendant on 12 months supervised probation. Defendant timely appealed to this Court.

I

Defendant first argues that the trial court erred by denying his motion to dismiss because his prosecution violated his constitutional rights to freedom of religion and speech. In *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 108 L. Ed. 2d 876, 110 S. Ct. 1595 (1990), the United States Supreme Court held that "the right of free exercise does not

[1]Defendant claimed at trial that for several months prior to his arrest, he had been involved with the "Hawaiian Cannabis Ministry," which, according to defendant, "regards the actual consumption of cannabis as prayer [and] a form of worship."

relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Id.* at 879, 108 L. Ed. 2d at 886, 110 S. Ct. at 1600 (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3, 71 L. Ed. 2d 127, 136 n.3, 102 S. Ct. 1051, 1059 n.3 (1982) (Stevens, J., concurring)). Nevertheless, the Court held, the First Amendment may still bar the application of a neutral and generally applicable law to religiously motivated action when the action involves not only the Free Exercise Clause, but the Free Exercise Clause in conjunction with some other constitutional protection. *Id.* at 881-82, 108 L. Ed. 2d at 887, 110 S. Ct. at 1601.[2]

Defendant does not dispute that North Carolina's controlled substances laws are neutral and generally applicable laws. Rather, defendant contends that, because he is an ordained minister in the Universal Life Church and smokes marijuana for religious reasons as

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[2]We note that the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") superceded *Smith* with respect to land-use regulation and religious exercise of institutionalized persons. *See Cutter v. Wilkinson*, 544 U.S. 709, 714-15, 161 L. Ed. 2d 1020, 1029-30, 125 S. Ct. 2113, 2117-18 (2005) (discussing coverage of RLUIPA). Outside of these limited fields, however, *Smith* still provides the relevant federal law governing the impact of State legislation on religious freedoms. *See City of Boerne v. Flores*, 521 U.S. 507, 537, 138 L. Ed. 2d 624, 649, 117 S. Ct. 2157, 2172 (1997) (noting that, despite congressional attempt to overrule *Smith* with Religious Freedom and Restoration Act of 1993 ("RFRA"), "RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance"). *See also Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, ___ U.S. ___, ___ n.1, 163 L. Ed. 2d 1017, 1027 n.1, 126 S. Ct. 1211, 1217 n.1 (2006) ("As originally enacted, RFRA applied to States as well as the Federal Government. In [*Flores*], we held the application to States to be beyond Congress' legislative authority under § 5 of the 14th Amendment.").

part of his adherence to the Hawaiian Cannabis Ministry, his prosecution impinges both his freedom of religion (by prosecuting him for using marijuana) and his freedom of speech (by prohibiting him from going "about the business of spreading the word about his religion, sharing and leading prayers with other similarly situated believers."). Defendant has not, however, made any showing as to how this prosecution abridges his freedom of speech. Defendant was prosecuted for the possession and manufacture of marijuana, and the possession of drug paraphernalia — charges that are unrelated to and do not preclude defendant's speech in support of the Universal Life Church or the Hawaiian Cannabis Ministry.

Accordingly, the only constitutional right implicated by defendant's argument is his right to freely exercise his religion and, therefore, under *Smith*, defendant's prosecution does not violate his First Amendment rights. With respect to defendant's rights under federal law, this assignment of error is, consequently, overruled.

Regarding defendant's rights under state law, the North Carolina Constitution, art. I, § 13, provides: "All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience." Our courts have held that the religious freedoms protected by this provision are co-extensive with those protected by federal law. *See, e.g.*, *In re Williams*, 269 N.C. 68, 78, 152 S.E.2d 317, 325 ("[T]he freedom protected by this provision of the

State Constitution is no more extensive than the freedom to exercise one's religion, which is protected by the First Amendment to the Constitution of the United States."), *cert. denied*, 388 U.S. 918, 18 L. Ed. 2d 1362, 87 S. Ct. 2137 (1967).

Williams was, however, decided before *Smith* and sets forth an arguably more protective view of individual religious freedoms than that recognized in *Smith*: "The liberty secured by the First Amendment to the United States Constitution and by Article I, § [13], of the Constitution of North Carolina are . . . so basic and fundamental that one may not be compelled by governmental action to do that which is contrary to his religious belief in the absence of a '*compelling state interest in the regulation of a subject within the State's Constitutional power to regulate*.'" *Id.* at 80, 152 S.E.2d at 326 (quoting *Sherbert v. Verner*, 374 U.S. 398, 403, 10 L. Ed. 2d 965, 970, 83 S. Ct. 1790, 1793 (1963)) (emphasis added). Our courts have not yet addressed whether the analysis in *Smith* should apply with respect to the North Carolina Constitution.

Our Supreme Court specifically noted in *Williams*, however, that "[t]he use of drugs may be prohibited notwithstanding the user's asserted belief that such use is required by Divine Law." *Id.* at 79, 152 S.E.2d at 326. This holding is binding on this Court and is sufficient to establish that defendant's prosecution does not violate North Carolina's Constitution. Moreover, we note that other jurisdictions have overwhelmingly held that a state can regulate the use of marijuana, irrespective of a defendant's claimed religious motivations. *See, e.g.*, *State v. Adler*, 108 Haw.

169, 176-78, 118 P.3d 652, 659-61 (2005) (finding marijuana prohibition legal under Hawaii Constitution); *Rupert v. Portland*, 605 A.2d 63, 68 (Me. 1992) (concluding Maine's prohibition on marijuana use did not violate defendant's religious freedom rights under either federal or state constitutions); *Commonwealth v. Nissenbaum*, 404 Mass. 575, 581-82, 536 N.E.2d 592, 595-96 (1989) (rejecting defendant's freedom of religion claim that he was entitled to smoke marijuana); *State v. Olsen*, 315 N.W.2d 1, 7-9 (Iowa 1982) (rejecting defendant's freedom of religion claim regarding his "right" to smoke marijuana, finding a compelling state interest in regulating marijuana, and compiling case law from other jurisdictions). This assignment of error is, therefore, overruled.

II

Defendant next argues that the trial court erred by concluding that Ms. Schaffer voluntarily consented to the officers' search of defendant's bedroom and denying his motion to suppress the evidence obtained as a result of the search. "Our review of a denial of a motion to suppress by the trial court is 'limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law.'" *State v. Barden*, 356 N.C. 316, 340, 572 S.E.2d 108, 125 (2002) (quoting *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074, 123 S. Ct. 2087 (2003).

Although searches and seizures inside a home without a warrant are presumptively unreasonable, consent has long been recognized as a special situation excepted from the warrant requirement. *See State v. Smith*, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997). The government bears the burden of proving that consent was freely and voluntarily given. *See United States v. Matlock*, 415 U.S. 164, 177, 39 L. Ed. 2d 242, 253, 94 S. Ct. 988, 996 (1974); *State v. Wilson*, 155 N.C. App. 89, 97, 574 S.E.2d 93, 99 (2002), *appeal dismissed and disc. review denied*, 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). "'[W]hether a consent to a search was in fact "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.'" *State v. Fincher*, 309 N.C. 1, 5, 305 S.E.2d 685, 689 (1983) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 36 L. Ed. 2d 854, 862-63, 93 S. Ct. 2041, 2047-48 (1973)).

The trial court based its determination that Ms. Schaffer voluntarily consented to the search on its findings that when Officer Boyd returned to the house after arresting defendant, Ms. Schaffer, who was staying with defendant in the bedroom, "gave the officer verbal consent to search the premises"; that Ms. Schaffer "led [the officers] to the bedroom closet where growing marijuana plants were located, along with other drug paraphernalia"; and that Ms. Schaffer also gave the officers "written consent to search the house." These findings are supported by competent evidence that was presented at the voir dire hearing and, consequently, our

standard of review precludes us from revisiting the issue. *Barden*, 356 N.C. at 340, 572 S.E.2d at 125.

Defendant argues that the totality of the circumstances indicate Ms. Schaffer's consent was in fact coerced. This argument, however, attempts to persuade us to draw inferences in defendant's favor that the trial court did not draw. Officer Boyd testified at the voir dire hearing that he requested that Ms. Schaffer bring out any drugs or paraphernalia that were on the premises and informed her that, if she did not, he would seek a search warrant. According to Officer Boyd, Ms. Schaffer was not crying or upset while talking with the officers, and he denied telling her that she was required to sign the consent form. This testimony provides ample competent evidence to support the trial court's finding that, under the totality of the circumstances, Ms. Schaffer voluntarily consented to the search.

In turn, these findings all support the trial court's legal conclusions that "Officer Boyd had valid consent" and that the search, therefore, "did not violate any of the defendant's constitutional rights." *See, e.g.*, *Fincher*, 309 N.C. at 6-9, 305 S.E.2d at 689-91 (concluding defendant provided valid consent when officers read and discussed consent form with defendant and his co-tenant grandmother and explained to defendant that if he did not consent they would get a search warrant); *State v. Houston*, 169 N.C. App. 367, 371, 610 S.E.2d 777, 781 (concluding defendant validly consented to search of his room and safe when he verbally consented, did not appear nervous or scared, was cooperative, led

officers to the room, provided combination to the safe, was not threatened, was present during the search, and gave no indication he wished to revoke consent), *appeal dismissed and disc. review denied*, 359 N.C. 639, 617 S.E.2d 281 (2005). This assignment of error is, accordingly, overruled.

No error.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).