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NO. COA07-1318

NORTH CAROLINA COURT OF APPEALS

Filed: 3 June 2008

STATE OF NORTH CAROLINA

v.

Union County
No. 03 CRS 056971

DARRIN CLARK

Appeal by defendant from order entered 7 August 2007 by Judge Linwood Foster in Superior Court, Union County. Heard in the Court of Appeals 29 April 2008.

Attorney General Roy Cooper, by Assistant Attorney General M. Elizabeth Guzman, for the State.

Tin Fulton & Owen, PLLC, by Noell P. Tin, for defendant-appellant.

WYNN, Judge.

When considering the denial of a motion to suppress, the trial court's findings of fact "are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting."¹ Here, although the trial court heard conflicting testimony as to the search of Defendant Darrin Clark's home, competent evidence supported the findings that "the initial search was consensual" and that additional drugs were found after the arrival of the search warrant. We therefore affirm the trial court's denial of

¹ *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (citations omitted).

Defendant's motion to suppress.

On 16 December 2003, Officer Brian Gillard, a member of the Narcotics Unit of the Monroe Police Department, received information from a confidential informant that Defendant had cocaine and marijuana at his residence. Based on that tip, Officer Gillard sent several other Monroe police officers, including Chris Helms, David McCallister, Watinia Goforth, and Robbie Hart, to Defendant's home to "speak with him about the drugs and what [the police] had been hearing on the streets[.]" According to Officer Gillard, he was then informed by Officer Helms that "[Defendant] originally had cooperated and was going to take him to some illegal narcotics that he had in his house, but then he denied consent to search his residence."

At that point, Officer Gillard instructed Officer Helms not to search the home and that he would obtain a search warrant to do so. Within the next thirty minutes, while he was still working on the warrant, Officer Gillard received another call from Officer Helms, who told him that "[Defendant] had cooperated . . . He had given [Officer Helms] some of the drugs and there was a weapon inside the residence." Officer Gillard then obtained the search warrant from a magistrate and proceeded to Defendant's house. A subsequent search of Defendant's home turned up additional quantities of cocaine, one thousand dollars in United States currency, a razor blade, and a scale.

The testimony of Officers Helms, McCallister, and Goforth corroborated this version of events, as presented by Officer

Gillard at trial. According to Officer Helms, when he arrived at Defendant's home, he was told by Officers McCallister and Goforth that Defendant had denied consent to search his house. However, because Officer Helms knew Defendant from prior interactions since Defendant had also worked for the City of Monroe, he approached Defendant again and informed him of the "reliable information" the police had received as to drugs being present in his home. He said to Defendant that "[i]t would just work out better if [Defendant] would just go ahead and give [police] the dope" in terms of getting release on bond, and he told Defendant that Officer Gillard was going to get a search warrant. Officer Helms recounted that Defendant "pac[ed] back and forth inside his residence" before letting Officers Helms and Hart come inside to get the cocaine. Defendant led Officers Helms and Hart to a closet inside a bathroom, which Defendant unlocked and opened, and gave the officers a weapon and a bag of what appeared to be cocaine that were located inside.

The conversation between Officer Gillard and Officer Helms then took place, with Officer Helms telling Officer Gillard what had been found and Officer Gillard instructing him to stop the search and wait for the search warrant to arrive. According to Officer Helms, Defendant became upset when he learned that the search warrant was still going to be executed on his home, insisting that he had given the officers all the drugs he had in the house. After the entire house was searched, however, "[a] large quantity of cocaine was found within the closet that was

previously opened by [Defendant] . . . contained in a little small - say attaché case[.]” Nevertheless, on cross-examination, Officer Helms testified that he could not identify “which exhibit is which” in the case, such that he was unable to indicate which drugs Defendant gave to the police prior the arrival of the warrant and which drugs were found subsequent to the search with the warrant.

Defendant disputed the police officers’ version of events, testifying that he denied consent to search his house to Officers Hart and Goforth, the latter of whom “pulled her gun out her holster [sic] and stuck her hand in the door and told [Defendant] that [he] couldn’t close that door[.]” He claimed that all of the officers then came into his house and started moving around while Officer Hart questioned him in the living room. According to Defendant, he never spoke to Officer Helms but did give him the gun; however, Defendant stated that he did not give any drugs to any of the officers prior to the arrival of the search warrant. Defendant further asserted that he “really didn’t tell them they could search,” but that he “had no other choice” than to “sit back in the chair and they did what - what they wanted to.”

At the conclusion of the voir dire testimony on Defendant’s motion to suppress, the trial court made oral findings of fact including that “the initial search was consensual” and that “a search warrant was secured and other drugs were found after the officer returned with the search warrant.” The trial court then denied Defendant’s motion to suppress. Following the denial of the motion, Defendant pled guilty to one count of trafficking in

cocaine by possession; subsequent to that plea agreement, the State dismissed the other charges of trafficking in cocaine by manufacture, possession of drug paraphernalia, felony possession of marijuana, maintaining a dwelling to keep controlled substances, and possession with intent to sell and deliver marijuana. The trial court sentenced Defendant to thirty-five to forty-two months in prison.

Defendant now appeals, arguing that the trial court erred in denying his motion to suppress, as Defendant did not knowingly and voluntarily consent to the search of his home, and the initial search was conducted without a warrant.

Our standard of review to determine whether a trial court properly denied a motion to suppress is "whether the trial court's findings of fact are supported by the evidence and whether the findings of fact support the conclusions of law." *State v. Cockerham*, 155 N.C. App. 729, 736, 574 S.E.2d 694, 699 (citing *State v. Wynne*, 329 N.C. 507, 522, 406 S.E.2d 812, 820 (1991)), *disc. review denied*, 357 N.C. 166, 580 S.E.2d 702 (2003). The trial court's findings of fact "are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (citations omitted). The conclusions of law, however, are reviewed *de novo* by this Court. *State v. Brooks*, 337 N.C. 132, 141, 446 S.E.2d 579, 585 (1994).

Although Defendant argues that the trial court erred by denying his motion when he did not knowingly and voluntarily

consent to a search of his home, there is ample competent evidence in the record to support the trial court's finding that "the initial search was consensual." Officer Helms testified at length that Defendant initially refused to allow the police to enter but then relented after speaking to Officer Helms and learning that the police had reliable information as to the presence of drugs inside. Defendant relies on *Bumper v. North Carolina*, 391 U.S. 543, 20 L. Ed. 2d 797 (1968), to argue that his consent was not voluntary because it was given in response to information that the police were obtaining a search warrant for his home. However, this reliance is misplaced.

In *Bumper*, the police gained the consent of the defendant's grandmother to search the home based on a false claim that they had a warrant to search the house. *Id.* at 546, 20 L. Ed. 2d at 801. No warrant was ever obtained nor presented to either the defendant or his grandmother; rather, the State explicitly argued at trial that the grandmother had voluntarily consented to the search, such that a warrant was unnecessary. *Id.* at 547-48, 20 L. Ed. 2d at 801-02. The Supreme Court therefore held that, "When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent." *Id.* at 550, 20 L. Ed. 2d at 803.

In the instant case, the trial court heard testimony from several police officers that Defendant was informed that a search

warrant for his home was being obtained and that he would likely get a better bond if he cooperated with the police prior to the arrival of the warrant. Unlike in *Bumper*, this information was all true; regardless of whether Defendant consented at that time, a search warrant was on its way, and his house would be searched by the police. Officer Helms and the others merely gave Defendant the opportunity to cooperate prior to the arrival of the warrant and thereby perhaps improve the conditions of his release. After "pacing back and forth inside his residence," Defendant agreed and turned over a weapon and small quantity of drugs to the police. Given that a larger amount of drugs was later recovered from Defendant's house, under the authority of a lawful search warrant, the record strongly suggests that Defendant attempted to use his cooperation to limit the contraband that police would discover in his possession, and then changed his mind when he realized a more thorough search pursuant to a warrant was still going to take place.

Although Defendant, his sister, and his friend offered conflicting testimony as to the sequence of events, competent evidence in the record supported the trial court's finding of fact that the initial search was consensual, which in turn supported the denial of Defendant's motion to suppress. See *Buchanan*, 353 N.C. at 336, 542 S.E.2d at 826 (holding that the trial court's findings of fact "are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting."). Accordingly, we reject Defendant's arguments on appeal and affirm the trial court's denial of Defendant's motion to suppress.

Affirmed.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).