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NO. COA08-243

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2008

STATE OF NORTH CAROLINA

v. Guilford County
No. 03 CRS 84998

GLENN DEVON McKINNEY

Court of Appeals

Slip Opinion

Appeal by Defendant from order entered 4 October 2007 by Judge L. Todd Burke in Guilford Superior Court. Heard in the Court of Appeals 7 October 2008.

Attorney General Roy Cooper, by Assistant Attorney General William B. Crumpler, for the State.

Paul F. Herzog, for Defendant.

Arrowood, Judge.

Glenn McKinney (Defendant) appeals from an order denying his motion to suppress evidence obtained from a residence at 1917 Drexel Road, in Greensboro, North Carolina. We affirm.

This appeal marks the second time that this Court has reviewed this case. The relevant factual and procedural background is set out in *State v. McKinney*, 361 N.C. 53, 637 S.E.2d 868 (2006) (*McKinney I*), and may be summarized as follows: On 17 May 2003, Greensboro police officers received information indicating that Defendant had killed his roommate, Jerry Alston. Law enforcement

officers went to Alston's house at 1917 Drexel Road, and found it locked. Alston's brother, Ricky Alston, climbed through a window and then invited the law enforcement officers into the house. As they looked through Alston's home, the officers saw what appeared to be blood spatters on a bedroom wall. The officers then left the house and returned after obtaining a search warrant. In the course of executing the search warrant, the officers "noticed a large, city-issued trash can in the laundry room. A towel and two candles were on the lid of the can. . . . Underneath the towel on the lid of the can was a computer-generated note that said 'Glenn Devon McKinney did this.' When the officers opened the trash can, they discovered the victim's body inside." *McKinney I*, 361 N.C. at 55, 637 S.E.2d at 870. Thereafter:

> Defendant was tried non-capitally, convicted of first-degree murder, and sentenced to life imprisonment without parole. Before trial, defendant filed a motion to suppress the evidence obtained from 1917 Drexel Road. His motion challenged . . . the officers' initial warrantless entry into the residence . . . [and] the validity of the subsequent search warrant. . . . [T]he state argued that defendant lacked standing to object to the initial warrantless entry of the house, and, in the alternative, that exigent circumstances authorized law enforcement officials to enter the residence. The trial court denied defendant's motion to suppress.

McKinney I, 361 N.C. at 56, 637 S.E.2d at 870-71. On appeal, this Court reversed Defendant's conviction, holding that the initial police entry into the residence was unlawful, and therefore the subsequent search warrant was the "fruit of the 'poisonous' tree."

State v. McKinney, 174 N.C. App. 138, 141, 619 S.E.2d 901, 904 (2005).

The North Carolina Supreme Court granted the State's petition for discretionary review and in *McKinney I* it affirmed in part, reversed in part, and remanded for further findings of fact by the trial court. The Court held that this Court "properly concluded 'that the State failed to establish any exigent circumstances authorizing the officers' warrantless entry'" and "affirm[ed] that portion of the Court of Appeals decision which held that 'to the extent that the trial court relied upon exigent circumstances in reaching its decision, . . . the trial court erred.'" *McKinney I*, 361 N.C. at 61, 637 S.E.2d at 874 (quoting *State v. McKinney*, 174 N.C. App. 138, 146, 619 S.E.2d 901, 907 (2005)). The Court reversed this Court's holding that the initial warrantless entry necessarily rendered the search warrant invalid, and held that the dispositive issue was whether the affidavit offered in support of the search warrant contained enough untainted evidence to support a finding of probable cause. Accordingly, the Court vacated this Court's reversal of Defendant's conviction and remanded to the trial court for findings on "whether the trial court would have found the evidence seized pursuant to the warrant admissible even if the tainted evidence had been excised from the warrant application." *McKinney I,* 361 N.C. at 63, 637 S.E.2d at 875.

In addition, the North Carolina Supreme Court held that:

> During the suppression hearing in the instant case, the prosecutor raised and properly preserved the issue of defendant's standing to contest the search. Conflicting evidence was

> presented as to whether defendant maintained a reasonable expectation of privacy in the premises. The trial court did not resolve this conflicting evidence or issue any conclusions as to whether such facts gave rise to a reasonable expectation by defendant of privacy in the victim's residence at the time the search was conducted. Because of this omission, defendant's standing to contest the validity of the search is unclear, and, though we express no opinion on this question, our standard of review compels us to remand the case for findings of fact on this issue.

McKinney I, 361 N.C. at 57, 637 S.E.2d at 871.

On remand, the trial court conducted a hearing in September 2007 and entered an order on 4 October 2007. The court denied Defendant's suppression motion on three separate grounds. The trial court ruled that Defendant lacked standing to contest the warrantless entry at 1917 Drexel Road by police, because he had abandoned the premises prior to the officers' entry and search. The Court also concluded that the search warrant was valid because after excluding the 'tainted' evidence, the warrant application still contained "an abundance of evidence to support a finding of probable cause by the issuing magistrate." In addition, the trial court ruled that "all evidence located within the premises at 1917 Drexel Road would have been inevitably discovered by law enforcement officials." From this order Defendant has appealed.

<u>Standard of Review</u>

Defendant appeals the denial of his motion to suppress evidence. "The trial court's findings of fact regarding a motion to suppress are conclusive and binding on appeal if supported by competent evidence. This Court determines if the trial court's

findings of fact support its conclusions of law. Our review of a trial court's conclusions of law on a motion to suppress is *de novo*." *State v. Edwards*, 185 N.C. App. 701, 702, 649 S.E.2d 646, 648, *disc. rev. denied*, 362 N.C. 89, 656 S.E.2d 281 (2007) (internal citations and quotations omitted). In the instant case, Defendant does not assign error to any of the trial court's findings of fact, which are therefore binding on appeal:

> On a motion to suppress evidence, the trial court's findings of fact are conclusive on appeal if supported by competent evidence. Defendant has not assigned error to any specific finding of fact. Therefore, the findings of fact are not reviewable, and the only issue before us is whether the conclusions of law are supported by the findings, a question of law fully reviewable on appeal.

State v. Campbell, 359 N.C. 644, 661-62, 617 S.E.2d 1, 12 (2005) (citations omitted).

"[C]onclusions of law are binding upon us on appeal if they are supported by the trial court's findings. In this context, the phrase 'supported by the findings' means required as a matter of law by the findings or correct as a matter of law in light of the findings. Only conclusions of law which are 'supported' in such a manner by the findings are binding on appeal." *State v. Brooks*, 337 N.C. 132, 141, 446 S.E.2d 579, 585 (1994) (citing *State v. Mahaley*, 332 N.C. 583, 592-93, 423 S.E.2d 58, 64 (1992)).

The Defendant's motion to suppress evidence asserted a violation of his U.S. Constitutional rights. "The Fourth Amendment to the United States Constitution protects the 'right of the people

to be secure . . . against unreasonable searches and seizures.' U.S. Const. amend. IV. The Fourth Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment. Article I, Section 20 of the North Carolina Constitution provides similar protection against unreasonable seizures. N.C. Const. art. I, § 20." *State v. Campbell*, 359 N.C. at 659, 617 S.E.2d at 11 (citations omitted). However, "in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; *i.e.*, one that has 'a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.'" *Minnesota v. Carter*, 525 U.S. 83, 88, 142 L. Ed. 2d 373, 379 (1998) (quoting *Rakas v. Illinois*, 439 U.S. 128, 143, 58 L. Ed. 2d 387, 401 n12 (1978)).

The warrantless entry and search of 1917 Drexel Road took place on 17 May 2003. The trial court ruled, *inter alia*, that Defendant (1) abandoned the house before that date; (2) had no reasonable expectation of privacy in the contents of the house on 17 May 2003, and; (3) therefore could not assert a violation of his Fourth Amendment rights. Accordingly, we first review the law governing the effect of abandonment on one's rights under the Fourth Amendment.

"A reasonable expectation of privacy in real property may be surrendered . . . if the property is permanently abandoned." *McKinney I,* 361 N.C. at 56-57, 637 S.E.2d at 871 (citing *U.S. v.*

Stevenson, 396 F.3d 538, 544-47 (4th Cir.), *cert. denied*, 544 U.S. 1067, 161 L. Ed. 2d 1122 (2005); and *Abel v. United States*, 362 U.S. 217, 240-41, 4 L. Ed. 2d 668, 687 (1960)) (other citations omitted). "When a person voluntarily abandons his privacy interest in property, his subjective expectation of privacy becomes unreasonable, and he is precluded from seeking to suppress evidence seized from it. . . . '[T]he proper test for abandonment is not whether all formal property rights have been relinquished, but whether the complaining party retains a reasonable expectation of privacy in the [property] alleged to be abandoned.'" *Stevenson*, 637 F.3d at 546 (quoting *United States v. Haynie*, 637 F.2d 227, 237 (4th Cir. 1980)) (internal quotation marks and citation omitted). In *Stevenson,* the Court held that, where the circumstances clearly indicated that the defendant had no intention of returning to his apartment, the trial court did not err by concluding that he had abandoned it.

In this case, the court made the following findings of fact:

1. In May of 2003, defendant was living at 1917 Drexel Road, Greensboro, North Carolina, with the victim, Jerry Alston.

2. Jerry Alston was the rightful occupant of the premises at 1917 Drexel Road and he allowed the defendant to stay there as a guest.

3. Defendant did not pay any rent to Jerry Alston.

4. On May 15, 2003, defendant killed Jerry Alston in the residence at 1917 Drexel Road.

5. Subsequently, defendant closed the windows and locked the door at the residence to conceal the crime and to provide him time and the opportunity to flee.

6. Prior to leaving the premises, defendant wrote a note admitting that he killed Jerry Alston and left it with Alston's body inside the residence.

7. Defendant admitted to his friend, Aja Snipes, that he killed Jerry Alston.

8. Defendant then left Greensboro with a destination of Daytona Beach, Florida, with the expressed intent of committing suicide.

9. When defendant left for Florida he had no intention to return to the residence on Drexel Road.

10. When defendant subsequently returned to Greensboro he did not return to the residence on Drexel Road.

Based on these findings of fact, the trial court concluded that:

1. Defendant had no reasonable expectation of privacy in the premises at 1917 Drexel Road after he killed Jerry Alston there on May 15, 2003.

2. Defendant had abandoned the premises at 1917 Drexel Road prior to the warrantless entry by police on May 17, 2003.

3. Defendant had no standing to contest the warrantless entry of the premises by police on May 17, 2003.

We conclude that the court's findings of fact, none of which are challenged by the Defendant, support its conclusions of law that Defendant abandoned the house at 1917 Drexel Road, had no reasonable expectation of privacy in its contents, and lacked standing to challenge the warrantless entry and search of the house. We conclude that the trial court's order should be upheld. Accordingly, we do not reach Defendant's other assignments of error.

For the reasons discussed above, we conclude that the trial court did not err and that its order should be

Affirmed.

Judges WYNN and BRYANT concur.

Report per Rule 30(e).