

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-16

NORTH CAROLINA COURT OF APPEALS

Filed: 1 September 2009

STATE OF NORTH CAROLINA

v.

Union County
No. 07 CRS 51851

STEPHEN JOHN MILLER

Appeal by defendant from judgment entered 22 September 2008 by Judge W. David Lee in Union County Superior Court. Heard in the Court of Appeals 27 July 2009.

Attorney General Roy Cooper, by Assistant Attorney General Amanda P. Little, for the State.

Bryan Gates, for defendant.

ELMORE, Judge.

On 22 September 2008, Stephen John Miller (defendant) pled guilty to possession with intent to sell or deliver cocaine under N.C. Gen. Stat. § 90-95(A) (2007) and felony maintenance of a vehicle or dwelling for purposes of keeping and selling controlled substances under N.C. Gen. Stat. § 90-108(a)(7) (2007). Based on his plea entry, the trial court entered judgment imposing a suspended sentence of eight to ten months. From this judgment, defendant appeals.

Defendant specifically appeals from the trial court's denial of his motion to suppress. Defendant's motion, filed on 6 December

2007, came on for hearing on 14 August 2008, and after hearing from both the State and defendant, the trial court denied the motion.

At the hearing on defendant's motion to suppress, the State presented evidence tending to show that in the early hours of the morning of 17 March 2007, police officers, acting on a tip, went to defendant's motel room. They knocked on the door, but the room appeared unoccupied. Their attention was drawn down toward the office area when they saw a black male looking around a corner and acting suspiciously. The officers then walked towards the area of the office but did not find anyone in the vicinity.

A short time later the officers saw an SUV drive through the parking lot at about twenty to twenty-five miles an hour and park. The defendant got out of the passenger side of the vehicle and started walking toward his room. When he was approximately fifty to seventy-five feet away from the officers, they told him they wanted to speak to him and he immediately turned and ran towards his room. As he was attempting to enter the room, one of the officers tackled and placed him under arrest for resisting, obstructing, and delaying an officer.

Through the open door of defendant's room, one of the officers saw what appeared to be a controlled substance on a table. The officers entered the room to secure that substance, at which time they noticed what appeared to be crack cocaine on top of a CD on the night stand. The officers seized the crack cocaine as evidence of possession of a controlled substance with intent to sell or distribute.

At the close of the hearing on defendant's motion to suppress, the trial court ruled that the officers were within their rights to interview defendant and that none of his rights under the United States Constitution were violated when they searched his room. The trial court, therefore, denied defendant's motion to suppress.

Thereafter, on 22 September 2008, defendant entered a guilty plea subject to the following terms and conditions: "Defendant will plead guilty to the charges of PWISD Cocaine and Felony MAINTN VEH/DWELL/PLACE CS. The remaining charges against Defendant will be dismissed. Defendant will receive a probationary sentence." The trial court entered judgment pursuant to the plea agreement on 22 September 2008. The court sentenced defendant to a term of eight to ten months imprisonment but suspended the sentence and placed defendant on supervised probation for thirty months. During the probationary period, the trial court ordered defendant to comply with several special conditions. Defendant gave notice of appeal in open court. Defendant now contends that the trial court erred in denying his motion.

N.C. Gen. Stat. § 15A-979(b) (2007) permits review of a trial court's denial of a defendant's motion to suppress upon appeal from a judgment, including a judgment entered upon a plea of guilty. However, this statutory right is conditional; defendant-appellant must provide the State and the trial court notice of his intent to appeal the denial of his motion to suppress prior to entry of his plea or during plea negotiations. *State v. McBride*, 120 N.C. App. 623, 625, 463 S.E.2d 403, 404 (1995), *disc. review allowed in part*,

343 N.C. 126, 468 S.E.2d 790, *aff'd*, 344 N.C. 623, 476 S.E.2d 106 (1996). A notice of intent to appeal is distinct from the "Notice of Appeal" required by N.C. Gen. Stat. § 15A-1448, and N.C.R. App. P. 4(a): "Notice of *intent* to appeal prior to plea bargain finalization is a rule designed to promote a 'fair posture for appeal from a guilty plea.' Notice of Appeal is a procedural appellate rule, required in order to give 'this Court jurisdiction to hear and decide a case.'" *McBride*, 120 N.C. App at 625, 463 S.E.2d at 405 (quoting *State v. Morris*, 41 N.C. App. 164, 166, 254 S.E.2d 241, 242, *appeal dismissed and cert. denied*, 297 N.C. 616, 267 S.E.2d 657 (1979)). Neither can a notice of appeal serve as a substitute for a notice of intent to appeal. *Id.* at 626, 463 S.E.2d at 405. The notice of intent must be "*specifically given*," *Id.* at 625, 463 S.E.2d at 404, and must be found in the record, *State v. Brown*, 142 N.C. App. 491, 492-93, 543 S.E.2d 192, 193 (2001).

In the present case, defendant gave notice of appeal at the time the trial court rendered its judgment in open court. However, the record does not indicate defendant gave any notice of his *intent* to appeal the denial of his motion to suppress prior to entry of his plea or during plea negotiations. Therefore, defendant waived his right to appeal the denial of his motion to suppress and we dismiss this appeal.

Dismissed.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).