

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-1413
NORTH CAROLINA COURT OF APPEALS

Filed: 19 July 2011

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 09 CRS 216106
09 CRS 216117-18
09 CRS 42314

LASHAWN TERRY DOWNEY

Appeal by defendant from judgment entered 21 July 2010 by Judge J. Gentry Caudill in Mecklenburg County Superior Court. Heard in the Court of Appeals 13 April 2011.

Attorney General Roy Cooper, by Associate Attorney General J. Rick Brown, for the State.

Mary March Exum, for defendant-appellant.

STEELMAN, Judge.

Where defendant gave consent to the officers' search of his backpack, and that consent was voluntary, the trial court did not err in denying defendant's motion to suppress evidence obtained as a result of the consensual search.

I. Procedural and Factual History

In the early morning hours of 2 April 2009, the Charlotte-Mecklenburg Police Department received a series of calls from a neighborhood in Charlotte. Officers Kristen Daughtery (Officer Daughtery) and Aaron Skipper (Officer Skipper) were on patrol in the area. Individually and jointly they responded to four dispatch calls that morning. Officer Skipper responded to a residence located at 3044 Florida Avenue at 2:41 a.m., where the complainant stated that someone kept knocking and hanging around the front door. Officer Skipper did not locate a suspect but observed several shoeprints left on the complainant's porch. Second, Officer Daughtery responded to a dispatch at 4:01 a.m. from a residence on 1000 E. 36th Street. That complainant reported seeing a black male wearing a green shirt and blue jeans masturbating on their front porch. Officer Daughtery was unable to locate the suspect. At 4:48 a.m., Officer Daughtery responded to a residence at 1001 E. 35th Street, which backs up to 1000 E. 36th Street. The dwelling's security alarm awoke the occupant, who found the front door had been unlocked from the inside. Officer Daughtery observed several shoeprints leading up to an open window at the front of the residence, as well as an additional shoeprint on the living room floor. The occupant reported that a laptop, laptop bag, purse and money had been stolen from the residence.

Both officers then responded to a fourth dispatch at 3031 Florida Avenue at 4:50 a.m. They observed defendant walking up Florida Avenue and approached him. Both officers were familiar with defendant from previous encounters. After speaking with him, the officers returned to the residence. A short time later, defendant reappeared on the same street, carrying a backpack. The backpack contained the items reported stolen from 1001 E. 35th Street.

On 3 May 2010, defendant was indicted for first-degree burglary, larceny after breaking and entering, possession of stolen goods and being an habitual felon. Defendant filed a motion to suppress the items seized at the time of his arrest. The trial court denied this motion. Following the denial of his motion to suppress, defendant pled guilty to first-degree burglary, felony larceny after breaking and entering, and being an habitual felon. Defendant preserved his right to appeal the denial of his motion to suppress. Defendant was sentenced to 121 to 155 months in the North Carolina Department of Correction.

Defendant appeals.

III. Motion to Suppress

In his first argument, defendant contends that the trial court erred by denying his motion to suppress the evidence and items seized during defendant's arrest. We disagree.

A. Standard of Review

"The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, ___ N.C. ___, ___, ___ S.E.2d ___, ___ (16 June 2011) (No. 432A10). Plaintiff does not challenge the trial court's findings of fact. Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal. *Id.* The trial court's conclusions of law are reviewable *de novo*. *Id.*

B. Analysis

Consensual encounters for which police do not need probable cause or even reasonable suspicion are lawful, as long as the person is free to disregard the police and leave. *I.N.S. v. Delgado*, 466 U.S. 210, 215, 80 L. Ed. 2d 247, 255 (1984). "For the warrantless, consensual search to pass muster under the Fourth Amendment, consent must be given and the consent must be voluntary. Whether the consent is voluntary is to be determined from the totality of the circumstances." *State v. Barden*, 356 N.C. 316, 341, 572 S.E.2d 108, 125 (2002), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074 (2003). Evidence obtained in an unconstitutional, nonconsensual search is not admissible. *State v. Garner*, 331 N.C. 491, 505, 417 S.E.2d 502, 510 (1992) (citing

State v. Colson, 274 N.C. 295, 305, 163 S.E.2d 376, 383 (1968)). "Inconsistencies or conflicts in the testimony do not necessarily undermine the trial court's findings, since such contradictions in the evidence are for the finder of fact to resolve." *State v. Bromfield*, 332 N.C. 24, 36, 418 S.E.2d 491, 497 (1992).

Defendant made a motion to suppress evidence gathered from his second interaction with the officers, contending that he was illegally stopped and seized, and that Officer Skipper had no reasonable suspicion to stop, seize and arrest him. The trial court entered an Order on 22 July 2010, denying defendant's motion to suppress, and making the following findings of fact:

13. The officers again observed the defendant walking up Florida Avenue a few minutes after their initial encounter. The defendant now had a backpack. The officers again walked toward the defendant.

14. The officers did not brandish their weapons or threaten the defendant as they approached him on Florida Avenue. The defendant was not instructed to stop.

15. The defendant voluntary [sic] engaged in a conversation with the officers.

16. The defendant was wearing an olive colored shirt with blue jeans. The defendant's pants zipper was down.

17. Skipper asked the defendant if he could see the soles of his shoes. The defendant consented. Daugherty recognized the defendant's soles to be consistent with the shoeprints left at 1001 E. 35th Street.

18. Skipper asked the defendant for consent to look in his backpack. The defendant gave consent. Skipper found a laptop bag and laptop inside of the backpack. The laptop bag and laptop matched the description of the items take [sic] from 1001 E. 35th Street.

19. The defendant was then handcuffed and his pants pockets were searched. Skipper found two hundred and forty dollars in the defendant's pants pocket.

20. The Court has considered the totality of the circumstances surrounding the search of the backpack, pants pocket and the arrest of the defendant.

The trial court noted, it "had the opportunity to see and observe each witness and to determine what weight and credibility to give each witness' testimony." Defendant did not assign as error any of the trial court's findings of fact and these findings are therefore binding on appeal.

The trial court found, based on the totality of the circumstances, that the officers' testimony offered sufficient evidence that both the encounter with defendant and the ensuing search were consensual and voluntary. These findings support the conclusions of law that defendant "was not subject to a seizure within the meaning of the Fourth Amendment." Instead, defendant "freely and voluntarily consented to showing the officers the soles of his shoes and to the search of his backpack Following the discovery of the victim's

property, the officers had sufficient probable cause to effectuate a warrantless arrest." The evidence in question was obtained during a consensual, lawful interaction with the officers and was admissible. These conclusions of law were supported by sufficient findings of fact. We hold that the trial court did not err in denying defendant's motion to suppress the stop and the evidence and items seized during his arrest.

This argument is without merit.

III. Sufficiency of Findings of Fact and Conclusions of Law

In his second argument, defendant contends that the trial court erred by failing to make full and sufficient findings of fact and conclusions of law in its order denying defendant's motion to suppress. We disagree.

We hold that the trial court made sufficient findings of fact and conclusions of law supporting its denial of defendant's motion to suppress. However, assuming *arguendo* that the trial court did not make findings of fact regarding defendant's testimony at the hearing, our case law indicates that the trial court's order should still be affirmed.

Trial courts are not required to make findings of fact on all evidence presented. *State v. Dunlap*, 298 N.C. 725, 730-31, 259 S.E.2d 893, 896 (1979) ("We see no reason why a trial judge should be compelled to summarize every single fact presented

at *voir dire*."). "It is not error per se for the trial court to omit findings of fact in support of its ruling on a motion to suppress." *State v. Rollins*, 200 N.C. App. 105, 110, 682 S.E.2d 411, 415 (2009) (quotations and internal alterations omitted). In cases where the trial court does not explicitly set forth in its findings of fact the reasons for denying a defendant's motion to suppress, "the necessary findings are implied from the admission of the challenged evidence." *State v. Phillips*, 300 N.C. 678, 685, 268 S.E.2d 452, 457 (1980). Findings of fact may support the denial of a motion to suppress through the trial court's conclusions on the merits of the legal issue underlying defendant's motion. *Biber*, __ N.C. at __, __ S.E.2d at __.

In the instant case, the trial court's order does not contain findings of fact or conclusions of law that specifically articulate the trial court's rationale for not adopting defendant's testimony. However, based on its ability to determine the witnesses' credibility, the trial court made findings of fact that incorporated the officers' testimony and did not adopt defendant's conflicting testimony. The trial court then explicitly concluded as a matter of law that "[n]one of the constitutional rights, either Federal or State, addressed in Defendant's Motion to Suppress were violated by the officers in their encounter with the defendant on 2 April 2009," and that defendant freely and voluntarily gave consent. The trial

court's denial of the motion to suppress was supported by its conclusion that defendant's rights were not violated, based on its findings of fact supporting this conclusion.

The trial court made sufficient findings of fact and conclusions of law supporting its denial of defendant's motion to suppress. This argument is without merit.

AFFIRMED.

Judges STEPHENS and HUNTER, ROBERT N. Jr. concur.

Report per Rule 30(e).