

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-142

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

STATE OF NORTH CAROLINA

v.

KENNETH LENARD ONEIL

Forsyth County
Nos. 08CRS56193-94
08CRS30805

Appeal by Defendant from judgment entered 1 September 2009 by Judge L. Todd Burke in Superior Court, Forsyth County. Heard in the Court of Appeals 1 September 2010.

Attorney General Roy Cooper, by Assistant Attorney General Martin T. McCracken, for the State.

Lucas & Ellis, PLLC, by Anna S. Lucas, for Defendant-Appellant.

McGEE, Judge.

Kenneth ONEil (Defendant) was arrested on 6 June 2008 and charged with selling cocaine, possession with intent to sell and deliver cocaine, and conspiring to sell and deliver cocaine. Defendant's arrest was part of a "citywide buy/bust operation" where undercover officers would buy drugs and relay suspect information to other law enforcement officers who would then arrest the individuals involved in the drug sales. Two Winston-Salem police officers, Corporal Renee Melly (Corporal Melly) and Officer Jennifer Nelson (Officer Nelson), were involved in the operation

and approached Rexx Jenkins (Jenkins) in the parking lot of a Motel 6 and asked to purchase forty dollars worth of crack cocaine from him. Jenkins left and returned with what appeared to be a rock of crack cocaine. While Jenkins was conducting the transaction with Corporal Melly, Defendant approached and told Jenkins to "hurry up" so Defendant could get his money. Defendant then gave Corporal Melly a phone number. Corporal Melly believed Defendant gave her the number so she could contact Defendant directly to set up future drug transactions. The serial numbers of the money used for the drug buy had been copied prior to the transaction.

Winston-Salem Police Officer William Cumbo (Officer Cumbo) and State Bureau of Investigation Agent J. Morrison (Agent Morrison) were working together on 6 June 2008, providing "close cover to the undercover officers as well as assisting in the takedown, if needed." Following the transaction, Corporal Melly gave Officer Cumbo and Agent Morrison descriptions of Jenkins and Defendant. Corporal Mello told Officer Cumbo that Defendant was wearing a gray tank top and yellow sweat pants. Officer Cumbo spotted Defendant and exited the vehicle in which he was riding. Officer Cumbo was wearing a shirt that identified him as a police officer and was also wearing his service firearm and badge. Defendant saw Officer Cumbo and ran away from Officer Cumbo. Officer Cumbo chased Defendant and apprehended him after following him into Room 116 of the Motel 6. Following Defendant's apprehension, crack cocaine, marijuana, Xanax pills, and paraphernalia were recovered from Room 116. The forty dollars Corporal Melly used to purchase the rock of

crack cocaine was found in a pair of yellow sweatpants located at the foot of the bed. Defendant then made a spontaneous statement that the room was not his, but that the drugs were.

On 30 March 2008, Defendant filed a motion to suppress his statement and the physical evidence recovered from Room 116. Defendant's motion was heard on 6 and 7 May 2009, and the trial court denied Defendant's motion. Defendant was tried before a jury and was found guilty on 1 September 2009 of selling cocaine, possession with intent to sell cocaine, possession of less than one ounce of marijuana, and possession of drug paraphernalia. Defendant pled guilty to having obtained habitual felon status. Defendant was sentenced as a prior record level V to 122 to 156 months' imprisonment. Defendant appeals. Additional relevant facts will be discussed in the body of the opinion.

In Defendant's sole argument on appeal, he contends the trial court erred in denying his motion to suppress. We disagree.

"The scope of appellate review of an order [on a motion to suppress evidence] is strictly 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." Defendant does not challenge any of the trial court's findings of fact in the order denying his motion to suppress. Defendant assigns error solely to the trial court's denial of his motion. Accordingly, the only issues for review are whether the trial court's findings of fact support its conclusions of law and whether those conclusions of law are legally correct.

State v. Stanley, 175 N.C. App. 171, 174-75, 622 S.E.2d 680, 682

(2005) (internal citations omitted).

The Fourth Amendment grants individuals the right to be secure against unreasonable searches and seizures. Generally, a warrant supported by probable cause is required before a search is considered reasonable. The warrant requirement "is a principal protection against unreasonable intrusions into private dwellings." This requirement is "subject only to a few specifically established and well delineated exceptions."

State v. Phillips, 151 N.C. App. 185, 191, 565 S.E.2d 697, 702 (2002) (internal citations omitted). "One exception is the exigent circumstances exception." *Id.* (citation omitted). "[I]t appears to be the essence of 'exigent circumstances' that there was 'the lack of time to obtain a warrant without thwarting the arrest or making it more dangerous.'" *State v. Johnson*, 310 N.C. 581, 586, 313 S.E.2d 580, 583 (1984) (citation omitted). "Exigent circumstances sufficient to make search without a warrant necessary include, but are not limited to, the probable destruction or disappearance of a controlled substance." *State v. Nowell*, 144 N.C. App. 636, 643, 550 S.E.2d 807, 812 (2001) (citations omitted). If police are in "hot pursuit" of a suspect, and probable cause exists to arrest that suspect, the "suspect may not defeat an arrest which has been set in motion in a public place, and is therefore proper . . . , by the expedient of escaping to a private place." *United States v. Santana*, 427 U.S. 38, 42-43, 49 L. Ed. 2d 300, 305-06 (1976) (citations omitted) (exigent circumstances existed to permit warrantless entry of the defendant's home when the defendant entered her home as police were attempting to arrest her on drug-related charges).

In the case before us, the trial court found as fact the following: Corporal Melly and Officer Nelson were working undercover as vice/narcotics officers on 6 June 2008. At approximately 9:15 p.m., they were working in the parking lot of a Motel 6 in Winston-Salem. Corporal Melly was driving and Officer Nelson was riding in the passenger seat. There had been "a lot of arrests in that area over the years for drug activity." Officer Nelson "made contact with [Jenkins] and waved toward [him]." Jenkins waved back, and Corporal Melly stopped the vehicle "directly in front of where Mr. Jenkins was standing on the second story balcony [of the Motel 6]." Jenkins asked Officer Melly what she wanted, and she replied "a 40." Jenkins "motioned with his hand to hold on a minute, went in to room 238." Jenkins then told Corporal Melly that he "had to go get it." Jenkins walked out of view, then returned and talked with Defendant at the bottom of the stairs for a few minutes. Defendant "looked in [Corporal Melly's] direction one time. [Defendant] was fidgeting with his belt and waistband area[.]" Defendant and Jenkins sat on the curb, which caused Corporal Melly to lose visual contact with them because a bush was between her and the two men. Jenkins then came to Corporal Melly's car and asked for the money. Corporal Melly said "let me see the drugs before I give you the money[.]" Jenkins opened his hand and showed Corporal Melly "a rock of what appeared to be crack cocaine[.]" Corporal Melly argued with Jenkins about the size of the rock of cocaine, and Jenkins kept asking Corporal Melly to let him have a piece of the rock. Corporal Melly finally

gave Jenkins forty dollars for the rock. The serial numbers on the money Corporal Melly gave Jenkins had been recorded. During the conversation between Corporal Melly and Jenkins, Defendant "came to the car window and said . . . 'give them the s--- so I can get my G-D money,' or something to that effect." Defendant then gave Corporal Melly a phone number.

Corporal Melly pulled away and gave the takedown units descriptions of Defendant and Jenkins. Officer Cumbo was riding with Agent Morrison when they responded to the information given by Corporal Melly. They pulled into the parking lot of the Motel 6, "the same side that [Corporal] Melly had been on," and Officer Cumbo "observed a black male with a black tank top and dark pants go into [R]oom 238." This matched Corporal Melly's description of Jenkins. Officer Cumbo also "saw an individual with a gray tank top with yellow sweatpants, who turned out to be [Defendant], run - in his words, run into [R]oom 116." Officer Cumbo followed Defendant and attempted to enter Room 116, but there "was some resistance on the door, like somebody was holding the door." Officer Cumbo managed to force his way into Room 116 and apprehend Defendant. Defendant then told Officer Cumbo, without any prompting, that "the room was not his; the drugs were his."

The trial court stated that it believed two exigent circumstances existed to support the warrantless entry of Room 116: (1) Officer Cumbo was in hot pursuit of Defendant, and (2) the potential that Defendant might destroy evidence if he was not apprehended immediately. The trial court then denied Defendant's

motion to suppress.

Defendant does not contest the trial court's findings of fact. Therefore, "the only issues for review are whether the trial court's findings of fact support its conclusions of law and whether those conclusions of law are legally correct." *Stanley*, 175 N.C. App. at 175, 622 S.E.2d at 682 (citation omitted). We hold that the trial court's findings of fact support its conclusions of law that exigent circumstances existed in this case to justify warrantless entry into Defendant's motel room. There was probable cause to arrest Defendant on suspicion of selling cocaine based upon Defendant's actions during the sale. When officers attempted to approach Defendant, Defendant ran into his motel room. Officer Cumbo followed. There were reasonable grounds to believe Defendant would destroy evidence if he was not immediately apprehended, as Defendant could easily dispose of drugs and currency, including the recorded currency used in the transaction involving Officer Melly. If police are in "hot pursuit" of a suspect, and probable cause exists to arrest that suspect, the "suspect may not defeat an arrest which has been set in motion in a public place, and is therefore proper . . . , by the expedient of escaping to a private place." *Santana*, 427 U.S. at 42-43, 49 L. Ed. 2d at 305-06 (citations omitted). We hold that the trial court did not err in denying Defendant's motion to suppress. Defendant's argument is without merit.

No error.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).