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NO. COA13-368
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

STATE OF NORTH CAROLINA

v. Harnett County
Nos. 11 CRS 50593, 51033

DONALD EDWARD JOHNSON and JESSICA WILLIAMS

Appeal by defendants from judgments entered 16 January 2013 by Judge Michael R. Morgan in Harnett County Superior Court. Heard in the Court of Appeals 26 September 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General James M. Stanley, Jr., for the State v. Donald Edward Johnson.

Attorney General Roy Cooper, by Assistant Attorney General Alexandra M. Hightower, for the State v. Jessica Williams.

Andrew L. Farris for defendant-appellant Donald Edward Johnson.

Richard Croutharmel for defendant-appellant Jessica Williams.

BRYANT, Judge.

Where there was competent evidence to support the finding that defendant Donald Edward Johnson consented to the entry of

law enforcement officers to his home, we find no error in the trial court's denial of Johnson's motion to suppress. Where evidence established incriminating circumstances, we find no error in the trial court's failure to dismiss charges of possession against Johnson. Where there was no evidence of a custodial interrogation, and where there was no material conflict in the evidence, the trial court's failure to make findings of fact regarding defendant Jessica Williams' contention of a Fifth Amendment violation was not error. Where the trial court allowed testimony referring to Williams' prior criminal conviction, we find no plain error.

Defendants Johnson and Williams were married and lived together at 626 Heritage Way in Cameron, a town in Harnett County. On 25 October 2011, a Harnett County grand jury returned separate indictments against each defendant. Johnson was charged with possession with intent to sell and deliver marijuana, maintaining a dwelling for keeping and selling controlled substances, and possession of drug paraphernalia. Williams was indicted for possession with intent to sell and deliver marijuana. On 4 April 2012, the State moved for an order to join the offenses and defendants for trial. The motion was granted on 14 January 2013.

On 5 April 2012, Johnson filed a motion to suppress evidence seized without a search warrant. On 16 April 2012, Williams filed a motion to suppress. In both motions, defendants argued that their property was searched by law enforcement officers without a warrant, without consent, and without probable cause or exigent circumstances. Williams further contended that her Fifth Amendment right against self-incrimination was violated when law enforcement failed to advise her of her *Miranda* rights during a custodial interrogation. The matters raised in the individual motions to suppress were heard on 8 October 2012, in Harnett County Superior Court, before the Honorable C. Winston Gilchrist, Judge presiding. On 11 January 2013, the trial court entered an order denying Johnson and Williams' respective motions to suppress.

Defendants were brought to trial in Harnett County Superior Court on 14 January 2013, the Honorable Michael R. Morgan, Judge presiding. The evidence presented tended to show that on 14 February 2011, Sergeant Dwayne Council along with Agent Thomas Parker, both working with the Harnett County Sheriff's Department, Narcotics Division, received a report that a student at Overhills High School had distributed cookies containing marijuana. Sergeant Council went to the school that same day

and interviewed the student, eighteen year old Mark Budran. Budran admitted to distributing cookies containing marijuana and admitted that he had more marijuana at home, 626 Heritage Way, in Cameron.

Sgt. Council, Agent Parker, and Budran arrived at 626 Heritage Way at approximately 1:00 p.m. Sgt. Council and Agent Parker, wearing badges identifying themselves as law enforcement officers escorted Budran to the front door of his residence and knocked. Budran attempted to open the door, but it was locked. Sgt. Council announced himself as a member of the Harnett County Sheriff's Department. Sgt. Council heard movement inside the residence and three to four minutes later, Johnson opened the front door. Sgt. Council testified that "[he] could tell that they were smoking marijuana, or been smoking recently." Sgt. Council again identified himself and Agent Parker and stated that there was an incident at Budran's school. Sgt. Council asked if they could enter the residence and talk about the incident. Once inside, Sgt. Council and Agent Parker spoke to Johnson and Williams. Budran was allowed to go to his room but returned saying that he could not find the marijuana. Budran informed the officers that he kept marijuana in a metal chewing gum canister that was now missing. Johnson and Williams denied

the presence of marijuana in the residence and asked the law enforcement officers to leave. Sgt. Council announced that he would conduct a "seize and freeze" wherein the officers would seize the house and apply for a warrant to search the house for marijuana. Johnson suddenly ran to a back door. Agent Parker chased Johnson but briefly lost sight of him when Johnson exited the house. Johnson was subsequently apprehended, handcuffed, and placed in a law enforcement vehicle. Meanwhile, Williams, Budran, and a second child were on the porch with Sgt. Council. Sgt. Council testified that Williams informed him that there was marijuana in the house and if she was allowed to talk to Johnson, she could find out where he had hidden it. Williams was allowed to sit and talk with Johnson. Williams then informed Sgt. Council that marijuana could be found in a trashcan in the master bathroom.

A warrant was issued to search the property located at 626 Heritage Way. Pursuant to a search of the house, Sgt. Council discovered a total of 132 grams of marijuana – at the rear of the house, outside near the backdoor in a metal Doublemint chewing gum container containing seventeen bags of marijuana and in a trashcan in the master bathroom containing four large bags

of marijuana. At trial, both Sgt. Council and Agent Parker testified as experts in the identification of the marijuana.

Following the close of the evidence, the jury returned verdicts finding Johnson guilty of possession with intent to sell and deliver marijuana, intentionally keeping and maintaining a building for the purposes of unlawfully keeping or selling a controlled substance, and possession of drug paraphernalia. The jury returned a verdict finding Williams guilty of possession with intent to sell and deliver marijuana. The trial court sentenced Johnson to consecutive active terms of 7 to 9 months for possession with intent to sell and deliver marijuana and maintaining a dwelling for the purposes of unlawfully keeping or selling a controlled substance, and a concurrent term of 120 days for possession of drug paraphernalia. For possession with intent to sell and deliver marijuana, the trial court sentenced Williams to an active term of 4 to 5 months but suspended the sentence and imposed supervised probation for a period of 24 months. Johnson and Williams appeal.

On appeal, Donald Johnson raises the following issues: whether the trial court erred by (I) denying Johnson's motion to suppress; and (II) failing to dismiss the possession charges.

Jessica Williams raises the following issues: whether the trial court erred in (III) failing to make written findings in its order denying Williams' motion to suppress; and (IV) allowing testimony of Williams' out-of-court statement.

Appeal by Donald Johnson

I

Johnson first argues that the trial court erred in denying his motion to suppress evidence obtained as a result of the search of his home. Specifically, Johnson argues that the entry of law enforcement officers into his home amounted to a search to which he did not consent, that Budran lacked authority or even apparent authority to consent, and that there were no exigent circumstances to justify a warrantless search of Johnson's home. For these reasons, Johnson contends that he is entitled to a new trial. We disagree.

> In reviewing the denial of a motion to suppress our Court is strictly limited to a determination of whether the court's findings are supported by competent evidence, even if the evidence is conflicting, and in turn, whether those findings support the court's conclusions of law. [I]f so, the trial court's conclusions

> of law are binding on appeal. If there is a conflict between the [S]tate's evidence and defendant's evidence on material facts, it is the duty of the trial court to resolve the conflict and such resolution will not be disturbed on appeal.
>
> . . . We review the trial court's conclusions of law *de novo*.

State v. Brown, ___ N.C. App. ___, ___, 720 S.E.2d 446, 450 (2011), *petition for disc. review dismissed*, ___ N.C. ___, 724 S.E.2d 910, and *temporary stay dissolved, disc. review denied*, 365 N.C. 541, 742 S.E.2d 187 (2012).

Consent to enter the residence

Johnson argues that he did not consent to the entry of Sgt. Council and Agent Parker into his home and that the entry of law enforcement officers into his home absent his consent amounted to a violation of his rights under the Fourth Amendment to the United States Constitution.

"The Fourth Amendment to the United States Constitution protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *State v. Rhodes*, 151 N.C. App. 208, 213, 565 S.E.2d 266, 269 (2002) (citation and quotations omitted). "[G]enerally speaking, an intrusion into a residence *is* a search within the meaning of the Fourth Amendment, for physical entry of the home

is the chief evil against which the wording of the Fourth Amendment is directed." *State v. Barnes*, 158 N.C. App. 606, 610, 582 S.E.2d 313, 317 (2003) (citation and quotations omitted).

> Consent, however, has long been recognized as a special situation excepted from the warrant requirement, and a search is not unreasonable within the meaning of the Fourth Amendment when lawful consent to the search is given. 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. Smith, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997) (citations omitted). "Consent may be inferred from actions as well as words." *United States v. Hylton*, 349 F.3d 781, 786 (4th Cir. 2003) (citing *United States v. Wilson*, 895 F.2d 168, 170 (4th Cir. 1990) (finding consent where defendant raised his arms after agent asked permission to pat him down, "a request made without threats, force, or physical intimidation"); *United States v. Wesela*, 223 F.3d 656, 661 (7th Cir. 2000) ("The fact that there was no direct verbal exchange between [the officer and the third party] in which [the third party] explicitly said 'it's o.k. with me for you to search the apartment' is immaterial, as the events indicate her implicit consent[.]" "Had

[the law enforcement officer] conducted an all-out search of the [residence], perhaps the result would be different. But everything he did was narrowly confined to finding evidence related to the events of that evening . . . ."); *United States v. Buettner-Janusch*, 646 F.2d 759, 764 (2d Cir. 1981) ("[I]t is well settled that consent may be inferred from an individual's words, gestures, or conduct.")).

In its 11 January 2013 order denying Johnson's motion to suppress, the trial court made the following unchallenged findings of fact:

> 2. Upon receiving the report, Council went to the school and met with Budran . . . . He agreed to take Council and Agent Parker of the Harnett County Sheriff's Office to his house to retrieve the marijuana.
>
> 3. Upon arriving at the house the officers and Budran walked to the front door, which was locked. Budran knocked on the door. . . . Council then stated to those inside that he was with the sheriff's office [sic] and he wanted to talk to them.

Johnson challenges finding of fact number four in as much as he argues that his action in response to the officer's request to enter the residence did not amount to consent to search.

> 4. After about 4-5 minutes Defendant Johnson came to the door and asked why they were there. Council explained the

> situation at school and asked if they could come in. **Johnson stepped back from the door and indicated by action and/or words that the officers and Budran could enter.** No one blocked their entrance or told them not to enter.

(emphasis added). The trial court then made findings of fact stating that Budran produced only marijuana residue and Sgt. Council and Agent Parker then conducted a "seize and freeze," whereby the occupants of the house were seized and removed from the residence while the officers applied for a search warrant.

As to the challenged finding of fact, we look to the evidence presented to the trial court during the hearing on Johnson's motion to suppress. We must first determine whether there was competent evidence to support the trial court's finding of fact describing Johnson's words and actions to law enforcement officers and then de novo consider whether the finding supports the conclusion that Johnson consented to the entry of law enforcement officers into his home. Sgt. Council gave the following testimony:

> Q. And then after four or five minutes, someone came to the door. Who was that?
>
> A. It was Mr. Johnson and Mrs. Williams.
>
> Q. All right. And is that Mr. Johnson -- who came to the door first?

A. Mr. -- I believe it was Mr. Johnson came to the door first.

Q. And is he the Defendant over here?

A. Yes.

Q. When he came to the door, what happened?

A. They asked why we were here, and that's when I told them that their son had brought some marijuana cookies to school on Friday, and a child got sick and was taken to the hospital and we're investigating it.

Q. And then did you say anything to him about entering the house?

A. I asked him could we come in and talk to him, I said because their son stated that he had some marijuana in his room that we come to confiscate. And we're -- we're not here to search the house. We're just here to get what he said was in his house.

Q. All right. And then what happened?

A. They stepped back, which -- stepped back from the door. So myself and Agent Parker, along with Mark, we just walked in the residence and we stood right there at the -- by the threshold of the door, the front door.

Q. At that time, did anybody tell you that you could not come in?

A. No, no.

Q. And did anyone block your way from going in?

A. No, no.

Q. Did they say anything to you, either one of them, about coming into the house?

A. No.

We find that competent evidence supports the trial court's finding of fact number 4: that Johnson opened the door and asked the officers why they were there; that Sgt. Council gave an explanation and asked if they could come in; that "Johnson stepped back from the door" and that when the law enforcement officers entered no one blocked their entry or told them not to enter.

Based on the totality of the circumstances, as reflected in the findings, we hold that Johnson voluntarily gave his consent to law enforcement officers, Sgt. Council and Agent Parker, to enter his home. *See Smith*, 346 N.C. at 798, 488 S.E.2d at 213 ("Whether the consent is voluntary is to be determined from the totality of the circumstances."); *see also Hylton*, 349 F.3d at 786 ("Consent may be inferred from actions as well as words."). Therefore, the officers' entry into Johnson's residence did not violate any Fourth Amendment protections to which Johnson may have been entitled. *C.f. Barnes*, 158 N.C. App. 606, 582 S.E.2d 313 (holding that the entry into a residence by law enforcement

officers violated the defendant's Fourth Amendment rights where the officers followed the defendant into his residence after he ran from his porch when startled).

Johnson challenges the trial court's denial of his motion to suppress solely on the grounds upon which law enforcement officers entered his residence. Because we have determined that the officers entered Johnson's residence with his consent, we need not address Johnson's remaining arguments on this issue. Accordingly, Johnson's argument challenging the trial court's denial of his motion to suppress is overruled.

II

Next, Johnson argues that the trial court erred in denying his motion to dismiss the charge of possession with intent to sell and deliver marijuana and possession of drug paraphernalia. Specifically, Johnson argues that because he was not in exclusive possession of the house he shared with his wife and two teenage children and because there was insufficient evidence of incriminating circumstances to support an inference of constructive possession, the trial court erred in failing to dismiss the possession charges.[1] We disagree.

[1] Johnson was charged with possession with intent to sell and deliver marijuana and possession of drug paraphernalia. In his brief to this Court, Johnson does not individually address

> When ruling on a motion to dismiss for insufficient evidence, the trial court must consider the evidence in the light most favorable to the State, drawing all reasonable inferences in the State's favor. Any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered. The trial court must decide only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

State v. Miller, 363 N.C. 96, 98-99, 678 S.E.2d 592, 594 (2009) (citations and quotations omitted). "The denial of a motion to dismiss for insufficient evidence is a question of law which we review *de novo*." *State v. Rouse*, 198 N.C. App. 378, 381-82, 679 S.E.2d 520, 523 (2009) (citations omitted).

To show constructive possession, i.e., that the defendant had the "the intent and capability to maintain control and dominion over" the item possessed, the State must show either a) the defendant had exclusive possession, or b) other incriminating circumstances existed. *Miller*, 363 N.C. at 99, 678 S.E.2d at 594 (quoting *State v. Beaver*, 317 N.C. 643, 648,

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either charge but asserts "there was no evidence he actually possessed the marijuana or paraphernalia on his person . . . ." Johnson's argument challenges only whether there were incriminating circumstances to support a theory of constructive possession; therefore, we address his argument as presented.

346 S.E.2d 476, 480 (1986)); *see also State v. Allen*, 279 N.C. 406, 408, 183 S.E.2d 680, 682 (1971), as discussed by *State v. Bradshaw*, 366 N.C. 90, 95, 728 S.E.2d 345, 348 (2012) (*Allen* presented sufficient evidence of constructive possession where law enforcement officers found heroin in a bedroom along with an Army identification card and personal papers with the defendant's name on them, the house utilities were in the defendant's name, and a witness testified that the defendant had told him where the heroin was located.).

In *Allen*, the defendant was convicted on charges of unlawfully dispensing narcotics (heroin) to a minor and unlawfully possessing a quantity of narcotic drugs (heroin). *Allen*, 279 N.C. 406, 183 S.E.2d 680. The defendant appealed to our Supreme Court arguing that the trial court erred in failing to grant his motion for non-suit at the close of the State's evidence and at the close of all evidence. The evidence presented at trial showed that law enforcement officers in the Fayetteville Police Department obtained a search warrant for 900 Gillis Street after receiving reports that a person known as "Snake" occupied that residence and was selling narcotics. *Id.* at 408, 183 S.E.2d at 682. At the time the officers executed the search warrant, sixteen-year-old Leslie Carl Scott occupied

the house along with two other people. The defendant was not present. *Id.* The search of the residence revealed fifteen capsules containing heroin. Six of the capsules were found under a mattress in the master bedroom. In the master bedroom, law enforcement officers also found a wallet containing an United States Army identification card with the defendant's name on it and several other items bearing the defendant's name. The State later produced evidence that the public utility services for the residence were in the defendant's name. At trial, Scott testified that on five or six occasions he had sold "stuff" for the defendant. He further testified that the day before the search of the residence by law enforcement officers, the defendant invited him to 900 Gillis Street; told him that he (the defendant) was going away for a few days; and "the 'stuff' was under the mattress." *Id.* Scott testified that the defendant told him that he wanted him to sell some "scagg" (a term Scott used interchangeably with heroin). Scott testified that on the day law enforcement officers came to search the residence at 900 Gillis Street, he sold heroin to a man who was accompanied by a law enforcement officer, and the heroin that he sold was supplied by the defendant, who had told him to sell it. *Id.* On these facts, our Supreme Court reasoned that there was

sufficient evidence for a jury to conclude that the heroin seized was subject to the defendant's dominion and control. The Court held that the evidence indicated the defendant had both the power and intent to control the disposition and use of the heroin so as to have it in his constructive possession. *Id.* at 412, 183 S.E.2d at 685.

Here, the evidence admitted at trial indicates that Sgt. Council and Agent Parker went to Johnson's residence, which Johnson shared with his wife and their two children, after Johnson's oldest child, Burdan, admitted to the officers that he had marijuana in his room at home. When Johnson opened the door, Sergeant Council noted the strong order of recently smoked marijuana. Sgt. Council informed Johnson that the officers were there to confiscate marijuana Burdan admitted to keeping in his room. Sgt. Council testified that Burdan had previously informed him the marijuana was kept in a metal chewing gum container. When Burdan returned from his room, unable to locate the marijuana, both Johnson and Williams denied there was marijuana in the house. Johnson became agitated, and Williams told the officers to leave. Sgt. Council testified that when he informed Johnson and Williams that he smelled marijuana upon his entry into the home and that he would perform a "seize and

freeze," wherein the officers would seize the residence and apply for a search warrant, Johnson "made a dash to the back door. He took off running." Agent Parker testified that he chased Johnson through the back of the house. Johnson made it through a back door before Parker reached the door, opened it, and seized Johnson.

> Q Were you completely -- was he completely outside by the time you got to the back door?
>
> A Yes.
>
> Q And then, as best you can tell, what did Mr. Johnson attempt to do then?
>
> A He tried to come back in. That's why I was holding the door, and he kept ramming the door, trying to run back inside the house. I didn't know what he had. I didn't know what he went outside for. There was no reason to just take off running out the door.

Sgt. Council testified that after a search warrant was issued, law enforcement officers discovered a Wrigley's Doublemint metal tin outside of the back door through which Johnson ran. In the tin were seventeen bags of marijuana.

While law enforcement officers searched the house, Johnson was placed in the back of a patrol car and Williams and her two children stood on the porch. Sgt. Council testified that during this time Williams approached him and expressed to him that she

did not want to go to jail and that she wanted to be cooperative. Sgt. Council testified that Williams told him there was marijuana in the house and that if he placed her in the patrol car with Johnson, she could find out where Johnson had hidden it. When Williams was removed from the car, Sgt. Council testified that she informed him exactly where the marijuana was located: in a trashcan in the master bathroom. Pursuant to Williams' direction, Sgt. Council found "four bags, maybe four big bags, and looks like some smaller bags that's in part of a ziplock bag or sandwich bag that's packaged." Sgt. Council testified that aggregated together, he discovered 132 grams of marijuana at the residence.

This evidence is more than sufficient to provide the incriminating circumstances necessary to support an inference and from which the jury could find that at the time of the search, Johnson asserted dominion and control over the marijuana found in the Doublemint chewing gum tin as well as the marijuana found in the master bathroom trashcan. Therefore, sufficient evidence exists to support the conclusion that Johnson constructively possessed marijuana and drug paraphernalia. Accordingly, we overrule Johnson's argument.

Appeal by Jessica Williams

III

Williams argues that the trial court erred in failing to enter proper findings of fact and conclusions of law in its 11 January 2013 order denying her motion to suppress evidence and statements. Specifically, Williams contends that the trial court failed to consider whether her incriminating statements to law enforcement officers were coerced in violation of her Fifth Amendment rights under the United States' Constitution.[2] We disagree.

For our standard of review, we again refer to *State v. Brown*, ___ N.C. App. at ___, 720 S.E.2d at 450, discussing motions to suppress, as stated in issue I. "If the motion [to suppress] is not determined summarily the judge must make the determination after a hearing and finding of facts." N.C. Gen. Stat. § 15A-977(d) (2011). "The judge must set forth in the record his findings of facts and conclusions of law." *Id.* ' 15A-977(f).

Pursuant to the Fifth Amendment of the United States Constitution, "[n]o person . . . shall be compelled in any

[2] Williams does not challenge the trial court's denial of her motion to suppress the physical evidence collected by law enforcement officers at the time of her arrest.

criminal case to be a witness against himself[.]" U.S. CONST. amend. V.

> As a constitutional prerequisite to the admissibility of statements obtained from an accused during custodial interrogation, *Miranda* [*v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)] requires that the suspect be advised in unequivocal terms (1) that he has a right to remain silent; (2) that anything he says can and will be used against him in court; (3) that he has a right to consult with a lawyer and to have a lawyer present during interrogation; and (4) that if he is indigent and unable to employ a lawyer, counsel will be appointed to represent him.

State v. Steptoe, 296 N.C. 711, 716, 252 S.E.2d 707, 710 (1979) (citation omitted).

Williams cites *State v. Buchanan*, 353 N.C. 332, 543 S.E.2d 823 (2001), for the proposition that the United States Supreme Court has interpreted the *Miranda* decision "as holding that failure to administer *Miranda* warnings in 'custodial situations' creates a presumption of compulsion which would exclude statements of a defendant." *Id.* at 336-37, 543 S.E.2d at 826 (citation omitted). We acknowledge the sentence Williams quotes from *Buchanan*, and also note that the *Buchanan* Court went on to say "[t]herefore, the initial inquiry in determining whether *Miranda* warnings were required is whether an individual was 'in custody.'" *Id.* at 337, 543 S.E.2d at 826.

Williams asserts that at the time she made statements to law enforcement officers she was handcuffed, standing on her front porch wearing only overalls on a cold February day, possibly visible to her neighbors for perhaps up to two hours. She was in custody but had not been advised of her *Miranda* rights by law enforcement officers of the Harnett County Sheriff's Department Williams contends that "[t]he only question left [is] whether her statements were the product of police coercion." Williams argues that the trial court's failure to make findings of fact resolving this issue amounts to a failure to consider the totality of the circumstances leading up to her incriminating statements to Sgt. Council.

Williams cites *Rhode Island v. Innis*, 446 U.S. 291, 64 L. Ed. 2d 297 (1980), for the proposition that any words or actions on the part of law enforcement that the officers should know are likely to elicit an incriminating response fall within the definition of interrogation under *Miranda*. *Id.* at 300-01, 64 L. Ed. 2d at 308. However, the *Innis* decision further states that "since [law enforcement officers] surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should*

have known were reasonably likely to elicit an incriminating response." *Id.* at 301-02, 64 L. Ed. 2d at 308.

The pertinent evidence presented to the trial court during the suppression hearing was given by Sgt. Council, who testified as follows:

> A. . . . Mrs. Williams had made a comment to me that she did not want to go to jail, and she had stated that she had been to jail before for trafficking marijuana.
>
> Q. Now, was this before the warrant arrived?
>
> A. Yes.
>
> Q. Okay.
>
> A. Okay. And Ms. Williams made the comment that her husband hid some marijuana in the house when we arrived, and she said she didn't know where it was at. And then she said, well, if you put me in the car with him, I can find out where he hid the marijuana.
>
> Q. And all this was before the warrant arrived---
>
> A. Yes, it was.
>
> . . .
>
> Q. And when she gave you that information that -- was that in response to any questions you asked her?
>
> A. No, no. This is her -- didn't want to go to jail. She kept stating that she

did not want to go to jail and leave her kids.

Q. At that point in time, did you know anything about her criminal background?

A. No, I did not. No.

Q. And was Mr. Johnson, in fact, in the patrol car---

A. Yes.

Q. ---or the law enforcement car there?

A. Yes, sir. He was in one of the deputies' patrol cars.

. . .

A. I instructed one of the deputies to come and place Ms. Williams, as well, in the car with her husband.

And he placed her in there. Within five or ten minutes, I instructed him to bring her out, and that's when she said that her husband had stated that he had put the marijuana in the trash can in the bathroom.

Q. And where was she when she told you that?

A. I placed her back on the porch, the steps of her house.

Q. As a result of the information she gave you, did you conduct a search at that time?

A. By that time, I told her that the search warrant hadn't got there yet. It was on its way. I said, well, thank you

> and, you know. And I did tell her that I would not arrest her. I'll let her turn herself in to find suitable means for her kids.

Williams did not testify at the suppression hearing.

There was no evidence presented that Sgt. Council or any other law enforcement officer elicited the statements made by Williams, nor was there evidence that the manner in which Williams was detained created a coercive environment such that the officers should have known was reasonably likely to elicit an incriminating response. All of the evidence shows Williams statements were freely and voluntarily given. Further, they were prompted by her desire to not go to jail and leave her children, as opposed to any words or actions by law enforcement officers that would lead to an incriminating response. Therefore, *Miranda* warnings were not required.

Williams further contends it was error for the court to fail to enter findings of fact and conclusions of law in denying her motion to suppress. Per General Statutes, section 15A-977(d) and (f) the trial court must make written findings of fact and conclusions of law. However, where there is no material conflict in the evidence presented at the suppression hearing, specific findings of fact are not required. *See, e.g., State v. Parks*, 77 N.C. App. 778, 781, 336 S.E.2d 424, 426

(1985) ("Specific findings of fact are not required . . . where there is no material conflict in the evidence presented at the suppression hearing. *State v. Phillips*, 300 N.C. 678, 268 S.E.2d 452 (1980)[.]"). Williams, who presented no evidence at the suppression hearing, cannot now challenge the trial court's finding that her remarks were unsolicited and that there was a material conflict in the evidence. Accordingly, Williams' argument is overruled.

IV

Lastly, Williams argues that the trial court erred in allowing Sgt. Council to testify to Williams' out-of-court statement concerning her prior criminal conviction. We disagree.

Williams acknowledges that, though she objected to Sgt. Council's testimony during trial, she did not preserve the arguments that she now raises on appeal. Therefore, she asks that this Court review the admission of testimony regarding her out-of-court statement concerning a prior criminal conviction for plain error.

> [T]he plain error rule ... is always to be applied cautiously and only in the exceptional case where, after reviewing the entire record, it can be said the claimed error is a *fundamental* error, something so basic, so prejudicial, so lacking in its

> elements that justice cannot have been done, or where [the error] is grave error which amounts to a denial of a fundamental right of the accused, or the error has resulted in a miscarriage of justice or in the denial to appellant of a fair trial or where the error is such as to seriously affect the fairness, integrity or public reputation of judicial proceedings or where it can be fairly said the instructional mistake had a probable impact on the jury's finding that the defendant was guilty.

State v. Lawrence, 365 N.C. 506, 516-17, 723 S.E.2d 326, 333 (2012) (citation and quotations omitted).

At trial, Sgt. Council testified as follows:

> Q Prior to the search warrant arriving, what did you do?
>
> A We were outside, got everybody out of the house, and we were just outside, waiting for the search warrant. At that point in time, Mrs. Williams engaged me in conversation.
>
> Q What did she say to you?
>
> [Defense counsel for Jessica Williams]: Objection.
>
> THE COURT: Grounds?
>
> [Defense counsel for Jessica Williams]: Again, your Honor, it's part of the ongoing objection that was already previously heard in the previous motion. That's all.
>
> THE COURT: Overruled. A continuing objection is noted for the record.

> MS. BEAMAN: Thank you, your Honor.
>
> Q What did she say?
>
> A She stated to me that she didn't want to go to jail, that she was on probation for trafficking a hundred pounds of cocaine, I'm sorry, a hundred pounds of marijuana out of Virginia, I believe, and she also stated that she didn't want to leave her boys and she really loved her boys.

Williams argues that the trial court erred in allowing the testimony because "Sgt. Council's testimony failed to qualify for admission under any rule of evidence and the jury undoubtedly used the information to infer that Defendant-Williams was guilty of the current offense because she had previously committed a similar offense." We are unpersuaded.

Per *Lawrence*,

> [f]or error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty.

Id. at 518, 723 S.E.2d at 334 (citation and quotations omitted).

Even presuming the admission of Williams' out-of-court statement regarding her prior conviction for trafficking marijuana was error, we cannot hold that such amounts to plain

error. The record evidence indicates that Sgt. Council and Agent Parker noted the strong odor of marijuana when Johnson opened the door to the home he shared with Williams. Williams was present, inside the home at that time, and admitted to Sgt. Council that she knew there was marijuana in the house. Law enforcement officers discovered 132 grams of marijuana in Williams' residence. Given this, we cannot hold that that the admission of evidence regarding Williams' prior trafficking conviction had a probable impact on the jury's verdict finding Williams guilty of possession with intent to sell and deliver marijuana. Accordingly, we overrule Williams' argument.

No error; no plain error.

Judges HUNTER, Robert C., and STEELMAN concur.

Report per Rule 30(e).