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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-73

Filed: 20 December 2016

Wake County, No. 11 CRS 213380

STATE OF NORTH CAROLINA

v.

THOMAS ANTWAN LUCAS

Appeal by defendant from judgment entered 22 April 2015 by Judge Paul G. Gessner in Wake County Superior Court. Heard in the Court of Appeals 6 September 2016.

Attorney General Roy Cooper, by Assistant Attorney General J. Aldean Webster III, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jon H. Hunt, for defendant-appellant.

BRYANT, Judge.

Where the search warrant application included an affidavit containing sufficient facts needed to support a determination that there existed probable cause to believe narcotics would be found in the residence located at 5804-102 Pointer Drive, we affirm the trial court's denial of defendant's motion to suppress the fruit of the search based on defendant's argument that the warrant application lacked assertions necessary to establish probable cause.

On 11 June 2011, defendant Thomas Antwan Lucas was arrested after law enforcement officers executed a search warrant at 5804-102 Pointer Drive, Raleigh, an apartment where defendant was residing, and seized 125 grams of marijuana they associated with defendant. On 24 October 2011, a Wake County grand jury indicted defendant for possession with intent to sell and deliver marijuana, and maintaining a dwelling for keeping and selling controlled substances. Defendant filed a motion to suppress the evidence seized pursuant to the search, contending that the search warrant was invalid and did not detail sufficient probable cause. A hearing on the motion was held in Wake County Criminal Superior Court, the Honorable Paul G. Gessner, Judge presiding. Only the application for the search warrant was submitted into evidence.[1]

The information in the affidavit in support of the search warrant provided the following details. On 30 May 2011, an anonymous caller informed the Raleigh Police Department, Crime Stoppers Unit that illegal narcotics were being sold from 5804-102 Pointer Drive in Raleigh. Detective R.T. Pereira was assigned to investigate the tip, and began surveillance on the address. On 9 June 2011, he observed a man leave Apartment 102 carrying a white plastic trash bag with red tie-up handles and place

[1] Pursuant to North Carolina General Statutes, section 15A-244, an application for a search warrant must contain "[a] statement that there is probable cause to believe that items subject to seizure . . . may be found" in the place to be searched and "[a]llegations of fact supporting the statement. The statements must be supported by one or more affidavits particularly setting forth the facts and circumstances establishing probable cause to believe that the items are in the places" to be searched. N.C. Gen. Stat. § 15A-244(1)–(2) (2015).

the bag in a nearby dumpster. Detective Pereira looked in the dumpster and observed two trash bags, both white with red tie-up handles. One of the trash bags contained three small plastic bags, each containing marijuana residue. That trash bag also contained a magazine receipt with the name Terrance Morgan and the address 1037 Shuford Road, and a sandwich order written for "King." Detective Pereira determined that Terrance Morgan was the emergency contact person for Apartment 102, and his name was also associated with the address 1037 Shuford Road, Wake Forest, North Carolina. Apartment 102 was also the site of a 24 February 2010 police incident report of a home invasion. The police report indicated that Charles King was inside Apartment 102, and when interviewed by law enforcement, King stated that the primary resident of the apartment was Terrance Morgan. Also, the address King provided to law enforcement officers as Terrance Morgan's contact address matched Terrance Morgan's contact address listed with the apartment complex management company as the emergency contact for Apartment 102.

On 11 June 2011, upon the issuance of the search warrant, detectives entered Apartment 102 and found four individuals inside, including defendant and Charles King. The officers seized a total of $6,648.00 in U.S. currency, 127 grams of cocaine, 1.05 grams of heroin, 126 grams of marijuana, four digital scales, six cell phones, and a 12-gauge shotgun. The officers were able to connect drugs to individuals in the residence, and connected 125 of the 126 grams of marijuana to defendant. Following

his arrest, defendant was transported to the police detention facility where he waived his *Miranda* rights and agreed to speak to law enforcement officers. Defendant stated he had been staying at the residence for a couple of weeks. Defendant admitted the "weed in the closet was mine. I'm going to try to sell it because I'm broke."

After defendant's motion to suppress was denied, defendant entered a plea of guilty to possession with intent to sell or deliver marijuana, while reserving the right to appeal the denial of his motion to suppress. A charge of keeping and maintaining a dwelling for keeping and selling controlled substances was dismissed. Defendant's guilty plea was accepted and he was sentenced to an active term of six to eight months, which was suspended and defendant was placed on supervised probation for a period of twenty-four months. Defendant appeals.

On appeal, defendant argues that the trial court erred by denying his motion to suppress the fruits of the 11 June 2011 search of Apartment 102 located at 5804 Pointer Drive, where the search warrant was not supported by probable cause. More specifically, defendant contends that the anonymous phone call in conjunction with Detective Pereira's observations on 9 June 2011 were insufficient to establish the probable cause necessary to support the issuance of a search warrant for Apartment 102. We disagree.

> The scope of review on appeal of a motion to suppress "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."

State v. Watkins, 220 N.C. App. 384, 388, 725 S.E.2d 400, 403 (2012) (quoting *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)). "Conclusions of law, however, are reviewed *de novo*." *Id.* (citation omitted). On appeal, defendant does not challenge the trial court's findings of fact; rather, its conclusions of law. Therefore, the trial court's findings are deemed binding, and we review the conclusions of law *de novo*. *See State v. Sinapi*, 359 N.C. 394, 397–98, 610 S.E.2d 362, 365 (2005) ("[W]e note that the parties do not challenge the superior court's findings of fact. Therefore, the scope of our inquiry is limited to the superior court's conclusions of law, which are fully reviewable on appeal." (citation omitted)).

The Fourth Amendment of the Constitution of the United States, states that

> [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

Our Supreme Court adopted the totality of circumstances test of *Illinois v. Gates*, 462 U.S. 213, 76 L.Ed.2d 527 (1983), and *Massachusetts v. Upton*, 466 U.S. 727, 80 L.Ed.2d 721 (1984), for determining whether probable cause exists for

issuance of a search warrant. *State v. Arrington*, 311 N.C. 633, 643, 319 S.E.2d 254, 260 (1984).

> The totality of the circumstances test may be described as follows:
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>> The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for . . . conclud[ing]" that probable cause existed.

State v. Beam, 325 N.C. 217, 221, 381 S.E.2d 327, 329 (1989) (alterations in original) (quoting *Arrington*, 311 N.C. at 638, 319 S.E.2d at 257–58); *see also State v. Benters*, 367 N.C. 660, 664, 766 S.E.2d 593, 597–98 (2014) ("The common-sense, practical question of whether probable cause exists must be determined by applying a totality of the circumstances test." (citations omitted)).

"[A] magistrate is entitled to draw reasonable inferences from the material supplied to him by an applicant for a warrant." *Benters*, 367 N.C. at 665, 766 S.E.2d at 598 (quoting *Sinapi*, 359 N.C. at 399, 610 S.E.2d at 365). "The Court emphasized in *Gates* that great deference should be paid a magistrate's determination of probable

cause and that after-the-fact scrutiny should not take the form of a *de novo* review." *Arrington*, 311 N.C. at 638, 319 S.E.2d at 258 (1984).

Here, in an order entered 23 April 2015, the trial court entered its written findings of fact and conclusions of law to support its ruling denying defendant's motion to suppress. In said order, the court found that Detective Pereira submitted an application for a search warrant, including an affidavit, to a Wake County magistrate, and upon review, the magistrate found that the affidavit provided sufficient facts to show there was probable cause to believe narcotics were being stored at 5804-102 Pointer Drive. The court made the following findings of fact:

> 5. . . . [U]pon receiving an anonymous tip that narcotics were being sold at 5804-102 Pointer Drive in Raleigh, North Carolina, Detective Pereira began surveillance of the residence on June 9, 2011.
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> 6. . . . [D]uring the Detectives [sic] surveillance, he observed a male subject leaving the residence with a trash bag and placing the trash bag in a dumpster. That the Detective subsequently retrieved the trash bag along with one other trash bag and examined the contents. That the one trash bag had no items of consequence, but the second bag had marijuana and baggies, consistent with drug sales, along with two documents.
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> 7. That the first document was a receipt for a magazine sale which listed the buyer as Terrance Morgan and the second document was a receipt for a sandwich order which listed the purchaser as King.
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> 8. That Detective Pereira was able to determine that the power for the residence was listed in the name of James Morgan, who listed Terrance Morgan as his emergency

> contact. That the residence was leased to James Morgan and again Terrance Morgan was listed as his contact. That a Raleigh police report, dated February 24, 2010, regarding a home invasion at the residence, listed a guest named Charles King. That Charles King told police that the main resident was Terrance Morgan and provided the same contact number that the lease and power company had as the contact person, Terrance Morgan, for the residence.

These unchallenged findings of fact, deemed binding on appeal, detail the anonymous tip directing law enforcement officers to look for illegal narcotics activity at 5804-102 Pointer Drive and the corroborative evidence of Detective Pereira's observations to provide the needed indicia of reliability to establish the "fair probability" that narcotics would be found in the apartment at 5804-102 Pointer Drive. *See Beam*, 325 N.C. at 221, 381 S.E.2d at 329. The name of King and Terrance provided a tangible connection between the contents of the incriminating bag and Apartment 102. Thus, the trial court's findings of fact support its conclusion that "[t]hat upon reviewing the affidavit submitted into evidence and the facts contained therein, the affidavit presented to the magistrate provided sufficient facts to warrant the magistrate finding that there was a fair probability that narcotics would be found at 5804-102 Pointer Drive in Raleigh, North Carolina." *See Sinapi*, 359 N.C. at 397–98, 610 S.E.2d at 365. Therefore, we affirm the trial court's ruling denying defendant's motion to suppress, and accordingly, defendant's argument is overruled.

AFFIRMED.

Judges STEPHENS and DILLON concur.

Report per Rule 30(e).