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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-146

Filed: 21 January 2020

Guilford County, No. 17CRS080457

STATE OF NORTH CAROLINA

v.

BRYAN CHRISTOPHER SHELL, Defendant.

Appeal by Defendant from judgment entered 13 July 2018 by Judge Paul L. Jones in Guilford County Superior Court. Heard in the Court of Appeals 14 November 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Ashish Sharda, for the State.*

*New Hanover County Public Defender Jennifer Harjo, by Assistant Public Defender Brendan O'Donnell, for the Defendant.*

DILLON, Judge.

Defendant Bryan Christopher Shell appeals from a judgment finding him guilty of possession with the intent to sell or distribute methamphetamine. We conclude that the trial court did not err in denying Defendant's pre-trial motion to suppress. Thus, we affirm the judgment.

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I. Background

On 17 July 2017, while on patrol duty, a Greensboro police officer noticed heavy traffic on a dead-end road leading to an inn, where the officer had previously made several drug-related arrests and responded to shootings, domestic disturbances, and drug overdoses.

The officer, along with another officer, decided to walk around the inn to ensure no illegal activity was occurring. When on the seventh floor, the officers smelled marijuana. They then saw a woman open her hotel door, look at them with wide eyes and a surprised look, and immediately shut her door. In light of the smell of marijuana and the conduct of this woman, the officers knocked on the woman's door. The officers then heard a lot of activity in the room, including the toilet being flushed and the shower being turn on. The officers knocked again and asked to speak with the woman inside. The woman told the officers through the door she needed to get dressed, though she was fully clothed when the officers saw her in the hallway.

The woman then opened the door and allowed the officers into the hotel room. The officers encountered two additional people in the bedroom and one person, Defendant, in the shower. The officers asked Defendant to get out of the shower so that they could speak to all of the room's occupants as a group. While speaking to the group, one of the officers observed Defendant attempt to conceal a needle under the

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bed. The officer “confiscated the needle and believed that [D]efendant was engaged in drug activity.”

Defendant consented to a search of his person, which revealed a notebook listing names and amounts. Defendant admitted this notebook belonged to him, and later the officers identified it as a drug ledger. The woman consented to a search of the hotel room, which revealed a digital scale, a heroin kit, a butane torch, several small baggies, and eight grams of clear crystal rock that was later confirmed to be crystal methamphetamine.

Defendant was indicted for possession with intent to sell or distribute methamphetamine. Defendant moved to suppress the evidence found during the encounter, which the trial court denied. Defendant was found guilty by a jury. He was then sentenced in the presumptive range. He gave notice of appeal in open court.

II. Analysis

On appeal, Defendant argues that the trial court erred in denying his motion to suppress certain evidence discovered by the officers during the encounter at the inn. Defendant contends that he was unlawfully seized as the officers did not have reasonable suspicion to search him, that his consent to the search was invalid as it was given during an unlawful detention, and that the search exceeded the scope of the consent given.

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We review a trial court's order concerning a motion to suppress for "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. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). And, following a general objection by a party, we review the court's decisions regarding the admissibility of evidence at trial for plain error. *See State v. Eason*, 328 N.C. 409, 420, 402 S.E.2d 809, 814 (1991) ("In order to preserve a question for appellate review, a party must have presented the trial court with a timely request, objection or motion, stating the specific grounds for the ruling sought if the specific grounds are not apparent.").

Here, the trial court's findings of fact in its order denying Defendant's motion to suppress are supported by competent evidence as recited above. These findings, in turn, justify the conclusion that Defendant "granted valid consent to search his person[,] . . . did not withdraw or limit the scope of his initial consent[,] . . . did not object to the viewing of the seized drug journal[, and] . . . was not in custody and Miranda warnings were not required." Thus, we conclude that the trial court did not err in denying Defendant's pre-trial motion to suppress.

"The Fourth Amendment protects the 'right of the people . . . against unreasonable searches and seizures.'" *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 69 (1994) (quoting U.S. Const. amend. IV). Thus, it is permissible for an

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officer to conduct a *reasonable* investigatory stop, “justified by a ‘reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.’” *Id.* at 441, 446 S.E.2d at 70 (quoting *Brown v. Texas*, 443 U.S. 47, 51 (1979)). “[A] search is [also] not unreasonable within the meaning of the Fourth Amendment when lawful consent to the search is given.” *State v. Smith*, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997).

Here, the officers had consent to enter the room at the inn. *See Smith*, 346 N.C. at 800, 488 S.E.2d at 214 (“That officers approach a residence with the intent to obtain consent to conduct a warrantless search and seize contraband does not taint the consent or render the procedure *per se* violative of the Fourth Amendment.”). The trial court found that the officers “requested” Defendant to exit the shower so that they could speak to all of the room’s occupants at once.<sup>1</sup> When Defendant came out into the bedroom, the officers asked to search him, to which Defendant consented without limit. During this search, the officers discovered the drug ledger. Thus, the trial court correctly denied his motion.

III. Conclusion

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<sup>1</sup> Defendant argues that this finding is not supported by the evidence. But the evidence shows that one officer asked Defendant, “Can you do me a favor? . . . Can you just get dressed real quick and come out. I got to talk to everyone. There is something weird going on [ ] here. Okay? I appreciate it.” As fact-finder, the trial court found that Defendant was not seized, but that the encounter was consensual when Defendant complied with the officer’s request. There is no indication that the officer applied any force or direct order or asked for identification or attempted to open the shower door.

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The trial court's findings support its conclusion that the search was consensual. The trial court did not err in denying Defendant's motion to suppress nor in admitting the evidence found as a result of searching Defendant. Therefore, we conclude that Defendant received a fair trial, free from reversible error.

NO ERROR.

Judge DIETZ concurs.

Judge ARROWOOD concurs in result only without separate opinion.

Report per Rule 30(e).