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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-288

No. COA20-690

Filed 15 June 2021

Guilford County, No. 18 CRS 81022-23

STATE OF NORTH CAROLINA

v.

TERRY LOUIS LITTLE, Defendant.

Appeal by Defendant from a judgment entered 11 September 2019 by Judge Craig Croom in Guilford County Superior Court. Heard in the Court of Appeals 11 May 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Tien Cheng, for the State-Appellee.*

*Shawn R. Evans for the Defendant-Appellant.*

GORE, Judge.

¶ 1

Terry Louis Little (“Defendant”) was indicted on 13 November 2018 on one count of possession with intent to sell and deliver a controlled substance, one count of misdemeanor possession of a controlled substance, and one count of misdemeanor possession of drug paraphernalia. On 3 November 2019, Defendant filed a motion to suppress. The motion sought to suppress all evidence from the search and detention

of Defendant.

¶ 2 The hearing on Defendant's motion to suppress commenced on 11 March 2019 before the Honorable Michael Duncan. The court did not make a ruling on the motion in open court, instead after hearing evidence and arguments by counsel, the trial court stated: "I'm going to take it under advisement and notify the parties by email hopefully by the end of this week of the court's decision and ask one of the attorneys to prepare the order."

¶ 3 On 9 September 2019, five months after the hearing on the motion to suppress and after a new term of court had begun, this case came on for trial before the Honorable Craig Croom. At this time, the order from the 11 March 2019 hearing on Defendant's motion to suppress had been prepared, and both parties had an opportunity to review the order, but the order remained unsigned and had not been filed by Judge Duncan. Judge Croom was unaware that the order from the hearing on Defendant's motion to suppress was unsigned until after the trial commenced and the jury was released for deliberation. Judge Duncan's order denying Defendant's motion to suppress was not filed until 11 October 2019, after the trial had concluded. Defendant was ultimately found guilty of felony possession of cocaine and possessing marijuana up to ½ oz, and not guilty of possession of drug paraphernalia. Judge Croom sentenced Defendant to a minimum of 5 months and a maximum of 15 months imprisonment; this sentence was suspended, and Defendant was placed on probation

for 12 months. Defendant gave oral notice of appeal in open court.

¶ 4 “[A]n order of the superior court, in a criminal case, must be entered during the term, during the session, in the county and in the judicial district where the hearing was held.” *State v. Boone*, 310 N.C. 284, 287, 311 S.E.2d 552, 555 (1984). “Absent consent of the parties, an order entered in violation of these requirements is null and void and without legal effect.” *State v. Trent*, 359 N.C. 583, 585, 614 S.E.2d 498, 499 (2005) (citing *Boone*, 310 N.C. at 287, 311 S.E.2d at 555)). The Supreme Court clarified in *State v. Palmer* that “*Boone* stands for the proposition that an order is a nullity if ‘the judge did not make a ruling on the motion in court during the term, but signed the order after the term had expired.’” *Trent*, 359 N.C. at 586, 614 S.E.2d at 500 (quoting *State v. Palmer*, 334 N.C. 104, 108, 431 S.E.2d 172, 174 (1993)).

¶ 5 An order entered out of term will only be valid with the consent of the parties, otherwise the order is null and void. *Boone*, 310 N.C. at 287, 311 S.E.2d at 555. A defendant does not impliedly consent to the entry to an order out of term by failing to object to the court taking the motion under advisement. *State v. Reid*, 76 N.C. App. 668, 670, 334 S.E.2d 235, 236 (1985).

¶ 6 Therefore, in the instant case the trial court was required to enter its ruling on Defendant’s motion to suppress either by announcing its decision in open court or by filing its order with the Iredell County Clerk of Court during the term in which the motion was heard. However, the order on the motion to dismiss was not filed until

the following term and after the Defendant's trial had concluded. Further, Defendant did not consent to the order being filed out of term. As a result, under North Carolina precedent, the order denying Defendant's motion to suppress is null and void and has no legal effect. *See Boone*, 310 N.C. at 287, 311 S.E.2d at 555; *Trent*, 359 N.C. at 585, 614 S.E.2d at 499.

¶ 7

The State argues we should remand this case to the trial court for further findings of fact, as opposed to remanding for a new trial. In making this argument the State relies on *State v. Morgan*, 225 N.C. App. 784, 741 S.E.2d 422 (2013), which relied on *State v. Neal*, 210 N.C. App. 645, 709 S.E.2d 463 (2011). However, in both *Morgan* and *Neal* the trial court announced its decision on the motion to suppress in open court but did not provide enough detail to constitute the required findings of fact. *Morgan*, 225 N.C. App at 789, 741 S.E.2d at 426; *Neal*, 210 N.C. App. at 656, 709 S.E.2d at 470. Here, the trial court never issued a ruling on the motion to suppress, and the case proceeded to trial, and the trial concluded before the denial of Defendant's motion to suppress was filed. Therefore, we do not find the State's argument persuasive. Defendant is entitled to a new trial.

¶ 8

Defendant also argued, in the alternative, that the trial court erred in denying his motion to suppress. However, because the denial of Defendant's motion to suppress was filed out of term, the order is null and void and has no legal effect. As a result, without an order on the motion to suppress, we cannot consider this argument.

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*Opinion of the Court*

¶ 9 For the foregoing reasons, we reverse and remand for a new trial.

NEW TRIAL.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).