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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1057

Filed 5 December 2023

Lincoln County, No. 20 CRS 50881

STATE OF NORTH CAROLINA

v.

JEREMY THOMAS STEVENS, Defendant.

Appeal by Defendant from judgment entered 21 February 2022 by Judge George Bell in Lincoln County Superior Court. Heard in the Court of Appeals 8 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Alex R. Williams, for the State.

Drew Nelson for Defendant.

GRIFFIN, Judge.

Defendant Jeremy Thomas Stevens appeals from the denial of his motion to suppress evidence of methamphetamine found during a drug investigation and the execution of a search warrant for a house and vehicle suspected to be involved in a drug deal. We hold the motion to suppress was properly denied.

I. Factual and Procedural History

On 8 April 2020, Deputy Counts of the Lincoln County Sherriff's Department

received a tip from a concerned citizen, alleging a methamphetamine delivery was scheduled to her rental property later that evening. The tip indicated a man named Jeremy Stevens, driving a black Honda Element, would be delivering methamphetamine to the residence. The informant requested she remain anonymous, and her name was not included in the search warrant. Deputy Dunigan later testified the tip came from Mrs. Smith, who owns the duplex that was searched.[1]

Deputy Counts went to the residence to corroborate the tip and saw a Black Honda Element, at which point he notified Deputies Dunigan and Killan and asked them to come assist him. The three deputies decided a knock-and-talk investigation at the residence was appropriate. All three arrived in marked police vehicles and were in uniform. Upon arriving, they noticed a female running into the residence and yelling "[t]he police are here."

Deputy Dunigan proceeded to the front porch of the residence and knocked on the door. He testified the screen door was closed, but that he believed the main door to the home was open. The knock was answered by Angers Crisson, an individual Deputy Dunigan had experience with through previous drug investigations. As he addressed Mr. Crisson, he surveyed the living room area and noticed a clear plastic bag that appeared to have methamphetamine residue in it.

[1] We have used a pseudonym to protect the identity of the informant.

Deputy Dunigan inquired about the clear bag and asked for consent to search the home but was denied consent. He informed Mr. Crisson he would obtain a search warrant and return to the residence. After this exchange, Deputy Dunigan cleared the residence and encountered Lisa Withers in the back bedroom. Deputy Dunigan cleared the residence and left to obtain a search warrant. While in route to get the warrant, he received a call from Deputy Killan. Killan stated Lisa Withers told him she ran inside to hide a mirror that had methamphetamine on it. She also stated there was a large quantity of methamphetamine in the back of the Honda Element.

Deputy Dunigan received the search warrant at 2:18 a.m. and returned to the residence. The search warrant authorized the Deputies to search the residence, the Honda Element operated by Defendant, and the individuals present at the residence. Deputy Dunigan searched the residence and found a clear plastic baggie with methamphetamine residue inside and drug-related paraphernalia. Deputies Killan and Counts searched the Honda Element and recovered a bag with methamphetamine and a digital scale.

Defendant's motion to suppress was denied on 16 February 2022. Defendant absconded immediately after the hearing. Defendant was located on 21 February 2022, and pled guilty to a three-count indictment of Trafficking in Methamphetamine by Possession, Possession with Intent to Manufacture, Sell or Deliver Methamphetamine, and Felony Maintaining a Vehicle for Controlled Substances. On the same day, judgment was entered. Defendant did not timely appeal pursuant to

Rule 4 of the North Carolina Rules of Appellate Procedure. Defendant filed a petition for a writ of certiorari to review the criminal judgment on 20 January 2023. In our discretion, we issue a writ of certiorari to review the issues raised in Defendant's petition and brief.

II. Standard of Review

"'It is well established that the standard of review in evaluating a trial court's ruling on a motion to suppress is that the trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.'" *State v. Benitez*, 283 N.C. App. 40, 51–52, 872 S.E.2d 160, 166 (2022) (citation omitted). "'Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.'" *State v. Ashworth*, 248 N.C. App. 649, 651, 790 S.E.2d 173, 176 (2016) (citation omitted). Furthermore, "[u]nchallenged findings of fact are binding on appeal." *State v. Byrd*, 287 N.C. App. 276, 279, 882 S.E.2d 438, 440 (2022) (citation omitted).

Additionally, "[o]nce this Court concludes that the trial court's findings of fact are supported by the evidence, then this Court's next task is to determine whether the trial court's conclusions of law are supported by the findings." *State v. Campbell*, 188 N.C. App. 701, 704, 656 S.E.2d 721, 724 (2008) (citations and quotation marks omitted). "The trial court's conclusions of law are reviewed *de novo* and must be legally correct." *Id.* (citations and quotation marks omitted).

III. Analysis

Defendant contends the trial court erred in denying his motion to suppress the evidence obtained pursuant to the search warrant. Specifically, Defendant argues the trial court erred by: (1) making Findings of Fact not supported by competent evidence; (2) concluding the knock-and-talk investigation was permissible; and (3) concluding the search warrant was supported by probable cause. Lastly, Defendant argues in the alternative that the trial court committed plain error by denying his motion to suppress.

A. Findings of Fact

Defendant asserts Findings of Fact 4, 5, 6, 7, 10, 14, and 22 were not supported by competent evidence. "Thus, all other findings of fact are deemed to be supported by competent evidence and are binding on this Court." *Ashworth*, 248 N.C. App. at654, 790 S.E.2d at 177 (citation omitted). "'[I]rrelevant findings in a trial court's decision do not warrant a reversal of the trial court.'" *State v. Styles*, 185 N.C. App. 271, 274, 648 S.E.2d 214, 216 (2007) (citations omitted).

Finding of Fact 4 states: "On April 8th, 2020, Deputy Counts with the Lincoln County Sheriff's Office received a report from a concerned citizen, [Mrs. Smith.]" The testimony provided by Officer Dunigan states that he "received a call about a vehicle possibly bringing controlled substances" from Deputy Counts. While Officer Dunigan does not initially state that the call was from Mrs. Smith, he explicitly states this later in his testimony. We find this testimony to be competent evidence. Therefore, the trial court did not err in making Finding of Fact 4.

Defendant also challenges additional findings of fact by asserting Findings of Fact 5-7, 10, 14, and 22 are erroneous. While we agree the trial court did err in making these Findings of Fact, Defendant's contention that this constitutes reversible error is without support. This Court has previously declined to overturn a denial of a defendant's motion to suppress when the trial court included unsupported findings of fact that did not affect the conclusions of law. *See State v. Hernandez*, 170 N.C. App. 299, 304–05, 612 S.E.2d 420, 424 (2005).

Here, even excluding the findings made in error, the motion was properly denied.

B. Knock and Talk

Defendant asserts Deputy Dunigan's knock-and-talk investigation exceeded the scope available to law enforcement officers acting without a warrant. We disagree.

Conclusion of Law 1 states: "That the approach of the residence and conversation with its occupants by Lincoln County Sheriff's Office deputies was a voluntary contact and, therefore, required no reasonable suspicion."

The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures. U.S. Const. amend. IV. "But when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Florida. v. Jardines*, 569 U.S. 1, 6 (2013)

(citations and quotation marks 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." *State v. Smith*, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997) (citation omitted).

Our Courts have long recognized the "knock and talk" doctrine. "A 'knock and talk' is a procedure by which police officers approach a residence and knock on the door to question the occupant, often in an attempt to gain consent to search when no probable cause exists to obtain a warrant." *State v. Marrero*, 248 N.C. App. 787, 790, 789 S.E.2d 560, 564 (2016) (citation omitted). "The scope of the implied license to conduct a knock and talk is governed by societal expectations, and when law enforcement approach a home in a manner that is not customary, usual, reasonable, respectful, ordinary, typical, nonalarming, they are trespassing, and the Fourth Amendment is implicated." *State v. Falls*, 275 N.C. App. 239, 248, 853 S.E.2d 227, 234 (2020) (citations and quotation marks omitted). "Put simply, bloodhound or not, law enforcement can do no more than the ordinary citizen would be expected to do." *Id.* at 247, 853 S.E.2d at 233 (citation omitted). "Relevant to distinguishing between a knock and talk and a search is how law enforcement approach the home, the hour at which they did so, and whether there were any indications that the occupant of the home welcomed uninvited guests on his or her property." *Id.* at 248, 853 S.E.2d at 234.

Defendant argues this Court should follow the "midnight-or-later" approach and hold that Deputy Dunigan exceeded the scope of the knock-and-talk investigation because of the hour in which the investigation was conducted. We disagree.

Deputy Dunigan knocked on the front door of the residence after seeing a woman run inside the door, indicating to him that the occupants of the house were awake. Mr. Crisson, who answered, was not required to answer the door, or speak to the officers. Instead, he opened the door and voluntarily talked to Deputy Dunigan and answered some of his questions. By the time he rejected Deputy Dunigan's request for consent to search the property, Deputy Dunigan had already identified a small plastic bag of what he believed contained residue of methamphetamine in plain view from the front door.

Throughout Deputy Dunigan's knock-and-talk investigation, he did no more than an ordinary citizen would have been permitted to do under these circumstances. Therefore, Defendant's challenge that the knock-and-talk investigation exceeded the scope and was not supported by findings of fact is improper. We hold that Findings of Fact 12, 13, and 14 support Conclusion of Law 1.

> 12. Another female named Lisa Withers was standing outside of the vehicle and, upon the arrival of the deputies in a marked patrol car, ran into the duplex yelling, "The police are here! The police are here!"
>
> 13. Deputy Dunigan proceeded up the drive and knocked on the door of the duplex.
>
> 14. Angers Crisson opened the door and allowed Deputy

Dunigan to step inside the residence.[2]

Therefore, the trial court did not err in finding that the deputies conducted a permissible knock-and-talk investigation.

C. Search Warrant

Defendant next argues the search warrant should not have relied on the statement that Lisa Withers made to the deputies. Additionally, he asserts that the trial court failed to treat Mrs. Smith's tip as anonymous when evaluating whether probable cause existed. Lastly, he makes a general assertion the search warrant was not supported by probable cause. We disagree.

"The 'common-sense, practical question' of whether probable cause exists must be determined by applying a 'totality of the circumstances' test." *State v. Benters*, 367 N.C. 660, 664, 766 S.E.2d 593, 597–98 (2014) (citations omitted). The task before the issuing magistrate is to evaluate "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 a crime will be found in a particular place." *Id.* at 664, 766 S.E.2d at 598 (citations and quotation marks omitted). "[T]he duty of a reviewing court is simply

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[2] We recognize that the record does not support that Deputy Dunigan stepped inside the residence. However, Mr. Crisson did initiate the knock-and-talk investigation by voluntarily opening the door. However, we will not disturb an order when erroneous findings do not affect the trial court's conclusions of law. *See Hernandez*, 170 N.C. App. at 305, 612 S.E.2d at 424.

to ensure that the magistrate had a substantial basis for . . . concluding that probable cause existed." *Id.* (citations and marks omitted).

1. Withers's Statement

Defendant argues the trial court erred in relying on a statement made by Ms. Withers when determining whether probable cause existed because (1) the statement was obtained in violation of Ms. Withers's Fourth Amendment rights and (2) the officer exceeded the scope of a protective sweep when gathering her statement. Defendant's argument fails for several reasons.

First, "[i]n order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1). This Court has consistently stated that counsel must specifically state the grounds for objection in a motion to suppress and that the defendant "may not swap horses after trial in order to obtain a thoroughbred upon appeal." *State v. Collins*, 245 N.C. App. 288, 300, 782 S.E.2d 350, 358 (2016) (citations and marks omitted).

Here, Defendant's motion to suppress the search warrant did not challenge the constitutionality of the inclusion of Ms. Withers's statement or that the officer exceeded the scope of a protective sweep when obtaining the statement. These issues may not be raised for the first time on appeal. Defendant points to nowhere in the record to indicate he made this argument at the trial court level and has presented

no argument to indicate otherwise. Instead, he requests this Court to invoke Rule 2 and further review his arguments on the merits. In our discretion, we decline to invoke Rule 2.

2. Failing to Treat Tip as Anonymous

Defendant next argues the trial court erred by failing to treat the tip as anonymous when evaluating whether the search warrant was supported by probable cause. While Defendant is correct that the trial court should have treated this tip as anonymous when evaluating whether there was probable cause, this error is harmless for two reasons.

First, "[a]n anonymous tip, standing alone, is rarely sufficient, but the tip combined with corroboration by the police could show indicia of reliability that would be sufficient to pass constitutional muster." *Benters*, 367 N.C. at 666, 766 S.E.2d a 598–99 (citations and marks omitted). Therefore, "a tip that is somewhat lacking in reliability may still provide a basis for probable cause if it is buttressed by sufficient police corroboration." *Id.* "When an anonymous tip is the source of information supporting a warrant, the officers' corroborative investigation must carry more of the State's burden to demonstrate probable cause." *State v. Caddell*, 267 N.C. App. 426, 434, 833 S.E.2d 400, 407 (2019) (citations and quotation marks omitted).

Findings of Fact 9 and 11 state that:

> 9. After receiving that information, Deputy Dunigan and Deputy Counts began to look for the Black Honda Element in the area of Keener Road.

> . . .
>
> 11. When the deputies arrived at the duplex, [Defendant] was sitting in the Black Honda Element in the driveway with a female named Tiffany.

These Findings of Fact show that the officers corroborated the tip from Mrs. Smith as if it were anonymous. Therefore, the fact that the trial court did not treat the tip as anonymous is not fatal because the police were able to verify that the Black Honda Element and Defendant were present on the same day and at the same residence as indicated by the tip.

Second, as discussed below, the error was harmless because there was additional evidence the trial court could have relied on in determining that probable cause existed.

3. Probable Cause

Defendant next argues the trial court erred in concluding that "the search warrant for the . . . Honda element was supported by probable cause" because there was no probable cause to support a search warrant. Even assuming the trial court did err in using Ms. Withers's statement and in failing to treat the tip as anonymous when evaluating whether there was probable cause, there was other evidence that was sufficient to establish probable cause. Therefore, we hold that any error committed by the trial court in evaluating whether there was probable cause for a search warrant was harmless.

In evaluating whether an error by the trial court is harmless:

> [w]e recognize that all Federal Constitutional errors are not prejudicial, and under the facts of a particular case, they may be determined to be harmless, so as not to require an automatic reversal upon conviction. The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction. Nevertheless, before a court can find a Constitutional error to be harmless it must be able to declare a belief that such error was harmless beyond a reasonable doubt.

State v. Heard, 285 N.C. 167, 172, 203 S.E.2d 826, 829 (1974). Applying the totality of the circumstances test laid out in *Benters,* Findings of Fact 15, 16, and 17 show that Deputy Dunigan observed a plastic baggie with methamphetamine residue in it in plain view. Specifically, these findings state:

> 15. Deputy Dunigan saw, in plain view, a plastic baggie lying on the coffee table.
>
> 16. The plastic baggie contained what Deputy Dunigan, based on his training and experience, believed to be methamphetamine residue.
>
> 17. Based on the baggie containing what he believed to be methamphetamine residue, Deputy Dunigan locked the residence down and left to apply for a search warrant.

These findings of fact alone are sufficient to show that there was probable cause for a search warrant. Even without the consideration of Ms. Withers's statement or the tip from Mrs. Smith, probable cause existed to support a search warrant and therefore, the trial court did not err.

IV. Conclusion

For the aforementioned reasons, we hold Defendant's motion to suppress was

properly denied.

AFFIRMED.

Chief Judge STROUD and Judge ARROWOOD concur.

Report per Rule 30(e).