IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-178

Filed 17 October 2023

New Hanover County, Nos. 21CRS54420–23, 54397

STATE OF NORTH CAROLINA

v.

SEAN RUFFOLO, Defendant.

Appeal by defendant from orders entered 18 August 2022 by Judge J. Stanley Carmical in New Hanover County Superior Court. Heard in the Court of Appeals 19 September 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Macari, for the State.*

*BJK Legal, by Benjamin J. Kull, for appellant-defendant.*

FLOOD, Judge.

Sean Ruffolo ("Defendant") appeals his conviction for one count of trafficking lysergic acid diethylamide ("LSD") by possession and one count of trafficking methylenedioxymethamphetamine ("MDMA") by possession, arguing the search

warrant application failed to establish probable cause to search 6149 Rossie Trail, Apartment B, Wilmington, North Carolina.[1] After careful review, we find no error.

## I. Factual and Procedural Background

In May 2021, Detective Sam Smith ("Detective Smith") was working at the special investigations unit of the Carolina Beach Police Department ("CBPD"). Detective Smith was informed by the Department of Homeland Security ("DHS") that they had intercepted two packages believed to contain MDMA. The packages were shipped from the Netherlands and addressed to Defendant at a residence in Carolina Beach, North Carolina. DHS transferred the packages to the CBPD on or about 10 May 2021, and both packages were confirmed to contain large quantities of MDMA.

Based on the packages containing MDMA, CBPD detectives began to conduct surveillance of the residence located in Carolina Beach, but they never saw Defendant coming from, or going to, the residence. A neighbor indicated they had not seen Defendant for a while, leading the officers to believe Defendant had moved. On or about 19 May 2021, CBPD detectives received confirmation from the U.S. Postal Inspector's Office of a new forwarding address for Defendant located at 6149 Rossie Trail, Wilmington, North Carolina. Within a few days of receiving Defendant's new address, Detective Smith began surveillance of 6149 Rossie Trail, and eventually, he personally observed Defendant at 6149 Rossie Trail, Apartment B. Detective Smith

[1] A pseudonym has been used for the address of the apartment described in the search warrant application.

subsequently contacted the New Hanover Sheriff's Office ("NHSO") to transfer the case along with the packages of MDMA.[2]

On 10 June 2021, after receiving the packages containing MDMA, NHSO detectives planned the following controlled delivery of the packages to Defendant. NHSO Detective Justin Shingleton called Defendant and represented that he was staying at Defendant's former apartment in Carolina Beach and had two packages addressed to Defendant that he wanted to make sure Defendant received. Defendant agreed to meet Detective Shingleton near Independence Mall.

While the controlled delivery was being set up, Detective Josh Cranford ("Detective Cranford"), a detective at the New Hanover Sheriff's Office, was surveilling Defendant's apartment. On 10 June 2021, Detective Cranford observed Defendant exit Apartment B, sit down, work for about ten minutes on a laptop computer, and then go back inside Apartment B. Later that day, Defendant left the apartment without the computer and walked to the meeting place near Independence Mall. Detectives continued surveilling Defendant while he was en route to the meeting place. Defendant met Detective Shingleton near the mall, and after willfully accepting the packages from Detective Shingleton, Defendant was taken into custody.

On 10 June 2021, immediately following Defendant's arrest, Detective Scott Leonard ("Detective Leonard") obtained a search warrant (the "10 June Warrant") for

[2] Officer Smith continued to assist NHSO during the remainder of the investigation.

6149 Rossie Trail, Apartment B. In the probable cause affidavit, Detective Leonard specified the following facts:

> During the month of May 2021, Det. Leonard was briefed by Detective S. Smith with the [CBPD] in reference to agents with [DHS] intercepting two (2) packages, each containing a trafficking amount of [MDMA]. Det. Smith stated the packages were intended to be delivered to [Defendant] at an address in Carolina Beach. Det. Smith stated [Defendant] had since moved out of the home in Carolina Beach to an address within the city of Wilmington [6149 Rossie Trail] . . . .
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> On June 10, 2021, Det. Shingleton and Det. C. Hunter with [t]he [NHSO] Vice and Narcotics Unit took custody of the packages containing the MDMA. The packages were plain white envelopes bearing postage from the Netherlands. Det. Shingleton placed a recorded call to [Defendant] stating he was staying [Defendant's] former apartment and was told several packages had been delivered for [Defendant] and wanted to make sure [Defendant] received the packages. [Defendant] agreed to meet Det. Shingleton near Independence Mall.
>
> Detectives conducted surveillance of [6149 Rossie Trail] prior to the agreed upon meeting. Det. Cranford observed [Defendant] exit the apartment and utilize a laptop computer on the front steps of the apartment. Detectives continued surveillance of [Defendant] as he left the apartment and traveled to the agreed upon meeting location to meet Det. Shingleton.
>
> [Defendant] took control of the packages containing the trafficking amounts of MDMA, [and] detectives arrested [Defendant] shortly after he accepted the packages. Det. Leonard knows the Netherlands to be a source of supply for many illicit drugs and knows that the area is specifically known for synthetic and designer drugs as well as pressed pills. Det. Leonard knows it is common for traffickers to purchase narcotics from foreign sources of supply via the

> internet and specifically the "dark web" and also commonly use cryptocurrency to facilitate the transactions.

The 10 June Warrant was executed the same day. While executing the 10 June Warrant, Detectives found, in plain view, marijuana and marijuana paraphernalia. Based on the items they observed while executing the 10 June Warrant, detectives applied for, and were granted, a second search warrant (the "11 June Warrant"). The day after the initial search of Defendant's apartment, Detectives executed the 11 June Warrant of 6149 Rossie Trail, Apartment B and seized LSD, Dimethyltryptamine ("DMT"), MDMA, and marijuana, as well as an Apple MacBook Pro, two Samsung SD cards, a flash drive, and a hardware wallet.

On 25 October 2021, Defendant was indicted on multiple counts all relating to the maintaining, trafficking, and possessing with intent to sell or distribute controlled substances.

On 1 May 2022, Defendant filed a supplemental motion to suppress the evidence obtained pursuant to the 10 June 2021 search warrant, arguing the search warrant was not supported by probable cause.[3] On 18 August 2022, the trial court orally denied the motion to suppress, concluding there was a sufficient nexus between the intercepted packages containing MDMA and the 6149 Rossie Trail apartment. Defendant subsequently entered an *Alford* plea to one count of trafficking LSD by

[3] Defendant filed an initial motion to suppress on 23 June 2021 before Defendant had been indicted.

possession and one count of trafficking MDMA by possession. Defendant preserved the right to appeal. On 1 February 2023, the trial court entered a written order reiterating the rationale and holding of its oral denial of the motion to suppress.

## II. Jurisdiction

This Court has jurisdiction to review a final order denying a motion to suppress evidence. N.C. Gen. Stat. § 15A-979(b) (2021).

## III. Analysis

While Defendant presents four issues on appeal, this appeal is more properly framed as whether the trial court: (A) lacked jurisdiction to enter the written order denying the motion to suppress; and (B) erred in denying Defendant's motion to suppress.

### A. Trial Court's Jurisdiction

Defendant's first assignment of error on appeal is that the written order issued on 1 February 2023 altered the orally-issued findings of fact in a way that affected the merits of the case because, in the written order, the trial court specified that Defendant had moved to 6149 Rossie Trail, Apartment B. We disagree.

This Court reviews jurisdictional issues *de novo*. *State v. Oates*, 366 N.C. 264, 266, 732 S.E.2d 571, 573 (2012). "Under a *de novo* review, [this] [C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citation and internal quotation marks omitted).

Once "appeal entries are noted, the appeal becomes effective immediately, and the trial court is without authority to enter orders affecting the merits of the case." *State v. Fields*, 268 N.C. App. 561, 565, 836 S.E.2d 886, 889 (2019) (citation omitted). Importantly, trial courts retain jurisdiction to enter an order that is a "chronicle of the findings and conclusions" issued orally at a prior hearing. *Id.* at 565, 836 S.E.3d at 889.

Here, the trial court orally denied Defendant's motion to suppress, noting there was a sufficient nexus between the packages of MDMA and the 6149 Rossie Trail apartment. In its oral order, the trial court announced that "Detective Smith stated [Defendant] had since moved out of the home in Carolina Beach to an address within the City of Wilmington, [6149 Rossie Trail]." The written order differed slightly, stating, "[p]ursuant to his investigation, Detective Smith determined that . . . [D]efendant had since moved out of the home in Carolina Beach to an address within the City of Wilmington, [6149 Rossie Trail,] *Apartment B*." (emphasis added).

Contrary to Defendant's argument, the specification of "Apartment B" in the written order does no more than chronicle the findings of fact made in the oral announcement and did not impact the merits of the case. *See Fields*, 268 N.C. App. at 565, 836 S.E.2d at 889. The first and last page of the warrant application specified that detectives were seeking a search warrant for "Apartment B." In the trial court's oral order, it repeatedly referred to "the apartment," as opposed to an entire complex or building. These statements were made in a specific context where it was

understood that the warrant issued was for Apartment B. The inclusion of that specific language in the written order does not alter the merits of the case because it does not add anything new to the facts of the case.

The trial court, therefore, had jurisdiction to reduce its oral denial of the motion to suppress to writing because the written order did not impact the merits of the case. *See Fields*, 268 N.C. App. at 565, 836 S.E.2d at 889.

**B. The Search Warrant Application**

Next, we turn to whether the magistrate had a substantial basis, based on the search warrant application, to conclude there was probable cause to search 6149 Rossie Trail, Apartment B. Defendant argues the order denying the motion to suppress should be reversed because the search warrant application failed to establish probable cause to search Apartment B. Specifically, Defendant claims there was insufficient evidence establishing: (1) Defendant lived in Apartment B; (2) Defendant was an active drug dealer; or (3) evidence of drug dealing would likely be found in Apartment B. We disagree.

This Court reviews the denial of a motion to suppress by determining "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusion of law." *State v. Lowe*, 369 N.C. 360, 364, 794 S.E.2d 282, 285 (2016) (citation omitted). When examining a magistrate's probable cause determination, a reviewing court looks to see whether there was a "substantial basis for concluding that probable cause existed." *State v. Arrington*, 311 N.C. 633,

638, 319 S.E.2d 254, 258 (1984) (cleaned up) (citation and internal quotation marks omitted).

The Fourth Amendment of the United States Constitution provides that "no [w]arrants shall issue, but upon probable cause, supported by [o]ath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. The Supreme Court of the United States has set forth a totality of the circumstances test to determine whether probable cause exists under the Fourth Amendment. *Illinois v. Gates*, 462 U.S. 213, 230–31, 103 S. Ct. 2317, 2328, 76 L. Ed. 2d 527, 543–44 (1983). This Court has adopted that same test for interpreting the validity of warrants pursuant to Article I, Section 20 of the North Carolina Constitution, and as the state constitution does not call for broader protection than its federal counterpart, the probable cause analysis under either clause is identical. *See State v. Miller*, 367 N.C. 702, 706, 766 S.E.2d 289, 292 (2014) ("[N]othing in the text of Article I, Section 20 calls for broader protection than that of the Fourth Amendment."); *see also State v. Allman*, 369 N.C. 292, 293, 794 S.E.2d 301, 303 (2016) (holding that the probable cause analysis in the federal and state constitution is the same).

The principal question under the totality of the circumstances test is "whether the evidence as a whole provides a substantial basis for concluding that probable cause exists." *State v. Beam*, 325 N.C. 217, 221, 381 S.E.2d 327, 329 (1989). This is a "commonsense, practical question[,]" which can be answered by using the "factual

and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Illinois*, 462 U.S. at 230–31, 103 S. Ct. at 2328, 76 L. Ed. 2d at 543–44.

An affidavit is sufficient to establish probable cause for a search warrant if it "furnish[es] reasonable cause to believe that the search will reveal the presence of the [items] sought on the premises described in the application for the warrant and that such [items] will aid in the apprehension or conviction of the offender." *State v. Bright*, 301 N.C. 243, 249, 271 S.E.2d 368, 372 (1980). A magistrate cannot issue a search warrant based on an affidavit that is "purely conclusory" and lacking in a description of the underlying circumstances giving rise to probable cause. *Id.* at 249, 271 S.E.2d at 372. Reviewing courts, however, "should not invalidate warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner." *State v. Riggs*, 328 N.C. 213, 222, 400 S.E.2d 429, 434 (1991) (alteration in original) (citation and internal quotation marks omitted).

Applying these principles to the case at hand, the search warrant application provided substantial evidence that Defendant lived in 6149 Rossie Trail, Apartment B. In the probable cause affidavit, Detective Leonard specified how he knew Defendant had moved to 6149 Rossie Trail, Apartment B—Detective Smith told him that Defendant's new forwarding address was 6149 Rossie Trail, and NHSO Detectives observed Defendant enter and exit Apartment B the day he was arrested.

Defendant argues the affidavit itself did not specify which specific unit he was thought to live in, but this, however, is not fatal to a finding of probable cause. Moreover, it is incorrect. The warrant application specifies that the warrant sought was for Apartment B. On the first page of the application, it stated, "[i]n the [m]atter of: Sean Thomas RUFFOLO [6149 Rossie Trail,] Aptment B [sic]." Then again, on the last page of the application, it describes the premises to be searched: "[6149 Rossie Trail, A]partment B is a second floor apartment in a tan/grey apartment complex." Where the application states that Detective Cranford "observed [Defendant] exit the apartment" and "Detectives continued surveillance of [Defendant] as he left the apartment," there is a substantial basis for finding that "the" referred to the individual unit specified twice in the warrant application.

Next, Defendant argues, assuming the warrant application referred to Apartment B, the nexus between him and that specific apartment is insufficient pursuant to *State v. Lewis*, 372 N.C. 576, 831 S.E.2d 37 (2019). In *Lewis*, a string of robberies led police to surveil the home at 7085 Laurinburg Road, Raeford, North Carolina. *Id.* at 577–78, 831 S.E.2d at 39. Law enforcement observed a man who matched the description of the defendant leave the home and walk to the mailbox. *Id.* at 578, 831 S.E.2d at 39. After the suspect identified himself to police, he was arrested. *Id.* at 578, 831 S.E.2d at 39. In the subsequent search warrant application to search the defendant's home, law enforcement failed to identify in the affidavit any information linking the defendant to the 7085 Laurinburg Road address, instead

simply specifying that he was arrested in front of that house. *Id.* at 579, 831 S.E.2d at 40. Our Supreme Court found it critical that the affidavit did not specify why law enforcement had gone to that specific address, subsequently concluding that the information contained in the affidavit failed to establish the existence of probable cause. *Id.* at 588, 831 S.E.2d at 45.

The case at hand is distinguishable from *Lewis* because the affidavit in this case clearly identified information connecting Defendant to 6149 Rossie Trail, Apartment B. Unlike in *Lewis*, where the affidavit did not explain why law enforcement was surveilling the house, here, the affidavit stated Detective Leonard was told by Detective Smith that Defendant had moved from Carolina Beach to the 6149 Rossie Trail apartment complex. The affidavit also explained that detectives observed Defendant walk in and out of Apartment B several times before his arrest. Instead of merely observing him exit the apartment once, like in *Lewis*, law enforcement had reason to believe he was living in Apartment B, relying on the forwarding address supplied by the U.S. Postal Inspector's Office, the CBPD's investigation, and the NHSO's surveillance of Defendant at the location they already had reason to believed he lived. There was substantial evidence, therefore, connecting Defendant to 6149 Rossie Trail, Apartment B.

The search warrant application also provided a substantial basis for concluding Defendant was an active drug dealer. The application specified that two packages containing trafficking levels of MDMA were mailed from the Netherlands

to Defendant at his home. The application further stated that detectives knew the Netherlands to be a common source for drug dealers to purchase drugs and that they often did so through the dark web, using cryptocurrency. This provided a sufficient basis connecting Defendant to the MDMA seized by DHS. Contrary to Defendant's argument, law enforcement was not required to prove that the drugs belonged to Defendant. The standard for obtaining a warrant requires only probable cause, and here, utilizing "factual and practical considerations of everyday life," there is a substantial basis for finding probable cause that the person to whom a trafficking amount of MDMA was sent was dealing drugs. *See Illinois*, 462 U.S. at 230–31, 103 S. Ct. at 2328, 76 L. Ed. 2d at 543–44.

Finally, Defendant argues the search warrant did not provide probable cause that evidence of drug dealings would be found in Apartment B because the affidavit implicated Apartment B solely through the conclusion of Detective Leonard based on his training and experience. We disagree.

In advancing this argument, Defendant relies on *State v. Hunt*, 150 N.C. App. 101, 562 S.E.2d 597 (2002). In *Hunt*, the affidavit specified that law enforcement had received numerous complaints regarding a specific home. *Id.* at 102–03, 562 S.E.2d at 599. The complaints detailed that many cars would drive up, only to remain for a short period of time. *Id.* at 102–03, 562 S.E.2d at 599. The affidavit relied on the detectives' training and experience to conclude that the heavy traffic of cars paired with the brief amount of time they stayed at the house created probable cause that

evidence of drug-dealing would be found in the home. *Id.* at 107, 562 S.E.2d at 601. This Court rejected that contention, finding the alleged facts to be too speculative to support finding probable cause of drug-trafficking. *Id.* at 107, 562 S.E.2d at 602. The facts, here, however, are not that speculative.

In this case, instead of relying solely on the complaints of neighbors and heavy vehicle traffic, Detective Leonard was able to point to an actual shipment of MDMA to Defendant's home, evidence of Defendant's move to 6149 Rossie Trail, Apartment B, and evidence of a laptop which, in his experience, could likely contain evidence of drug-dealing based on the origin of the drugs. Yes, Detective Leonard's training and experience informed him that the Netherlands was a common source of drugs, and those dealing in drugs often used computers to store records and communications. A reviewing court, however, looks at the totality of the circumstances. Detective Leonard's conclusion did not come out of thin air. Detectives knew two packages of MDMA had been shipped from the Netherlands to an address associated with Defendant. They knew Defendant had moved from Carolina Beach to 6149 Rossie Trail, Apartment B. They observed Defendant at this address, working on a laptop computer. The broader context gave detectives substantial evidence to conclude that evidence of drug dealing would be found in Apartment B, even if that evidence was simply a laptop in which information was stored.

The magistrate who issued the 10 June Warrant had a substantial basis for concluding that evidence of drug-dealing would be found in 6149 Rossie Trail,

Apartment B. The facts alleged in the affidavit provided a strong nexus to connect Defendant to both evidence of drug-dealing and the specific apartment, and it provided substantial evidence that evidence of drug-dealing would be found at the apartment.

The trial court, therefore, did not err in denying Defendant's motion to suppress evidence because the 10 June Warrant application provided probable cause of illicit activity at 6149 Rossie Trail, Apartment B. *See Beam*, 325 N.C. at 221, 381 S.E.2d at 329.

## IV. Conclusion

For the reasons set forth above, we hold that the trial court had the authority to enter the written order and did not err in denying Defendant's motion to suppress. We therefore affirm the order of the trial court.

NO ERROR.

Chief Judge STROUD and Judge MURPHY concur.

Report per Rule 30(e).