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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-320

Filed 16 January 2024

Wake County, No. 20 CRS 201267

STATE OF NORTH CAROLINA

v.

DONNELL EMANUEL HALL

Appeal by defendant from judgment entered 15 July 2022 by Judge Keith O. Gregory in Wake County Superior Court. Heard in the Court of Appeals 17 October 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Kellie E. Army, for the State.

Phoebe W. Dee for defendant-appellant.

ZACHARY, Judge.

Defendant Donnell Emanuel Hall appeals from the judgment entered upon his conviction for attempted robbery with a dangerous weapon. On appeal, Defendant argues that he received ineffective assistance of counsel as a result of his trial counsel's failure to file a motion to suppress certain evidence at trial. Defendant also filed a motion for appropriate relief with this Court pursuant to N.C. Gen. Stat. § 15A-

1418 (2021), again alleging ineffective assistance of counsel. After careful review, we conclude that Defendant was not denied the effective assistance of counsel. Accordingly, there was no prejudicial error at trial and we deny Defendant's motion for appropriate relief.

BACKGROUND

In the early morning hours of 19 January 2020, Raleigh resident Hany Gendy called 9-1-1 and reported that a relatively young black male had just attempted to rob him and that he was following the perpetrator in his vehicle in order to obtain the license-plate number of the perpetrator's vehicle. When Mr. Gendy obtained the license-plate number, he instructed the 9-1-1 dispatcher that he had terminated his pursuit and he then met law enforcement officers at a nearby Sheetz gas station.

Mr. Gendy told the officers that a young black man, dressed in all black and wearing a ski mask, gloves, and a hoodie, had attempted to rob him with a black gun outside of Mr. Gendy's home. While holding a gun to Mr. Gendy's throat and chest, the gunman searched Mr. Gendy and rifled through Mr. Gendy's automobile looking for cash. He then demanded entrance to Mr. Gendy's home, which Mr. Gendy resisted because his children were in the house. The gunman fled in a silver automobile and Mr. Gendy followed him.

The vehicle description and license-plate number were broadcast to other Raleigh Police Department officers. By utilizing police databases, Officer Matthew Hathaway determined that Defendant's mother was the owner of the residence listed

on the vehicle's registration, and that Defendant also resided there. Officers then traveled to Defendant's mother's address, where the silver vehicle for which they were searching was parked.

Because the robbery involved a firearm, the officers first surrounded the residence and then knocked on the front door. Defendant answered the door wrapped in a blanket, and officers asked him step outside onto the porch. Defendant informed the officers that his mother, sister, and niece were asleep inside of the home. Officers entered the home and "secured the residence"; they knocked on bedroom doors and instructed the occupants, including Defendant's mother, to step outside of their respective bedrooms. Officers told Defendant's mother that they were responding to a reported armed robbery in which the suspect had fled in her vehicle.

Officers retrieved Defendant's black hoodie from the living room couch where Defendant had been sleeping prior to the officers' arrival, and brought it to the front porch, where they continued to speak with Defendant. Defendant admitted to the officers that he had a firearm in his backpack, which was in the living room, next to the couch where Defendant had been sleeping.

Defendant's mother gave officers her written consent to search the vehicle and the living-room area of her home, where Defendant had slept on the couch and where his backpacks remained in plain view. Inside of the first of Defendant's two backpacks, officers discovered a loaded black firearm, a black ski mask, and gloves. They searched the second backpack and found a box of .380 caliber ammunition.

Officers then arrested Defendant. After officers advised him of his *Miranda* rights, Defendant admitted that the backpacks, black firearm, and ski mask belonged to him; that he knew Mr. Gendy from his gambling community; and that he knew Mr. Gendy to win a lot of money, including a particularly large sum at a recent holiday party.

On 10 March 2020, a grand jury indicted Defendant for attempted robbery with a dangerous weapon. On 15 July 2022, the jury found Defendant guilty as charged. That same day, the trial court entered judgment upon the jury's verdict and sentenced Defendant in the presumptive range to 64 to 89 months in the custody of the North Carolina Division of Adult Correction. Defendant gave oral notice of appeal in open court.

On 9 June 2023, Defendant also filed with this Court a motion for appropriate relief pursuant to N.C. Gen. Stat. § 15A-1418.

DISCUSSION

In both his appellate brief and his motion for appropriate relief, Defendant argues that he "had grounds to suppress [the] evidence gained as a result of" (1) the illegal warrantless entry and search of his home; (2) "the illegal warrantless search of his personal belongings"; and (3) his statements to officers on the front porch, which he contends were "taken in violation of his 5th Amendment Right against self-incrimination[.]" Because defense counsel did not move to suppress this evidence, Defendant maintains that "the State was able to convict [him] where it likely could

not have without the tainted evidence[,]" specifically, the "loaded firearm, ammunition, a ski mask, and gloves[,]" as well as his statements on the front porch. Therefore, Defendant contends that he received ineffective assistance of counsel. For the reasons that follow, we disagree.

Ineffective Assistance of Counsel

"When a defendant attacks his conviction on the basis that counsel was ineffective, he must show that his counsel's conduct fell below an objective standard of reasonableness." *State v. Braswell*, 312 N.C. 553, 561–62, 324 S.E.2d 241, 248 (1985). The defendant "must first show that his counsel's performance was deficient[.]" *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286, *cert. denied*, 549 U.S. 867, 166 L. Ed. 2d 116 (2006). That is, the defendant must establish that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." *Braswell*, 312 N.C. at 562, 324 S.E.2d at 248 (citation omitted). The defendant then "must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* (emphasis omitted) (citation omitted). "The fact that counsel made an error, even an unreasonable error, does not warrant reversal of a conviction unless there is a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings[,]" with this determination being "based on the totality of the evidence before the finder of fact." *Id.* at 563, 324 S.E.2d at 248.

Although a reviewing court will typically evaluate "the performance component of an [ineffective assistance] claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* (citation omitted).

Trial counsel's decision not to file a motion to suppress is not deficient performance; "where the search . . . that led to the discovery of the evidence was lawful[,]" counsel's performance did not fall below "an objective standard of reasonableness." *State v. Canty*, 224 N.C. App. 514, 517, 736 S.E.2d 532, 535 (2012), *disc. review denied*, 366 N.C. 578, 739 S.E.2d 850 (2013).

a. Motion to Suppress the Fruits of the Warrantless Search

"It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *State v. Smith*, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997) (cleaned up).

However, law enforcement officers need not obtain a warrant where they receive consent to search. "For the warrantless, consensual search to pass muster under the Fourth Amendment, consent must be given and the consent must be voluntary. Whether the consent is voluntary is to be determined from the totality of the circumstances." *Id.* (citation omitted); *see also* N.C. Gen. Stat. § 15A-221(a)–(b).

Otherwise, "[i]n order to justify a warrantless entry of a residence, there must be probable cause and exigent circumstances which would warrant an exception to

the warrant requirement." *State v. Wallace*, 111 N.C. App. 581, 586, 433 S.E.2d 238, 241 (1993).

"North Carolina [has] adopted the 'totality of the circumstances' approach for determining the existence of probable cause . . . ." *State v. McCoy*, 100 N.C. App. 574, 576, 397 S.E.2d 355, 357 (1990) (quoting *State v. Arrington*, 311 N.C. 633, 643, 319 S.E.2d 254, 261 (1984)). "Probable cause exists where the facts and circumstances within . . . the officers' knowledge and of which they ha[ve] reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *State v. Earhart*, 134 N.C. App. 130, 133, 516 S.E.2d 883, 886 (cleaned up), *appeal dismissed*, 351 N.C. 112, 540 S.E.2d 372 (1999).

"To determine whether exigent circumstances were present . . . we must consider the totality of the circumstances." *State v. Guevara*, 349 N.C. 243, 250, 506 S.E.2d 711, 716 (1998), *cert. denied*, 526 U.S. 1133, 143 L. Ed. 2d 1013 (1999). "[F]actors courts have considered relevant in determining whether exigent circumstances existed to support a warrantless search" include:

> (1) the degree of urgency involved and the time necessary to obtain a warrant; (2) the officer's reasonably objective belief that the contraband is about to be removed or destroyed; (3) the possibility of danger to police guarding the site; (4) information indicating the possessors of the contraband are aware that the police are on their trail; and (5) the ready destructibility of the contraband.

Wallace, 111 N.C. App. at 586, 433 S.E.2d at 241–42. "[A] suspect's fleeing or seeking

to escape could be considered an exigent circumstance." *Guevara*, 349 N.C. at 250, 506 S.E.2d at 716.

Additionally, "[l]aw enforcement officers have the right to approach a person's residence to inquire whether the person is willing to answer questions." *Wallace*, 111 N.C. App. at 585, 433 S.E.2d at 241. Where a defendant voluntarily speaks with officers, the Fourth Amendment is not implicated. *Smith*, 346 N.C. at 798, 488 S.E.2d at 213.

In the instant case, law enforcement officers had probable cause to believe that there was a fair probability that contraband or evidence of the crime of attempted armed robbery would be found in Defendant's mother's residence. The presence at the home of a silver vehicle with a license plate that matched the plate on the car used in the attempted robbery provided strong probable cause that the perpetrator was inside of the residence and that contraband or other evidence of the crime—including a ski mask, gloves, and a weapon—would be found therein. In addition, Mr. Gendy relayed to officers that he believed that the suspect noticed that Mr. Gendy was following him as he fled in the silver vehicle. *See Wallace*, 111 N.C. App. at 586, 433 S.E.2d at 241–42 ("[F]actors courts have considered relevant in determining whether exigent circumstances existed . . . include . . . information indicating the possessors of the contraband are aware that the police are on their trail . . . and . . . the ready destructibility of the contraband.").

There were also exigent circumstances. Upon officers' arrival, Defendant

immediately informed them that other occupants were inside the home, and officers knew that the vehicle was registered to someone other than Defendant. Thus, law enforcement officers could have reasonably believed that the other individuals might remove or destroy contraband or other evidence; moreover, officers could have harbored concern for officer safety, and for these reasons, law enforcement officers surrounded the home before knocking on the door. *See id.* (noting various factors that may be relevant in determining whether exigent circumstances exist include "the officer's reasonably objective belief that the contraband is about to be removed or destroyed [and] the possibility of danger to police guarding the site").

Moreover, law enforcement officers obtained Defendant's mother's written consent to conduct a warrantless search of the living-room area of her residence where Defendant had been sleeping. The owner-occupant of a home possesses actual authority to consent to a search of her residence, and her consent is valid so long as it is voluntary. *Smith*, 346 N.C. at 798, 488 S.E.2d at 213; *see also State v. Houston*, 169 N.C. App. 367, 371, 610 S.E.2d 777, 780 ("The only requirement for a valid consent search is the voluntary consent given by a party who had reasonably apparent authority to grant or withhold such consent."), *appeal dismissed and disc. review denied*, 359 N.C. 639, 617 S.E.2d 281 (2005). And as our Supreme Court has explained, "when the prosecution seeks to justify a warrantless search by proof of voluntary consent," it is not limited to proof showing that the "consent was given by [the] defendant, but may show that [the] permission to search was obtained from a

third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected." *State v. Barnett,* 307 N.C. 608, 615–16, 300 S.E.2d 340, 344 (1983) (quoting *United States v. Matlock*, 415 U.S. 164, 171, 39 L. Ed. 2d 242, 250–51 (1974)); *see also Houston*, 169 N.C. App. at 371, 610 S.E.2d at 780 (recognizing that even reasonable "apparent authority" is sufficient).

Here, Defendant's mother, the homeowner, had common authority over her residence. It is undisputed that she voluntarily executed written consent for officers to search the living-room area where Defendant slept and where his backpacks sat in plain view when law enforcement officers arrived at the home. Within Defendant's backpacks, officers recovered a loaded black firearm, .380 caliber ammunition, a mask, gloves, paperwork, and other of Defendant's belongings. Because officers discovered this evidence pursuant to Defendant's mother's lawful consent to search, trial counsel's decision not to file a motion to suppress was objectively reasonable; thus, Defendant did not receive ineffective assistance of counsel as regards the warrantless entry of the residence or search of his belongings.

b. Motion to Suppress Statements Given on Front Porch

Defendant also argues that he received ineffective assistance of counsel in that his trial counsel failed to seek to suppress his statements—that there was a weapon in the backpack and that the backpack belonged to him—which he made to officers while on the front porch, before officers informed him of his rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 (1966).

Law enforcement officers may "approach a person's residence to inquire whether the person is willing to answer questions." *Wallace*, 111 N.C. App. at 585, 433 S.E.2d at 241. Here, Defendant voluntarily spoke with police officers. But even assuming *arguendo* that Defendant's statements were made while he was in custody for purposes of *Miranda*, *see State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001), Defendant has not demonstrated that trial counsel's failure to move to suppress these two statements prejudiced his defense, as required for a showing of ineffective assistance of counsel. Had Defendant's statements been suppressed, there was ample other evidence of Defendant's guilt.

Defendant's mother told officers that Defendant was sleeping in the area with the backpacks, in which there was paperwork belonging to Defendant, as well as a mask and gloves like the suspect wore. Defendant's black hoodie was also in the living-room area. Mr. Gendy testified at trial that he had been robbed of $5,100.00 in cash on 27 December 2019, and that he recognized Defendant as the perpetrator of that robbery. He also testified that the suspect fled the scene of the attempted robbery in a silver vehicle, which law enforcement officers ultimately identified as registered at the address of Defendant's mother. Moreover, after officers later read Defendant his *Miranda* rights, Defendant again admitted that the backpacks, black firearm, and ski mask belonged to him, and that he knew Mr. Gendy from his gambling community.

In light of the overwhelming evidence of Defendant's guilt, we conclude that "it

is not reasonably probable that the jury would have reached a different result had none of the alleged errors of counsel occurred." *Braswell*, 312 N.C. at 566, 324 S.E.2d at 250. Accordingly, Defendant has not shown ineffective assistance of counsel on this ground.

Defendant's Motion for Appropriate Relief

Finally, Defendant filed a motion for appropriate relief with this Court pursuant to N.C. Gen. Stat. § 15A-1418, similarly alleging that he received ineffective assistance of counsel.

"A defendant's motion for appropriate relief may be determined by this Court if there is sufficient information in the record." *State v. Foreman*, 270 N.C. App. 784, 791, 842 S.E.2d 184, 189 (2020). "A defendant who seeks relief by motion for appropriate relief must show the existence of the asserted ground for relief." *Id.* (citation omitted). As explained above, Defendant cannot "show the existence of the asserted ground for relief[,]" that is, that he received ineffective assistance of counsel. *Id.* (citation omitted). Accordingly, Defendant's motion for appropriate relief is denied.

CONCLUSION

For the reasons stated herein, Defendant has not shown that he received ineffective assistance of counsel. Defendant's motion for appropriate relief is denied. Based on our review of the record, we hold that Defendant has received a fair trial free from prejudicial error

NO ERROR.

Judges WOOD and STADING concur.

Report per Rule 30(e).