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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-343

Filed: 2 January 2018

Guilford County, Nos. 15 CRS 93010–11

STATE OF NORTH CAROLINA

v.

JONATHAN DAVID FRIDAY

Appeal by defendant from judgments entered 27 October 2016 by Judge Stanley L. Allen in Guilford County Superior Court. Heard in the Court of Appeals 4 October 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General John A. Payne, for the State.

Cheshire Parker Schneider & Bryan, PLLC, by John Keating Wiles, for defendant.

DIETZ, Judge.

Defendant Jonathan David Friday appeals the denial of his motion to suppress evidence obtained through a search warrant.

After observing suspected drug activity at a house in Greensboro, and later finding traces of cocaine in trash bags left at the street there, law enforcement applied

for a search warrant. The warrant described the house under investigation, including its size, door color, and cross streets, and included a photograph of the house. But the application contained the wrong physical address. An officer later testified that he mistook a "1" at the end of the street address for a "7." Despite this mistake in the physical address, the officers who executed the warrant searched the home described in the application (and pictured in the photograph).

As explained below, the trial court properly denied Friday's motion to suppress. The record supports the trial court's findings and conclusions that the description of house, including its size, color, and location, together with the photo of the house included with the warrant application, were sufficient to validate the search. *See State v. Moore*, 152 N.C. App. 156, 159–60, 566 S.E.2d 713, 715–16 (2002). Accordingly, we reject Friday's arguments and affirm the trial court's judgments.

Facts and Procedural History

In late 2015, law enforcement observed suspected drug activity at 1101 Elwell Avenue in Greensboro and began to investigate the residence. On trash pick-up day, the officers removed several garbage bags from cans placed at the street in front of the house and recovered sandwich bags that tested positive for cocaine residue.

Detective R.C. Cole of the Guilford County Sheriff's Office then applied for a search warrant. The application listed the physical address to be searched as "1107 Elwell Avenue" but the warrant application included a detailed description of 1101

Elwell Avenue, including size, door color, and cross streets. The application also included a photograph of the house located at 1101 Elwell Avenue.

A magistrate issued a search warrant based on the application. The warrant, consistent with the application, listed the physical address to be searched as 1107 Elwell Avenue. When law enforcement executed that warrant, they searched 1101 Elwell Avenue, the location actually described in the application. Law enforcement recovered incriminating evidence leading to Friday's arrest on various drug charges.

Friday later moved to suppress the evidence recovered in the search of 1101 Elwell Avenue, arguing that the search warrant was invalid because it only authorized a search of 1107 Elwell Avenue.

At the hearing on the motion, Detective Cole testified that he mistakenly wrote 1107 Elwell Avenue in the warrant application because "[a]t some point, I believe that it looked like a seven or thought it was a seven. Once I marked seven instead of one, I just kept putting it in as 1107 instead of 1101." Detective Cole further testified that, although the application and warrant mistakenly identified the address as 1107, the investigation, observations, and trash pulls described in the application as the basis for probable cause all occurred at 1101 Elwell Avenue. Detective Cole also testified that the physical description of the house and its location as well as the photograph included in the application were of 1101 Elwell Avenue.

The trial court denied Friday's motion, finding that the description in the warrant application "is that of 1101 Elwell Avenue" and concluding that "notwithstanding the inaccuracy of the numerical address associated with the subject location, the description set forth in . . . the application of the search warrant provides a sufficient nexus between the address to be searched and a probable cause basis for that search."

Friday then pleaded guilty to attempted trafficking by possession of cocaine, attempted trafficking by manufacture of cocaine, and possession of cocaine with intent to sell and deliver. Friday reserved his right to appeal the denial of his motion to suppress. The trial court sentenced Friday to two consecutive terms of 15 to 27 months in prison. Friday timely appealed.

Analysis

Friday challenges several findings and conclusions in the trial court's order denying his motion to suppress. Friday's arguments all stem from law enforcement's use of the wrong physical address in the warrant application. As explained below, we reject these arguments.

Our review of a trial court's denial of a motion to suppress is "strictly limited to determining 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).

"A search warrant must contain a designation sufficient to establish with reasonable certainty the premises, vehicles, or persons to be searched, and a description or a designation of the items constituting the object of the search and authorized to be seized." *State v. Moore*, 152 N.C. App. 156, 159, 566 S.E.2d 713, 715 (2002).

Importantly, "the address described in the search warrant may differ from the address of the residence actually searched." *Id.* at 160, 566 S.E.2d at 715. "[S]tanding alone, an incorrect address on a search warrant will not invalidate the warrant where other designations are sufficient to establish with reasonable certainty the premises, vehicles, or persons to be searched, and a description or a designation of the items constituting the object of the search and authorized to be seized." *State v. Hunter*, 208 N.C. App. 506, 509, 703 S.E.2d 776, 779 (2010).

Here, the trial court found that the search warrant "was based on a drug related investigation of activities associated with an address at 1101 Elwell Avenue," that "references in the search warrant to the numerical address of '1107' were errors in the preparation of the warrant," and that the description of the location to be searched "is that of 1101 Elwell Avenue."

These findings are supported by competent evidence in the record. Detective Cole testified that the residence targeted in the search warrant application was 1101 Elwell, where law enforcement conducted their investigation into drug activity. He explained that the references to 1107 Elwell Avenue in the warrant application were clerical errors on his part because he mistakenly believed the number "1" at the end of the street address for 1101 Elwell Avenue was a "7."

The description of the location to be searched in the warrant application matched 1101 Elwell Avenue, not 1107 Elwell Avenue. For example, it described the residence as located at the north side of the intersection of Elwell Avenue and Wooddale Lane. 1101 Elwell is located at that intersection; 1107 Elwell Avenue is not. The application also included other physical descriptions of the house to be searched that matched 1101 Elwell but not 1107. Finally, the warrant application attached a photograph of the residence to be searched. That photograph depicts 1101 Elwell Avenue, not 1107. Thus, the trial court properly found that the location to be searched, as described in the application and corresponding search warrant, "is that of 1101 Elwell Avenue."

Friday argues that the trial court's findings are infirm because the court found that "the application for the search warrant and . . . the actual search warrant repeatedly references '1107 Elwell Ave.' No other address is given in either document." Friday points out that the certification portion of the search warrant,

which law enforcement completed during or after executing the search, contains a handwritten notation that the officer made of search of "1101 Elwell Avenue."

But even if that reference to 1101 Elwell Avenue contradicts this particular finding of fact—and, in context, this finding likely meant that law enforcement consistently (and mistakenly) referred to the physical address to be searched as 1107 Elwell Avenue *before* executing the warrant—this does not render the search invalid. As explained above, even if we disregard this finding, the trial court's other findings concerning the description and photograph of 1101 Elwell Avenue readily support the trial court's ultimate finding that the location to be searched in this warrant "is that of 1101 Elwell Avenue."

Friday next argues that the trial court's conclusions of law are infirm because the court concluded that the description in the warrant application provided "a sufficient nexus between *the address* to be searched and a probable cause basis for that search." Friday argues that this conclusion is erroneous because there was no nexus between the *address* listed in the warrant—1107 Elwell Avenue—and the probable cause basis, which stemmed from investigative activities at 1101 Elwell Avenue. But again, in context, the court's use of the word "address" here did not mean the physical address listed in the warrant; the court meant the location law enforcement *intended* to search. And, as explained above, there was a sufficient nexus between the probable cause basis and the home located at 1101 Elwell Avenue, which

was both the home where law enforcement established probable cause for a search and the location actually searched.

In sum, the relevant findings of fact in the trial court's order are supported by competent evidence in the record, and those findings, in turn, support the trial court's conclusions of law. Accordingly, the trial court properly denied Friday's motion to suppress.

Conclusion

For the reasons discussed above, we affirm the trial court's judgments.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).