An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1221

Filed: 17 April 2018

Mecklenburg County, No. 13CRS244937

STATE OF NORTH CAROLINA

v.

RICARDO LEE SWAIN, Defendant.

Appeal by defendant from judgment entered 18 March 2016 by Judge Linwood O. Foust in Superior Court, Mecklenburg County. Heard in the Court of Appeals 8 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General M. Elizabeth Guzman, for the State.

Rudolf Widenhouse, by M. Gordon Widenhouse, Jr., for defendant-appellant.

STROUD, Judge.

Because material conflicting evidence was presented and because it is unclear upon which findings of fact the trial court was relying, we remand for a written order on defendant's amended motion to suppress based on probable cause.

The State's evidence showed that on 8 November 2013 law enforcement officers executed a search warrant; the warrant allowed officers to search an apartment in

Charlotte and a black Porsche. When the garage to the apartment opened, officers found defendant backing out in the black Porsche. During the execution of the warrant, officers found cocaine.

Defendant was indicted for trafficking in drugs. Defendant moved to suppress "all evidence seized pursuant to the Search Warrant[.]" The legal basis of defendant's motion to suppress was *Franks v. Delaware*, 438 U.S. 154 (1978). Defendant contended that the "warrant affidavit contained an intentionally or recklessly false statement" in "that there was no CRI[, Confidential Reliable Informant,] involved[.]" The trial court denied defendant's motions to suppress, and a jury found defendant guilty. The trial court entered judgment, and defendant appeals.

Defendant argues on appeal that the trial court erred in denying his motion to suppress "because the search warrant did not state sufficient, reliable facts to establish probable cause in violation of his" rights. (Original in all caps.) The basis of defendant's challenge on appeal differs from the written motion to suppress, which was based upon *Franks*. Defendant's argument in this appeal arises from a later amended motion to suppress. Due to the many motions before the trial court, and the lack of a written order, we have had difficulty in reviewing defendant's arguments on appeal.

Before defendant's trial began, defendant moved to dismiss the case before the trial court and that motion was denied. Defendant then turned to his written motion

to suppress based on *Franks*. Defendant called three witnesses to testify on behalf of his motion, including the detective who wrote the affidavit in support of the search warrant. After much discussion, the trial court ordered the State to hand a document over to defendant to which defendant's attorney stated, "So, Your Honor, I'd ask Mr. Swain here in the midst of a motion to suppress or in the midst of a *Frank's* motion has been turned over the very document he's been looking for since 2015." Defendant's attorney then asked for leeway to file an amended motion based upon the new information; the request was denied. Defendant's counsel again requested time to file an amended motion, and the trial court asked defendant's attorney if he would like to present any further evidence regarding the written motion to suppress which was under consideration by the trial court. The trial court then orally rendered its decision and denied defendant's motion to suppress. The trial court then moved on to defendant's motion to disclose the confidential informant. The trial court denied defendant's motion to disclose the confidential informant and during this ruling made many findings of fact which were relevant to defendant's forthcoming motion to suppress.

It appears from the transcript that defendant later filed a written amended motion to suppress, but that motion is not in the record before us. According to the transcript, defendant's amended motion focuses on a lack of probable cause because "[t]he Almond case, Your Honor, which I've passed up addresses the issue which we

contend in this case of does the search warrant contain any information supporting the search of a specific residence." Defendant did not present any additional evidence on the amended motion to suppress.

Before ruling on the amended motion to suppress, the trial court stated regarding other motions, "I want to cover all of that now before addressing the final ruling on the motion to suppress[.]" The trial court then heard arguments regarding motions to join and sever and then the State raised "a motion in limine concerning the defendant's proof of guilt of another[.]" The State then moved to amend an indictment. At this point, the trial court returned to the amended motion to suppress and orally rendered its ruling denying it because there was probable cause.

Defendant raises many issues on appeal regarding a lack of probable cause for the issuance of the warrant including that the trial court's "analysis was superficial and inadequate. (Tpp. 347-49)[.]" Defendant directs us to the trial court's ultimate oral rendition on the amended motion to suppress in the transcript and contends that the trial court did not make adequate findings of fact. But defendant's argument takes the trial court's final rendition of its denial of the amended motion out of context. The trial court's analysis and findings relevant to the amended motion to suppress were not limited to the three pages cited by defendant in the transcript, 347-349, because the trial court was making various rulings and findings at various points during the prior proceedings as shown in the preceding 346 pages of the transcript.

The trial court had already ruled on several other motions, including the original motion to suppress and a motion to disclose the identity of the confidential informant; the trial court's rendition of its rulings on these motions included many findings of fact which would also be pertinent to the amended motion to suppress.

We cannot address defendant's arguments on appeal because we cannot determine the trial court's exact rationale for denial of the amended motion to suppress and how much its ultimate determination depended upon the findings of fact it had made in ruling on the prior motions. Some of the confusion arises because the trial court was considering several different motions over a period of about two days.[1] In addition, defendant presented evidence, and there were material conflicts in the evidence. Since the trial court did not enter a written order denying the amended motion to suppress, we are unable to review the ruling.

> N.C. Gen. Stat. § 15A–977(f) (2011) requires that the judge must set forth in the record his findings of facts and conclusions of law. However, N.C. Gen. Stat. § 15A–977(f), has been interpreted as mandating a written order unless (1) the trial court provides its rationale from the bench, and (2) there are no material conflicts in the evidence at the suppression hearing. If these two criteria are met, the necessary findings of fact are implied from the denial of the motion to suppress.

State v. Royster, 224 N.C. App. 374, 376, 737 S.E.2d 400, 403 (2012) (citations,

[1] For example, counsel for the State noted at one point, "So, I mean, there's got to be some semblance of structure here, Your Honor. I mean, we can't just jump back and forth from one motion to the next. He said he wanted to address the *Franks* motion, the motion to suppress."

quotation marks, and brackets omitted).

We must remand for a written order clarifying the trial court's findings of facts on defendant's amended motion to suppress for lack of probable cause.

REMANDED.

Judge CALABRIA concurs.

Judge BRYANT concurs in the result only without separate opinion.

Report per Rule 30(e).