An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1256

Filed: 15 May 2018

Wake County, Nos. 14 CRS 224200; 16 CRS 99

STATE OF NORTH CAROLINA

v.

KEVIN NELSON HUNTER

Appeal by defendant from judgment entered 14 March 2017 by Judge James K. Roberson in Wake County Superior Court. Heard in the Court of Appeals 7 May 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Phillip T. Reynolds, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for defendant-appellant.

TYSON, Judge.

Kevin Nelson Hunter ("Defendant") appeals from a judgment entered upon his guilty pleas to trafficking in marijuana by possession, conspiracy to traffic in marijuana by possession, possession with intent to sell or deliver marijuana, and attaining habitual felon status. We affirm.

I. Factual Background

On 17 November 2014, Defendant was indicted for multiple offenses related to marijuana trafficking. On 23 August 2016, Defendant was indicted for attaining habitual felon status. Defendant filed a motion to suppress the fruits of warrantless searches of his car and townhouse on 6 March 2017.

Defendant's motion to suppress was heard on 13 and 14 March 2017. One of the State's witnesses, Kevin McLaughlin, testified that in October 2014, he was group supervisor for a United States Drug Enforcement Administration ("DEA") task force. The DEA had been investigating Defendant, whom the DEA suspected was selling large amounts of marijuana.

On 15 October 2014, McLaughlin entered Defendant's townhouse parking lot. McLaughlin parked his vehicle near Defendant's vehicle just as Defendant was exiting his own vehicle. McLaughlin approached Defendant and identified himself as a law enforcement officer. Defendant stepped out of his vehicle with the engine still running and left the door ajar. McLaughlin smelled marijuana in proximity to the vehicle. McLaughlin reached into the car to turn off the engine and saw a large amount of United States currency present on the passenger seat. As McLaughlin spoke with Defendant in the parking lot, he observed three men "bolt out the back door" of Defendant's townhouse and run toward the woods.

Other officers soon arrived and chased after the fleeing men. Officers apprehended one of the three men and returned to the townhouse. The officers discovered the back door of the townhouse open and entered the townhouse through the back door to look for other individuals inside.

In a subsequent warrant application, the applicant stated that officers "could smell an[ ] over whelming [sic] smell of marijuana inside the residence." Police obtained a search warrant, and a search of the residence uncovered currency, drug paraphernalia, and a large amount of marijuana.

The trial court denied the motion to suppress. Defendant pled guilty to the charges pursuant to a plea agreement. Defendant reserved the right to appeal the denial of his motion to suppress. The trial court consolidated the offenses for judgment and sentenced Defendant to an active term of 51 to 74 months' imprisonment. Defendant gave oral notice of appeal from the denial of his motion to suppress.

II. Jurisdiction

Jurisdiction lies in this Court on appeal from a final judgment of the superior court pursuant to N.C. Gen. Stat. § 7A-27(b) (2017) and N.C. Gen. Stat. § 15A-1444(a) (2017). Defendant filed a petition for writ of *certiorari* as an alternative basis for review after recognizing his oral notice of appeal indicated that he was appealing "the denial of the motion to suppress," but failed to indicate he was appealing from the

judgment entered upon the guilty plea. *See* N.C. Gen. Stat. § 15A-979(b) (2017) ("An order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty."). In the exercise of our discretion, we allow Defendant's petition for and grant the writ of *certiorari*.

III. Issue

Defendant contends that the trial court erred by denying his motion to suppress.

IV. Standard of Review

This Court's "standard of review in evaluating a trial court's denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Hammonds*, __ N.C. __, __, 804 S.E.2d 438, 441 (2017) (internal quotation marks and citation omitted). "'[T]he trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.'" *Id.* at __, 804 S.E.2d at 441 (alteration in original) (quoting *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001)). Where the "findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal." *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36, *disc. review denied*, 358

N.C. 240, 594 S.E.2d 199 (2004). The trial court's conclusions of law are fully reviewable on appeal. *Hammonds*, __ N.C. at __, 804 S.E.2d at 441.

V. Analysis

A. Warrantless Search of Residence

"It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York,* 445 U.S. 573, 586, 63 L. Ed. 2d 639, 651 (1980).

However, "in the presence of an emergency or dangerous situation described as an 'exigent circumstance,' officials may lawfully make a warrantless entry into a home[.]" *State v. Guevara,* 349 N.C. 243, 250, 506 S.E.2d 711, 716 (1998) (quoting *Payton,* 445 U.S. at 583, 63 L. Ed. 2d at 649), *cert. denied,* 526 U.S. 1133, 143 L. Ed. 2d 1013 (1999). Examples of exigent circumstances justifying warrantless entry include "'hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or other persons inside or outside the dwelling.'" *Id.* (quoting *Minnesota v. Olson*, 495 U.S. 91, 100, 109 L. Ed. 2d 85, 95 (1990)).

The trial court concluded the warrantless entry into Defendant's townhouse was justified by the exigent circumstance in order "to locate any remaining individuals in the home that could cause harm to the officers *or lead to the destruction of evidence*." (Emphasis supplied). Defendant challenges the trial court's conclusion

that the search was justified on grounds of officer safety. Defendant does not challenge the trial court's conclusion that the search was justified by the need to prevent "the destruction of evidence."

B. Failure to Challenge Findings

In his brief, Defendant does not challenge any of the trial court's findings of fact in its order denying the motion to suppress. Where a defendant has failed to identify in his brief that the trial court's findings of fact are not supported by the evidence, "this Court's review . . . is limited to whether the trial court's findings of fact support its conclusions of law." *State v. Cheek*, 351 N.C. 48, 63, 520 S.E.2d 545, 554 (1999).

Defendant failed to challenge or argue the trial court erred in concluding the search of Defendant's townhouse was justified by the need to prevent "the destruction of evidence." Presuming, *arguendo*, Defendant could successfully demonstrate on appeal the trial court erred in concluding that the search was justified on officer safety grounds, the trial court's conclusion that the search was justified by the need to prevent the destruction of evidence alone supported the trial court's denial of Defendant's motion to suppress. *See State v. Blackwell*, 246 N.C. 642, 644, 99 S.E.2d 867, 869 (1957) ("[A] correct decision of a lower court will not be disturbed because a wrong or insufficient or superfluous reason is assigned."). We will not disturb that conclusion on appeal. Defendant's arguments are overruled.

V. Conclusion

Defendant has failed to demonstrate that the trial court erroneously denied his motion to suppress. The trial court's ruling on Defendant's motion to suppress is affirmed. *It is so ordered*.

AFFIRMED.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).