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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-345

Filed: 4 December 2018

Craven County, Nos. 14 CRS 53664-65

STATE OF NORTH CAROLINA

v.

KEYELLE LUVAEE HASSELL

Appeal by defendant from judgments entered 10 October 2017 by Judge John E. Nobles, Jr., in Craven County Superior Court. Heard in the Court of Appeals 15 October 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Kristine M. Ricketts, for the State.

Patterson Harkavy LLP, by Narendra K. Ghosh, for defendant.

ARROWOOD, Judge.

Keyelle Luvaee Hassell ("defendant") appeals from judgments entered on his guilty plea to various drug offenses following the denial of his motion to suppress evidence. For the following reasons, we affirm.

I. Background

Defendant was arrested and charged with drug related offenses during a stakeout of a New Bern hotel by police on 30 October 2014. On 2 February 2015, a Craven County Grand Jury indicted defendant on one count of trafficking in heroin by possession, one count of possession with intent to sell or deliver heroin, one count of possession with intent to sell or deliver marijuana, one count of knowingly keeping and maintaining a vehicle for keeping and selling heroin and marijuana, and one count of possession with intent to use drug paraphernalia.

Defendant filed a motion to suppress evidence and an affidavit in support of the motion on 29 June 2016. The motion was heard by the trial court on 10 October 2017. The evidence presented at the suppression hearing tended to show that on 30 October 2014, officers with the New Bern Police Department, together with officers from other departments that made up the Coastal Narcotics Enforcement Team, were conducting a stakeout at a New Bern hotel known to law enforcement for drug sales, prostitution, and criminal activity. That evening, police observed a red Ford Explorer registered to a subject out of Fayetteville pull into the hotel parking lot. A male driver and a female passenger, identified as defendant and Ms. Page, got out of the vehicle and went into Room 228 for a while. Defendant and Ms. Page later exited the room, got back into the vehicle, and left the hotel. They returned a short time thereafter and went back in to Room 228.

Around 10:20 p.m., policed observed a silver car occupied by a male driver and a female passenger slowly pull through the parking lot before backing into a spot against the building so that the license tag was not visible. The man and woman were looking around at everybody. The officers believed these furtive behaviors were indicative of drug activity. Leaving the silver car running with the female passenger inside, the male driver exited the vehicle, walked to Room 228, knocked, went into the room, and then came out a very short time later. Based on the time of evening, the quick in and out, and other motions of the driver, the officers believed a drug transaction had transpired and decided to investigate further by approaching and questioning the driver. As the officers approached, the driver of the silver car made eye contact with the officers, quickly got back into the vehicle, and shut the door. As an officer held his badge up to the window of the silver car and yelled, "[p]olice[,] [s]top," the driver put the car in gear and sped off.

Based on the totality of the circumstances to that point, the officers decided to approach Room 228. The officers first knocked without announcing themselves as law enforcement. Defendant asked who it was, but did not open the door when an officer identified himself simply as "[m]e." The officers then announced themselves as law enforcement, held a badge up to the peep hole in the door, and asked defendant to open the door. Defendant then got quiet. One of the officers could see into the room through an opening in the curtains. Defendant was on the phone and walking

back and forth between the room and the bathroom. The officers could hear Ms. Page hollering and crying, telling defendant to open the door. Defendant did not go back to the door. The testifying officer recalled, "at this point, we're knocking like the police knock, banging on the door, still identifying ourselves, telling him to open the door. She's still crying, screaming, trying to get him to open the door." The officers demanded that they open the door. The testifying officer was fearful for the woman's safety and indicated there was now a potential hostage situation.

Ms. Page ultimately came to the door and attempted to open it. The officer at the door could hear her rattling the latch. The officer testified Ms. Page was panicky, but was finally able to get the door open, at which time they entered the room, secured defendant, performed a protective sweep, and brought Ms. Page outside away from defendant. During her conversation with the officers, Ms. Page stated that there were drugs and money in the red Ford Explorer that they arrived in. The officers then called for a K-9 officer. The K-9 alerted to an odor of narcotics upon conducting an exterior sniff of the outside of the red Ford Explorer. Defendant and Ms. Page gave consent to search the room and the vehicle after the positive alert by the K-9.

The officer's search of the vehicle yielded substances believed to be heroin and marijuana, drug packaging kits, digital scales, and a large amount of money. Lab analysis of the substances later confirmed them to be heroin and marijuana. Through further investigation, the officers learned the red Ford Explorer belonged to

defendant's father, who allowed defendant to use the vehicle. Room 228 was rented to Ms. Page.

At the conclusion of the arguments, the trial court announced its decision to deny defendant's motion to suppress in open court. Defendant then pleaded guilty to the drug charges pursuant to *Alford* while preserving his right to appeal the denial of his motion to suppress. The trial court entered judgment for trafficking in heroin by possession sentencing defendant to a term of 70 to 93 months imprisonment. The trial court consolidated the other drug offenses and entered a separate judgment sentencing defendant to a concurrent term of 10 to 21 months imprisonment. Defendant gave notice of appeal in open court.

The trial court entered a written order denying defendant's motion to suppress on 1 November 2017.

II. Discussion

On appeal, defendant argues the trial court erred in denying his motion to suppress. Defendant challenges certain findings and conclusions by the trial court by asserting that the officers' entry into the hotel room was not consensual, the officers did not have probable cause, there were no exigent circumstances, and the recovery of drugs found in the vehicle was the result of the illegal entry into the hotel room. All of these arguments are premised on defendant's assertion of a right to privacy in the hotel room.

An individual has a right to freedom from unreasonable searches and seizures under both the state and federal constitutions. *State v. McBennett*, 191 N.C. App. 734, 737, 664 S.E.2d 51, 54 (2008); U.S. Const. amend. IV; N.C. Const. art. 1, §§ 19, 20.

> Before defendant can assert the protection afforded by the Fourth Amendment, however, he must demonstrate that any rights alleged to have been violated were his rights, not someone else's. A person's right to be free from unreasonable searches and seizures is a personal right, and only those persons whose rights have been infringed may assert the protection of the Fourth Amendment.

State v. Mlo, 335 N.C. 353, 377, 440 S.E.2d 98, 110, *cert. denied*, 512 U.S. 1224, 129 L. Ed. 2d 841 (1994). "An individual's standing to claim the protection of the Fourth Amendment depends upon whether the place invaded was an area in which such individual had 'a reasonable expectation of freedom from governmental intrusion.' " *State v. Alford*, 298 N.C. 465, 471, 259 S.E.2d 242, 246 (1979); *see also State v. McKinney*, 361 N.C. 53, 56, 637 S.E.2d 868, 871 (2006) ("A defendant has standing to contest a search if he or she has a reasonable expectation of privacy in the property to be searched."). This Court has explained that "[s]tatus as an overnight guest creates a reasonable expectation of privacy in the home or dwelling where the guest is staying. No less than a tenant of a house, . . . a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures." *McBennett*, 191 N.C. App. at 738, 664 S.E.2d at 55 (internal citations and quotation marks omitted).

A review of the record in this case reveals insufficient evidence establishing defendant had a right to privacy in Room 228. First, as defendant stipulated at the hearing, Room 228 was rented to Ms. Page, who opened the door and told police that there were drugs and money in the vehicle. It was the statements by Ms. Page to the police that led to the discovery of the drugs and money in the vehicle. It is clear in the record that the trial court contemplated whether it was defendant's or Ms. Page's privacy that was infringed, if there was any violation. During the defense's cross-examination of the sole witness at the suppression hearing, the trial court sought clarification from the defense that Ms. Page did not make the motion. The defense agreed Ms. Page was not part of the motion. The trial court later explained its reasons for denying defendant's motion to suppress, including the following:

> [Ms.] Page . . . is not asking for protection under the Fourth Amendment. She's not before this Court. She ends up letting [the officers] in and they ask her a question about the drugs and the money, and she says -- not [defendant] -- she says it's in that car.
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> . . . .
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> I don't think at that stage, he's protected by the Fourth Amendment, and I'm going to deny your motion to suppress.

We agree with the trial court's reasoning. Based on the evidence presented, if the violation of anyone's rights resulted in the discovery of the evidence defendant seeks to suppress, it was Ms. Page's reasonable expectation of privacy that was infringed. Defendant cannot base his motion to suppress on the violation of Ms. Page's rights.

See State v. Smith, 117 N.C. App. 671, 676, 452 S.E.2d 827, 830 (1995) ("A defendant has no standing to object to the admission of evidence obtained in violation of the Fourth Amendment rights of another."), *State v. Craddock*, 272 N.C. 160, 169, 158 S.E.2d 25, 32 (1967) ("The immunity to unreasonable searches and seizures is a privilege personal to those whose rights thereunder have been infringed. They alone may invoke it against illegal searches and seizures.")

Furthermore, there was insufficient evidence to establish that defendant was an overnight guest in Room 228. Defendant attempts to place the burden on the State to show that he was not an overnight guest by citing *State v. Parker*, 183 N.C. App. 1, 3, 644 S.E.2d 235, 238 (2007) ("At a hearing to resolve a defendant's motion to suppress, the State carries the burden to prove by a preponderance of the evidence that the challenged evidence is admissible."), and asserting that "[n]othing in the record suggests [he] was just visiting Ms. Page and was not going to stay overnight in the room." While the State may bear the ultimate burden to show that evidence is admissible, defendant has the burden of establishing a reasonable expectation of privacy for standing to raise a Fourth Amendment challenge. *See State v. Taylor*, 298 N.C. 405, 415-16, 259 S.E.2d 502, 508 (1979)). Defendant states in his verified motion to suppress that "[he] was staying in Room 228 . . . with [Ms. Page]." However, in response to the State's argument that defendant lacks standing to challenge the evidence, defendant does not address the statement in his motion and instead points

only to the evidence that he arrived at the hotel with Ms. Page sometime after 5:00 p.m., left the hotel with Ms. Page for a brief time before returning to the hotel with Ms. Page, and was with Ms. Page in Room 228 at approximately 10:20 p.m. when the officers approached the room. Defendant contends that because he was continuously with Ms. Page during this time, it is clear that he was an overnight guest. We are not convinced the evidence identified by defendant establishes that he was an overnight guest, especially in light of the evidence that another individual had just visited the room and left prior to the encounter with police. While defendant's statement in his motion may be enough to get the motion before the trial court, it is insufficient to establish a reasonable expectation of privacy at the suppression hearing without additional evidence establishing he was an overnight guest. There was insufficient evidence in this case.

Defendant has failed to establish a reasonable expectation of privacy in Room 228 in this case. As stated above, if the challenged evidence was discovered as a result of a violation of anyone's reasonable expectation of privacy, it was Ms. Page's right to assert and not defendant's. Therefore, the trial court did not err in denying defendant's motion to suppress.

III. Conclusion

For the reasons discussed, we affirm the denial of defendant's motion to suppress evidence.

AFFIRMED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).