An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-1102

Filed: 18 June 2019

Harnett County, No. 15CRS051383

STATE OF NORTH CAROLINA

v.

PORSCHIA LANEE SPARKS, Defendant.

Appeal by Defendant from judgment entered 13 June 2017 by Judge Charles W. Gilchrist in Harnett County Superior Court. Heard in the Court of Appeals 24 April 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Wes Saunders, for the State.

Patterson Harkavy LLP, Narendra K. Ghosh, for the Defendant.

DILLON, Judge.

Defendant Porschia Lanee Sparks appeals from a judgment entered upon a verdict finding her guilty of robbery with a firearm, conspiracy to commit robbery with a firearm, and second degree kidnapping. Defendant challenges the trial court's denial of her motion to suppress evidence and, in the alternative, her trial counsel's

effectiveness. We conclude that Defendant received a fair trial, free from reversible error.

I. Background

This case arises from an incident which occurred when Defendant and Dalan Mosley were robbed at gunpoint while on their first date. Mr. Mosley later discovered evidence suggesting that Defendant lived with the gunman on Bald Eagle Drive in their town and had participated in setting up the robbery.

Police obtained a warrant to search the Bald Eagle Drive residence where Defendant lived with the alleged gunman and discovered incriminating evidence during the search. On appeal, Defendant challenges the sufficiency of the warrant. The warrant application alleged the following:

Defendant and Mr. Mosley went to the same high school in 2010. In March 2015, after not having been in contact for a number of years, Defendant reached out to Mr. Mosley on Facebook. On 30 March 2015, Defendant and Mr. Mosley made plans to go to a movie.

That night, Mr. Mosley picked Defendant up at the entrance of a subdivision where she claimed to have been babysitting. Once in the car, Defendant asked Mr. Mosley to go by her parents' house on Camden Court to pick up a key so that she would not be locked out of the house that night. Once at the Camden Court house, Defendant noticed a red car and a darker color car parked in the driveway. Defendant

asked Mr. Mosley to walk her to the door. While approaching the door, Defendant bent down and appeared to pick up something, which Mr. Mosley believed to be the house key. They then started walking back towards the car.

As they walked towards the car, Defendant received a text message. She looked at the message and then stated to Mr. Mosley that she needed to tie her shoe, though Mr. Mosley noticed that Defendant's shoes were both tied. While she bent down, a man appeared, wearing a grey hoodie, dark Dickie-type pants, and a red bandana covering the lower half of his face. This man was carrying a silver revolver and demanded that Mr. Mosley and Defendant get into the car. The two men sat in the front while Defendant sat in the back.

While in the car, the gunman demanded that Mr. Mosley turn over his wallet and cell phone. He demanded Mr. Mosley to go to a nearby ATM and withdraw cash. Mr. Mosley complied, withdrawing and giving the gunman $40.00. He then demanded that Mr. Mosley drive back towards the subdivision. At some point, the gunman got out of the car, grabbed Defendant's purse along with Mr. Mosley's keys and cell phone; however, once out of the car, he tossed Mr. Mosley's keys and cell phone on the ground and ran off with just Defendant's purse and the money he had stolen from Mr. Mosley. During the entire encounter, Defendant had her cell phone in her possession but never tried to contact anyone for help. Also, she never showed

any real emotion or concern that one would expect to exhibit while being robbed at gunpoint.

Mr. Mosley then drove Defendant back to the Camden Court residence (where Defendant supposedly lived with her parents), dropped her off, and then departed.

Mr. Mosley filed a police report, but Defendant never contacted the police about the incident.

A few days later, Mr. Mosley learned from Defendant's father that Defendant did not live with him but rather lived on Bald Eagle Drive with a Mr. Hudson, a man of the same race as the gunman; that there should have only been a red car in his driveway that night; that Defendant does not have a key to his residence; and that he never kept a spare key outside his home. The sheriff's office database confirmed that Defendant resided at the Bald Eagle Drive location with Mr. Hudson. Mr. Mosley investigated further and learned that Defendant and Mr. Hudson operated a dark Chevy Cavalier, matching the description of the car he saw at the Camden Court residence the night of the robbery. Mr. Hudson matched the description of the gunman given by Mr. Mosley to investigators.[1]

A week after the robbery, based on this affidavit, the magistrate issued a warrant for the search of Defendant's Bald Eagle Drive residence. That same day, officers went to the Bald Eagle Drive residence to execute the warrant. They were

[1] We affirmed the conviction of Mr. Hudson, as set out in a prior opinion by our Court. *See State v. Hudson*, 2018 N.C. App. LEXIS 1057, 820 S.E.2d 130 (N.C. Ct. App. Nov. 6, 2018).

let into the residence by Mr. Hudson. Defendant was also present. During the search, officers found a grey hoodie, black Dickie pants, a red bandana, and a stainless steel handgun in the bedroom Defendant shared with Mr. Hudson.

At trial, Defendant filed a motion to suppress the evidence obtained from the search warrant, arguing that the affidavit in support of the warrant request failed to establish a nexus between the objects sought and the premises searched. Defendant also argued that the warrant was stale, as it was submitted six days after the alleged robbery. The trial court denied the motion on the basis that the motion was untimely and, in the alternative, that the search warrant was supported by probable cause.

Defendant was found guilty on all three charges and judgment was entered on same. Defendant timely filed a petition for writ of *certiorari*, which we granted.

II. Analysis

Defendant makes two arguments on appeal, which we address in turn.

A. Motion to Suppress

The trial court denied Defendant's motion to suppress on two independent grounds: (1) that the motion was untimely made; and (2) on the merits, the affidavit supported the issuance of the warrant in that it established probable cause. Defendant argues on appeal that the trial court erred in denying her motion to suppress.

We review a trial court's denial of a motion to suppress for "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012) (internal citations omitted).

For the following reasons, we conclude that there was probable cause to search the Bald Eagle Drive residence. Therefore, we need to not address Defendant's argument that the trial court erred in concluding that her motion to suppress was untimely.

"Article I, Section 20 of the Constitution of North Carolina . . . prohibits unreasonable searches and seizures and requires that warrants be issued only on probable cause." *State v. Allman*, 369 N.C. 292, 293, 794 S.E.2d 301, 302-03 (2016).

Probable cause exists where "the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense." *State v. Bright*, 301 N.C. 243, 255, 271 S.E.2d 368, 376 (1980) (citing *Beck v. Ohio*, 379 US 89, 91 (1964)). "Probable cause requires not certainty, but only *a probability or substantial chance* of criminal activity." *State v. McKinney*, 368 N.C. 161, 165, 775 S.E.2d 821, 825 (2015) (emphasis in original) (internal citations omitted).

Whether probable cause exists is determined by the totality of the circumstances. *Allman*, 369 N.C. at 293, 794 S.E.2d at 303. We do not conduct a *de novo* review of the issuing magistrate's probable cause determination. *Id.* at 294, 794 S.E.2d at 303. Rather, we review a magistrate's determination of probable cause for whether "the magistrate had a 'substantial basis for . . . concluding' that probable cause existed." *State v. Arrington*, 311 N.C. 633, 638, 319 S.E.2d 254, 258 (1984) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). And the determination made by the magistrate is to be afforded "great deference." *Allman*, 369 N.C. at 294, 794 S.E.2d at 303.

We conclude that, in the present case, the affidavit supporting the challenged warrant provided more than enough information to establish probable cause that Defendant had participated with the gunman in committing the crime.

We further conclude that the affidavit "establish[ed] a nexus between the objects sought and the place to be searched." *State v. McCoy*, 100 N.C. App. 574, 576, 397 S.E.2d 355, 357 (1990). Our Supreme Court has noted that "direct evidence linking the crime to the location to be searched is not required to support a search warrant[.]" *Allman*, 369 N.C. at 297, 794 S.E.2d at 305. However, similar to the facts in *Allman*, Defendant had lied to Mr. Mosley about her place of residence. *See id.* (holding that the defendant's lie about where he lived was relevant in concluding that probable cause existed to search the defendant's home). And we conclude that based

on the totality of the circumstances it is a reasonable inference that there would be evidence of the crime, e.g. clothes worn by the gunman, etc., inside the Bald Eagle Drive residence where he and Defendant lived. *See id.* ("These are just the sort of common-sense inferences that a magistrate is permitted to make when determining whether probable cause exists" to search a location where there is otherwise no direct evidence linking the location with the crime.).

Moreover, we conclude that the information alleged in the application for the search warrant was not stale. Unlike the case cited by Defendant, the present case and underlying search warrant centered around one crime that was under investigation, the armed robbery, not around prior crimes and criminal conduct of Defendant. *See McCoy*, 100 N.C. App. at 577, 397 S.E.2d at 358.

Thus, we affirm the denial of Defendant's motion to suppress as the search warrant was supported by probable cause.

B. Ineffective Assistance of Counsel

In the alternative, Defendant argues that her trial counsel was ineffective in failing to timely file the motion to suppress. However, as we have concluded that the warrant was valid on its merits, we conclude that any ineffective assistance by Defendant's counsel was not prejudicial.

III. Conclusion

We affirm the trial court's denial of Defendant's motion to suppress. The search warrant was based on relevant, current information that amounted to probable cause. Moreover, any error stemming from the trial court's conclusion that Defendant's motion was untimely was not prejudicial. Thus, Defendant's counsel was not ineffective.

AFFIRMED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).