

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-571

Filed: 7 January 2020

Mecklenburg County, Nos. 16CRS221987, 17CRS013742

STATE OF NORTH CAROLINA

v.

FREDDIE PATRICK, Defendant.

Appeal by Defendant from judgment entered 31 August 2018 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 4 December 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Stacey A. Phipps, for the State.*

*Charlotte Gail Blake for Defendant.*

BROOK, Judge.

Freddie Patrick (“Defendant”) appeals from judgment entered upon jury verdict finding him guilty of possession of a firearm by a felon and attaining the status of habitual felon. Defendant argues the trial court erred in denying his motion to suppress evidence he contends was seized unlawfully. We disagree and hold the trial court did not err in denying Defendant’s motion to suppress.

I. Procedural and Factual History

Around 10 June 2016, probation officers in Mecklenburg County received a tip from the Charlotte Mecklenburg Police Department (“CMPD”) that Defendant was “out in the community committing criminal crimes” and in the possession of a gun. Defendant was on probation and was prohibited from possessing firearms or other deadly weapons and was required to submit to warrantless searches.

A team of probation and parole officers conducted a search of Defendant’s residence on 10 June 2016 in response to the tip they received. Two CMPD officers accompanied the team to provide scene security because Defendant lived in the “Metro District” of Charlotte, which purportedly had a high rate of violent crime and criminal activity. During the search, Probation Officer Steven Eudy found .22 caliber bullets in Defendant’s living room in a drawer in a TV console, and Probation Officer Lauren Leftwich saw a firearm in Defendant’s bedroom in plain view. Per department policy, CMPD officers collected, seized, and marked each item as evidence. CMPD officers then arrested Defendant.

After his arrest, Defendant told CMPD Officer Gregory McTigue that he needed protection because of threats that were made against him. Officer McTigue then transported Defendant to the police department. CMPD Detective Robert Stark interviewed Defendant, and Defendant admitted the gun found in his apartment

STATE V. PATRICK

*Opinion of the Court*

belonged to him. Defendant was charged with felony possession of a firearm by a felon and with attaining the status of habitual felon.

At trial, Defendant moved to suppress the evidence seized at his home and his statements, claiming the search violated his rights under the N.C. Constitution and the U.S. Constitution. Defendant further argued that the search violated N.C. Gen. Stat. § 1343(b)(13) because it was arbitrary and not based on probable cause or a valid search warrant. The trial court denied Defendant's motion and found the purpose of the search was "directly related to the purposes and genesis of probation" and therefore lawful.

The jury ultimately returned verdicts of guilty on both charges, and the Honorable Eric L. Levinson sentenced Defendant to an active sentence of 52 to 72 months. Defendant timely appealed.

II. Analysis

On appeal, Defendant contends the trial court erred in denying his motion to suppress because he was subject to a warrantless search and the search was not directly related to his probation supervision; thus, he argues that the evidence was unlawfully seized from his apartment and should not have been admitted at trial. We disagree.

A. Standard of Review

The review of a 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). “Conclusions of law are reviewed de novo.” *State v. Crandell*, 247 N.C. App. 771, 774, 786 S.E.2d 789, 792 (2016) (citation omitted). Under *de novo* review, this Court “considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *Id.*

#### B. Motion to Suppress

North Carolina General Statutes Section 15A-1343(b)(13) requires probationers, as a regular condition of probation, to “[s]ubmit at reasonable times to warrantless searches by a probation officer of the probationer’s person and of the probationer’s vehicle and premises while the probationer is present, for purposes *directly related* to the probation supervision[.]” N.C. Gen. Stat. § 15A-1343(b)(13) (2017) (emphasis added). The probationer “may not be required to submit to any other search that would otherwise be unlawful.” *Id.*<sup>1</sup>

---

<sup>1</sup> In 2009, the General Assembly amended this statutory regime by replacing “for purposes *reasonably related* to probation supervision” with the higher standard of “for purposes *directly related* to probation supervision.” *State v. Powell*, 253 N.C. App. 590, 599, 800 S.E.2d 745, 751 (2017) (emphasis added). The Fourth Circuit held the less stringent “reasonably related” standard constitutional in *United States v. Midgette*, 478 F.3d 616 (4th Cir. 2007), stating in part:

North Carolina has the . . . need to supervise probationers’ compliance with the conditions of their probation in order to promote their

Whether or not a search is “directly related to probation supervision” is the touchstone of whether the warrantless search of a probationer is lawful. *See Powell*, 253 N.C. App. at 601, 800 S.E.2d at 751. We have previously held information received from an anonymous source that “indicated . . . [the d]efendant was in violation of his probation . . . clearly furthered the supervisory goals of probation.” *State v. Robinson*, 148 N.C. App. 422, 428-29, 560 S.E.2d 154, 159 (2002) (upholding denial of motion to suppress where law enforcement searched defendant’s home after receiving an anonymous tip that defendant was in possession of marijuana in his home); *see also State v. Howell*, 51 N.C. App. 507, 509, 277 S.E.2d 112, 114 (1981) (holding warrantless search of probationer by law enforcement valid after probation officer received a tip that the defendant was using drugs).<sup>2</sup>

---

rehabilitation and protect the public’s safety. To satisfy this need, North Carolina authorizes warrantless searches of probationers by probation officers. But North Carolina has narrowly tailored the authorization to fit the State’s needs, placing numerous restrictions on warrantless searches.

*Id.* at 624; *see also Powell*, 253 N.C. App. at 605, 800 S.E.2d at 754 (invalidating search at issue but also “emphasiz[ing] that our opinion today should not be construed as diminishing any of the authority conferred upon probation officers by N.C. Gen. Stat. § 15A-1343(b)(13) to conduct warrantless searches of probationers’ homes or to utilize the assistance of law enforcement officers in conducting such searches”).

<sup>2</sup> These cases pre-date the aforementioned revision to N.C. Gen. Stat. § 15A-1343(b)(13) requiring a tighter nexus between the warrantless search at issue and the defendant’s probation supervision. *Powell*, 253 N.C. App. at 600, 800 S.E.2d at 752. Nonetheless, these pre-revision cases still provide insight into what sort of evidence is permissibly considered when assessing whether the requisite connection exists. *See id.* at 600, 800 S.E.2d at 751 (“Although all of our prior caselaw evaluating warrantless searches conducted pursuant to N.C. Gen. Stat. § 15A-1343(b)(13) applies the version of this statutory provision in effect prior to the 2009 statutory amendment, it is nevertheless helpful to review these decisions.”).

Searches that are initiated for general law enforcement purposes, on the other hand, are not “directly related to probation supervision.” *Powell*, 253 N.C. App. at 604-05, 800 S.E.2d at 753-54. In *Powell*, this Court held the search of a probationer unlawful based on “officers’ testimony that the search of Defendant’s home occurred as a part of an ongoing operation of a U.S. Marshal’s Service task force.” *Id.* at 604, 800 S.E.2d at 753. The operation targeted defendants on probation because their conditions of probation allowed warrantless searches. *Id.* at 597, 800 S.E.2d at 750. The defendant’s probation officer did not participate in the search, and there was “no suggestion in the record that Defendant’s own probation officer was even notified—much less consulted—regarding the search of Defendant’s home.” *Id.* at 604 n.3, 800 S.E.2d at 753 n.3. This Court determined the State had not met “its burden of satisfying the ‘purpose’ element of [N.C. Gen. Stat. § 15A-1343](b)(13)” and held the search unlawful. *Id.* at 604, 800 S.E.2d at 754.

Here, the warrantless search of Defendant was most certainly directly related to the purposes of probation. One of the standard conditions of probation is to refrain from possessing a firearm, and probation officers received a tip that Defendant had been seen with a weapon. N.C. Gen. Stat. § 15A-1343(b)(5) (2017). Accordingly, and unlike *Powell*, this search was animated by information that Defendant was violating a condition of his probation by possessing a firearm. 253 N.C. App. at 604, 800 S.E.2d at 754. Furthermore, the fact that probation officers coordinated the warrantless

STATE V. PATRICK

*Opinion of the Court*

search of Defendant's residence with the assistance of law enforcement does not render it unlawful. *Id.* at 604, 800 S.E.2d at 753 (“[O]ur prior caselaw interpreting N.C. Gen. Stat. § 15A-1343(b) makes clear that the presence and participation of law enforcement officers does not, by itself, render a warrantless search under the statute unlawful.”).

Defendant contends “unverified information from an unidentified person that [Defendant] had a gun” does not meet the “directly related” standard. However, as previously stated, information that “indicate[s] . . . [a d]efendant was in violation of his probation . . . clearly further[s] the supervisory goals of probation,” even if that information is relayed via an anonymous source. *Robinson*, 148 N.C. App. at 428-29, 560 S.E.2d at 159. We therefore hold the trial court properly denied Defendant's motion to suppress because the purpose of the search was directly related to probation supervision.

III. Conclusion

For the abovementioned reasons, we hold that the trial court did not err in denying the motion to suppress.

AFFIRMED.

Judges STROUD and ARROWOOD concur.

Report per Rule 30(e).