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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-650

Filed: 17 March 2020

Forsyth County, No. 18 CRS 54818

STATE OF NORTH CAROLINA

v.

GEORGE EDWARD HAIRSTON, Defendant.

Appeal by defendant from judgment entered 7 March 2019 by Judge Stanley L. Allen in Forsyth County Superior Court. Heard in the Court of Appeals 18 February 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Jarrett McGowan, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for defendant-appellant.

YOUNG, Judge.

This appeal arises out of a conviction for possession of a firearm by a felon. The trial court's finding that Defendant gave consent was supported by the evidence. Furthermore, the trial court did not err in denying Defendant's motion to suppress. Therefore, we find no error.

I. Factual and Procedural History

On 26 May 2018, Officer Andrew P. King (“Officer King”) of the Winston-Salem Police Department responded to a call regarding a subject with a gun. George Edward Hairston (“Defendant”) was the only occupant at the address where the officers were called to investigate. Officer King asked twice for consent to look around the home. Officer King asked Defendant, “Mind if we walk through and make sure you ain’t got no gun?” Defendant responded, “You can go wherever you want to go.” To be clear regarding Defendant’s answer, Officer King asked again, “You mind if we check?” Defendant replied, “You can check whatever . . .” As Officer King was preparing to look through the home he told Defendant, “we are not going to flip anything over or search.” During the walk-through Officer King swept back some hanging clothes and saw the bottom of a soft guitar case. Officer King swept back clothes on the top of the guitar case and saw the barrel of a shotgun. Officer King arrested Defendant and charged him with possession of a firearm by a felon.

On 16 July 2018, Defendant was formally indicted by a grand jury on the same offense. On 4 October 2018, Defendant moved to suppress the gun obtained in connection with his arrest, arguing that it was uncovered as the result of an unlawful search of his residence. On 23 January 2019, the trial court denied the motion to suppress. On 7 March 2019, Defendant pled guilty to possession of a firearm by a

felon, specifically reserving his right to appeal the denial of his motion to suppress.

The trial court accepted the plea and entered judgment.

The trial court sentenced Defendant to 10 to 21 months imprisonment, that sentence being suspended pending Defendant's completion of 18 months supervised probation. Defendant gave timely oral and written notice of appeal.

II. Standard of Review

Our review of a trial court's 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). "The trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

III. Consent

Defendant contends that the trial court's finding that he gave consent to search his residence was not supported by the evidence. We disagree.

"[A] search conducted pursuant to valid consent is constitutionally permissible." *Schneckloth v. Bustamonte*, 412 U.S. 218, 223, 36 L. Ed. 2d 854, 860 (1973). When the State seeks to rely upon consent to justify the lawfulness of a search, it has the burden of proving the consent was "freely and voluntarily given."

Id. “[T]he question whether a consent to search was in fact ‘voluntary’ or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances. *Id.* at 228, 36 L. Ed. 2d at 862-63; *State v. Fincher*, 309 N.C. 1, 5, 305 S.E.2d 685, 689 (1983).

Here, Defendant does not challenge the trial court’s findings that Defendant was not in custody at the time of the search, that the officers entered the home with Defendant’s permission, that “the interaction between law enforcement and the defendant on this occasion was pleasant and relatively uneventful,” and that “there was no duress or no coercion.” The only finding that Defendant challenges is that Defendant gave consent to search.

After Defendant invited the officers into his home, Officer King initially asked Defendant, “Mind if we just walk through and make sure you ain’t got no guns?” Defendant replied, “You can go wherever you wanna go.” Officer King asked again, “You mind if we check?” Defendant replied, “You can check whatever . . .”

There is no evidence in the record that Defendant attempted to revoke his consent, or otherwise limit the scope of the search, nor is there evidence that Defendant was subjected to coercion, compulsion, or duress during his encounter with the officers. The evidence shows that Defendant voluntarily allowed the officers to search his home. The evidence supports the findings and the findings support the

conclusion. Therefore, the trial court did not err in finding that Defendant gave consent to search his residence.

IV. Scope of Consent

Furthermore, Defendant contends that even if he gave consent to search, the officers exceeded the scope of the consent. We disagree.

“[T]he standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of ‘objective’ reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?” *State v. Neal*, 190 N.C. App. 453, 456, 660 S.E.2d 586, 588 (2008). The consent Defendant granted can reasonably be interpreted as to put no limitations on the scope of the officers’ search. There is no evidence that Defendant objected at any point during the search. Defendant was calm and cooperative throughout the search. Defendant argues that Officer King stated he would not flip anything over. Even if this statement, which was made after obtaining consent, could be construed as placing a limitation on the search, the officers still acted within the scope of the search because they did not flip anything over. The evidence supports the findings and the findings support the conclusion. Therefore, the officers did not exceed the scope of the search.

V. Motion to Suppress

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Opinion of the Court

Defendant contends that the trial court erred in denying his motion to suppress. We disagree.

Based on the analysis above, Officer King obtained possession of the gun in Defendant's home through a lawful search. Defendant provided consent without limitations and the officers did not exceed the scope of that consent. At no time before, during, or after the search did Defendant object to the search. There was also no evidence of coercion, compulsion, or duress during Defendant's encounter with the officers. The evidence supports the findings and the findings support the conclusion that the officers lawfully obtained the gun from Defendant's home. Therefore, the trial court did not err in denying Defendant's motion to suppress the gun.

NO ERROR.

Judges STROUD and INMAN concur.

Report per Rule 30(e).