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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-643

Filed: 3 November 2020

Wake County, No. 17 CRS 719934

STATE OF NORTH CAROLINA

v.

DANIEL DEL CASTILLO CAICEDO

Appeal by defendant from order entered 20 February 2019 and judgment entered 25 February 2019 by Judge Stephan Futrell in Wake County Superior Court. Heard in the Court of Appeals 22 January 2020.

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

Blass Law, PLLC, by Danielle Blass, for defendant-appellant.

ZACHARY, Judge.

Defendant Daniel Del Castillo Caicedo appeals from an order and judgment entered upon his guilty plea following the denial of his motion to suppress. Upon careful review, we affirm.

Background

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On 5 April 2017, Officer James Rollins of the City of Raleigh Police Department responded to “some neighbor complaints” about “a very strong odor of marijuana in the hallway” of an apartment complex. Officer Rollins entered the apartment building, smelled the odor of burnt marijuana, and quickly determined the apartment from which the smell of burnt marijuana was emanating. Officer Rollins could hear people talking through the closed apartment door, and he distinctly heard someone say the words “drugs” and “weed.” Officer Rollins “was 100 percent certain that . . . marijuana was at some point being used based on the odor as well as the discussion inside the apartment.”

Officer Rollins radioed for assistance, and when two more officers arrived about five minutes later, Officer Rollins knocked on the apartment door. He did not announce that he was a law enforcement officer, and he remained silent after someone inside asked who was at the door. Officer Rollins, who was dressed in his uniform, observed someone looking at him through the peephole, and 15 to 30 seconds passed before someone opened the door. According to Officer Rollins, the occupant “had a look of surprise or an alarm[ed] look on their face,” and the occupant immediately attempted to shut the door “with some level of force.” However, Officer Rollins stuck his right foot in the door, preventing the door from closing, as he ordered the occupants, “Do not close this door.” The occupant stepped back and raised “at least one hand up as if to surrender,” which indicated to Officer Rollins that the

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occupant “was no longer going to resist or try to close the door on” him. Officer Rollins interpreted these gestures as implicit permission to enter the apartment and “have a conversation.”

Inside the apartment, Officer Rollins smelled fresh marijuana. Defendant, who leased the apartment, gave Officer Rollins oral consent to search the apartment, and later signed a consent search form. The search concluded with Officer Rollins issuing Defendant a citation for: (1) possession of marijuana, a Schedule VI controlled substance; and (2) possession of marijuana drug paraphernalia.

On 25 September 2017, Defendant pleaded guilty to both offenses in Wake County District Court and appealed to superior court. On 25 January 2019, Defendant filed a motion to suppress any and all evidence obtained as a result of the warrantless entry and search of the apartment. On 11 February 2019, a hearing was held on Defendant’s motion to suppress before the Honorable Stephan Futrell. The trial court denied Defendant’s motion by order entered on 20 February 2019. On 25 February 2019, the State filed a misdemeanor statement of charges against Defendant for the same offenses identified in the initial citation. Defendant pleaded guilty to the charged offenses, while reserving the right to appeal the denial of his motion to suppress. Defendant gave his notice of appeal in open court.

Discussion

On appeal, Defendant argues that the superior court: (1) lacked subject-matter jurisdiction to enter judgment against him; and (2) erred in denying his motion to suppress. We address each issue in turn.

I. Subject-Matter Jurisdiction

It is well settled “that a defendant who pleads guilty generally waives all non-jurisdictional errors in the proceeding. However, . . . a plea of guilty standing alone does not waive a jurisdictional defect, and our Court has long recognized that subject matter jurisdiction can be raised for the first time on appeal.” *State v. Bryant*, ___ N.C. App. ___, ___, 833 S.E.2d 641, 643 (2019) (citations and internal quotation marks omitted).

The existence of subject-matter jurisdiction is a matter of law, as it establishes “the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it.” *State v. Wooten*, 194 N.C. App. 524, 527, 669 S.E.2d 749, 750 (2008) (citation omitted), *disc. review denied*, 363 N.C. 138, 676 S.E.2d 308 (2009). This Court reviews challenges to a trial court’s subject-matter jurisdiction de novo. *State v. Matthews*, ___ N.C. App. ___, ___, 832 S.E.2d 261, 264, *disc. review denied*, 373 N.C. 256, 835 S.E.2d 445 (2019).

Defendant maintains that the superior court lacked subject-matter jurisdiction “to try [him] on a misdemeanor statement of charges filed in superior court for allegations of possession of marijuana drug paraphernalia and possession of

marijuana where he was tried and convicted on a uniform citation in district court.” As Defendant’s argument was recently foreclosed by a decision of our Supreme Court, we must disagree.

In criminal proceedings, “[t]he citation, criminal summons, warrant for arrest, or magistrate’s order serves as the pleading of the State for a misdemeanor prosecuted in the district court, unless the prosecutor files a statement of charges[.]” N.C. Gen. Stat. § 15A-922(a) (2019). “A statement of charges is a criminal pleading which charges a misdemeanor.” *Id.* § 15A-922(b)(1). The filing of a statement of charges “supersedes all previous pleadings of the State and constitutes the pleading of the State.” *Id.* § 15A-922(a). “The prosecutor may file a statement of charges upon his own determination at any time prior to arraignment in the district court. It may charge the same offenses as the citation, criminal summons, warrant for arrest, or magistrate’s order or additional or different offenses.” *Id.* § 15A-922(d).

The procedure for filing a misdemeanor statement of charges “at the time of or after arraignment” is as follows:

(e) Objection to Sufficiency of Criminal Summons; Warrant for Arrest or Magistrate’s Order as Pleading. —If the defendant by appropriate motion objects to the sufficiency of a criminal summons, warrant for arrest, or magistrate’s order as a pleading, at the time of or after arraignment in the district court or upon trial de novo in the superior court, and the judge rules that the pleading is insufficient, the prosecutor may file a statement of charges, but a statement of charges filed pursuant to this authorization may not change the nature of the offense.

(f) Amendment of Pleadings prior to or after Final Judgment. —A statement of charges, criminal summons, warrant for arrest, citation, or magistrate’s order may be amended at any time prior to or after final judgment when the amendment does not change the nature of the offense charged.

Id. § 15A-922(e)–(f).

Our Supreme Court recently construed these subsections to mean that “when a prosecutor’s action is in substance an amendment to a criminal pleading, no matter what the document containing the amendment is labeled, the amendment can be made *at any time* as long as it does not alter the nature of the offense or is otherwise authorized by law.” *State v. Capps*, 374 N.C. 621, 624, 843 S.E.2d 167, 169 (2020) (emphasis added). The Court determined that the legislature intended to “g[i]ve prosecutors the freedom to amend criminal pleadings at any stage of proceedings if doing so does not change the nature of the charges or is otherwise authorized by law.”

Id. at 628, 843 S.E.2d at 171.

The *Capps* Court explained:

By enacting subsections (d) and (e) the General Assembly did not intend to limit the circumstances in which a prosecutor may file a statement of charges. It instead simply clarified a specific circumstance in which such a filing remains permissible. Read together, subsections (d) and (e) provide that before arraignment a prosecutor may file a statement of charges that changes the nature of the offense, but after arraignment the prosecutor may only file a statement of charges that does not change the nature of the offense. Where subsection (e) includes the clauses “[i]f the defendant by appropriate motion objects to the

sufficiency of a criminal [pleading] . . . and the judge rules that the pleading is insufficient,” it simply clarifies that a prosecutor may still file a statement of charges in that circumstance if doing so does not change the nature of the offense. It does not mean that a prosecutor may file a statement of charges *only* in that circumstance. It would be an odd result to allow a statement of charges to be filed when a defendant objects to the sufficiency of the warrant but not allow the same non-prejudicial statement of charges to be filed when a defendant does not object to the sufficiency of the warrant and consents to the new filing.

Id. at 627-28, 843 S.E.2d at 171 (quoting N.C. Gen. Stat. § 15A-922(e)).

In the case at bar, on 5 April 2017, Defendant was charged by way of uniform citation with possession of marijuana and possession of marijuana drug paraphernalia. Defendant pleaded guilty in district court and appealed to superior court. On 25 February 2019, the State filed a statement of charges alleging the same offenses. The only differences between the two pleadings were the degrees of specificity in the State’s descriptions of the charges, none of which altered the nature of the charges against Defendant. *See id.* at 628, 843 S.E.2d at 171. Accordingly, the superior court had subject-matter jurisdiction to enter judgment against Defendant. *See id.* Defendant’s first argument is overruled.

II. Motion to Suppress

Defendant next asserts that the trial court erred in denying his motion to suppress evidence discovered in the search of his apartment. First, Defendant argues that the trial court made findings of fact that were unsupported by competent

evidence. Second, he argues that the trial court erred by concluding, as a matter of law: (1) that exigent circumstances existed to justify Officer Rollins' warrantless entry and search of the apartment, and (2) that the officer-created exigency doctrine did not apply. Lastly, he argues that Officer Rollins did not obtain "implied consent to enter and conduct a warrantless search." Because we hold that the trial court did not err in concluding that Officer Rollins obtained consent, we pretermitt discussion on Defendant's remaining arguments.

A. 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). "[W]hen . . . the trial court's findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011).

B. Findings of Fact

Defendant argues that specific portions of findings of fact #4 and #6 are not supported by competent evidence. Those findings are printed below in their entirety, with the portions that Defendant challenges on appeal presented in italics:

4. *Having previously been advised of the apartment number from which the odor seemed to emanate, Officer Rollins made his way there.* Within fifty (50) feet or more of the apartment, he detected the strong odor of burnt marijuana in the hallway. He was familiar with the odor because of his training and prior professional experiences. The odor became stronger as he got closer to the apartment (Apt # 263).

. . . .

6. Officer Rollins had radioed for officer assistance. About five minutes after the reference to “weed,” he knocked on the front door of the apartment. Two other officers were present when Officer Rollins knocked on the apartment’s door. A male voice from inside said, “who is it?” Officer Rollins did not respond; *he looked through the peephole and saw a silhouette of what appeared to be movement and a male peering through the peephole. Officer Rollins then heard more movement inside the apartment; and after 15 to 30 seconds, the door opened. Officer Rollins testified that the time to open the door seemed long, given that the voices inside the apartment seemed to be in the living area and those individuals could have opened the door much sooner.*

(Emphases added).

Defendant contends that the italicized portion of finding of fact #4 is not supported by competent evidence, because at the suppression hearing, Officer Rollins “did not recall exactly whether the citizen complaint was in reference to the hallway or a specific apartment number[.]” Regarding finding of fact #6, in his brief on appeal, Defendant first summarizes Officer Rollins’ testimony, allowing that:

(1) he was able to see into the apartment door’s peephole from the hallway; (2) that he saw “some movement side to side as well as what appeared to be a male come up to the

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door”; (3) the resident at the door “saw that it was me”; (4) he believed that the resident should not have taken 15 to 30 seconds from the time of his knock until the time he opened the door.

From this, Defendant posits that (1) “it seems unlikely that an officer could see into a peephole from the outside”; and (2) “if the trial court believed that Officer Rollins was able to see in the reverse direction through the peephole, and that Officer Rollins’ view through the peephole allowed him to observe that the resident looked through the peephole from the inside and saw Officer Rollins in his police uniform,” it follows that the resident would not have also been taken by surprise upon opening the door and seeing Officer Rollins. These assertions lack merit.

Defendant is essentially asking this Court to reweigh the evidence, and to reject the trial court’s conclusions drawn from Officer Rollins’ testimony. This we cannot do.

Although [D]efendant’s interpretation of Officer [Rollins’] testimony may also be reasonable, it is the trial court who passes upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom. If different inferences may be drawn from the evidence, he determines which inferences shall be drawn and which shall be rejected.

State v. Alexander, 233 N.C. App. 50, 56, 755 S.E.2d 82, 87 (2014) (citation and internal quotation marks omitted).

Further, Officer Rollins testified that although he could not precisely recall whether he had been advised which apartment the odor was emanating from, he

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“believe[d] that [he] was” told which apartment was at issue. Moreover, Officer Rollins further testified that when he looked through the peephole of the door to the apartment, “there was a second where there was some movement side to side as well as what appeared to be a male come up to the door. . . . [H]e peeped through the peephole and saw that it was me.” Officer Rollins believed that it was approximately “15 to 30 seconds” between “seeing [the] light change in the peephole and the opening of the door,” which he said “seemed like a long time at that point.”

Officer Rollins explained that after his initial knock,

there was almost an immediate “Who is it?” And . . . having been inside several of those apartments before, I generally know the size of those apartments, the square footage of those apartments. They’re not small apartments, but they’re not a 5,000-square-foot mansion where somebody has to take five flights of stairs to get to the front door.

. . . .

I would submit to you that you could get to the front door within a matter of a handful of seconds.

. . . .

The conversation and the movement and the voice that I heard from inside the apartment seemed to be not just on the other side, but in the common living area. Again, I’ve been in this apartment complex many times before and I’m somewhat familiar with the floor plan. As soon as you walk in, generally speaking and in this case, there’s a kitchen to your right or left and then right there is the living room. Oftentimes people have a couch or a television and that’s their common area or their living room, if you will.

In light of this testimony, we are satisfied that competent evidence supports the trial court's challenged findings of fact #4 and #6. "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *State v. Ashworth*, 248 N.C. App. 649, 651, 790 S.E.2d 173, 176 (citation omitted), *disc. review denied*, 369 N.C. 190, 793 S.E.2d 694 (2016). "[T]he question for review is whether the ruling of the trial court was correct and not whether the reason given therefor is sound or tenable. The crucial inquiry for this Court is admissibility and whether the ultimate ruling was supported by the evidence." *State v. Hester*, 254 N.C. App. 506, 515, 803 S.E.2d 8, 15 (2017) (emphasis omitted). Officer Rollins was the only witness to testify at the suppression hearing, and his testimony was uncontradicted. Therefore, because Officer Rollins' testimony constituted "evidence that a reasonable mind might accept as adequate," *Ashworth*, 248 N.C. App. at 651, 790 S.E.2d at 176, findings of fact #4 and #6 are "supported by competent evidence" and are thus "conclusively binding on appeal," *Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

C. Conclusions of Law

Defendant concedes that while "there may have been probable cause" to obtain a warrant, he contends that a warrantless search was unlawful because "no exigency was present" to permit the search; and, alternatively, "even if there was an exigency, it was created by Officer Rollins." Defendant does not challenge any specific

conclusion of law in the order denying his motion to suppress, but instead argues that (1) “[t]he trial court . . . erroneously concluded that there were ‘furtive movements’ inside the home that created exigent circumstances”; (2) “the State did not offer evidence of the degree of urgency involved, or the time necessary to obtain a warrant”; (3) “the officer did not have a reasonably objective belief that the contraband was about to be removed or destroyed”; and (4) “[t]he trial court erroneously concluded that Officer Rollins had implied consent to enter and conduct a warrantless search.” While the trial court concluded that exigent circumstances existed, and that they were not created by Officer Rollins, we need not address these arguments because the trial court did not err in concluding that Defendant consented to Officer Rollins’ search.

The Fourth Amendment guarantees individuals the right to be free from “unreasonable searches and seizures.” U.S. Const. amend. IV. As applied to the states through the Fourteenth Amendment, *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 69 (1994), its “essential purpose . . . is to impose a standard of reasonableness upon the exercise of discretion by . . . law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions.” *Delaware v. Prouse*, 440 U.S. 648, 653-54, 59 L. Ed. 2d 660, 667 (1979) (internal footnote omitted) (citations and internal quotation marks omitted).

Consent, however, has long been recognized as a special situation excepted from the warrant requirement, and a

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search is not unreasonable within the meaning of the Fourth Amendment when lawful consent to the search is given. For the warrantless, consensual search to pass muster under the Fourth Amendment, consent must be given and the consent must be voluntary.

State v. Smith, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 222, 36 L. Ed. 2d 854, 860 (1973)). “Whether the consent is voluntary is to be determined from the totality of the circumstances.” *Id.*

As previously discussed, finding of fact #6 describes Officer Rollins’ knock on the apartment door, a male voice inside responding, “who is it?”, and the apartment door opening “15 to 30 seconds” later. The trial court’s order also includes the following findings of fact, which Defendant has not challenged on appeal:

7. The individual who opened the door (who was not the Defendant) only opened it 1 to 1½ feet. When he saw Officer Rollins, his facial expression was one of surprise and alarm – his eyes opened wide. Officer Rollins noted that the odor of marijuana grew stronger when the door opened, and he became certain that the apartment was the source of the odor.

8. Immediately after the individual opened the door as described above, he tried to slam the door shut. Officer Rollins described the action as being “with some force.” Officer Rollins was about one foot away, and he quickly inserted his right shoe to prevent the door from closing. He said, “Do not close this door.” *At that point, the other individual released his pressure on the door and stepped back with his hands up. Officer Rollins’ understanding from his gestures was that the individual was permitting Officer Rollins to enter the apartment.*

9. Because of the strong odor of marijuana from inside of the apartment, the abnormal delay in opening the front

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door after his know, and the individual's reaction to the presence of a policeman when he answered the door, Officer Rollins believed that evidence inside the apartment could and would be destroyed if he did not intervene immediately.

10. Officer Rollins stated, in response to questions from Defendant's attorney, that *he decided against obtaining a search warrant because of the individual's physical and verbal consent at the apartment*. Later, after the search of the apartment and seizure of the illegal items, Officer Rollins also obtained written consent on a standard form; however, *he primarily relied on the individual's physical and verbal consent to search in justifying the search of the apartment's interior and the seizure*.

(Emphases added). From these findings of fact, the trial court made the following relevant conclusions of law:

16. "It is well-established that 'exigent circumstances', including the need to prevent the destruction of evidence, permit police officers to conduct an otherwise permissible search without first obtaining a warrant." *Kentucky v. King*, 563 U.S. 452, 455, 181 S.Ct. 1849, 1853-54, 179 L.Ed.2d 865, 872 (2011). "[T]he exigent circumstances rule applies when police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment." *Id.* At 469, 181 S.Ct. at 1862, 179 L.Ed.2d at 880-881. Defendant has not come forward with any evidence that Officer Rollins gained entry into the subject apartment by means of an actual or threatened violation of the Fourth Amendment. Officer Rollins did not threaten to break down the door after he knocked. *The individual voluntarily opened the door in response to Officer Rollins' knock; and when Officer Rollins told that individual that he should not close the door, that individual acquiesced and, while raising his hands to gesture his acquiescence, he indicated – at least, in the mind of an experienced law enforcement officer confronted with a situation fraught with*

potentially dangerous possibilities – his consent to Officer Rollins’ entry into the apartment.

17. Defendant fails to come forward with any evidence that Officer Rollins demanded entry into the apartment. He was the only witness to testify at the motion hearing, and his testimony was uncontradicted. He testified that when the individual inside the apartment asked, “Who is it?” after the knock, he (Officer Rollins) did not respond. After the individual opened the door and tried to slam it shut, Officer Rollins’ only statement was, “Do not close this door.” He prevented the closing of the door by inserting his right shoe between the door and the door jamb. *At that point, the other individual effectively invited Officer Rollins’ entry by releasing pressure on the door and backing away with his hands up, thus manifesting an invitation to resolve the encounter peacefully without the necessity of a destructive entry or a formal application for a search warrant.* Nothing that Officer Rollins described about the encounter amounts to a creation of the exigency; rather, it reflects a law enforcement officer reacting to a rapidly evolving situation in which a reasonable person mindful of the totality of the circumstances would believe that a suspect could destroy evidence before a warrant could be obtained.

(Emphases added).

These findings of fact and conclusions of law indicate that the trial court considered the totality of the circumstances—including the conduct of all parties, the alleged exigencies of the situation, and the validity of the parties’ consent to search—in ruling on Defendant’s motion to suppress. Further, the findings of fact, by which we are bound on appeal, support the trial court’s conclusions. The validity of consent, express or implied, is “to be determined from the totality of the circumstances.” *Smith*, 346 N.C. at 798, 488 S.E.2d at 213. Here, the trial court’s unchallenged

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findings that Officer Rollins obtained physical and express verbal consent to enter and search the apartment support its conclusion that the Fourth Amendment was not violated by the warrantless search. Accordingly, we conclude that the trial court did not err in denying Defendant's motion to suppress.

Conclusion

We conclude that (1) the superior court had subject-matter jurisdiction to enter judgment against Defendant, and (2) the court did not err in denying Defendant's motion to suppress.¹ Accordingly, we affirm the judgment and order entered against Defendant.

AFFIRMED.

Judges BERGER and YOUNG concur.

Report per Rule 30(e).

¹ Based on our foregoing determination that Officer Rollins obtained valid consent to conduct the warrantless search, we need not address Defendant's remaining arguments on that issue.