IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-81

No. COA20-297

Filed 16 March 2021

New Hanover County, Nos. 17 CRS 51521, 51522

STATE OF NORTH CAROLINA,

v.

NELSON GABRI GUERRERO-AVILA, Defendant.

Appeal by Defendant from judgment entered 20 November 2019 by Judge Joshua W. Willey, Jr., in New Hanover County Superior Court. Heard in the Court of Appeals 10 February 2021.

Attorney General Josh Stein, by Assistant Attorney General Michael E. Bulleri, for the State.

Sandra Payne Hagood for Defendant.

GRIFFIN, Judge.

¶ 1 Defendant Nelson Gabri Guerrero-Avila ("Defendant") appeals from the trial court's judgment entering his plea of no contest to charges of trafficking and possession of cocaine. Though pleading guilty, Defendant reserved the right to appeal the denial of his motion to suppress evidence. Defendant argues the trial court erred in denying his motion to suppress because (1) several of the trial court's findings of

fact were unsupported by any evidence, (2) Defendant's consent to the initial search of his home was coerced, and (3) all evidence from the search of his home must be excluded as fruit of an unconstitutional search. Because the trial court's findings of fact were either supported by competent evidence or immaterial to the trial court's conclusions of law; and because binding factual findings and uncontroverted evidence supported the conclusion that Defendant voluntarily consented to the initial search of his home, we affirm.

I. Procedural History

¶ 2 On 24 April 2017, a grand jury indicted Defendant for trafficking in cocaine by possession, trafficking in cocaine by manufacture, manufacture of cocaine, possession with intent to distribute cocaine, maintaining a dwelling for controlled substance, and possession of drug paraphernalia. On 21 November 2018, Defendant filed a motion to suppress evidence ("Motion to Suppress"), together with the affidavit required by N.C. Gen. Stat. § 15A-977. The Motion to Suppress was heard at the 19 November 2019 session of New Hanover County Criminal Superior Court before the Honorable Joshua W. Willey, Jr.. The court denied Defendant's Motion to Suppress, entering a written order on 21 November 2019.

¶ 3 On 20 November 2019, Defendant pled no contest to trafficking in cocaine by possession and possession with intent to distribute cocaine, and the State dismissed the other counts. Pursuant to the plea agreement, Defendant retained his right to

appeal the denial of his Motion to Suppress. Defendant filed written Notice of Appeal on 3 December 2019.

¶ 4 Defendant filed the Motion to Suppress on grounds that the search of his residence violated his Fourth Amendment rights, and filed the accompanying affidavit required by N.C. Gen. Stat. § 15A-977. Thus, this argument is preserved for appellate review. *See State v. Kuegel*, 195 N.C. App. 310, 316-17, 672 S.E.2d 97 (2009) ("[T]o preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." (quoting N.C. R. App. P. 10(b)(1))).

II. Factual Background

¶ 5 We first review the contested facts before we apply them to the findings of the trial court.

A. State's Evidence

¶ 6 At the hearing on the Motion to Suppress, the State offered the testimony of Thomas Swivel (Special Agent at the Department of Homeland Security) and Brian Guill (Inspector at the North Carolina Division of Motor Vehicles License and Theft Bureau), who were two of the four officers who searched Defendant's residence. Their testimony asserted the following:

¶ 7 The officers did not have weapons drawn when they approached Defendant's

residence. Agent Swivel testified they did not use any coercive tactics to gain consent to enter Defendant's residence, and Inspector Guill testified they did not use any deceptive or furtive techniques when inside the residence. Instead, they entered after requesting, and receiving, permission from Defendant to come inside.

¶ 8 Agent Swivel communicated with Defendant in Spanish after knocking on his door and throughout the encounter. Defendant said in their first interaction that he did not speak much English. Agent Swivel is fluent in Spanish.

¶ 9 Defendant first answered the door, left to change into clothes, and then "about a minute later" opened the door again. When Defendant answered the door the second time, Agent Swivel asked if the officers could enter Defendant's house, to which Defendant agreed. Once inside Defendant's house, Agent Swivel asked Defendant some questions and asked to see his identification. Defendant provided his Honduran identification card. Agent Swivel asked for U.S. or North Carolina identification, and Defendant responded that he did not have any. Agent Swivel then asked Defendant "if we could look around." Defendant asked about a warrant, to which Agent Swivel replied "no, we didn't have a warrant. I said we would leave, or we could leave, and I said is it okay if these guys—if we look around?" Defendant replied "that [they] were able to look around."

¶ 10 Agent Swivel "ha[d] [Defendant] sign a written consent form" for the search of the house. Defendant filled out the form at the dining room table. Agent Swivel

testified Defendant signed a consent to search his truck "at least an hour" after he signed the consent to search the house. Tony DiGiovanni, the officer who witnessed Defendant's signature on the consent to search the truck, did not arrive on the scene until after the narcotics field test, or possibly even after they had obtained the search warrant. The consent forms for the searches of the house and truck were written in Spanish. Agent Swivel read aloud to Defendant, in Spanish, the rights written on the consent forms before Defendant signed the forms.

¶ 11 After Defendant signed the consent forms, the next step of the officers' investigation was to conduct "a quick security sweep of the house." Agent Swivel asked his partner to run Defendant's immigration history. In court, the prosecutor asked Agent Swivel, "At that point in time, did you begin to search the residence?", to which Agent Swivel replied, "Yes." Agent Swivel went on to testify that in this search, the officers found "wrappers in the bathroom that had a residue on them that were indicative of drug activity and also a box with . . . a large amount of cash." A field test indicated that the substance was cocaine.

¶ 12 Agent Swivel testified Defendant never withdrew consent to the entry and search of his residence. Agent Guill testified that, aside from "seem[ing] a little nervous, obviously", Defendant did not display any body language that seemed to indicate he wanted the officers to leave his residence.

B. Defendant's Evidence

¶ 13 At the hearing on the Motion to Suppress, Defendant testified to the following:

¶ 14 When Defendant "opened the door, [the officers] say can they come in to look inside the house and to just look in and talk to me. I tell [Agent Swivel] okay." Defendant, when asked by the prosecutor what he thought the officers would do once they entered his residence, testified that "[Agent Swivel] told me he was just going to come and look. I thought he was going to come and look, see that everything was okay, and then leave." Defendant affirmed during his sworn in-court testimony that he "consented to these officers entering the residence and looking around."

¶ 15 Defendant denied that Agent Swivel offered to leave because of not having a warrant. Rather, Defendant testified that Inspector Guill entered the master bedroom shortly after entering the house, at which point Defendant "told him to get out and they need to bring a search warrant to check the house", to which Agent Swivel replied, "Don't worry about it. You already let us in[.]"

¶ 16 Defendant testified that, after the officers had already found drugs in his residence, they handcuffed Defendant and told him to sit at the dining room table. Defendant stated that the officers never presented him with, and that he never signed, a consent to search his residence. However, Defendant stated that after handcuffing him, the officers presented him with a consent to search the truck, and that he was "fine with signing a paper and all that." Defendant denied that Agent Swivel read him his constitutional rights, stating "[i]t wasn't read to me until later."

¶ 17 On the day of the knock and talk at Defendant's residence, Defendant was aware that he was subject to deportation without a hearing because he had a prior order of removal. By the time Defendant was presented with the consent to search the truck, he figured he was going back into deportation proceedings.

C. Findings of Fact and Conclusions of Law

¶ 18 On 21 November 2019, the court entered a written order denying the motion to suppress. In the written order, the court made the following findings of fact pertinent to this appeal:

> 3. On February 21, 2017, . . . [at a]pproximately 2:30 p.m., Agent Swivel with the Department of Homeland Security, Officer Guill with the North Carolina Division of Motor Vehicles, Officer Eason with the North Carolina Division of Motor Vehicles, and Officer Feldman decided to do a knock-and-talk at the Defendant's residence.
>
> . . .
>
> 4. The officers approached the residence, went to the front door, and Officer Swivel knocked on the door approximately seven times. Shortly thereafter, the Defendant appeared and opened the door wearing only a towel. Officer Swivel identified himself, said that him [sic] and the officers wanted to talk and look around his home. Agent Swivel was the agent communicating directly with [D]efendant because he spoke Spanish. [D]efendant and Agent Swivel conversed in Spanish throughout this interaction. []Defendant then asked if they could give him a chance to put some clothes on and then closed the door. Officers remained outside the residence at that time. [D]efendant then took the opportunity, while the officers were waiting outside, to try to conceal some of the contraband located in the house.

> 5. After at least a minute, officers knocked again at the front door of the residence. This time when []Defendant opened the door, he was wearing clothing. Agent Swivel advised []Defendant that they wanted to talk to him and look around the residence. [D]efendant did not feel intimidated. He understood he was not under arrest. []Defendant then permitted the officers to enter the residence.
>
> 6. Once inside the home, Agent Swivel asked [D]efendant for his identification. He went back to a bedroom and came back with a Honduran identification card and did not present any North Carolina identification.
>
> 7. Officers then presented []Defendant with State's Exhibit 1 and 3. []Defendant signed State's Exhibit 3, which is a consent form authorizing search of the truck in the yard. []Defendant also signed State's Exhibit l, a consent to search a residence. This consent to search form signed by []Defendant was in Spanish so Defendant could clearly have understood its contents. The Court does not find []Defendant's testimony that he did not sign this form to be credible.
>
> 8. The officers conducted a quick security search of the residence. In doing so, they find some containers with some wrappers contained [sic] residue which field tested positive for controlled substances.
>
> 9. After that, []Defendant was advised of his Miranda rights. At this point, [D]efendant asked about a warrant, and the officers stopped their search to obtain a search warrant for the residence.

¶ 19 Based on these findings, the court made the following conclusions of law:

> 1. []Defendant voluntarily consented to the officers entering his home and to conducting at least a preliminary search of the residence.

> 2. The search conducted by the officials was reasonable under the circumstances.
>
> 3. The search did not violate []Defendant's rights against unreasonable search and seizure under the Fourth Amendment to the United States Constitution or the corresponding sections of the North Carolina Constitution.

III. Analysis

¶ 20 On appeal, Defendant argues that (1) several of the trial court's findings lack any support in the evidence, (2) the State failed to meet its burden of showing that Defendant's consent to the initial search of his residence was voluntary, and (3) all the evidence from Defendant's residence should be excluded as fruit of an unconstitutional search. After careful review, we disagree and affirm.

A. Defendant's Challenges to the Court's Findings of Fact

¶ 21 Defendant challenges four of the trial court's findings. A trial court's findings of fact are conclusive on appeal if they are supported by competent evidence, even where that evidence is conflicting. *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001). Accordingly, we review whether any competent evidence supported the challenged findings of fact. *See State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (stating that in reviewing denial of a motion to suppress, this Court first determines "whether the trial judge's underlying findings of fact are supported by competent evidence").

1. Competent Evidence Supported Findings of Fact Nos. 4 and 5.

¶ 22 Defendant disputes Findings of Fact Nos. 4 and 5, which stated that Agent Swivel told Defendant from their very first interaction that the officers wanted to "talk" with Defendant and that they wanted "to look around his home", and that when Defendant returned to the door after getting dressed, "Agent Swivel advised the Defendant that they wanted to talk to him and look around the residence."

¶ 23 Defendant contends the evidence shows that Agent Swivel did not ask permission to search Defendant's house until after Defendant had admitted them into the residence and provided his Honduran identification card.

¶ 24 Defendant's testimony supports the factual findings of the trial court. Defendant testified that when he "opened the door, [the officers] say can they come in to look inside the house and to just look in and talk to me. I tell [Agent Swivel] okay." Defendant, when asked what he thought the officers would do once they entered his residence, replied "[Agent Swivel] told me he was just going to come and look. I thought he was going to come and look, see that everything was okay, and then leave." Defendant testified that he "consented to these officers entering the residence and looking around." Defendant's testimony supports the trial court's findings that in their first interaction, Agent Swivel asked permission to "talk" with Defendant and "look" inside his home. Therefore, Findings of Fact Nos. 4 and 5 are supported by competent evidence and conclusive on appeal.

2. Competent Evidence Supported Finding of Fact No. 7.

¶ 25 Defendant disputes Finding of Fact No. 7, which states that the "[o]fficers then presented the Defendant with State's Exhibit 1 and 3. The Defendant signed State's Exhibit 3, which is a consent form authorizing search of the truck in the yard. The Defendant also signed State's Exhibit l, a consent to search a residence." Defendant argues this finding indicates that the two consent forms were presented to him at the same time, and that he signed these forms at the same time. Defendant argues this chronology is not supported by competent evidence.

¶ 26 Contrary to Defendant's argument, this finding does not specifically indicate that the two forms were presented to Defendant at the same time and that he signed them at the same time. The findings do not specify what (if any) time interval separated the presentations and signings of the two consent forms. Finding of Fact No. 7 is not precise in its wording, but neither is it erroneous.

¶ 27 The word "then", and the placement of this finding after Finding of Fact No. 6 (which concerns Defendant's provision of his Honduran identification card), does indicate that the consent forms were presented and signed at some point after Defendant presented his Honduran identification card. This chronology is supported by competent evidence and not challenged by Defendant. Agent Swivel testified that the officers presented Defendant with both consent forms and that Defendant signed both consent forms, albeit apparently at least an hour apart. Because competent

evidence supported Finding of Fact No. 7, this finding is binding on appeal. *Buchanan*, 353 N.C. at 336, 543 S.E.2d at 826.

3. The Challenged Elements of Findings of Fact Nos. 8 and 9 are Immaterial to the Conclusions of Law.

¶ 28 We agree with Defendant's argument that some parts of Findings of Fact Nos. 8 and 9 are unsupported by the evidence. Because the errors in these findings are immaterial to the larger issues challenged on appeal (whether contraband was discovered pursuant to a search based on constitutionally acquired consent), we will not disturb these findings. *See State v. Hernandez*, 170 N.C. App. 299, 305, 612 S.E.2d 420, 424 (2005) ("[A]n order will 'not be disturbed because of . . . erroneous findings which do not affect the conclusions.'" (citation omitted)).

¶ 29 Competent evidence presented at the suppression hearing supports that (1) Defendant asked about a warrant before consenting to the initial search of the residence, (2) the officers found wrappers with residue that field-tested positive for cocaine, (3) this discovery occurred after Defendant signed the consent forms, and (4) the officers obtained a search warrant after Defendant invoked his right to counsel.

¶ 30 We agree with Defendant that the evidence shows that he asked about a warrant soon after he presented his Honduran identification card, rather than after the officers found the contraband. No evidence indicates that Defendant asked about a warrant after being read his Miranda rights. Agent Swivel testified that Defendant

invoked his right to counsel after Agent Swivel read him his Miranda rights. There was no evidence presented that Defendant asked about a warrant at that time. Agent Swivel testified that Defendant only asked about a warrant after Defendant provided his Honduran identification. The officers obtained a search warrant later, after Defendant invoked his right to counsel.

¶ 31 Additionally, the trial court's attribution of the contraband discovery to the initial security search was erroneous. Agent Swivel testified that after Defendant signed the consent forms, the next step of their investigation was to conduct "a quick security sweep of the house." Agent Swivel asked his partner to run Defendant's immigration history. The prosecutor asked Agent Swivel, "At that point in time, did you begin to search the residence?", to which Agent Swivel replied, "Yes." In this search, the officers found "wrappers in the bathroom that had a residue on them" which field-tested positive for cocaine. Agent Swivel's above testimony supports that the contraband was found in a search conducted *after* the security search, but not during the security search itself.

¶ 32 These errors do not affect the issues material to the trial court's conclusions of law: whether Defendant consented to the officers' searching his home, and whether the contraband was discovered after Defendant gave consent. Accordingly, we do not disturb the court's findings on these bases. *See Hernandez*, 170 N.C. App. at 305, 612 S.E.2d at 424.

B. Consent to Search the Defendant's Home

¶ 33 Defendant argues the State failed to meet its burden to show that his "consent" to the initial search of his residence was voluntary. Specifically, Defendant argues that, under the totality of circumstances, his consent was the result of implied coercion from the officers. Defendant argues the officers' conduct was coercive in (1) using four uniformed officers to conduct the visit; (2) knocking for an extensive period and knocking again after Defendant had told the officers he would return to the door; (3) asking for Defendant's identification even though Defendant was in his own home; (4) retaining Defendant's identification; and (5) keeping Defendant at his dining room table.

¶ 34 Upon review, we disagree, and conclude the Defendant consented to the search of his home.

1. Standard of Review

¶ 35 In determining whether a trial court's findings of fact support its conclusions of law, the conclusions of law are reviewed *de novo*. *State v. Haislip*, 362 N.C. 499, 500, 666 S.E.2d 757, 758 (2008) (citation omitted). Under *de novo* review, this Court "considers the matter anew and freely substitutes its own judgment" for that of the trial court. *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citation and quotation marks omitted).

¶ 36 A warrantless search "is not unreasonable within the meaning of the Fourth

Amendment when lawful consent to the search is given." *State v. Smith*, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). Similarly, N.C. Gen. Stat. § 15A-221(a) allows warrantless searches and seizures "if consent to the search is given." N.C. Gen. Stat. § 15A-221(a) (2017). When the State relies on consent to support the validity of a search, it bears the burden of showing the consent was voluntary. *State v. Morocco*, 99 N.C. App. 421, 429, 393 S.E.2d 545, 549 (1990).

¶ 37 "[T]he question [of] whether a consent to a 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 all the circumstances." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973); *see also State v. Icard*, 363 N.C. 303, 308-09, 677 S.E.2d 822, 826 (2009) ("A reviewing court determines whether a reasonable person would feel free to decline the officer's request or otherwise terminate the encounter by examining the totality of circumstances." (citations omitted)). Relevant considerations include "the number of officers present, whether the officers displayed a weapon, the words and tone of voice used by the officers, any physical contact between the officer and the defendant, the location of the encounter, and whether [an] officer blocked the individual's path." *State v. Cobb*, 248 N.C. App. 687, 696, 789 S.E.2d 532, 538 (2016) (citing *Icard*, 363 N.C. at 309, 677 S.E.2d at 827). "[A]ccount must be taken of subtly coercive police questions, as well as the possibly vulnerable

subjective state of the person who consents." *Bustamonte*, 412 U.S. at 229. A defendant's age, level of experience, and race may also be factors. *State v. Bartlett*, 260 N.C. App. 579, 583-84, 818 S.E.2d 710, 714-15 (2018).

2. Application

¶ 38 We review the totality of the circumstances in this case to determine whether Defendant's consent was voluntary.

a. Number of Officers

¶ 39 "'[T]he threatening presence of several officers" may indicate a seizure. *State v. Marrero*, 248 N.C. App. 787, 791, 789 S.E.2d 560, 564 (2016) (citation and quotation marks omitted). However, the presence of as many as *ten* officers does not necessarily create police coercion. *See State v. McDaniels*, 103 N.C. App. 175, 184, 405 S.E.2d 358, 364 (1991) ("[O]ur Supreme Court has refused to hold that police coercion exists as a matter of law even when ten or more officers are present in his own home before the suspect consents to a search." (citing *State v. Fincher*, 309 N.C. 1, 25, 305 S.E.2d 685, 700 (1983) (Exum, J., dissenting in part and concurring in part))). Rather, our courts consider the number of officers present in relation to the case circumstances. *See State v. Sokolowski*, 344 N.C. 428, 433, 474 S.E.2d 333, 336 (1996) (finding that it was not unreasonable to bring eight deputies for safety to investigate possible homicide in a rural area, "especially in light of the information that the defendant had stated that he would shoot any law enforcement officers who came to his house").

¶ 40 Four officers were present at the search of Defendant's residence. The trial court found that Defendant "did not feel intimidated" when he opened the door to the four officers, and he "understood he was not under arrest." Although Defendant's appellant brief memorably states that he was "faced with a phalanx of four uniformed officers at his front door", the Record is clear that this sight did not intimidate him at the time. The four officers here hardly compared to the Greek Army at Thermopylae. Defendant did not challenge the trial court's factual finding that he "did not feel intimidated" and "understood he was not under arrest"; therefore, this finding is binding on appeal. *See State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36 (citation omitted) ("Where . . . 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."), *disc. rev. denied*, 358 N.C. 240, 594 S.E.2d 199 (2004).

b. Dialogue Between Defendant and Officers

¶ 41 The officers behaved civilly toward Defendant in the encounter. Agent Swivel asked permission for them to enter Defendant's residence and look around. Defendant granted this request. The officers did not threaten him or command him to let them inside. They did not use deceptive tactics to gain entry. *Cf. Kuegel*, 195 N.C. App. at 313-16, 672 S.E.2d at 99-101 (upholding voluntariness of consent even though officer obtained consent by lying).

c. Display of Weapons

¶ 42 The officers did not have weapons drawn when they approached Defendant's residence. *See Cobb*, 248 N.C. App. at 696, 789 S.E.2d at 538 (citing *Icard*, 363 N.C. at 309, 677 S.E.2d at 827). Since there is no conflict of evidence on this fact, its finding is implied. *See Smith*, 346 N.C. at 800, 488 S.E.2d at 214 ("If there is no conflict in the evidence on a fact, failure to find that fact is not error. Its finding is implied from the ruling of the court." (citation and quotation marks omitted)). The Record does not reflect that the officers drew weapons at any time during the encounter.

d. Knocking Repeatedly

> "Knock and talk" is a procedure utilized by law enforcement officers to obtain a consent to search when they lack the probable cause necessary to obtain a search warrant. That officers approach a residence with the intent to obtain consent to conduct a warrantless search and seize contraband does not taint the consent or render the procedure *per se* violative of the Fourth Amendment.

Id. at 800, 488 S.E.2d at 213 (citing *Whren v. United States*, 517 U.S. 806, 813 (1996)).

¶ 43 Defendant argues that the officers exceeded the scope of public license permissible in a "knock and talk", by knocking for "about a minute or two" with "seven or eight" "loud[]" knocks, and by knocking again after Defendant told them he would return. Defendant's reliance on *State v. Ellis*, 266 N.C. App. 115, 829 S.E.2d 912 (2019), and *Florida v. Jardines*, 569 U.S. 1 (2013), for this argument is misplaced.

¶ 44 *Jardines* is distinguishable on its facts. There, a surveillance team brought a trained drug-sniffing dog to investigate the curtilage of the respondent's home.

Jardines, 569 U.S. at 3-4. On review, the U.S. Supreme Court found that this conduct amounted to a "search" within the meaning of the Fourth Amendment and accordingly affirmed suppression of the resulting evidence. *Id*. at 11-12. The Court reasoned that "there is no customary invitation" to bring "a trained police dog to explore the area around the home in hopes of discovering incriminating evidence." *Id*. at 9. The detectives' conduct in *Jardines* exceeded the scope of the implied license for members of the public to "approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Id*. at 8.

¶ 45 Here, there was no drug-sniffing dog involved, and the officers did not investigate the curtilage of Defendant's home. Instead, the officers went to Defendant's front door, Agent Swivel knocked for "about a minute or two", and Defendant answered. The officers' conduct stayed within the scope of the implied license for members of the public to "approach the home by the front path, knock promptly, [and] wait briefly to be received[.]" *See id*. (describing the implied license for members of the public to approach a home and knock).

¶ 46 Likewise, *Ellis* is distinguishable on its facts. There, two detectives approached the defendant's home. *Ellis*, 266 N.C. App. at 116-17, 829 S.E.2d at 914. One detective knocked at the front door; the other detective knocked at the back door. *Id*. Neither received a response after knocking for "several minutes", except that a

front window curtain moved. *Id.* Subsequently, one of the detectives walked over to a corner of the front yard, and from that location could smell marijuana. *Id.* at 117, 829 S.E.2d at 914. The *Ellis* Court concluded that the detectives "overstayed their 'knock and talk' welcome on the property" by remaining at the front door after no one answered, moving to the back door, and moving around the yard. *Id.* at 121, 829 S.E.2d at 916-17.

¶ 47 Here, Agent Swivel knocked on Defendant's front door only. After Agent Swivel knocked, Defendant answered the door. The officers did not move to a back entrance or to other areas of the property. They waited at the front door after Defendant answered and gave them an implicit invitation to stay until he returned. These facts do not indicate that the officers "overstayed their 'knock and talk' welcome on [Defendant's] property." *See id.*

¶ 48 The officers' behavior in knocking at Defendant's door does not indicate that Defendant's consent was coerced. Rather, the facts demonstrate that the officers were acting according to an acceptable "knock and talk" procedure and that they waited at Defendant's door pursuant to his permission.

e. Asking for Identification

¶ 49 Agent Swivel asked to see Defendant's identification after entering the home. Defendant argues that asking for identification in his own home was a "show of authority and intimidation," particularly given Defendant's vulnerable state of mind

caused by his immigration history. *See Bustamonte*, 412 U.S. at 229 ("[A]ccount must be taken of . . . the possibly vulnerable subjective state of the person who consents.").

¶ 50 Generally, asking for identification does not amount to coercion. "Even when officers have no basis for suspecting a particular individual, they may generally . . . ask to examine identification . . . provided they do not convey a message that compliance with their requests is required." *Fla. v. Bostick*, 501 U.S. 429, 434-35 (1991) (citing *Immigration & Naturalization Serv. v. Delgado*, 466 U.S. 210, 216 (1984)).

¶ 51 Here, Agent Swivel "asked" to see Defendant's identification. None of the officers made any threats, physically touched Defendant, or drew a weapon. Without more, Agent Swivel's request to see identification would not convey a message that compliance with his request was required. *Cf. Icard*, 363 N.C. at 304-05, 677 S.E.2d at 824 (finding a seizure where police approached the defendant in parking lot, repeatedly rapped on her car window, forcibly opened her car door, and then asked for identification).

¶ 52 Defendant argues that asking for Defendant's identification in his own home (as opposed to another setting) was itself a "show of authority and intimidation." Defendant's argument is not persuasive. Conversely, the fact that Defendant was inside his own home left Defendant with more freedom (as opposed to being in a traffic stop, for example) to terminate the encounter by refusing to provide identification or

by asking the officers to leave. *See, e.g.*, *State v. Jackson*, 199 N.C. App. 236, 243, 681 S.E.2d 492, 497 (2009) ("[A] reasonable person [in a traffic stop] would certainly not believe he was free to leave without his driver's license and registration."). Indeed, both Agent Swivel's and Defendant's testimonies reflect that, immediately or soon after providing his identification, Defendant felt enough freedom in the situation to ask about a search warrant.

¶ 53 Agent Swivel's request for Defendant's identification was not an act of intimidation and does not suggest that Defendant was coerced into providing consent to search his residence.

f. Retention of Identification

¶ 54 "In determining whether there has been a show of authority by a law enforcement officer . . . [which] would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business[,] . . . [r]elevant circumstances to be considered include . . . whether the officer retained the individual's identification." *State v. Holley*, 267 N.C. App. 333, 346, 833 S.E.2d 63, 74 (2019) (internal quotation marks omitted) (citing *Bostick*, 501 U.S. at 437; *Icard*, 363 N.C. at 309, 677 S.E.2d at 827).

¶ 55 The trial court's findings of fact do not address whether the officers retained Defendant's identification card or returned it to Defendant. Likewise, the Record is silent on the issue, except to suggest that the officers retained the card for some

amount of time because they ran Defendant's immigration history.

¶ 56 However, even assuming the officers retained Defendant's identification card for some amount of time, the circumstances of this case are distinguishable from cases where seizures were found when officers retained an individual's identification in the context of a traffic stop or out in a public place. *See, e.g.*, *Jackson*, 199 N.C. App. at 243, 681 S.E.2d at 497 ("[A] reasonable person [in a traffic stop] would certainly not believe he was free to leave without his driver's license and registration."); *State v. Parker*, 256 N.C. App. 319, 326-28, 807 S.E.2d 617, 622 (2017) (failing to return identification to the defendant standing outside on a driveway, after finding no outstanding warrants and after the initial reason for detention was satisfied, was a seizure). Here, even if the officers were holding onto his license, Defendant could still ask them to leave his house and terminate the encounter without risking his safety or breaking the law. *See State v. Thompson*, 257 N.C. App. 370, 377, 809 S.E.2d 340, 347 ("[I]t would defy common sense to interpret 'free to leave' as meaning 'free to leave and break the law by driving without a license,' or 'free to leave your car by the side of the road and proceed on foot.'"), *vacated and remanded on other grounds*, 372 N.C. 48, 822 S.E.2d 616 (2018).

¶ 57 In the circumstances of this case, retaining Defendant's identification card did not amount to a seizure.

g. Keeping Defendant at Table

¶ 58 The trial court did not make findings of fact regarding whether the officers kept Defendant at the dining room table during the encounter. Agent Swivel testified that he stayed at the dining room table with Defendant "most of the time" after they went there to sign the consent forms. Defendant testified that he was placed in handcuffs at the time, a fact that was neither mentioned nor contradicted by the State's witnesses.

¶ 59 Restricting Defendant's movements by handcuffing him could amount to placing him in custody. *See Cobb*, 248 N.C. App. at 696, 789 S.E.2d at 539 (finding the defendant was not in custody when "there [wa]s no evidence that [the] defendant's movements were limited by any of the officers at any point in time during the encounter"). However, Defendant's uncontradicted testimony demonstrated that being handcuffed did not influence his willingness to sign the consent forms, as he testified that he was "fine with signing a paper and all that." Although handcuffing Defendant is a factor weighing in favor of coercion, Defendant's uncontradicted testimony that he was "fine with signing" a consent to search form counterbalances that factor.

h. Conclusion

¶ 60 Based on the totality of circumstances as set forth in the trial court's findings of fact and demonstrated by uncontradicted evidence, we find that the State met its burden to show that Defendant's consent to a preliminary search of his residence was

voluntary.

C. Exclusion of Evidence

¶ 61 The evidence at issue was obtained (1) through a constitutionally valid consent search, and (2) from a subsequently issued search warrant. Accordingly, suppression of the evidence was not warranted.

IV. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Judge DIETZ concurs.

Judge ZACHARY concurs in result only.

Report per Rule 30(e).