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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-75

No. COA21-55

Filed 1 February 2022

Columbus County, No. 10 CRS 53880

STATE OF NORTH CAROLINA

v.

TIFFANY FAULK, Defendant.

Appeal by Defendant from judgments entered 4 August 2016 by Judge Douglas B. Sasser in Columbus County Superior Court. Heard in the Court of Appeals 17 November 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Zachary K. Dunn, for the State.

Marilyn G. Ozer for Defendant.

INMAN, Judge.

¶ 1 Tiffany Faulk ("Defendant") was convicted of first degree murder and robbery with a dangerous weapon in 2016. She appealed those judgments to this Court, arguing in part that the trial court erred in denying two motions to suppress she filed prior to trial. *State v. Faulk*, 256 N.C. App. 255, 256, 807 S.E.2d 623, 625 (2017). On 7 November 2017, we remanded the matter to the trial court "to make proper

conclusions of law regarding its decision to deny Defendant's motions to suppress." *Id.* at 266, 807 S.E.2d at 631. Following remand, the trial court again denied Defendant's motions to suppress by a new order entered 8 February 2018, *nunc pro tunc* 7 September 2016. Defendant now appeals that order on the basis that the challenged evidence was obtained in violation of N.C. Gen. Stat. § 15A-401(e)(1) (2021),[1] the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and Article I, Section 20 of the North Carolina Constitution. After careful review, we hold Defendant has failed to demonstrate error.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 The facts underlying Defendant's conviction are fully set out in our prior opinion resolving Defendant's earlier appeal. *See Faulk*, 256 N.C. App. at 256-58, 807 S.E.2d at 625-27. Facts pertinent to the motions to suppress under present review are excerpted below:

> On 6 November 2010, Defendant and Kenneth Gore ("Gore") were staying with a friend in the Berry Court Apartments in Chadbourn, North Carolina. On occasion, and twice on 6 November 2010, Defendant would knock on Ms. Bonnie Fowler's door to use her phone. Ms. Fowler, a 77-year-old woman, lived alone in the apartment next door to where Defendant and Gore were staying, and would oblige Defendant's request to make calls.

[1] This statute generally precludes law enforcement from entering private property to effectuate an arrest without possessing a copy of a warrant or order for arrest. N.C. Gen. Stat. § 15A-401(e)(1)a.

At some point in the late afternoon or early evening of 6 November 2010, Ms. Fowler was attacked in her kitchen. She suffered repeated blows to the head and multiple stab wounds, and died as a result of her injuries. Security footage from the apartment complex showed Ms. Fowler's car leaving the parking lot that same evening at approximately 8:13 p.m.

. . . .

On 9 November 2010, the North Carolina State Bureau of Investigation (the "SBI") contacted the Maryland State Police regarding Defendant's and Gore's outstanding arrest warrants in connection with Ms. Fowler's death. The SBI provided Maryland police with copies of the arrest warrants and a description of the homicide and apparent theft of Ms. Fowler's car. Maryland police contacted Defendant's sister, who was living in Baltimore. Defendant's sister took police to a row house in Baltimore where Defendant and Gore were staying.

Maryland police converged on the row house, and as officers knocked on the front door, Gore fled out the back door where he was immediately apprehended by police. Gore told police that Defendant was upstairs, and two officers entered the row house, performed a protective sweep, and arrested Defendant. The officers secured the house while a search warrant was obtained. While the officers were waiting for the warrant, the owner of the house arrived.

Once the warrant was issued, the owner of the row house led police to items identified as belonging to Defendant and Gore. The police recovered various items from the basement, including the following: clothing, a steak knife, a pair of Jordan tennis shoes, a pair of Adidas tennis shoes, a cell phone, and a pill bottle with Ms. Fowler's name on it. Crime lab results from the items revealed that the two pairs of shoes were consistent with the shoes that made the

bloody shoeprints in Ms. Fowler's apartment. The Adidas tennis shoes also tested positive for Ms. Fowler's DNA.

On 17 November 2010, Defendant provided police with a voluntary statement concerning the events leading up to her arrest. During the interview, Defendant told police that she had used Ms. Fowler's phone twice on 6 November 2010, witnessed Gore stab Ms. Fowler while Ms. Fowler was bleeding on the kitchen floor, and drove Ms. Fowler's car to Baltimore with Gore. Defendant explained that she had not attempted to flee from Gore because she was afraid of how he would react.

Defendant was indicted on 10 February 2011 for one count of first degree murder and on 6 October 2011 for one count of robbery with a dangerous weapon. A hearing was held on 25 July 2016 to address Defendant's various pre-trial motions, including three motions to suppress—the first filed in August 2013 and the second two filed on 5 and 14 July 2016.

At the outset of the hearing, Defendant's counsel withdrew the August 2013 motion to suppress. Defendant's counsel proceeded to argue the motions filed on 5 and 14 July 2016, which sought to exclude evidence obtained from the Baltimore row house following Defendant's arrest and pursuant to a search warrant and Defendant's statement to police. The trial court denied the motions, announcing from the bench that "the State has met its burden, proven by a preponderance of the evidence; that the challenged evidence is admissible." The trial court then instructed the prosecutor to draft a written order disposing of the motions to suppress, stating that "there's no conflict as to the testimony and the evidence presented." The trial court then asked whether there was "[a]nything else we need to address from the defense in regards to those motions?" Defense counsel responded, "No, sir."

At trial, Defendant's counsel properly objected to each item

> of evidence which the motions to suppress sought to exclude.
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> . . . .
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> The jury returned a verdict finding Defendant guilty of first degree murder on the basis of premeditation and deliberation and guilty of robbery with a dangerous weapon. The trial court imposed a mandatory life prison sentence without the possibility of parole for the first degree murder conviction and 73 to 97 months in prison for the robbery with a dangerous weapon conviction.

Id.

¶ 3 Defendant appealed her conviction to this Court and challenged, among other rulings, the trial court's denial of her motions to suppress. *Id.* at 256, 807 S.E.2d at 625. We rejected Defendant's other arguments but held that "the trial court erred by failing to either provide its rationale [for denying the suppression motions] from the bench or make the necessary conclusions of law in its written order." *Id.* at 265, 807 S.E.2d at 630. Because we were unable to conduct "meaningful appellate review of that ruling" absent such conclusions, *id.*, we remanded the matter to the trial court "to make necessary conclusions of law concerning Defendant's motions to suppress." *Id.* at 265, 807 S.E.2d at 631.

¶ 4 On remand, and without further hearing, the trial court entered a revised order denying Defendant's motions to suppress. The order contains many of the pertinent facts excerpted above, as well as additional details surrounding the search

executed by the Maryland State Police in connection with the North Carolina arrest warrants. Specifically, the order contains additional findings that: (1) Maryland State Police received the arrest warrants via email before executing them; (2) Maryland State Police confirmed with the Federal Bureau of Investigation's National Crime Information Center that the arrest warrants were active before executing them; (3) the officers who arrested Defendant knew she was wanted for first degree murder in North Carolina and "had reason to believe that [Defendant] . . . was inside the residence and might poise [sic] a serious threat to their safety, destroy evidence, and/or escape, if her arrest was not immediately effectuated[;]" and (4) Gore informed the officers that Defendant was in the shower at the time they entered the home to arrest her. Based on these findings, the trial court made the following conclusions of law:

> 1. That [N.C. Gen. Stat. § 15A-401(e)] was not applicable to the arrest of [Defendant] in the State of Maryland.
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> . . . .
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> 5. That in accordance with the United States Supreme Court's decision in Minnesota v. Olson, 495 U.S. 1 (1990), an overnight guest in a home has a reasonable expectation of privacy.
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> 6. That, assuming arguendo that [Defendant] was indeed an overnight guest at [the location of her arrest], as there was no direct testimony or evidence presented during the suppression hearing that she had spent any night at the residence or that she planned to, while she had a

> reasonable expectation of privacy, there was a lawful arrest warrant and entry of the [Maryland State] Troopers into another person's home to arrest [Defendant] did not violate [Defendant's] Fourth and Fourteenth Amendment rights under the United States Constitution nor did it violate her rights under Article I § 20 of the North Carolina Constitution.
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> 7. That, in the alternative, the arrest of [Defendant] would not be in violation of the Fourth and Fourteenth Amendments of the United States Constitution nor of Article I § 20 of the North Carolina Constitution if her arrest was effectuated without a valid arrest warrant, as sufficient exigent circumstances existed at that time to justify a warrantless arrest.

¶ 5 Defendant failed to timely appeal the entry of the trial court's order denying her suppression motions following remand. However, Defendant's counsel filed a petition for writ of certiorari with this Court seeking a review of that order, and this Court allowed that petition by order dated 31 August 2020.

II. ANALYSIS

¶ 6 Defendant presents two principal arguments on appeal, namely: (1) N.C. Gen. Stat. § 15A-401(e)(1)a.'s requirement that an officer possess a copy of an arrest warrant when executing an arrest at a private residence applied to her arrest in Maryland, and evidence obtained pursuant to her arrest must be suppressed because Maryland State Police failed to abide by this North Carolina statutory provision; and (2) the totality of the circumstances do not satisfy the exigent circumstances exception to constitutional warrant requirements. After careful review, we hold that the trial

court properly concluded that exigent circumstances existed to allow for Defendant's arrest without a warrant; because we hold that exigency obviated the need for a warrant, we do not address her argument that N.C. Gen. Stat. § 15A-401(e)(1) required Maryland State Police to have a physical copy of the warrant, as opposed to a digital copy, in their possession at the time of arrest. *See* N.C. Gen. Stat. § 15A-401(e)(1)a. ("A law-enforcement officer may enter private premises . . . to effect an arrest when . . . [t]he officer has in his possession a warrant or order or a copy . . . ; *or is authorized to arrest a person without a warrant or order having been issued*." (emphasis added)).

1. Standard of Review

¶ 7 We review an order resolving a motion to suppress "by determining whether the trial court's underlying findings of fact are supported by competent evidence and whether those factual findings in turn support the trial court's ultimate conclusions of law." *State v. Parisi*, 372 N.C. 639, 649, 831 S.E.2d 236, 243 (2019) (cleaned up) (quotation marks and citations omitted). The trial court's findings are binding if supported by competent evidence or left unchallenged by the defendant on appeal. *State v. Falls*, 275 N.C. App. 239, 245, 853 S.E.2d 227, 232 (2020). The trial court need not make explicit findings on facts drawn from uncontradicted evidence in support of its order. *State v. Johnson*, 378 N.C. 236, 2021-NCSC-85, ¶ 12. Conclusions of law are reviewed de novo. *Id.* ¶ 11.

2. Exigent Circumstances

¶ 8 The Fourth Amendment of the United States Constitution, applied to the states through the Fourteenth Amendment, "prohibits unreasonable searches and seizures and provides that no warrant shall be issued without probable cause." *State v. Williams*, 32 N.C. App. 204, 205, 231 S.E.2d 282, 283 (1977). Article I, Section 20 of the North Carolina Constitution provides this same protection. *See, e.g., State v. Hendricks*, 43 N.C. App. 245, 251-52, 258 S.E.2d 872, 877 (1979) (noting that the language of Article I, Section 20 differs from the Fourth Amendment, but that "there is no variance between the search and seizure law of North Carolina and the requirements of the Fourth Amendment as interpreted by the Supreme Court of the United States" (citations omitted)).

¶ 9 There are, however, several "specifically established and well-delineated exceptions" to this warrant requirement, *Katz v. United States*, 389 U.S. 347, 357, 19 L. Ed. 2d 576, 585 (1967), including the presence of exigent circumstances. *State v. Pigford*, 248 N.C. App. 797, 799, 789 S.E.2d 857, 860 (2016). Such exigency must be shown from the totality of the circumstances, *State v. Nowell*, 144 N.C. App. 636, 643, 550 S.E.2d 807, 812 (2001), and be based on "objective factors, rather than subjective intent." *State v. Marrero*, 248 N.C. App. 787, 795, 789 S.E.2d 560, 566 (2016) (citation omitted). Our Supreme Court has identified several such factors to consider when determining whether exigent circumstances exist to conduct a warrantless arrest in

a residence:

> (1) the gravity and violent character of the offense; (2) the reasonableness of the belief the suspect is armed; (3) the degree of probable cause to believe the suspect committed the crime involved; (4) whether reason to believe the suspect is in the premises entered existed; (5) the likelihood of escape if not swiftly apprehended; (6) the amount of force used to effect the unconsented entry; and (7) whether the entry was at day or night.

State v. Allison, 298 N.C. 135, 141, 257 S.E.2d 417, 421 (1979) (citing *Dorman v. United States,* 435 F.2d 385, 392-93 (D.C. Cir. 1970)). The potential destruction of evidence may also contribute to the exigency of the circumstances. *State v. Adams*, 250 N.C. App. 664, 670-71, 794 S.E.2d 357, 362 (2016).

¶ 10 We hold that the trial court's unchallenged findings,[2] considered in their totality alongside uncontradicted evidence, support the trial court's conclusion that exigent circumstances existed to permit the Maryland State Police to arrest Defendant without a warrant. Defendant does not contest that Maryland State Police had probable cause to believe she had committed a murder, "a most grave and violent crime." *Allison*, 298 N.C. at 142, 257 S.E.2d at 422. The uncontradicted evidence

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[2] Defendant explicitly challenges one finding of fact on appeal, namely that the officers could not remember whether they had physical copies of the arrest warrant on them when they executed the search. Because this finding is irrelevant to our holding that exigent circumstances rendered a warrant constitutionally unnecessary, we need not consider it. *See, e.g., State v. Price*, 233 N.C. App. 386, 395, 757 S.E.2d 309, 315 (2014) ("To the extent that any of the challenged findings are unsupported, they are immaterial to the outcome and are disregarded.").

shows Maryland police officers who executed the arrest also had reason to believe Defendant was armed; indeed, the trooper who coordinated the arrest testified at the suppression hearing that, "I had information that there had been a stabbing in North Carolina[.] . . . I did have information that they may be armed." Unchallenged findings further demonstrate the troopers had a strong reason to believe Defendant was in the premises at the time of entry, as: (1) they had been led there by Defendant's sister; and (2) Mr. Gore confirmed that Defendant was in the home when he surrendered to police. The uncontested findings and evidence disclosing the officers' manner of entry—peaceably, after announcing their presence, through an unlocked door, and in the afternoon—likewise supports the trial court's determination. *See id.* at 142-43, 257 S.E.2d at 422 (holding an officer's entry into a trailer "in the daytime after knocking" by "merely turn[ing] the knob of an unlocked door" supported a showing of exigent circumstances and warrantless entry); *United States v. Shye*, 492 F.2d 886, 892 (6th Cir. 1974) (holding exigent circumstances existed in part because "[t]he entry was accomplished without a 'breaking' and was not a nighttime entry"). All of these facts—as established by uncontradicted evidence and findings not challenged on appeal—weigh in favor of the existence of exigent circumstances.

¶ 11 Defendant does not address the above facts, but argues instead that no exigency existed because: (1) Maryland State Police created any exigency by knocking and announcing their presence; (2) she was not a flight risk; and (3) she was not in a

position to destroy evidence at the time of arrest. These contentions do not withstand scrutiny.

¶ 12 Per her brief, Defendant's first assertion—that Maryland State Police created any exigency—stems from a flawed premise that the "objective[] . . . result" of police knocking and announcing their presence "would be an attempt by one or more of the co-defendants to leave the house." This "objective" claim is unconvincing on its face and as a matter of fact. *See, e.g., Porter v. Ashmore*, 421 F.2d 1186, 1188 (4th Cir. 1970) (reviewing a case in which the defendant opened the door for police and allowed them into his home after they knocked on his front door and informed him that they had an arrest warrant).

¶ 13 Defendant's argument that she was otherwise not a flight risk also lacks merit. Per our prior opinion, and consistent with the uncontradicted evidence introduced at the suppression hearing, Defendant had fled North Carolina for Maryland immediately after the murder. *Faulk*, 256 N.C. App. at 257, 807 S.E.2d at 625. Her accomplice, Gore, had attempted to exit the home through the back of the house when Maryland State Police knocked on the front door and announced their presence. *Id.* Such facts certainly support a reasonable belief that, like Gore, Defendant would attempt to flee if given the opportunity.

¶ 14 We also disagree with Defendant's final contention that there was no danger of destroying evidence, an argument she bases on assertions that "[t]he evidence of

the crime was not . . . readily destructible" and Ms. Faulk was not in a position to destroy evidence because she was in the shower at the time of her arrest. But Defendant overlooks the fact that the act of showering could itself result in the destruction of evidence of the murder; a perpetrator may very well wash away DNA, blood, or other physical evidence from her person or effects by taking a shower. *See, e.g., State v. Waring*, 364 N.C. 443, 454, 701 S.E.2d 615, 623 (2010) (reviewing a capital murder case in which the evidence showed the defendant "noticed blood on his clothes, so he took a shower"). Rather than undercutting the State's case, this fact supports a conclusion of exigent circumstances.

III. CONCLUSION

¶ 15 The trial court correctly concluded, based on the uncontradicted evidence and unchallenged findings of fact, that exigent circumstances obviated the need for an arrest warrant under the state and federal constitutions. In light of this conclusion, we need not address Defendant's contention that North Carolina's statutory requirements for the execution of an arrest warrant applied to Maryland State Police effectuating an arrest in that state. Because the trial court properly denied Defendant's motions to suppress, we hold Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges ZACHARY and CARPENTER concur.

Report per Rule 30(e).