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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-109

No. COA21-423

Filed 15 February 2022

McDowell County, No. 19 CRS 51551

STATE OF NORTH CAROLINA

v.

BRANDON DARRELLE BATES, Defendant.

Appeal by Defendant from an order entered 4 March 2021 by Judge J. Thomas Davis in McDowell County Superior Court. Heard in the Court of Appeals 12 January 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Scott T. Slusser, for the State.

Andrew Nelson for Defendant.

GRIFFIN, Judge.

¶ 1

Defendant Brandon Darrelle Bates (“Defendant”) appeals from an order denying his motion to suppress evidence found in a safe during a warrantless search of Defendant’s vehicle. Defendant argues that the trial court erred by failing to grant Defendant’s motion to suppress because the trial court incorrectly found that

Defendant consented to the search after he denied ownership of a safe containing controlled substances. We affirm the trial court's order.

I. Factual and Procedural History

¶ 2

On 12 September 2019, Deputy Watson of the McDowell County Sheriff's Office stopped Defendant because he knew, from a previous stop, that Defendant's license had been suspended. After approaching Defendant's vehicle and conversing with Defendant, Deputy Watson noticed that Defendant was the only occupant of the car, he had a large square bulge in his pocket which turned out to be a large amount of cash wrapped in rubber bands, and that Defendant was in possession of two cell phones. These observations led Deputy Watson to suspect, based on his training and experience, that Defendant was engaged in illegal drug activity.

¶ 3

Deputy Watson took Defendant's ID and returned to his patrol car as Trooper Deaton arrived at the scene. Trooper Deaton undertook writing a citation for driving with a revoked license. Deputy Watson returned to Defendant's vehicle to inform him that he would be receiving a citation, and to ask for Defendant's consent to search his vehicle. Deputy Watson testified that Defendant gave consent to search the vehicle at this point.

¶ 4

During the search of Defendant's vehicle, Deputy Watson discovered a backpack with a safe inside of it. Defendant denied ownership of the safe. Then,

Deputy Watson noticed “a bunch of small keys that looked like they belong to a safe like that” on Defendant’s key ring in the ignition. Deputy Watson testified that he asked for Defendant’s consent to open the safe with the keys and Defendant said yes. Deputy Watson unlocked the safe using one of the keys on the key ring and found bags of methamphetamine inside. Deputy Watson arrested Defendant for possession of an illegal controlled substance.

¶ 5 On 2 December 2020, Defendant filed a motion to suppress, challenging the lawfulness of the search of the safe by Deputy Watson. At a pre-trial hearing on Defendant’s motion to suppress, Defendant testified, contrary to Deputy Watson’s testimony, that “[Deputy Watson] did not ask for permission” to search his vehicle or for Defendant’s consent to use the keys to open the safe.

¶ 6 On 4 March 2021, the trial court entered an order denying Defendant’s motion to suppress. In the order, the trial court found that Defendant “freely and voluntarily consented to the search” of his vehicle and for Deputy Watson to use the keys to open the safe. Based on these findings, the trial court concluded that Defendant’s rights had not been violated. Subsequently, a jury found Defendant guilty of three counts related to the methamphetamine found during the search. Following sentencing, Defendant entered oral notice of appeal.

II. Analysis

¶ 7 Defendant challenges the trial court’s order denying his motion to suppress.

Defendant asserts there was no competent evidence to support the finding that he consented to the search of the safe because the uncontroverted evidence showed that Defendant disclaimed ownership of the safe. We disagree.

¶ 8

North Carolina appellate courts review the denial of a motion to suppress to determine “whether competent evidence supports the trial court’s findings of fact and whether the findings of fact support the conclusions of law.” *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011) (citation omitted). “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 (2016) (citation omitted). If competent evidence is found to support the trial court’s relevant finding, then that finding is binding on appeal, regardless of whether there is conflicting evidence. *State v. Barden*, 356 N.C. 316, 332, 572 S.E.2d 108, 120-21 (2002) (citation omitted). “Conclusions of law are reviewed de novo and are subject to full review.” *Biber*, 365 N.C. at 168, 712 S.E.2d at 878 (citations omitted).

¶ 9

North Carolina law permits warrantless searches if requisite consent is given. *See* N.C. Gen. Stat. § 15A-221(a) (2019). “[A] 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, 298, 488 S.E.2d 210, 213 (1997) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)). Under North Carolina law, consent must be given:

- (1) By the person to be searched;
- (2) By the registered

owner of a vehicle to be searched or by the person in apparent control of its operation and contents at the time the consent is given; (3) By a person who by ownership or otherwise is reasonably apparently entitled to give or withhold consent to a search of premises.

N.C. Gen. Stat. § 15A-222 (2019). “Evidence seized during a warrantless search is admissible if the State proves that the defendant freely and voluntarily, without coercion, duress, or fraud, consented to the search.” *State v. Williams*, 314 N.C. 337, 344, 333 S.E.2d 708, 714 (1985) (citation omitted).

¶ 10 Defendant contends that a person who denies ownership of or control over a piece of property is not capable of consenting to the search of the property. However, “[t]his Court has previously determined that officers may rely on the consent of third parties who have apparent control over the area requested to be searched.” *State v. Early*, 194 N.C. App. 594, 602, 670 S.E.2d 594, 601 (2009) (citing *State v. Jones*, 161 N.C. App. 615, 620, 589 S.E.2d 374, 377 (2003)). Further, “[a] driver is in ‘apparent control’ of a car and its contents, whether the vehicle or its contents belong to him or to others.” *State v. McDaniels*, 103 N.C. App. 175, 187, 405 S.E.2d 358, 366 (1991), *aff’d*, 331 N.C. 112, 413 S.E.2d 799 (1992).

¶ 11 Here, Defendant was the owner and sole occupant of the vehicle that contained the safe. He also possessed the key that Deputy Watson used to unlock the safe. Based on these facts, it is reasonable to find that Defendant was in apparent control of the vehicle and the safe at the time of the stop and was able to consent to the

search, regardless of ownership status of the safe. Defendant made no argument that he was improperly induced or coerced to consent to the search. Thus, the trial court was not precluded from finding that Defendant freely and voluntarily consented to the search.

¶ 12 In addition to the evidence of Defendant's apparent control of the safe, there was testimonial evidence that Defendant gave consent. There was conflicting testimony between Defendant and Deputy Watson as to whether Defendant consented to the search of the vehicle and the safe. After hearing this conflicting testimony, the trial court, being in the best position to resolve issues with conflicting testimony, found that Defendant consented to the search based upon Deputy Watson's testimony. *See State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008) ("Even if evidence is conflicting, the trial judge is in the best position to resolve the conflict." (citation and internal quotation marks omitted)). This finding led the trial court to conclude that Defendant consented to the search and that his constitutional rights were not violated. Accordingly, we conclude that the trial court's findings of fact were supported by competent evidence and that these findings supported the trial court's conclusions of law.

III. Conclusion

¶ 13 For the reasons stated above, we affirm the trial court's order.

AFFIRMED.

STATE V. BATES

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Opinion of the Court

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).