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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-152

No. COA20-547

Filed 1 March 2022

Rowan County, No. 15 CRS 50267

STATE OF NORTH CAROLINA

v.

JOSEPH O. MURDOCK

Appeal by Defendant from Judgment entered 6 November 2019 by Judge Richard S. Gottlieb in Rowan County Superior Court. Heard in the Court of Appeals 7 September 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney Phillip K. Woods, for the State.

Sigler Law PLLC, by Kerri L. Sigler, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Joseph O. Murdock (Defendant) appeals from a Judgment entered upon his guilty plea to Manufacturing Methamphetamine, Maintaining a Dwelling for Keeping or Storing a Controlled Substance, three counts of Possession of an Immediate Precursor to Methamphetamine, and Possession of Drug Paraphernalia,

following the denial of his Motion to Suppress evidence obtained during the execution of a Writ of Possession of rental property where Defendant resided. The Record before us—including evidence presented during the hearing on the Motion to Suppress—tends to reflect the following:

¶ 2 On 12 January 2015, Defendant was residing with Debbie Bledsoe in a rental property leased to Ms. Bledsoe. However previously, on 8 December 2014, the owner of the rental property had filed a Complaint in Summary Ejectment against Ms. Bledsoe, alleging Ms. Bledsoe was a hold-over tenant. Rowan County Sheriff's Deputy Donnie Wagoner (Deputy Wagoner) served the Complaint and Summons on Ms. Bledsoe on 10 December 2014. Deputy Wagoner accomplished service by leaving these documents with Defendant. Subsequently, after a hearing at which Ms. Bledsoe did not appear, a magistrate issued a Summary Ejectment Judgment in favor of the property owner.

¶ 3 On 2 January 2015, as a result of the Summary Ejectment Judgment, the Rowan County Clerk of Superior Court issued a Writ of Possession for the rental property. Deputy Wagoner received the Writ of Possession on 5 January 2015, which he testified he would have mailed to Ms. Bledsoe along with a notice he would be at the property on 12 January 2015 at 11:30 a.m. to execute the Writ.

¶ 4 Consistent with this notice, Deputy Wagoner arrived at the property at

approximately 11:30 a.m. on 12 January 2015 to serve and execute the Writ of Possession. Deputy Wagoner approached the "back door" of the residence because that was the door Defendant had used when Deputy Wagoner had originally served the Complaint and Summons for Summary Ejectment. Deputy Wagoner knocked on the back door of the residence. Ms. Bledsoe answered the door and was joined by Defendant. Deputy Wagoner explained he was there to execute the Writ and both Ms. Bledsoe and Defendant appeared to understand why Deputy Wagoner was there. Ms. Bledsoe asked for time to shower before leaving the property and Deputy Wagoner acquiesced to this request. Defendant thanked Deputy Wagoner for accommodating this request.

¶ 5 Deputy Wagoner then stepped back from the door to wait in the backyard. While waiting for Defendant and Ms. Bledsoe to prepare to leave the property, Deputy Wagoner began to walk around the property—accompanied by a representative of the property owner—to determine whether there were any animals or property that would need to be removed. Deputy Wagoner explained it is his normal practice to remain at the subject property until the evictees are removed and ensure that no persons are in the outbuildings, as he has found people inside outbuildings on prior evictions. During his walk-around, Deputy Wagoner observed items such as a bottle of drain cleaner, cut bottles with residue inside them, aluminum foil, numerous cut

lithium batteries, a bottle with a hose attached to the top, and Coleman Camp Fuel cans. He testified these items "threw up a red flag" because he knew, based on his training, these items could possibly be used in the production of methamphetamine.

¶ 6 After observing these items, Deputy Wagoner contacted narcotics detectives who arrived at the property and also observed the items Deputy Wagoner had found. The detectives spoke to Defendant and Ms. Bledsoe, both of whom gave detectives verbal permission to search the premises. After discovering more items they suspected were related to manufacturing methamphetamine, the detectives obtained a search warrant, began collecting evidence, and ultimately arrested Defendant.

¶ 7 On 18 May 2015, a Rowan County Grand Jury indicted Defendant for Manufacturing Methamphetamine, Maintaining a Dwelling to Keep/Sell a Controlled Substance, and Possessing Drug Paraphernalia. On 30 August 2017, Defendant filed a Motion to Suppress the evidence obtained as a result of the search warrant alleging, *inter alia*, the evidence seized was fruit of the poisonous tree resulting from Deputy Wagoner's original "unauthorized search" of the property in the course of executing the Writ of Possession. Following an evidentiary hearing on 4-5 November 2019, the trial court entered an Order on 7 November 2019 denying the Motion to Suppress. Based on the evidence summarized above, the trial court made the following relevant Findings of Facts:

1. A Complaint in Summary Ejectment regarding the property located at [address] ("Property"), filed December 8, 2014, was served by Rowan County Sheriff's Deputy Wagoner ("Wagoner") on December 10, 2014. [Defendant] and the named defendant in the Summary Judgment action, Debra Bledsoe, lived in a trailer on the Property. The Complaint and Magistrate Summons were served by personal service on [Defendant] at the Property.

4. A Writ of Possession of Real Property ("Writ") was issued on January 2, 2015. The Writ was received by the Rowan County Sheriff's Department on January 5, 2015.

7. On January 12, 2015, Deputy Wagoner traveled to [the address] and met a male representative of the plaintiff homeowner. Deputy Wagoner's purpose in being on the property was to serve the Writ of Possession of Real Property. Deputy Wagoner's understanding of the Writ was that he was required to remove the tenants.

8. On January 12, 2015[,] at approximately 11:30 am, Deputy Wagoner pulled into the first portion of the driveway at the Property, drove next to the mobile home, and walked to the back door. Although nothing indicated that the front door to the Property was unusable, Deputy Wagoner went to the same rear door from which [Defendant] had exited when he was served with the Complaint in Summary Ejectment on December 10, 2014. The rear door appeared to be used as the main entrance to the mobile home on the property, was the door closest to the carport located on the Property, was the door closest to the driveway, and was not blocked by any fences or gates.

9. Deputy Wagoner was met by [Defendant] and Ms. Bledsoe at the rear door. Deputy Wagoner informed Ms. Bledsoe and [Defendant] of his purpose to serve the Writ. Ms. Bledsoe sought permission to take a shower, to which Deputy Wagoner acquiesced. [Defendant] and Ms. Bledsoe understood that Deputy Wagoner was on the property to execute the Writ, to take possession of the Property for [the property owner], and to remove

[Defendant] and Ms. Bledsoe from the Property pursuant to the Writ.

10. Consistent with his usual practice, Deputy Wagoner began a survey of the Property with a representative of the owner. Deputy Wagoner's purpose was to look for people or animals who may be on the property, as they would be removed.

11. Deputy Wagoner first investigated a small storage building and saw a bottle of drain cleaner. Continuing, Deputy Wagoner located a fire ring in the back yard. Deputy Wagoner became concerned that [Defendant] and Ms. Bledsoe were illegally burning trash on the premises.

12. In and around the burn pile, Deputy Wagoner observed cut bottles, numerous cut lithium batteries, and several cans of Coleman camp fuel. Deputy Wagoner also looked in an open carport and saw a bottle with a hose attached to the top.

13. Upon seeing the cut bottles, Coleman Camp Fuel cans, and other items Deputy Wagoner became concerned that there may be a clandestine methamphetamine laboratory present on the property. Deputy Wagoner called his immediate supervisor, Sgt. Hannold, and informed Sgt. Hannold of what he found. Sgt. Hannold ordered Deputy Wagoner not to go back into the residence.

16. Approximately 15 minutes after Deputy Wagoner called Sgt. Hannold, Detectives Kepley and Bacote arrived on the property. Deputy Wagoner escorted Detective Kepley around the property, showing Detective Kepley the items that he had observed.

17. After viewing the items that Deputy Wagoner had observed, Detective Kepley obtained consent to search the property from [Defendant] and Ms. Bledsoe. After locating additional evidence consistent with the clandestine manufacture of methamphetamine, Detective Kepley sought and received a search warrant to search the property.

Based on these Findings of Fact the trial court concluded:

> 1. Deputy Wagoner's purpose for traveling to [the address], was to serve and execute the Writ of Possession of Real Property, to restore possession of the [property to the owner], and to remove [Defendant] and Ms. Bledsoe from the Property. Appropriate notice was provided by Deputy Wagoner pursuant to N.C. Gen. Stat. § 42-36.2.
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> 2. At the time [Defendant] and Ms. Bledsoe were served with the Writ of Possession of Real Property they did not have a reasonable expectation of privacy in the Property.
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> 4. The Property Owner's representative had authority to give permission to Deputy Wagoner to search the Property.
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> 5. Even if an expectation of privacy existed and the Property was improperly searched without a search warrant, all items of evidence that are subject to this Motion, including the items located within the trailer, within the curtilage, and across the fence, would inevitably have been discovered.
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> 6. The actions of Deputy Wagoner, and other law enforcements[sic] officers on the Property, did not constitute a violation of the Constitution of the United States, the Constitution of North Carolina, or the North Carolina General Statutes.

¶ 8 Subsequently, Defendant pled guilty to all charges but expressly preserved his right to appeal the denial of his Motion to Suppress in a Transcript of Plea. Defendant also gave oral Notice of Appeal from the final Judgment in open court.

Appellate Jurisdiction

¶ 9 "An order . . . denying a motion to suppress evidence may be reviewed upon an appeal from . . . a judgment entered upon a plea of guilty." N.C. Gen. Stat. § 15A-979(b) (2021). However, a defendant must (1) notify the prosecutor and the trial court of his intention to appeal during plea negotiations and (2) provide notice of appeal from the final judgment. *State v. McBride*, 120 N.C. App. 623, 625-26, 463 S.E.2d 403, 404-05 (1995), *aff'd per curiam*, 344 N.C. 623, 476 S.E.2d 106 (1996).

¶ 10 Here, the Record, including discussion with the trial court and the Transcript of Plea, reflects Defendant gave timely notice to both the State and the trial court of his intention to appeal the denial of his Motion prior to the plea being finalized. Moreover, Defendant gave oral Notice of Appeal of the Judgment in open court after final judgment was entered against him. Therefore, Defendant's appeal is properly before this Court.

Issue

¶ 11 The dispositive issue is whether the trial court's Findings of Fact in the Order denying the Motion to Suppress support the trial court's Conclusion Defendant did not have a reasonable expectation of privacy under the Fourth Amendment and the North Carolina Constitution.[1]

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[1] Defendant also challenges the trial court's alternative conclusion regarding inevitable discovery. Because of our disposition here, we do not reach this alternative argument. We

Analysis

¶ 12 "The scope of appellate review of an order [suppressing evidence] is strictly limited." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). This Court must determine "whether the trial judge's findings of facts 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." *Id.* "While the trial court's factual findings are binding if sustained by the evidence, the court's conclusions based thereon are reviewable de novo on appeal." *State v. Parker*, 137 N.C. App. 590, 594, 530 S.E.2d 297, 300 (2000). Here, however, Defendant does not challenge any of the trial court's Findings of Fact. Thus, those Findings are deemed supported by competent evidence and are, therefore, binding on appeal. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

¶ 13 Rather, Defendant argues the trial court's Conclusion Defendant did not have a reasonable expectation of privacy in the property at the time Deputy Wagoner served the Writ of Possession was unsupported by the Findings of Fact because the trial court made no finding Deputy Wagoner actually physically served the Writ of

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also do not reach Defendant's challenge to the conclusion the landlord's representative had authority to consent to the search of the property and the argument that any such consent was invalid where Ms. Bledsoe and Defendant allegedly remained in possession of the property.

Possession or required Defendant be removed from the property before conducting his inspection of the property, and, thus, Defendant—as a resident or guest on the property—was still in lawful possession of the property. Defendant further broadly contends this Court should conclude as a matter of law that hold-over tenants retain a reasonable expectation of privacy in the residence they occupy, and the curtilage thereof, until execution of the Writ of Possession is completed and the tenants legally removed from the property. Based on the particular facts of this case, however, we conclude it is unnecessary to reach this broader question.

¶ 14 "Upon timely motion, evidence must be suppressed if: (1) Its exclusion is required by the Constitution of the United States or the Constitution of the State of North Carolina[.]" N.C. Gen. Stat. § 15A-974(a) (2021). The Fourth Amendment to the United States Constitution protects an individual's right to be free from unreasonable searches. U.S. Const. amend. IV. "Article I, Section 20 of the Constitution of North Carolina likewise prohibits unreasonable searches . . . ." *State v. Allman*, 369 N.C. 292, 293, 794 S.E.2d 301, 303 (2016). Therefore, evidence obtained as the result of an unreasonable search must be suppressed upon timely motion.

¶ 15 "It must always be remembered that what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures." *State v. Scott*, 343

N.C. 313, 328, 471 S.E.2d 605, 614 (1996) (quoting *Elkins v. United States*, 364 U.S. 206, 222, 4 L. Ed. 2d 1669, 1680 (1960)). "The reasonableness of a warrantless search is determined on a case-by-case basis, under the totality of the circumstances." *State v. Cline*, 205 N.C. App. 676, 680, 696 S.E.2d 554, 557 (2010). "The burden lies with [the defendant] to show that he has a reasonable expectation of privacy in the place searched." *United States v. Rusher*, 966 F.2d 868, 874 (4th Cir. 1992) (citation omitted). *See also*, *State v. Taylor*, 298 N.C. 405, 259 S.E.2d 502 (1979); *State v. Rodelo*, 231 N.C. App. 660, 752 S.E.2d 766 (2014). A two-part inquiry determines whether a defendant has met this burden. "First, we ask whether the individual, by his conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that he sought to preserve something as private . . . . Second, we inquire whether the individual's expectation of privacy is one that society is prepared to recognize as reasonable." *Bond v. United States*, 529 U.S. 334, 338, 146 L. Ed. 2d 365, 370 (2000) (citation and quotation marks omitted).

¶ 16 "In determining whether the seizure and search were 'unreasonable' our inquiry is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Scott*, 343 N.C. at 328, 471 S.E.2d at 614. Moreover, to be reasonable, the expectation of privacy must have "a source outside of the Fourth

Amendment, either by reference to concepts of real or personal property law to understandings that are recognized and permitted by society." *Minnesota v. Carter*, 525 U.S. 83, 88, 142 L. Ed. 2d 373, 379 (1998). (citation and quotation marks omitted).

¶ 17 Generally, tenants in lawful possession have a reasonable expectation of privacy in the leased residence and curtilage thereof. *See State v. McBennett*, 191 N.C. App. 734, 738, 664 S.E.2d 51, 55 (2008); *State v. Reagan*, 35 N.C. App. 140, 142, 240 S.E.2d 805, 807 (1978); *In re Dwelling Located at 728 Belmont Ave.*, 24 N.C. App. 17, 210 S.E.2d 73 (1974). This precept derives from common-law principles of landlord tenant law that "a landlord surrenders his right to possession of the dwelling by renting it to the tenant." *In re Dwelling Located at 728 Belmont Ave.*, 24 N.C. App. at 22, 210 S.E.2d at 76. Nevertheless, a landlord regains the right to lawfully re-enter and possess the premises through a successful summary ejectment action. *See* N.C. Gen. Stat. § 42-46 (2021); *Chrisalis Props., Inc. v. Separate Quarters, Inc.*, 101 N.C. App. 81, 86, 398 S.E.2d 628, 632 (1990).

¶ 18 In this case, Defendant concedes Deputy Wagoner had the authority to "approach the home" to serve and execute the Writ. Further, the trial court's unchallenged Findings establish upon arriving at the premises, Deputy Wagoner knocked on the door and informed Ms. Bledsoe and Defendant of his presence on the property. Defendant and Ms. Bledsoe understood Deputy Wagoner was there to serve

the Writ. Specifically, the trial court found Defendant and Ms. Bledsoe "understood that Deputy Wagoner was on the property to execute the Writ, to take possession of the Property for [the property owner], and to remove [Defendant] and Ms. Bledsoe from the Property pursuant to the Writ." Subsequently, Ms. Bledsoe asked for a few minutes to shower before they were removed from the property and Deputy Wagoner agreed.

¶ 19 Deputy Wagoner unquestionably took each of these actions in the course of executing the Writ. Indeed, the trial court's Findings establish Deputy Wagoner only began to walk the property after he notified the residents of his presence, they understood his purpose for being on the property, and they expressly requested some additional time prior to their removal from the premises. As such, Defendant and Ms. Bledsoe—understanding Deputy Wagoner was there to evict them from the property—plainly consented to Deputy Wagoner remaining on the property and continuing the removal process to return possession of the property to the owner. As such, on these facts, Deputy Wagoner was justified in continuing the removal process while he waited for Defendant and Ms. Bledsoe to prepare to leave the residence.

¶ 20 Moreover, as the trial court also found, Deputy Wagoner acted consistently with his "usual practice" in executing a Writ. Deputy Wagoner walked the property "to look for people or animals who may be on the property, as they would be removed."

As part of this routine, Deputy Wagoner investigated in and around outbuildings because he had found persons or animals in outbuildings on prior occasions. Indeed, after initially observing items around the outbuilding and in the backyard that—based on his training and experience—Deputy Wagoner believed were related to the production of methamphetamine, he did not take any further action until he notified his supervisor. As reflected in the trial court's Findings, it was only after detectives arrived on scene that they sought and received permission from Defendant and Ms. Bledsoe to conduct a more extensive search of the property.

¶ 21 Thus, on the facts of this case, Deputy Wagoner's initial walk-around was both justified by, and reasonably related in scope to, the exercise of his duties in executing the Writ; and before he began the walk-around, he initiated the execution process by informing Defendant and Ms. Bledsoe of his presence and purpose for being on the property, which they understood and acquiesced to.

¶ 22 Therefore, based on its Findings of Fact, the trial court properly concluded Defendant did not have a reasonable expectation of privacy in the property at the time Deputy Wagoner inspected the property as part of the execution of the Writ of Possession and discovered the evidence subsequently seized. Consequently, the trial court did not err by denying Defendant's Motion to Suppress.

Conclusion

¶ 23 For the foregoing reasons, we conclude the trial court did not err in denying Defendant's Motion to Suppress. Accordingly, we affirm the Judgment.

AFFIRMED.

Judges WOOD and GORE concur.

Report per Rule 30(e).