IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-698

No. COA22-252

Filed 18 October 2022

Montgomery County, Nos. 19 CRS 50308, 20 CRS 1050, 1051

STATE OF NORTH CAROLINA

v.

TRAVIS LEON BARRETT

Appeal by defendant from judgment entered 30 September 2021 by Judge James P. Hill Jr. in Montgomery County Superior Court. Heard in the Court of Appeals 21 September 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Amber I. Davis, for the State.

Christopher J. Heaney for defendant-appellant.

TYSON, Judge.

¶ 1 Travis Leon Barrett ("Defendant") appeals from the judgment entered upon his *Alford* guilty pleas to three counts of statutory rape of a child, preserving his right to challenge the trial court's denial of his motion to suppress. We affirm.

I. Background

¶ 2 Defendant and K.S. spent the night at Lane McCloud's house on 18 October

2018 after an evening of partying and drinking. Defendant and K.S. slept in one of Lane McCloud's bedrooms after McCloud gave them permission. K.S. was fourteen years old at the time, and Defendant was forty-five years old.

¶ 3 Montgomery County Sheriff's Detective Harold Brock knew Defendant for approximately seven years, and Montgomery County Sheriff's Detective Mark Higdon grew up with Defendant. Detective Higdon had seen Defendant with K.S. while he was conducting a probation search at another residence weeks before 19 October 2018. Detective Brock received a call from an informant expressing concern over K.S. being with Defendant and her use of illegal drugs. The informant had seen Defendant and K.S. together and observed them using narcotics at McCloud's house. Detectives Brock and Higdon knew K.S. was a missing juvenile from Stanly County. A be on the lookout ("BOLO") for K.S. had been issued to law enforcement. Detectives Brock and Higdon also knew an undercover officer had purchased cocaine from Defendant in 2015.

¶ 4 Detectives Brock and Higdon knocked on McCloud's single-wide mobile home door. McCloud answered and opened the door to his home. Detective Brock asked McCloud if Defendant and K.S. were present. McCloud responded that he would look. McCloud left the front door open and walked towards a bedroom. Detectives Brock and Higdon followed McCloud through the open door into the home. McCloud did not protest their presence and voluntarily led Detective Brock to a bedroom and opened

the door. Detective Brock saw through the open bedroom door in plain view Defendant, naked, and observed K.S., wearing a bra and underwear, crawl out of a bed.

¶ 5 Defendant told a detective in a voluntary interview at the Sheriff's Department that he had picked up K.S. from her home in Stanly County and had been "hanging out" with her for two weeks. Defendant stated K.S. had told him she was seventeen years old, but he had found out that she was actually fourteen years old. Defendant was not arrested at the time.

¶ 6 A law enforcement officer stopped a vehicle, reported as stolen on 5 March 2019. Individuals inside the stopped car informed the officer that they were allowed to use the car by people who were located inside a house nearby. Those people inside the house allowed the officers to enter. The officers found Defendant and K.S., both naked, in a bed on 5 March 2019 inside of his house.

¶ 7 K.S. admitted in a written statement and police interview that she and Defendant had engaged in sexual intercourse three times in the prior six to eight months. A sexual assault nurse examiner examined K.S. and found DNA was present inside K.S.'s vagina. The DNA sample was insufficient to specifically identify Defendant as the source, but was sufficient to show the source of the DNA was from a male in the paternal lineage of Defendant.

¶ 8 A Montgomery County grand jury indicted Defendant on three counts of

statutory rape, assault on a female, and for assault inflicting physical injury by strangulation on 2 November 2020. Defendant's counsel made an oral motion to suppress Detective Brock's testimony that he had observed Defendant, naked, get out of a bed with K.S., who was wearing only a bra and underwear. The trial court denied Defendant's motion to suppress in an eleven-page written order on 30 September 2021.

¶ 9 After the trial court empaneled a jury, Defendant pleaded guilty to three counts of statutory rape pursuant to an *Alford* plea, preserving the right to appeal the denial of his motion to suppress *See State v. Alford*, 298 N.C. 465, 259 S.E.2d 242 (1979). The trial court accepted Defendant's plea and entered judgment sentencing Defendant as a prior level III offender to an active term of 254-365 months in prison. Defendant appeals.

II. Jurisdiction

¶ 10 Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(4), 15A-979(b) (2021).

III. Issue

¶ 11 Defendant argues the trial court erred in denying Defendant's motion to suppress.

IV. Motion to Suppress

A. Standard of Review

¶ 12 This Court reviews a trial court's denial of a motion to suppress to determine "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) (citations omitted). "The trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

B. Analysis

¶ 13 The trial court denied Defendant's motion to suppress Detective Brock's testimony that he had observed Defendant, while naked, get out of a bed with K.S., who was wearing only a bra and underwear on 19 October 2018. On appeal, Defendant contends this denial was prejudicial error. Defendant asserts the evidence presented by Detective Brock was illegally obtained during law enforcement's warrantless entry into Lane McCloud's home in violation of his Fourth Amendment rights.

¶ 14 An "individual relying on immunity from unreasonable searches and seizures [must] have a 'reasonable expectation of freedom from governmental intrusion' in the place or property searched." *State v. Mlo,* 335 N.C. 353, 378, 440 S.E.2d 98, 110 (1994) (citations omitted).

¶ 15 Defendant carries the burden of showing an ownership or possessory interest

in the property searched, and a reasonable expectation of privacy, to contest Detective Brock's testimony of the officers' entry into and observations inside McCloud's home on 19 October 2018. *Id*.

¶ 16 Defendant did not show ownership and has no possessory interest in McCloud's home. He never challenged or told law enforcement not to enter or to remove themselves from the bedroom or acted in a manner to contest the homeowner's authority. Defendant did not present sufficient evidence to support a finding that he had a reasonable expectation of privacy, or a possessory interest in McCloud's home, while permissively using McCloud's bedroom. The trial court correctly concluded the officers had entered the home with McCloud's consent, and Defendant had no expectation of privacy in McCloud's home.

¶ 17 N.C. Gen. Stat. §§ 15A-221 and 15A-222 provide that a law enforcement officer may conduct a search without a search warrant or other authorization if consent to the search is given by a person who by ownership is entitled to give or withhold consent to a search of the premises to consent to a warrantless search. N.C. Gen. Stat. §§ 15A-221-222 (2021); *State v. Stover*, 200 N.C. App. 506, 513-14, 685 S.E.2d 127, 133 (2009) (citation omitted). Even if Defendant was an overnight guest and had some expectation of privacy therein, the officers' entry in the home was lawful by McCloud's consent.

¶ 18 McCloud gave his nonverbal consent to search his home by opening the exterior

door and voluntarily allowing the officers to enter, follow him, and by opening the door to the bedroom with the officers present and seeing Defendant and K.S. in plain view. *State v. Harper*, 158 N.C. App. 595, 603, 582 S.E.2d 62, 68 (2003). The trial court correctly concluded that McCloud had consented to the officers entering into his home.

V. Conclusion

¶ 19 Defendant failed to show the trial court's denial of his motion to suppress violated his Fourth Amendment rights based upon the officers' entry into McCloud's home. Defendant did not assert or have a possessory interest in McCloud's home. Defendant did not have a reasonable expectation of privacy in McCloud's home. McCloud allowed the officers to enter the premises through his actions and nonverbal conduct, which resulted in the officers being in lawful position to observe Defendant and K.S. together in the bedroom in plain view. Defendant never contested the officers' presence at the time.

¶ 20 The trial court correctly denied Defendant's motion to suppress. The trial court's ruling on Defendant's motion to suppress is affirmed. *It is so ordered.*

AFFIRMED.

Judges WOOD and CARPENTER concur.

Report per Rule 30(e).