

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-428

Filed 07 February 2023

Caswell County, Nos. 15CRS465-468, 15CRS50340

STATE OF NORTH CAROLINA

v.

MICHAEL LAWRENCE MARTIN, Defendant.

Appeal by defendant from order and judgments entered 8 October 2021 by Judge Stanley L. Allen in Caswell County Superior Court. Heard in the Court of Appeals 4 October 2022.

Blass Law PLLC, by Danielle Blass, for defendant-appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Tirrill Moore, for the State-appellee.

GORE, Judge.

On 11 August 2015, defendant Michael Lawrence Martin was indicted in Caswell County on multiple counts of felony breaking and entering a motor vehicle and misdemeanor larceny. On 23 September 2020, defendant filed a motion to suppress items seized during a search of his residence in Danville, Virginia. Numerous items believed to have been stolen from locations in North Carolina and

Virginia were found in his home. Following a suppression hearing held on 25 May 2021, the trial court orally denied the motion to suppress. Defendant subsequently entered a guilty plea to five counts of misdemeanor larceny. The trial court imposed two consecutive 120-day sentences.

In his sole issue raised on appeal, defendant argues the trial court erred in denying his motion to suppress on grounds that the Virginia search warrant application was insufficient to support the magistrate's finding of probable cause. Upon review, we discern no error.

I.

In July of 2015, Detective Chivvis of the Danville Police Department in Virginia was investigating a series of larcenies from vehicles. Several items were stolen from vehicles, including credit cards and checks, which were then used to purchase goods at Walmart stores in the area. After reviewing surveillance footage from multiple stores where the stolen credit cards and checks had been used, Detective Chivvis identified two suspects and reported their descriptions to other officers in his department.

While Detective Chivvis's investigation was ongoing, Rynesha Green entered the police station to report a domestic violence assault. Officers recognized Green from the description of suspects seen in the Walmart surveillance footage. Green confessed she was involved in the vehicle break-ins; she identified the other individual as defendant, her boyfriend, with whom she shared an apartment. Green

STATE V. MARTIN

Opinion of the Court

admitted that she drove defendant to the scene of the vehicle break-ins, picked him up afterwards, and that she was with defendant when the stolen credit cards and checks were used to purchase merchandise for their household.

Using Green's information, Detective Chivvis applied for a search warrant of defendant's apartment on 2 July 2015. As part of his search warrant application, Detective Chivvis submitted a sworn affidavit, which alleged as follows:

The material facts constituting probable cause that the search should be made are:

A female available to testify came to the Danville Police Department and reported that Michael L. Martin was living in [specified address] She had observed him possessing firearms and ammunition. He is a convicted felon. She gave inculpatory information, identifying herself and Martin in surveillance videos involving credit card fraud. She and Martin match the physical characteristics of the credit card fraud suspects. She was present when the credit cards were stolen, she was present when the credit cards and personal identities were used fraudulently. She stated that victim identities had been used to fraudulently obtain credit by mail. She advised that stolen credit cards had been used to buy electronics that can be identified by serial number. She advised that Martin had been possessing large quantities of illegal drugs. The credit card and larceny from vehicles [had] taken place within the previous two months leading up to and including offenses on 6/30/15. She advised that stolen property and firearms were still in the residence as of the writing of this warrant.

Based upon this affidavit, the magistrate determined that there was probable cause and issued the search warrant. Members of the Danville Police Department executed the search warrant that same day, 2 July 2015, and found several items

that had been reported stolen, including items that were taken from Caswell County, North Carolina.

The State of North Carolina subsequently used evidence found at defendant's Virginia residence to charge defendant with six counts of felony breaking and entering into a motor vehicle and five counts of misdemeanor larceny, all alleged to have occurred in Caswell County, North Carolina. Defendant filed a motion to suppress, asserting the evidence against him was illegally obtained and should be excluded. The State initially extended a plea offer to defendant, in which he was to plead guilty to four counts of felony breaking and entering and four counts of misdemeanor larceny. With that offer on the table, the trial court conducted a hearing on his motion to suppress.

After hearing testimony from Detective Chivvis and another officer involved in the investigation, and reviewing the affidavit in support of the motion, the trial court denied defendant's motion from the bench. The trial court provided a rationale for its ruling, while also stating, "I believe that it does meet the threshold, just barely," while noting it is accustomed to seeing more detailed descriptions in North Carolina affidavits supporting probable cause.

After the hearing, defendant entered and then withdrew an *Alford* plea. He also alleged Detective Chivvis intentionally or recklessly gave materially false information to the magistrate in his search warrant application. The State offered a new plea deal, under which defendant entered an *Alford* plea to five counts of

misdemeanor larceny. In return, the State dismissed all six felony breaking and entering of a motor vehicle charges.

II.

Generally, a defendant who pleads guilty may not appeal as a matter of right. N.C. Gen. Stat. § 15A-1444(e) (2021). However, “[a]n order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty.” N.C. Gen. Stat. § 15A-979(b) (2021). “This statutory right to appeal is conditional, not absolute.” *State v. McBride*, 120 N.C. App. 623, 625, 463 S.E.2d 403, 404 (1995), *aff’d per curiam*, 344 N.C. 623, 476 S.E.2d 106 (1996).

[I]n order to properly appeal the denial of a motion to suppress after a guilty plea, a defendant must take two steps: (1) he must, *prior to finalization of the guilty plea*, provide the trial court and the prosecutor with notice of his intent to appeal the motion to suppress order, and (2) he must *timely and properly appeal from the final judgment*.

State v. Cottrell, 234 N.C. App. 736, 739-40, 760 S.E.2d 274, 277 (2014) (emphasis added).

After a hearing on 25 May 2021, the trial court denied defendant’s motion to suppress. After the trial court denied the motion, the following exchange occurred:

[DEFENSE COUNSEL]: And, Judge, for appellate purposes, [we] would like to preserve the right to appeal that, pending further outcome of the case.

THE COURT: Certainly. I’ll note your exception to my ruling.

[DEFENSE COUNSEL]: And I guess we'll give notice of appeal just on that issue. That way, it's very clear on the record.

. . .

[DEFENSE COUNSEL]: Judge, for the record, Mr. Martin is prepared to enter a plea at this time. However, for appellate purposes, again, want to expressly retain the appeal of the ruling on the motion to suppress. . . . So even though we're entering the plea, I'm just – I'm supercautious with this. I want to make absolutely sure that that right is held on appeal.

THE COURT: All right. We'll show that you have excepted again to my ruling on the motion to suppress, and I will note your objection. I will note that you have – you've actually given notice of appeal; is that right, on that issue?

[DEFENSE COUNSEL]: For that issue, yes, ma'am. I believe I did it earlier, but I will reiterate it now.

THE COURT: We'll give notice of appeal – show that defendant has given notice of appeal on the Court's ruling for appellate purposes, appoint the Appellate Defender's Office.

When the trial court reconvened on 27 May 2021, defendant withdrew his plea, and the following exchange occurred:

[THE STATE]: Your Honor, I did want to put on the record all plea offers that [defendant] has are hereby revoked.

. . .

THE COURT: So we'll let the record reflect that the State has the right to extend – has the authority to extend plea offers. They, likewise, have the authority to withdraw them if they have not been accepted. And so we will show that those plea offers have been withdrawn.

On 13 September 2021, defendant entered a guilty plea to five counts of misdemeanor larceny pursuant to a new plea arrangement. Under this new plea, the State agreed to dismiss all counts of felony breaking and entering a motor vehicle. When the trial court asked defendant whether he was satisfied with his lawyer's legal services, defendant expressed dissatisfaction, in part:

THE DEFENDANT: Because when I spoke to [defense counsel] about [alleged improper statements that were made during the State's closing argument at the suppression hearing], [defense counsel] wasn't able to come up with a way to remedy the – a way to remedy that situation, which I feel like that's some type of legal mechanism in North Carolina that could have remedied it, but I have to go with the appeal situation about appealing the motion to suppress so –

THE COURT: So are you not wanting to do this plea arrangement?

THE DEFENDANT: I – I have no choice. I have to do it.

Defendant alludes to reserving his right to appeal the suppress motion under the previously withdrawn plea. However, the transcript does not indicate defendant gave specific "notice of his intent to appeal the motion to suppress to the trial court and prosecution prior to the finalization" of his second plea negotiation. *State v. Brown*, 217 N.C. App. 566, 569, 720 S.E.2d 446, 449 (2011) (citation omitted).

After the trial court accepted defendant's plea, the following exchange occurred:

[DEFENSE COUNSEL]: And, Your Honor, Mr. Martin has given – would like to give notice of appeal.

THE COURT: Of what?

[DEFENSE COUNSEL]: He likes to appeal the – specifically the suppression motion. He asked me to give notice.

THE COURT: All right. Note – note the appeal for whatever that’s worth. And if – if it’s necessary, appoint the appellate defender.

On 12 November 2021, the trial court entered the Appellate Entries Order, and checked the box indicating that defendant had given notice of appeal.

The burden is on defendant to show the record reflects a clear reservation of his right to appeal the motion to suppress and notice of appeal from the final judgment entered against him. *Cottrell*, 234 N.C. App. at 739-40, 760 S.E.2d at 277. It is not clear from the record that defendant met either of these requirements, and his failure to do so divests this court of jurisdiction to hear his direct appeal. *See State v. Robinson*, 279 N.C. App. 643, 645, 865 S.E.2d 745, 748 (2021) (“Because the plea transcript is silent as to defendant’s intent to appeal the trial court’s judgment, defendant has failed to preserve his appeal.”).

Appellate counsel for defendant has also filed a petition for writ of certiorari with this Court seeking appellate review in the event we determine his notice of appeal from the underlying judgments was insufficient to confer appellate jurisdiction. Appellate Rule 21 provides that “writ of certiorari may be issued in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely

action[.]” N.C.R. App. P. 21(a)(1). “This Court has previously granted petitions for writ of certiorari where, as here, defendant lost their right to appeal through no fault of their own but rather due to their trial counsel’s failure to give proper notice of appeal.” *Robinson*, 279 N.C. App. at 645, 865 S.E.2d at 748 (*purgandum*). In the exercise of our discretion, we grant defendant’s petition for writ of certiorari and address the merits of his arguments.

III.

The trial court made an oral ruling from the bench denying defendant’s motion to suppress. The trial court further stated its intention to enter a written order, but the record indicates it neglected to do so.

When ruling on a motion to suppress, the trial court must set forth in the record their findings of fact and conclusions of law. N.C. Gen. Stat. § 15A-977(f) (2021). “This statute has been interpreted as mandating a written order unless (1) the trial court provides its rationale from the bench, and (2) there are no material conflicts in the evidence at the suppression hearing.” *State v. Wainwright*, 240 N.C. App. 77, 82, 770 S.E.2d 99, 103 (2015) (quotation marks and citations omitted). “[F]or purposes of section 15A-977(f), a material conflict in the evidence exists when evidence presented by one party controverts evidence presented by an opposing party such that the outcome of the matter to be decided is likely to be affected.” *State v. Baker*, 208 N.C. App. 376, 384, 702 S.E.2d 825, 831 (2010).

If a reviewing court concludes that both criteria are met,

then the findings of fact are implied by the trial court's denial of the motion to suppress and shall be binding on appeal if supported by competent evidence. If a reviewing court concludes that either of the criteria is not met, then a trial court's failure to make findings of fact and conclusions of law, contrary to the mandate of section 15A-977(f), is fatal to the validity of its ruling and constitutes reversible error.

Id. at 381-82, 702 S.E.2d at 829 (internal citations omitted).

Here, defendant presented no conflicting evidence at the hearing and stipulated the search warrant application contains all material facts constituting probable cause. The transcript reveals the trial court provided an extensive rationale for its oral ruling from the bench. Thus, the record is sufficient to permit appellate review of the trial court's denial of defendant's motion to suppress. *See State v. Romano*, 268 N.C. App. 440, 450, 836 S.E.2d 760, 769 (2019) (determining that the trial court was not required to enter a written order).

When this Court reviews the denial of a motion to suppress, we "must 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. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012) (quotation marks and citation omitted). "[T]he trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (quotation marks and citation omitted). "[T]he trial court's ruling on a motion to suppress is afforded great deference upon appellate review as

it has the duty to hear testimony and weigh the evidence.” *State v. McClendon*, 130 N.C. App. 368, 377, 502 S.E.2d 902, 908 (1998) (citation omitted), *aff’d*, 350 N.C. 630, 517 S.E.2d 128 (1999). This Court reviews conclusions of law de novo. *Williams*, 366 N.C. at 114, 726 S.E.2d at 165. “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quotation marks and citations omitted).

IV.

Defendant argues the search of his residence in Danville, Virginia, which gave rise to charges against him in Caswell County, North Carolina, violated his federal and state constitutional rights to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the United States Constitution, Article 1, Section 20, of the North Carolina Constitution, and Chapter 15A, Article 11, of the North Carolina General Statutes. Specifically, defendant asserts the search warrant application did not establish the probable cause necessary to effectuate a search. We disagree.

Search warrants obtained in other jurisdictions are subject to examination and scrutiny by North Carolina courts. *See State v. Myers*, 266 N.C. 581, 582, 146 S.E.2d 674, 675 (1966); *see also State v. Richards*, 294 N.C. 474, 487, 242 S.E.2d 844, 853 (1978).

To be competent here, the evidence must meet the North

Carolina tests of admissibility. However, Virginia decisions and ours do not seem to be out of harmony on the question of the citizen's right to be protected from unwarranted searches and seizures. The decisions of both States are subject to the overriding authority of the Supreme Court of the United States to determine the citizen's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

Myers, 266 N.C. at 582-83, 146 S.E.2d at 675-76 (citations omitted). The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. "Upon timely motion, evidence must be suppressed if: (1) [i]ts exclusion is required by the Constitution of the United States or the Constitution of the State of North Carolina; or (2) [i]t is obtained as a result of a substantial violation of the provisions of this Chapter." N.C. Gen. Stat. § 15A-974(a) (2021).

"Under North Carolina law, an application for a search warrant must be supported by an affidavit detailing 'the facts and circumstances establishing probable cause to believe that the items are in the places . . . to be searched.'" *State v. McKinney*, 368 N.C. 161, 164, 775 S.E.2d 821, 824 (2015) (quoting N.C. Gen. Stat. § 15A-244(3) (2013)). "A magistrate must 'make a practical, common-sense decision,' based on the *totality of the circumstances*, whether there is a 'fair probability' that contraband will be found in the place to be searched." *Id.* (emphasis added) (first

quoting *Illinois v. Gates*, 462 U.S. 213, 238, 76 L. Ed. 2d 527, 548 (1983); then citing *State v. Benters*, 367 N.C. 660, 664, 766 S.E.2d 593, 598 (2014)). “This standard for determining probable cause is flexible, permitting the magistrate to draw ‘reasonable inferences’ from the evidence in the affidavit supporting the application for the warrant, and from supporting testimony, as set out in N.C.G.S. § 15A-245(a).” *Id.* at 164, 775 S.E.2d at 824-25 (internal citations omitted) (first quoting *State v. Zuniga*, 312 N.C. 251, 262, 322 S.E.2d 140, 146 (1984); then citing *State v. Riggs*, 328 N.C. 213, 221, 400 S.E.2d 429, 434 (1991)). “That evidence is viewed from the perspective of a police officer with the affiant’s training and experience, and the commonsense judgments reached by officers in light of that training and specialized experience. *Id.* at 164-65, 775 S.E.2d at 825 (internal citations omitted) (first citing *Benters*, 367 N.C. at 672, 766 S.E.2d at 603; then citing *United States v. Ortiz*, 422 U.S. 891, 897, 45 L. Ed. 2d 623, 629 (1975)).

“Probable cause requires not certainty, but only ‘a probability or substantial chance of criminal activity.’” *Id.* at 165, 775 S.E.2d at 825 (2015) (quoting *Riggs*, 328 N.C. at 219, 400 S.E.2d at 433). “The magistrate’s determination of probable cause is given ‘great deference’ and ‘after-the-fact scrutiny should not take the form of a *de novo* review.’” *Id.* (quoting *State v. Arrington*, 311 N.C. 633, 638, 319 S.E.2d 254, 258 (1984)). “Instead, a reviewing court is responsible for ensuring that the issuing magistrate had a “substantial basis for . . . conclud[ing]” that probable cause existed.” *Id.* (alteration in original) (quoting *Gates*, 462 U.S. at 238-39, 76 L. Ed. 2d

at 548). “This deference, however, is not without limitation. A reviewing court has the duty to ensure that a magistrate does not abdicate his or her duty by ‘mere[ly] ratif[ying] . . . the bare conclusions of [affiants].” *Benters*, 367 N.C. at 665, 766 S.E.2d at 598 (alteration in original) (citations omitted) (quoting *Gates*, 462 U.S. at 239, 76 L. Ed. 2d at 549).

Under a “totality of the circumstances” test, “[s]everal factors are used to assess reliability including: (1) whether the informant was known or anonymous, (2) the informant’s history of reliability, and (3) whether information provided by the informant could be and was independently corroborated by the police.” *State v. Green*, 194 N.C. App. 623, 627, 670 S.E.2d 635, 638, (quotation marks and citation omitted), *aff’d per curiam*, 363 N.C. 620, 683 S.E.2d 208 (2009).

When making a determination of probable cause, “[t]he affidavit must establish a nexus between the objects sought and the place to be searched.” *State v. Parson*, 250 N.C. App. 142, 152, 791 S.E.2d 528, 536 (2016) (quotation marks and citation omitted). “[T]he magistrate may not consider evidence outside the four corners of the affidavit, unless “the information is either recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official.” *Id.* (quoting § 15A-245(a) (2015)).

Defendant offers several arguments in support of his position that the search warrant application was not supported by probable cause. He maintains that Green had no history of reliability as an informant, that she did not make a statement

against her penal interest, and that she gave vague, unreliable details about the information she relayed. Defendant also contends law enforcement officers failed to corroborate basic information, such as his physical appearance or address. Further, defendant notes time signatures indicate the search was conducted prior to obtaining the warrant. These arguments lack merit.

Here, the search warrant application affidavit specifies the informant “gave inculpatory information, identifying herself and [defendant] in surveillance videos involving credit card fraud.” Further, Detective Chivvis specifies in the affidavit that the informant “available to testify provided firsthand information against her own interest [and] . . . provided corroborating details of known offenses.” Defendant points to no discernable requirement, by statute or common law, that requires an affiant to precisely identify the crimes an informant has incriminated themselves in before a magistrate can consider the statement to be against one’s own penal interests. To the contrary, in reviewing an application for a search warrant, “a magistrate is entitled to draw reasonable inferences from the material supplied to him” *State v. Sinapi*, 359 N.C. 394, 399, 610 S.E.2d 362, 365 (2005); *see also State v. Barnhardt*, 92 N.C. App. 94, 96, 373 S.E.2d 461, 462 (1988) (quoting *Arrington*, 311 N.C. at 640, 319 S.E.2d at 258) (“[A]ppellate court review of a magistrate’s probable cause decision is not subject to a technical *de novo* review, but is limited to whether ‘the evidence as a whole provided a substantial basis for a finding of probable cause’”).

The affidavit provided precise details of the premises to be searched, described

the informant's involvement in known offenses, and specified the methods and timelines concerning stolen credit cards and fraudulently obtained electronics. Green was an identifiable informant at the police station, interviewed face-to-face by law enforcement officers. She was not an anonymous caller lacking any indicia of reliability. *See State v. Jackson*, 249 N.C. App. 642, 654, 791 S.E.2d 505, 513 (2016), (quotation marks and citation omitted), *aff'd*, 370 N.C. 337, 807 S.E.2d 141 (2017) (noting that when considering a confidential informant's reliability, "the nature of th[e] face-to-face conversation between" the detective "and the informant significantly increased the likelihood that [the informant] would be held accountable if her tip proved to be false."). In giving her statements implicating defendant, Green provided inculpatory information against her own penal interests and reasonably established her own credibility and reliability as an informant. Thus, Green's information was sufficiently credible to support the search warrant application affidavit.

Finally, we decline to address defendant's remaining arguments that several alleged technical errors, imprecise statements, or discrepancies as to the timing of the search were sufficient to disturb the magistrate's finding of probable cause. Defendant cites to no authority to substantiate his contentions, and these arguments are deemed abandoned pursuant to N.C.R. App. P. 28(b)(6).

V.

For the foregoing reasons, the trial court did not err in denying defendant's

STATE V. MARTIN

Opinion of the Court

motion to suppress.

NO ERROR.

Chief Judge STROUD and Judge MURPHY concur.

Report per Rule 30(e).