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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-780

Filed 04 April 2023

Cabarrus County, Nos. 20CRS53855 20CRS53856

STATE OF NORTH CAROLINA

v.

CHRISTOPHER NEIL TOMLIN

Appeal by defendant from judgment entered 17 December 2021 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 8 March 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General J. Aldean Webster III, for the State.

Everson Law Office, PLLC, by Cynthia E. Everson for the defendant-appellant.

TYSON, Judge.

Christopher Neil Tomlin (“Defendant”) appeals from an order denying his motion to suppress evidence. We affirm.

I. Background

Cabarrus County Sheriff’s Detective M. L. Hodges applied for a warrant to search Defendant’s premises at 446 Old Charlotte Road Southwest in Concord on 28

September 2020. Detective Hodges relied upon information two confidential informants had provided, who both had purchased illegal substances from Defendant while undercover. One informant purchased “what they believed to be Marijuana and Clonazepam” from Defendant’s residence within the months leading up to the warrant’s application. The second informant had purchased Methamphetamine at the address listed in the warrant from Defendant during the week prior to Detective Hodges seeking the warrant.

The confidential informants were searched for weapons, controlled or illegal substances, or money before participating in the “undercover buys.” If the informants chose to use their own vehicles, their vehicles were also searched, and an electronic listening device and GPS tracker were installed. Law enforcement officers gave currency to the informants from the office’s special funds and sent them to Defendant’s address.

Law enforcement officers watched both undercover buys from another vehicle and personally observed Defendant sell drugs at that address. As soon as the undercover buys were completed, both informants met law enforcement officers at a predetermined location and surrendered whatever substances they had purchased, returned any leftover funds, and allowed the officers to conduct an additional search of their person and vehicle.

Detective Hodges had found both informants to be reliable and trustworthy. The first confidential informant “had provided information over [a] previous amount

of time” and the “information [] led to multiple arrests.” Detective Hodges had known the second confidential informant for two years prior to the undercover buy. At the time of the suppression hearing, both confidential informants were working with the Sheriff’s Department.

Detective Hodge’s warrant application specifically described the evidence to be seized, including Methamphetamine, any substances included in the North Carolina Controlled Substance Act, drug paraphernalia, U.S. currency, “indicia of domain”, firearms, and computers, phones, or similar digital devices. The application described the premises to be searched and included a photograph of Defendant’s purported residence at 446 Old Charlotte Road Southwest in Concord. The photograph of the property depicted a fence surrounding the address and a recreational vehicle (“RV”) parked in the front yard. The application asserted the officers intended to search “[a]ll vehicles on the premises that could contain evidentiary items described above located in the curtilage” of Defendant’s residence. Finally, the application requested judicial authorization to search “Christopher Neil Tomlin DOB: 04/15/1992 as well as all persons located on the premises of 446 Old Charlotte Road Southwest Concord NC.”

Detective Hodges executed the search warrant with a team of officers on 29 September 2020 at around 11:40 a.m. Defendant had just left the property in another vehicle when the officers executed the warrant, and he had driven “[m]aybe 50 yards,” down the road from the property. Detective Hodges testified officers had not yet

attempted to execute the warrant when Defendant left his home.

When Detective Hodges approached the front door of the residence, Defendant's father answered the door and told him Defendant lived in the parked RV. The RV was located inside the six-foot fence that completely wrapped around the property. After learning Defendant lived in the RV, versus the home, law enforcement focused their search on the RV. Several items were found and seized, including Methamphetamine, cameras, plastic baggies, digital scales, and other illegal drugs.

Defendant was charged with multiple drug-related offenses on 29 September 2020, including: possession with intent to manufacture, sell, or deliver a schedule II controlled substance; simple possession of a schedule III and schedule IV controlled substance; maintaining a vehicle or dwelling place for keeping and selling controlled substances; and possession of drug paraphernalia. Defendant moved to suppress the evidence obtained from the RV and from Defendant's personal vehicle on 15 April 2021. The trial court heard and denied Defendant's motion to suppress on 17 December 2021.

Defendant pled guilty to all charges on 11 May 2022, while preserving his right to appeal the denial of his motion to suppress. Defendant was sentenced as a prior record level II offender to a term of 8 to 19 months. His sentence was suspended, and he was placed on supervised probation for 30 months.

Defendant filed a timely notice of appeal on 17 May 2022.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 15A-979(b) (2021).

III. Issues

Defendant presents two arguments on appeal, drawing a distinction between items seized from the RV located at 446 Old Charlotte Road Southwest and the items seized from his off-premises vehicle: (1) the trial court erred in denying his motion to suppress by considering evidence outside the four corners of the search warrant application to determine whether probable cause existed to issue the warrant and to subsequently search the RV; and, (2) the trial court's conclusion of law upholding the search of Defendant and his vehicle, which was fifty yards away from the premises identified in the search warrant, is not supported by findings of fact and is contrary to law.

IV. Motion to Suppress

Defendant challenges the trial court's denial of his motion to suppress on four separate grounds: (1) the search warrant did not provide sufficient information from which the magistrate could find probable cause; (2) the search warrant did not authorize law enforcement to search the RV because the camper was not a "vehicle"; (3) the search warrant failed to establish a nexus or temporal proximity between the activity supporting probable cause and the time the search warrant was issued; and, (4) the search of Defendant and his vehicle was unlawful because it was not covered in the search warrant or independently supported by reasonable suspicion.

A. Standard of Review

This Court’s review of a whether a trial court properly denied a motion to suppress is “strictly limited to determining 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). “[T]he trial court’s conclusions of law are reviewed *de novo* and must be legally correct.” *State v. Pickard*, 178 N.C. App. 330, 334, 631 S.E.2d 203, 206 (2006) (citation omitted).

B. Analysis

1. Fourth Amendment

The Fourth Amendment of the Constitution of the United States protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” U.S. Const. amend. IV, XIV. A search warrant may be issued only “upon probable cause, supported by [o]ath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. “Article I, Section 20 of the Constitution of North Carolina likewise prohibits unreasonable searches and seizures and requires that warrants be issued only on probable cause.” *State v. Allman*, 369 N.C. 292, 293, 794 S.E.2d 301, 302-03 (2016) (citation omitted); *see also* N.C Gen. Stat. § 15A-245 (2021)

(outlining the information an issuing officer may consider when “determining whether probable cause exists for the issuance” of a search warrant).

Our Supreme Court stated: “Probable cause . . . means a reasonable ground to believe that the proposed search will reveal the presence *upon the premises to be searched of the objects sought* and that those objects will aid in the apprehension or conviction of the offender.” *State v. Campbell*, 282 N.C. 125, 128–29, 191 S.E.2d 752, 755 (1972) (emphasis supplied) (citation omitted).

The Fourth Amendment protects a defendant by requiring any “usual inferences which reasonable men draw from evidence” to be “drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” *Johnson v. United States*, 333 U.S. 10, 14, 92 L.Ed. 436, 440 (1948); accord *State v. McKinney*, 368 N.C. 161, 164, 775 S.E.2d 821, 824 (2015) (“A neutral and detached magistrate determines whether probable cause exists.”) (citation and internal quotation marks omitted)).

Courts interpreting the Fourth Amendment have expressed a “strong preference for searches conducted pursuant to a warrant.” “A grudging or negative attitude by reviewing courts toward warrants” is inconsistent with that preference. Recognizing that affidavits attached to search warrants “are normally drafted by nonlawyers in the . . . haste of a criminal investigation,” courts are reluctant to scrutinize them “in a hypertechnical, rather than a commonsense, manner.”

McKinney, 368 N.C. at 164, 775 S.E.2d at 824 (citing first *Illinois v. Gates*, 462 U.S. 213, 236, 76 L.Ed.2d 527, 547 (1983); then *State v. Sinapi*, 359 N.C. 394, 398, 610

S.E.2d 362, 365 (2005); and *United States v. Ventresca*, 380 U.S. 102, 106–08, 13 L.Ed.2d 684, 689 (1965)).

When determining whether a search warrant is supported by probable cause, a reviewing court must consider the “totality of the circumstances.” *Sinapi*, 359 N.C. at 398, 610 S.E.2d at 365 (citations omitted). In applying this “totality” test, our Supreme Court has explained an affidavit is sufficient if it establishes reasonable cause to believe the search will “probably reveal the presence upon the described premises of the items sought,” and that those items will aid in apprehending or convicting the offender. *Id.*

Before issuing a search warrant, a magistrate must “simply [] make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Gates*, 462 U.S. at 238, 76 L. Ed. 2d at 548 (citation omitted).

Temporal and proximity requirements also exist. “Before a search warrant may be issued, proof of probable cause must be established by facts so closely related to the time of issuance of the warrant so as to justify a finding of probable cause at that time.” *State v. Lindsey*, 58 N.C. App. 564, 565, 293 S.E.2d 833, 834 (1982) (citation omitted).

Lastly, when a search warrant application is based on information from an informant, there are additional requirements. “[E]vidence is needed to show [an] indicia of reliability” of the informants to provide probable cause. *State v. Hughes*, 353 N.C. 200, 203-04, 539 S.E.2d 625, 628 (2000) (citations omitted). Nevertheless, “an officer may rely upon information received through an informant, rather than upon his direct observations, so long as the informant’s statement is reasonably corroborated by other matters within the officer’s knowledge.” *State v. Bone*, 354 N.C. 1, 10, 550 S.E.2d 482, 488 (2001) (citation and internal quotation marks omitted).

Here, the search warrant provided:

Within the past several months, I, Detective Hodges have met with [] individual[s,] hereinafter referred to as CS1 and CS2 due to fear of personal retaliation should his/her identity be known. CS1 and CS2 have been proven credible and reliable due to having provided information to this applicant on a number of occasions[,] which I have personally verified to be true and correct.

Within the past several months, CS1 purchased what they believed to be Marijuana and Clonazepam from the residence at 446 Old Charlotte Road Southwest, specifically from Christopher Tomlin DOB 4/15/1992, utilizing Cabarrus County Sheriff’s office special funds that have been provided to CS1. The suspected Marijuana and Clonazepam w[ere] turned over to detectives and placed into property control.

Within the past week[,] CS2 purchased Methamphetamine from Christopher Tomlin DOB 4/15/1992 at 446 Old Charlotte Road Southwest utilizing Cabarrus County Sheriff’s office special funds. The suspected Methamphetamine was turned over to detectives and placed into property control.

Prior to and at the conclusion of each controlled buy[,] CS1 and CS2 were thoroughly searched.

2. Search Warrant

The application also specified the premises, persons, and vehicles the officers sought to search. The premises at 446 Old Charlotte Road Southwest was listed as the address to be searched and included a picture of the home, fence, and vehicles in the driveway. The persons in the application included Defendant, “Christopher Neil Tomlin DOB: 04/15/1992 as well as all persons located on the premises of 446 Old Charlotte Road Southwest Concord NC.” The vehicles incorporated “[a]ll vehicles on the premises that could contain evidentiary items described above located in the curtilage of 446 Old Charlotte Road Southwest Concord NC.”

The search warrant application and Detective Hodge’s affidavit collectively provided sufficient information from which a magistrate could find probable cause existed. The application indicated CS1 and CS2 were “credible and reliable.” It also explained how law enforcement had provided CS1 and CS2 with special funds to purchase illegal substances at Defendant’s address. Those informants were again searched after the confidential buys. This information provided sufficient information for the magistrate to find probable cause. *McKinney*, 368 N.C. at 164, 775 S.E.2d at 824.

The search warrant also satisfied temporal and proximity requirements, as the most recent undercover buy occurred only one week prior to the search warrant’s

application. *Lindsey*, 58 N.C. App. at 565, 293 S.E.2d at 834. Similarly, the information provided by the confidential informants demonstrated an indicia of reliability to meet the probable cause burden, because the information provided by the informants was corroborated by Detective Hodges who oversaw them and the officers who secretly watched the undercover buys from their own vehicles as they occurred. *Hughes*, 353 N.C. at 203-04, 539 S.E.2d at 628; *Bone*, 354 N.C. at 10, 550 S.E.2d at 488. Finally, the search of the RV did not violate Defendant's Fourth Amendment rights because: (1) the warrant authorized law enforcement to search all vehicles present at the address or within the curtilage, and (2) the picture in the affidavit indicated the officers' intent to search the entire property depicted at that address. *McKinney*, 368 N.C. at 164, 775 S.E.2d at 824.

Overall, law enforcement officers provided the magistrate with sufficient information to "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238, 76 L. Ed. 2d at 548; accord *McKinney*, 368 N.C. at 164, 775 S.E.2d at 824 and *Sinapi*, 359 N.C. at 398, 610 S.E.2d at 365. The reliability of the confidential informants for the magistrate to find probable cause and to issue the search warrant is affirmed. The validity of the search of the RV and the areas described in the search warrant are also affirmed.

3. Search of Defendant's Person and Vehicle

Notwithstanding our conclusion that probable cause existed for the magistrate to issue a warrant and search the premises described and the RV, Defendant also argues law enforcement officers exceeded their constitutional bounds by searching Defendant's off-premise vehicle without a warrant or other reasonable suspicion to justify a traffic stop. *Bailey v. United States*, 568 U.S. 186, 202, 185 L. Ed. 2d 19, 34 (2013) ("If officers elect to defer the detention until the suspect or departing occupant leaves the immediate vicinity, the lawfulness of detention is controlled by other standards, including, of course, a brief stop for questioning based on reasonable suspicion under *Terry* or an arrest based on probable cause. A suspect's particular actions in leaving the scene, including whether he appears to be armed or fleeing with the evidence sought, and any information the officers acquire from those who are conducting the search, including information that incriminating evidence has been discovered, will bear, of course, on the lawfulness of a later stop or detention.").

Defendant was stopped driving a vehicle about fifty yards away from the described premises after the search warrant was executed. Officers searched the RV, the vehicle he was driving, and he was charged with possession with intent to manufacture, sell, or deliver a schedule II controlled substance, simple possession of a schedule III controlled substance, simple possession of a schedule IV controlled substance, maintaining a vehicle or dwelling place for keeping and selling controlled substances, and possession of drug paraphernalia.

The trial court did not find what and which location the substances were located in and seized at the time of the arrest and search. Where the trial court failed to make the required findings of fact, the proper remedy is to remand to the trial court for entry of an additional findings of fact. *See State v. Kerrin*, 209 N.C. App. 72, 78, 703 S.E.2d 816, 820 (2011).

This matter is remanded to the trial court with instructions to make findings of fact of the locations of the substances recovered at the time of the search and arrest.

V. Conclusion

The trial court's order denying the motion to suppress is affirmed in part. We remand to the trial court to make findings of fact of the locations of the substances recovered at the time of the searches and Defendant's arrest. *It is so ordered.*

AFFIRMED IN PART AND REMANDED.

Judges DILLON and GORE CONCUR.

Report per Rule 30(e).