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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-948

Filed 15 August 2023

Lincoln County, No. 20 CRS 51449

STATE OF NORTH CAROLINA

v.

RICHARD LAVOR BEATTY, Defendant.

Appeal by Defendant from order entered 17 May 2022 by Judge Todd Pomeroy in Lincoln County Superior Court. Heard in the Court of Appeals 6 June 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Christine Wright, for the State.*

*John E. Ryan III for Defendant.*

GRIFFIN, Judge.

Defendant Richard Lavor Beatty appeals the trial court's denial of his motion to suppress narcotics-related evidence seized under a search warrant which authorized the search of his home, vehicles, and person. Defendant contends the trial court erred in denying his motion as the witness's statement supporting the search warrant, lacked the reliability and corroboration necessary to establish probable cause. We hold the motion to suppress was properly denied.

## **I. Factual and Procedural History**

On 18 June 2020, Deputy Metcalf conducted a stationary patrol on Saint James Church Road in Denver, North Carolina—an area reportedly high in drug activity. During this patrol, Metcalf noticed a vehicle, driven by Randy Sharpe, traveling north on Saint James Church Road. The vehicle returned south approximately five minutes later. Based on his experience and training, Metcalf knew this timeframe to be consistent with a drug transaction. This, combined with recent reports of drug activity in the area, led Metcalf to stop Sharpe’s vehicle.

Metcalf searched Sharpe’s vehicle and found a bag of cocaine. Sharpe stated he purchased the cocaine for \$20.00 from Defendant, at a white trailer off Saint James Church Road, and gave a detailed description of the property and residence. Metcalf knew Defendant frequently resided at the white trailer described by Sharpe. Notably, Metcalf had previously stopped another driver on the dirt road leading to the trailer who said he was going to see Defendant. Metcalf then drove down the dirt road to confirm the description of Defendant’s residence.

Sharpe’s statement, combined with the previous traffic stop on the dirt road and the ongoing reports of drug activity in the area, led Metcalf to apply for a warrant to search the premises, vehicle, and person of Defendant for narcotics and items related to their distribution. The search warrant was granted. On 19 June 2020, police executed the warrant and recovered drugs and drug paraphernalia.

On 9 November 2020, Defendant was indicted for possession with intent to sell

and deliver methamphetamine, possession with intent to sell and deliver MDMA, and two counts of possession of drug paraphernalia. On 4 October 2021, Defendant filed a motion to suppress the evidence obtained as a result of the search warrant.

Defendant's motion to suppress was calendared for trial in Lincoln County Superior Court. The following day, the trial court entered an order denying Defendant's motion to suppress after a hearing on the motion. After the denial of the motion, Defendant entered an *Alford* plea to possession with intent to sell and deliver methamphetamine and one count of possession of drug paraphernalia while the State dismissed the remaining charges. Defendant reserved the right to challenge the trial court's denial of his motion to suppress. The trial court consolidated the convictions into one judgment and Defendant was sentenced to 9 to 20 months imprisonment, suspended for 24 months probation. Defendant timely appeals.

## II. Standard of Review

When reviewing a trial court's denial of a motion to suppress, we must determine whether the trial court's "findings of fact are supported by competent evidence . . . and whether those factual findings in turn support the [trial court's] ultimate conclusions of law." *State v. Allman*, 369 N.C. 292, 296, 794 S.E.2d 301, 305 (2016) (citation omitted). "However, when, . . . the trial court's findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citation omitted). We review conclusions of law do novo. *Biber*, 365 N.C. at 168, 712

S.E.2d at 878 (citation omitted).

### **III. Analysis**

Defendant contends the trial court erred in denying his motion to suppress the evidence seized pursuant to the search warrant. Specifically, Defendant argues Metcalf's affidavit, on which the magistrate relied in granting the search warrant, did not establish the informant's reliability and therefore there was not probable cause to issue the warrant. We disagree.

The Fourth Amendment to the United States Constitution provides no warrant shall issue except upon probable cause. U.S. Const. amend. IV; see also N.C. Const. art. I, § 20. Thus, our North Carolina General Statutes provide, an application for a search warrant must be made to a magistrate in writing, upon oath or affirmation, and contain:

- (1) The name and title of the applicant; and
- (2) A statement that there is probable cause to believe that items subject to seizure under G.S. 15A-242 may be found in or upon a designated or described place, vehicle, or person; and
- (3) Allegations of fact supporting the statement. The statements must be supported by one or more affidavits particularly setting forth the facts and circumstances establishing probable cause to believe that the items are in the places or in the possession of the individuals to be searched; and
- (4) A request that the court issue a search warrant directing a search for and the seizure of the items in question.

N.C. Gen. Stat. § 15A-244 (2021). Where a magistrate has issued a warrant and the defendant files a motion to suppress “based upon [their] contention that the search warrant obtained was not supported by probable cause, the trial court must determine whether, based on the totality of the circumstances, ‘the evidence as a whole provides a substantial basis for concluding that probable cause exists.’” *State v. Brody*, 251 N.C. App. 812, 814, 796 S.E.2d 384, 387 (2017) (quoting *State v. Sinapi*, 359 N.C. 394, 398, 610 S.E.2d 362, 365 (2005)).

In deciding whether to grant or deny such a motion, the trial court must determine whether “there is substantial evidence in the record supporting the magistrate’s decision to issue the warrant.” *State v. McCoy*, 100 N.C. App. 574, 576, 397 S.E.2d 355, 357 (1990) (internal marks and citations omitted). Likewise, a magistrate, when deciding whether to issue a warrant, must review the application and “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.” *State v. Jackson*, 249 N.C. App. 642, 647, 791 S.E.2d 505, 509 (2016) (internal marks and citations omitted); see also *Pickard*, 178 N.C. App. at 334–35, 631 S.E.2d at 207 (stating great deference is given to the magistrate’s determination).

A totality of the circumstances test is also to be employed as a means to assess the reliability of an informant where the informant’s tip provides the basis for

probable cause to issue a warrant. *State v. Jackson*, 220 N.C. App. 1, 14, 727 S.E.2d 322, 332 (2012). Several factors used to assess the informant’s reliability include: “(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 (2009) (internal marks and citations omitted). These factors indicating reliability are merely factors and not requirements; thus “[a] deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.” *Illinois v. Gates*, 462 U.S. 213, 233 (1983) (citations omitted).

Our Court previously noted, as an initial matter, “we must determine the reliability of the information by assessing whether the information came from an informant who was merely anonymous or one who could be classified as confidential and reliable[.]” as information from an anonymous source is afforded less weight in considering the totality of the circumstances. *Jackson*, 249 N.C. App. at 649, 791 S.E.2d at 510–11 (internal marks and citations omitted). If an informant’s tip is to be considered confidential and reliable, there must be evidence supporting an indicia of reliability—including: “statements against the informant’s penal interests and statements from an informant with a history of providing reliable information.” *Id.* at 649, 791 S.E.2d at 511. Where sufficient indicia of reliability is lacking, the trial court must evaluate the informant’s reliability using an anonymous tip standard. *Id.*

Our Supreme Court, in *State v. Benters*, noted that while “[a]n anonymous tip, standing alone, is rarely sufficient, [ ] the tip combined with corroboration by the police could show indicia of reliability that would be sufficient to pass constitutional muster.” 367 N.C. 660, 666, 766 S.E.2d 593, 598–99 (2014) (internal marks and citations omitted). “Thus, a tip that is somewhat lacking in reliability may still provide a basis for probable cause if it is buttressed by sufficient police corroboration.” *Id.* at 666, 766 S.E.2d at 599 (internal marks and citations omitted); *see also State v. Hughes*, 353 N.C. 200, 207, 539 S.E.2d 625, 630 (2000). Further, where there is “doubt as to an informant’s motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first-hand, entitles his tip to greater weight than might otherwise be the case.” *Gates*, 462 U.S. at 234.

In the present case, Defendant challenges the reliability and credibility of Sharpe’s statements as an unknown informant allegedly interested in providing a helpful tip to Metcalf, in hopes of avoiding punishment for possessing cocaine. Further, Defendant claims due to the unreliability of Sharpe’s statements and lack of facts and circumstances to support the magistrate’s determination that drugs would likely be found in the residence, the search warrant lacked probable cause.

We recognize Sharpe may not meet the standard of a confidential and reliable known informant. Though he admitted to purchasing cocaine against his own penal interest, Sharpe was not an informant with a history of providing reliable information as Metcalf had no previous interaction with Sharpe prior to conducting the traffic

stop. Nonetheless, even if his statement is most properly assessed using an anonymous tip standard, Metcalf was able to buttress Sharpe's statement with sufficient, reliable police corroboration.

Metcalf, based on his training and experience stopped Sharpe after observing activity which he believed to be consistent with a drug transaction. Further, Sharpe told Metcalf he purchased cocaine from Defendant for \$20.00 and gave a detailed description of Defendant's residence where he made the purchase. Metcalf had previously stopped someone on the road to Defendant's house who professed to be on the way to Defendant's. The individual that Metcalf previously stopped said that Defendant lived on the same road that Metcalf testified was Defendant's road. Additionally, Metcalf himself was able to corroborate the information given by Sharpe as he drove down the road and observed, as Sharpe described, a white trailer on the left side of the street with a fence along the drive; dogs barking; and several vehicles in the driveway. Metcalf was also able to see Sharpe face to face and personally evaluate his credibility. Thus, even though Sharpe is treated as an anonymous tipster for the purpose of this analysis, the circumstances set forth in the affidavit before the magistrate—including Sharpe's statement, the statement made upon Metcalf's previous stop, and Metcalf's ability to corroborate the tip—were such that the magistrate could find, given the totality of the circumstances, probable cause to issue the warrant.

#### **IV. Conclusion**



STATE V. BEATTY

*Opinion of the Court*

For the aforementioned reasons, we hold Defendant's motion to suppress was properly denied.

AFFIRMED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).