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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1156

Filed 5 February 2025

Union County, Nos. 18 CRS 54471-72

STATE OF NORTH CAROLINA

v.

DARRICK JAY CLARK, Defendant.

Appeal by defendant from order entered 24 January 2023 by Judge Hunt Gwyn in Union County Superior Court. Heard in the Court of Appeals 9 October 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Scott K. Beaver, for the State.*

*Manning Law Firm, by Clarke S. Martin, for defendant-appellant.*

PER CURIAM.

Defendant argues that the trial court erred in failing to suppress evidence collected from the search warrant because the warrant was issued without probable cause. We affirm.

I. Background

On 27 August 2018, Defendant Darrick Clark was arrested and charged with

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the following offenses: (1) driving while impaired, (2) drinking beer while driving, and (3) driving while license revoked.

Defendant had an encounter with officers in which he appeared under the influence after driving into a gas station in his vehicle. A magistrate issued a search warrant to perform a blood test on Defendant. The results of the blood test showed the presence of alcohol. Defendant moved to have the results of the search warrant suppressed, contending that there was a lack of probable cause. The trial court denied Defendant's motion to suppress. Defendant pleaded guilty to the charges, reserving his right to appeal the denial of his motion to suppress.

II. Analysis

Defendant argues that the trial court erred in denying his motion to suppress evidence obtained from the search because the search warrant was based on insufficient probable cause.

A. Standard of Review

A trial court's findings of fact resulting from a motion to suppress are conclusive and binding when supported by competent evidence. *See State v. Brooks*, 337 N.C. 132, 140 (1994). Consequently, this Court must determine whether competent evidence supports such findings of fact and, in turn, whether those findings of fact support the trial court's conclusions of law. *Id.* at 141. This Court reviews conclusions of law *de novo*. *Id.*

B. Analysis

Both the United States and North Carolina constitutions protect people from unreasonable searches and seizures. *State v. Allman*, 369 N.C. 292, 293 (2016) (explaining that the probable cause analysis is identical on both the federal and state levels). Specifically, search warrants may be issued only after a showing of probable cause. *Id.* Determined by a totality of circumstances test, probable cause exists where the stated facts establish reasonable grounds to believe that a search will reveal evidence of a crime. *See id.* at 293 – 94.

As a flexible, nontechnical standard, probable cause should be approached in a commonsense manner. *State v. Zuniga*, 312 N.C. 251, 262 (1984); *State v. Riggs*, 328 N.C. 213, 222 (1991). As such, North Carolina law largely favors the issuance of warrants in cases on the margins. *Riggs*, 328 N.C. at 222. Yet, probable cause may require more than the bare minimum. For example, the *mere* odor of alcohol on a person’s breath is insufficient for a finding of probable cause as to impaired driving. *Atkins v. Moye*, 277 N.C. 179, 185 (1970).

Our General Statutes provide that a magistrate or other judicial officer may only issue a search warrant if the applicant provides a statement including factual allegations “supported by one or more affidavits[.]” N.C.G.S. § 15A-244(3). Our Court, however, has held that an officer need not submit *a separate sworn writing* labeled “Affidavit” “when its contents would be a verbatim duplication of the sworn statement in the application.” *State v. Marshall*, 94 N.C. App. 20, 26 (1989).

In determining whether probable cause exists, a magistrate must consider only

information contained in the application's affidavit, unless the information is either (1) recorded, (2) contemporaneously summarized in the record, or (3) on the face of the warrant by the issuing official. N.C.G.S. § 15A-245(a). *See State v. Benters*, 367 N.C. 660 (2014) (explaining that probable cause determination must be made within the four corners of the warrant application and that reviewing courts should analyze solely such information.). Nevertheless, a magistrate may draw reasonable inferences from warrant application materials. *State v. Lewis*, 372 N.C. 576, 584 (2019). Moreover, a magistrate's probable cause determination deserves great deference by reviewing courts. *Id.* Still, this deference is limited, and reviewing courts must ensure that a determination of probable cause is not based simply on bare conclusions of affiants. *State v. Benters*, 367 N.C. 660, 665 (2014).

Affidavit discrepancies do not preclude a probable cause determination if the affidavit otherwise suffices. *See State v. Monserrate*, 125 N.C. App. 22, 31 - 32 (1997).

Here, the warrant showed that police dispatch alerted an officer to be on the lookout for a blue Ford Explorer, expected to be traveling on US Highway 74 heading north on Highway 601. The officer pulled into a gas station on 601/Skyway Drive, where, after a short period, a vehicle matching dispatch's description pulled in. The Ford Explorer driver, later identified as Defendant, pulled next to a gas pump and stopped driving.

The officer noticed that the Ford Explorer's license plate number matched the one that dispatch provided. Even though he did not observe any bad driving by

Defendant, the officer saw Defendant finish and throw out a beer can. The officer approached Defendant to investigate the possible offenses of an open container or drinking beer while driving.

When the officer reached Defendant, he detected a strong odor of alcohol coming from Defendant, specifically from Defendant's breath. Furthermore, he noticed Defendant's red, glassy eyes and his slow, slurred speech. He also observed Defendant's crotch area to be wet, suspecting the wetness to be urine. A second officer arrived on the scene and made the same observations.

The search warrant application stated that Defendant "was operating a SUV, Ford Explorer . . . in violation of the statute(s) specified." However, the officer failed to check any of the application's boxes that would indicate the basis of the officer's knowledge of how he knew Defendant was operating the vehicle.

Even if the application does not facially allege that Defendant was driving, as Defendant argues, it does so implicitly. Although the officer should have been more thorough in his application details, the magistrate may deduce reasonable conclusions from the application materials. The application stated that Defendant was operating a Ford Explorer. It does not matter that "was operating" were preprinted words on the application, as both the preprinted and handwritten portions of the form are within the four corners of the warrant application. On the application, the officer charged Defendant with Driving While Impaired ("DWI") and Habitual DWI. Even if the officer did not expressly signal in his application that he observed

Defendant driving, the magistrate may have reasonably inferred that Defendant was observed driving based upon the information provided that Defendant was operating a Ford Explorer and was charged with DWI and Habitual DWI.

Further, although the officer failed to respond to a question pertaining to his experience on the search warrant, another part of the application stated that he had two-and-a-half years of law enforcement experience, including at least ten impaired driving situations. Despite the missing answer elsewhere on the document, the magistrate still had sufficient information to determine the officer's qualifications.

The trial court acknowledged the search warrant discrepancies. However, such discrepancies do not invalidate a search warrant application if the rest of the application demonstrates probable cause, as a hyper-technical approach is not required. We conclude that the search warrant application included sufficient information to give probable cause that Defendant had committed a crime.

### III. Conclusion

We conclude that the trial court rooted its findings of fact in competent evidence to support the issuance of the search warrant to search Defendant's blood. Thus, the trial court did not err in denying the motion to suppress.

AFFIRMED.

Panel consisting of Chief Judge DILLON and Judges COLLINS and CARPENTER.

Report per Rule 30(e).