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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-356

Filed 19 February 2025

Stokes County, Nos. 19 CRS 22, 700059–60

STATE OF NORTH CAROLINA

v.

KELAN MICHAEL ELLIS ROBERTSON, Defendant.

Appeal by defendant from judgment entered 13 July 2023 by Judge Angela Puckett in Stokes County Superior Court. Heard in the Court of Appeals 30 January 2025.

Attorney General Joshua H. Stein, by Assistant Attorney General John W. Congleton, for the State.

Michael A. Grace, for defendant-appellant.

FLOOD, Judge.

Defendant Kelan Michael Ellis Robertson appeals from the trial court's judgment entered upon a guilty plea for driving while impaired, driving after consuming alcohol while being under twenty-one years of age, careless and reckless driving, underage consumption of alcohol, and failure to maintain lane control. On appeal, Defendant argues (A) the trial court erred in denying his motion to suppress

the search warrant for his medical records, and (B) the trial court committed plain error by denying Defendant’s motion in limine to exclude the ethanol screening test in his medical records. After careful review, we find no error on part of the trial court and no plain error due to Defendant’s failure to show prejudice. We therefore affirm the trial court’s denial of Defendant’s motions.

I. Factual & Procedural Background

On 6 January 2019, while driving on Sheppard’s Mill Road in Stokes County, Defendant drove off to one side of the road, overcorrected, then went over the lane to the other side of the road, and struck a tree, coming to a stop. He sustained serious brain injuries and was airlifted to the hospital, where Trooper Christopher White of the North Carolina State Highway Patrol went to investigate the matter and speak with Defendant.

While talking with Defendant, Trooper White detected the smell of alcohol, conducted a horizontal gaze nystagmus test—which showed Defendant exhibiting all six signs of impairment—and saw a positive result on the “alco-sensor.” Trooper White then applied for a search warrant for the hospital’s medical records of Defendant and the results of a blood test taken by the hospital upon Defendant’s arrival. Trooper White’s affidavit stated that Defendant was in a car accident on 6 January 2018 and received treatment on 20 November 2016, the “individual named above”—Defendant—was the driver, Trooper White smelled alcohol on Defendant’s breath and observed six signs of impairment, and Defendant submitted to an alco-

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sensor. Trooper White obtained the search warrant, and the hospital provided the sought-after documents.

Defendant was thereafter charged with driving while impaired, driving after consuming alcohol while being under twenty-one years of age, careless and reckless driving, underage consumption of alcohol, and failure to maintain lane control. This matter came on for hearing before Stokes County District Court, where Defendant submitted a motion to suppress the search warrant in open court, which the court denied. On 26 April 2022, the district court judge found him guilty of all charges. Defendant gave notice of appeal in open court and appealed to superior court.

Prior to the hearing in superior court, Defendant moved to suppress the search warrant for his medical records and several motions in limine to exclude the hospital ethanol screening for his blood alcohol level for lack of notice, lack of analyst's certification, failure to comply with N.C.G.S. § 8C-1, Rule 702, lack of chain of custody, and failure to comport with N.C.G.S. §§ 20-24.01(3a) and 20-139.1. The trial court heard the motions on 23 June 2023, and denied them by written order on 13 July 2023.

On 18 September 2023, after providing oral notice of his intent to appeal from the denial of his motion to suppress and motions in limine, Defendant pled guilty to all charges, and the trial court accepted Defendant's plea. Defendant timely filed notice of appeal.

II. Jurisdiction

This Court has jurisdiction to address Defendant’s appeal pursuant to N.C.G.S. § 15A-979(b) (2023).

III. Analysis

On appeal, Defendant argues: (A) the trial court erred in denying Defendant’s motion to suppress the search warrant for his medical records, and (B) the trial court plainly erred in denying Defendant’s motion in limine to exclude the ethanol screening test in his medical records. We address each argument, in turn.

A. Motion to Suppress

Defendant contends the trial court erred in denying his motion to suppress the search warrant for his medical records because the affidavit listed the incorrect date of the car crash and did not mention that Defendant was the driver of the vehicle in the car crash. We disagree.

Our review of a trial court’s denial of 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 (1982) (citation omitted). Unchallenged findings of fact “are deemed to be supported by competent evidence and are binding on appeal.” *State v. Biber*, 365 N.C. 162, 168 (2011) (citation omitted). “Conclusions of law are reviewed de novo and are subject to full review.” *Id.* at 168 (citation omitted). “We review de novo a trial court’s conclusion that a magistrate had probable

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cause to issue a search warrant.” *State v. Worley*, 254 N.C. App. 572, 576 (2017) (citation omitted).

The Fourth Amendment to the United States Constitution, made applicable to the states through the Due Process Clause of the Fourteenth Amendment, 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; *see also State v. Smith*, 346 N.C. 794, 798 (1997). “Article I, Section 20 of the Constitution of North Carolina likewise prohibits unreasonable searches and seizures and requires that warrants be issued on probable cause, although the language of the North Carolina Constitution differs from that of the United States Constitution.” *State v. Allman*, 369 N.C. 292, 303 (2016); *see also* N.C. Const. art. 1, § 20.

A search warrant “affidavit is sufficient if it supplies reasonable cause to believe that the proposed search for evidence of the commission of the designated criminal offense will reveal the presence upon the described premises of the objects sought and that they will aid in the apprehension or conviction of the offender.” *State v. Vestal*, 278 N.C. 561, 575–76 (1971) (citations omitted); *see also* N.C.G.S. § 15A-244 (2023). “A warrant [affidavit] describes items with sufficient particularity when it enables the officer executing the warrant reasonably to ascertain and identify the items to be seized.” *State v. Kornegay*, 313 N.C. 1, 16 (1985) (citation omitted).

“A magistrate must make a practical, common-sense decision, based on the totality of the circumstances, where there is a fair probability that [the records] will

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be found in the place to be searched.” *State v. McKinney*, 368 N.C. 161, 164 (2015) (citations and internal quotation marks omitted). Moreover, “a magistrate is entitled to draw reasonable inferences from the material supplied to him by an applicant for a warrant.” *State v. Sinapi*, 359 N.C. 394, 399 (2005) (citation omitted). A magistrate’s finding of probable cause does not require certainty, but rather only a substantial chance of criminal activity. *See McKinney*, 368 N.C. at 165 (“Probable cause requires not certainty, but only ‘a probability or substantial chance of criminal activity.’” (citation omitted)).

“Reviewing courts should give great deference to the magistrate’s determination of probable cause and should not conduct a de novo review of the evidence to determine whether probable cause existed at the time the warrant was issued.” *State v. Greene*, 324 N.C. 1, 9 (1989) (citations omitted), *vacated on other grounds*, 494 U.S. 1022 (1990). “Instead, a reviewing court is responsible for ensuring that the issuing magistrate had a substantial basis for . . . concluding that probable cause existed.” *McKinney*, 368 N.C. at 165 (citations and internal quotation marks omitted) (cleaned up).

Here, as an initial matter, the inaccuracies of the dates listed on the affidavit did not disturb the magistrate’s consideration for probable cause. The affidavit clearly addressed evidence regarding the 2019 car crash, which means that the magistrate could “reasonably [] ascertain” Trooper White was requesting medical records from 2019, not 2016 or 2018. *See Kornegay*, 313 N.C. at 16. Thus, from the

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content of the affidavit, the magistrate could properly draw the reasonable inference that the incorrect dates were simply typographical mistakes. *See Sinapi*, 359 N.C. at 399; *see also McKinney*, 368 N.C. at 164.

Second, the affidavit contained sufficient information to ascertain that Defendant was the driver. *See Vestal*, 278 N.C. at 575–76. The affidavit plainly stated, “the individual named above was operating a motor vehicle,” and the individual named above was Defendant. Thus, the magistrate could reasonably infer from the affidavit that Defendant was the driver of the vehicle that collided with the tree. *See McKinney*, 368 N.C. at 164; *see also Sinapi*, 359 N.C. at 399.

Upon our review, the Record demonstrates that, under the totality of the circumstances, the magistrate could properly consider the affidavit’s listed date and its mention of Defendant as the driver in determining there was probable cause to issue the warrant. *See Vestal*, 278 N.C. at 575–76. Moreover, as this Court affords “great deference to the magistrate’s determination of probable cause,” we conclude the magistrate properly issued the warrant to Trooper White. *See Greene*, 324 N.C. at 9. Thus, we affirm the trial court’s denial of Defendant’s motion to dismiss.

B. Screening Test

Defendant asserts in his second argument that the trial court committed plain error in not excluding the ethanol screening test in his medical records because the ethanol screening test did not comply with Rule 702 regarding expert evidence or the statutory requirements for chemical analysis. We disagree.

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“To preserve an issue for appeal, the defendant must make an objection at the point during the trial when the State attempts to introduce the evidence.” *State v. Golphin*, 352 N.C. 364, 463 (2000) (citation omitted). “A defendant cannot rely on his pretrial motion to suppress to preserve an issue for appeal.” *Id.* at 463. “His objection must be renewed at trial.” *Id.* at 463.

Here, when the State expressed at the hearing its intention to admit into evidence the results of his blood ethanol test, Defendant failed to object. Thus, he did not properly preserve his objection for appeal, limiting our review to plain error. *Id.* at 463. To establish plain error, a defendant must meet a three-part test:

First, the defendant must show that a fundamental error occurred at trial. Second, the defendant must show that the error had a “probable impact” on the outcome, meaning that “absent the error, the jury probably would have returned a different verdict.” Finally, the defendant must show that the error is an “exceptional case” that warrants plain error review, typically by showing that the error seriously affects “the fairness, integrity or public reputation of judicial proceedings.”

State v. Reber, 386 N.C. 153, 158 (2024) (citations omitted).

Assuming, *arguendo*, a fundamental error occurred, Defendant has not met his burden of showing prejudice—that, absent the trial court’s error, the jury would have reached a different verdict. *See id.* at 158; *see also State v. Lawrence*, 365 N.C. 506, 518 (2012) (“For error to constitute plain error . . . a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty.” (citations and internal

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quotation marks omitted)). In his brief, Defendant explains the alleged deficiency in the ethanol screening evidence, but does not explain why it is probable that, absent the evidence, he would not have been convicted. “It is not the duty of this Court to supplement an appellant’s brief with . . . arguments not contained therein[.]” and we will not do so here. *See Goodson v. P.H. Glatfelter Co.*, 171 N.C. App. 596, 606 (2005).

Accordingly, as Defendant has failed to meet his burden of demonstrating prejudice, we discern no plain error on part of the trial court. *See Reber*, 386 N.C. at 158; *see also Lawrence*, 365 N.C. at 518.

IV. Conclusion

Upon review, we conclude the magistrate could reasonably infer probable cause to issue the warrant for Defendant’s medical records, and, as such, we affirm the trial court’s denial of Defendant’s motion to suppress evidence. Moreover, we conclude Defendant has not met his burden of demonstrating that the trial court’s exclusion of the ethanol screening test prejudiced his case, and as such, we find no plain error on part of the trial court.

AFFIRMED In Part, and NO PLAIN ERROR In Part.

Judge STADING concurs.

Judge HAMPSON concurs in result only.

Report per Rule 30(e).