No. COA21-423 TWENTY-NINTH (A) DISTRICT

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA )

 )

 v. ) From McDowell

 ) 19 CRS 51551

BRANDON DARRELLE BATES )

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BRIEF OF DEFENDANT-APPELLANT

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BRIEF OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

I. DID THE TRIAL COURT ERR BY FINDING THAT MR. BATES CONSENTED TO THE SEARCH OF THE LOCKED CONTAINER?

II. DID THE TRIAL COURT ERR BY DENYING THE MOTION TO SUPPRESS FILED BY MR. BATES’S TRIAL COUNSEL?

STATEMENT OF THE CASE

This appeal arises out of three judgments entered on 4 March 2021 in McDowell County Superior Court. (R p 1). After a jury trial, Mr. Bates was convicted of one count of trafficking in methamphetamine by possession, one count of trafficking in methamphetamine by transportation, and one count of knowingly maintaining or keeping a vehicle for controlled substances. *Id.* The trial court issued a sentence of 70-93 months in the judgment concerning trafficking in methamphetamine by possession. *Id.* The trial court issued an identical sentence in the judgment concerning trafficking in methamphetamine by transportation and set this sentence to run concurrently with the initial trafficking sentence. *Id.* The trial court issued a sentence of 120 days regarding the count of knowingly maintaining or keeping a vehicle for controlled substances and set that sentence to run consecutively. *Id.* Mr. Bates, through counsel, entered oral notice of appeal on 4 March 2021. *Id.*

STATEMENT OF GROUNDS OF APPELLATE JURISDICTION

 Mr. Bates appeals the judgments in his case pursuant to N.C. Gen. Stat. § 7A-27 (2021) and N.C. Gen. Stat. § 15A-1444 (2021).

STATEMENT OF THE FACTS

The allegations against Mr. Bates arise from a stop of a vehicle that Mr. Bates was operating on 12 September 2019. (T p 181). Deputy Robert Watson observed Mr. Bates operating the vehicle. *Id.* Deputy Watson stopped the vehicle because he knew Mr. Bates had a suspended driver’s license. (T p 182). After interacting with Mr. Bates, Deputy Watson observed that Mr. Bates possessed two cell phones and a “large amount of currency” in his pocket. (T pp 182-83). After his initial interaction with Mr. Bates, the deputy returned to his patrol vehicle and began preparing to issue a citation to Mr. Bates for driving while his license was revoked. (T p 184). While Deputy Watson was preparing the citation, a state trooper arrived at the scene. *Id.* Deputy Watson transferred the responsibility for preparing the citation to the trooper and returned to speak with Mr. Bates. *Id.* The trial court found that Mr. Bates gave Deputy Watson consent to search the interior of his vehicle during the second interaction between the men. (R p 28).

During the search, Deputy Watson located a “black Champion bag” in the floorboard behind the front passenger seat. (T pp 190-91). A small safe was inside the backpack. (T p 195). The safe was “closed and locked” when Deputy Watson found it. (T p 199). He initially tried to pull it open, and when his effort failed, Deputy Watson asked Mr. Bates if he had a key to the safe. *Id.* Mr. Bates “said that he did not and that the bag and the safe were not his.” *Id.* Deputy Watson then noticed a set of keys that were attached to the ignition key, which remained in the ignition. *Id.* This second set of keys was “a bunch of small keys that looked like they would fit in a safe like this,” and upon seeing these keys, Deputy Watson asked Mr. Bates for consent to attempt to open the safe with the set of small keys. *Id.* According to Deputy Watson, Mr. Bates gave his consent to try the keys and Deputy Watson was able to open the safe with one of the keys. *Id.* Deputy Watson found two bags of methamphetamine in the safe, one of which was later determined to weigh 60.62 grams (R p 34; T p 203). No other controlled substance was found in the vehicle or on Mr. Bates’s person.

Trial counsel for Mr. Bates filed a motion to suppress the controlled substance found in the safe, arguing, in part, that “the search exceeded the scope and extended to a locked container inside a separate container” that was in the vehicle. (R p 19). During a pre-trial hearing on this motion, Deputy Watson testified that Mr. Bates had denied ownership of the safe. (T p 13). The deputy reiterated this fact during cross-examination. (T p 21). Mr. Bates testified that Deputy Watson never asked for consent to search the safe. (T p 27).

At the conclusion of the pre-trial hearing, the trial court denied the motion to suppress. (T pp 40-41). During his oral pronouncement, the trial court found that Mr. Bates denied owning the safe. (T p 39). The court also found that Mr. Bates gave “consent to open the box or to try the keys and open the box.” *Id.* The trial court reiterated its finding that Mr. Bates gave consent to search the safe and consent to try to the keys, labeling it as a conclusion of law at the end of its pronouncement. (T p 40). The trial court then announced that it would draft a written order that “may be a little more specific and a little more detailed.” (T p 41).

A few days later, the trial court issued a written order confirming the denial of the motion, and included within this written order the trial court’s findings that Mr. Bates denied owning the safe and that Mr. Bates “freely and voluntarily consented to allow Deputy Watson to try and open the box with the keys.” (R pp 27-28). The trial court ultimately concluded that Deputy Watson’s search of the locked container was proper. (R p 28).

Mr. Bates was ultimately convicted on three counts related to the methamphetamine found in the safe. (R pp 36-37).

ARGUMENT

 *Standard of Review*

This brief argues that the trial court erred by denying the motion to suppress filed by Mr. Bates’s trial counsel. “The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court’s findings of fact and whether the findings of fact support the conclusions of law.” *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011). The trial court’s conclusions of law are reviewed *de novo* and are subject to a full review. *Id.*

**I. THE TRIAL COURT ERRED BY FINDING THAT MR. BATES CONSENTED TO THE SEARCH OF THE LOCKED CONTAINER.**

The trial court’s oral and written findings of fact concerning Mr. Bates’s alleged consent to search the safe are not supported by competent evidence as the undisputed evidence presented during the pre-trial hearing and at trial demonstrated that Mr. Bates denied owning the safe.

During both the pre-trial hearing and the trial, Deputy Watson testified that Mr. Bates explicitly disclaimed ownership of the safe. A person who denies ownership of or control over a piece of property is not capable of consenting to the search of the property. *See State v. Damenon Ropmele Early*, 194 N.C. App. 594, 602, 670 S.E.2d 594, 601 (2009) (noting the general rule that “the owner of the property or the person who is apparently entitled to give or withhold consent to search premises may give consent, and a person who has common authority over the premises may also give valid consent to search the premises”); *Top of Form*

*State v. Little*, 270 N.C. 234, 239, 154 S.E.2d 61, 65 (1967) (consent to search must be specific and unequivocal); *Top of FormUnited States v. Block*, 590 F.2d 535, 540 (4th Cir. 1978) (discussing various instances in which a third party’s consent is invalid). Bottom of Form

The First Circuit Court of Appeals has considered a matter similar to this case. In *United States v. Infante-Ruiz*, 13 F.3d 498 (1st Cir. 1994), the court considered the constitutionality of evidence collected from a closed briefcase found in the trunk of a car. *Id.* at 500-01. In that case, the driver of the vehicle consented to a general search of the car, but informed the officer that the briefcase in question belonged to a third party. *Id.* at 500. The court found that “[i]t was not reasonable . . . for the police officers to have believed that [the driver] gave his consent to the search of [the third party’s] briefcase.” *Id.* at 504. Supporting this conclusion, the court explained that the driver’s “general permission to search the car and its trunk was qualified by [the driver’s] further statement to the officer, before the latter opened and searched the briefcase, that the briefcase belonged to [the third party].” *Id.* at 505; *see also United States v. Moran*, 944 F.3d 1, 7-9 (1st Cir. 2019) (reaching a similar conclusion as the court in *Infante-Ruiz)*, and *Block*, 590 F.2d at 540 (holding that the search of a locked footlocker owned by a party other than the party giving consent was unconstitutional). As all of the evidence presented before the trial court demonstrated that Mr. Bates explicitly denied ownership of the safe, the trial court’s findings of fact concerning his consent to search the safe were unsupported by competent evidence. In the same way that the First Circuit found that the general consent of the driver was limited by his assertion that he did not own the container at issue in *Infante-Ruiz*, this Court should find that Mr. Bates’s assertion that he did not own the safe found in his vehicle qualified and limited his general consent to search the car. The trial court’s oral and written findings of fact on this issue, including specifically the trial court’s written finding that Mr. Bates “freely and voluntarily consented to the search of his vehicle and the contents therein,” were not supported by competent evidence.

**II. THE TRIAL COURT ERRED BY DENYING THE MOTION TO SUPPRESS FILED BY MR. BATES’S TRIAL COUNSEL.**

 The trial court erred by denying the motion to suppress filed by Mr. Bates’s trial counsel. As the trial court found, the search of Mr. Bates’s vehicle was based on Mr. Bates’s consent. (R p 28). Mr. Bates, however, as described above, qualified and limited his consent by disclaiming ownership of the safe. As a “suspect may of course delimit as he chooses the scope of the search to which he consents,” *Florida v. Jimeno*, 500 U.S. 248, 252, 111 S. Ct. 1801, 1804, 114 L. Ed. 2d 297, 303 (1991), Mr. Bates’s denial of ownership excluded the locked container from the area available for Deputy Watson’s search. Accordingly, the controlled substances found inside the locked container were produced by an unconstitutional search, and the trial court’s oral and written conclusions of law to the contrary were reached in error. Specifically, the trial court’s legal conclusion that Mr. Bates’s constitutional rights were not violated by the improper search was not supported by the competent findings of fact. (R p 28). Therefore, as each of Mr. Bates’s convictions was based on the evidence found in the safe, this Court should vacate the judgments issued against Mr. Bates.

CONCLUSION

The trial court erred by denying the motion to suppress filed by Mr. Bates’s trial counsel. Mr. Bates did not consent to the search of the locked container. Therefore, the controlled substances found in the locked container were found as a result of an improper search and should have been suppressed by the trial court. This Court, therefore, should vacate the judgments against Mr. Bates.

 Respectfully submitted, this the 27th day of August, 2021.

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CERTIFICATE OF WORD COUNT

 I hereby certify that the Brief of Defendant-Appellant complies with North Carolina Rule of Appellate Procedure 28(j).

 This the 27th day of August, 2021.

 /s/ Drew Nelson

 Drew Nelson

 ATTORNEY FOR DEFENDANT-APPELLANT

CERTIFICATE OF FILING AND SERVICE

 I hereby certify that the Brief of Defendant-Appellant and the associated appendix were filed electronically with the North Carolina Court of Appeals, pursuant to North Carolina Rule of Appellate Procedure 26.

 I further certify that a copy of the foregoing brief and appendix was duly served by electronic mail, as of the date below, pursuant to and in compliance with North Carolina Rule of Appellate Procedure 26, upon:

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 Drew Nelson

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APPENDIX OF BRIEF OF DEFENDANT-APPELLANT

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