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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-585

Filed: 2 June 2020

Haywood County, Nos. 17 CRS 52202 51-52

STATE OF NORTH CAROLINA

v.

LARRY GENE KEARNEY II

Appeal by Defendant from Judgments entered 1 May 2018 by Judge R. Gregory Horne in Haywood County Superior Court. Heard in the Court of Appeals 5 February 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Jonathan J. Evans, for the State.

Dylan J.C. Buffum for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Larry Gene Kearney II (Defendant) appeals from Judgments entered on 1 May 2018 upon his convictions of Trafficking in Cocaine by Possessing 400 Grams or More, Trafficking in Cocaine by Transporting 400 Grams or More, and Assault on a Female.

On appeal, Defendant does not challenge his conviction for Assault on a Female. The Record and evidence presented at trial tend to show the following:

Around 5 a.m. on the morning of 2 July 2017, Faralee Chopski (Chopski), called 911 to report Defendant had physically assaulted her and taken her cellphone and keys before leaving her house. Chopski told the dispatcher she ran to a neighbor's house to use the phone and that she was four-months pregnant. Chopski provided a physical description of Defendant, his date of birth, and a description of Defendant's rental car—a charcoal grey Ford Focus with Florida tags.

Minutes later, around 5:18 a.m., Haywood County Sheriff's Deputies Seth Brown (Deputy Brown) and Ken Stiles (Deputy Stiles) responded to the 911 call and found Chopski walking down the middle of the road. Deputies Brown and Stiles stopped their patrol car and got out to speak with Chopski. Chopski told Deputies Brown and Stiles she had an argument with her boyfriend, Defendant, which turned into a physical altercation. She repeated she was four-months pregnant and gave Deputies Brown and Stiles a physical description of Defendant and his rental car matching the description she previously provided to 911 dispatch. Chopski informed Deputies Brown and Stiles Defendant "was on federal probation, . . . that he could possibly have a gun[,] and that he had a large amount of dope[.]" Deputy Stiles had

the dispatcher issue a “be on the lookout” (BOLO) for Defendant on domestic assault charges.

Around 9 a.m. that morning, Lake Junaluska Security Officer Michael Buckner (Officer Buckner) radioed the Sheriff’s Office to report a driver in a charcoal Ford with a Florida license plate matching the BOLO. Deputy David Stoller (Deputy Stoller) responded to the area and confirmed the vehicle with Officer Buckner. Deputy Stoller also confirmed that the driver of the car matched the description of Defendant provided in the BOLO. Having confirmed both the driver and car matched the descriptions in the BOLO, Deputy Stoller activated his emergency lights and pulled over the car.

Deputy Stoller approached the car and informed the driver “he resembled a suspect and vehicle in [an] assault.” The driver complied with Deputy Stoller’s request for personal identification, and Deputy Stoller confirmed with dispatch the driver was Defendant and that there were two active warrants for Defendant’s arrest. Deputy Stoller asked Defendant if he was staying in the area, and Defendant responded he was “visiting a girl.” Deputy Stoller inquired if they had an altercation that morning, to which Defendant responded they had been arguing.

Deputy Stoller asked Defendant to step out of the car. Defendant complied, grabbing his wallet, keys, and cigarettes. Once Defendant exited the car, Deputy Stoller informed Defendant of pending warrants for his arrest and asked him to put

his hands behind his back before handcuffing him. At that time, Deputy Brown arrived at the scene of the stop and advised Deputy Stoller of Chopski's statements indicating there was "dope" in the car. Deputy Stoller called for a K-9 officer. Deputies Brown and Stoller searched Defendant, finding \$2,389.00 in cash, which they counted and returned to Defendant.

Soon thereafter, Haywood County Sheriff's Sergeant Craig Campbell (Sergeant Campbell) and then-Officer William Benhart (Sergeant Benhart), a K-9 handler with the Waynesville Police Department, arrived with Sergeant Benhart's dog Valor. Valor, a certified narcotics-detection dog, was trained to detect methamphetamine, cocaine, marijuana, and heroin. Sergeant Benhart led Valor on a cursory walk around the premises of Defendant's rental car. During this cursory walk, Sergeant Benhart noted Valor "bracketed" the passenger side by the trunk. Sergeant Benhart testified bracketing was a type of "back and forth sniffing" that occurred when Valor "found an odor that got his attention[.]" Sergeant Benhart then began a detailed search with Valor, pointing out seams and areas of the car that may hold narcotics odors for Valor to sniff. On this detailed search, Valor sat by the car's front passenger window, which Sergeant Benhart testified constituted a "final response" indicating the presence of narcotics. Sergeant Benhart testified he believed marijuana was in the car, claiming he smelled the odor when he first approached and in light of Valor's final response and unusual behavior on the search.

Sergeant Benhart opened the car door to let Valor inside the car to pinpoint the location of the suspected narcotics. Sergeant Benhart observed Valor lay down in the back seat and try to push his head into the trunk, which he described as an “unusual change in behavior.” Sergeant Benhart, believing Valor was “messaging around,” redirected Valor to the search at hand. Valor moved to the front seat, sniffed the steering wheel and gear shift, and gave another final response. Valor returned to the backseat and again lay down before leaving the car.

After noting Valor’s final responses inside and outside of the car as well as his “bracketing” at the exterior of the trunk, Sergeant Benhart informed Sergeant Campbell and Deputies Brown and Stoller they were “good to search the vehicle.” Deputy Stoller and Sergeant Benhart began searching the driver and passenger areas of the car while Deputy Brown and Sergeant Campbell searched the car’s trunk. Deputy Brown observed several bags, including a blue bag, and clothes strewn about the trunk. Deputy Brown opened the blue bag and found “four individual cases of compressed powder in blocks” and several bags of individually wrapped pills. Deputy Brown immediately notified Deputy Stoller. Deputy Stoller observed the “vacuum-sealed bags with a white substance inside[,]” which he believed to be cocaine or fentanyl.

After finding the suspected controlled substances, Sergeant Campbell, the highest-ranking officer at the scene, ordered the deputies to stop their search.

Sergeant Benhart requested the bags containing the suspected controlled substances be returned to the trunk so Valor could be rewarded “from the source.” The deputies again removed the items from the trunk of the car and placed them on the road beside the car, where Valor once again alerted to the items and was rewarded. Deputy Stoller photographed the recovered items and completed an evidence sheet and vehicle inventory sheet. Defendant’s rental car was subsequently towed away.

Deputy Brown brought Defendant before a magistrate where Defendant was served with a warrant for his arrest for Assault on a Female and Battery on an Unborn Child. Meanwhile, Deputy Stoller took the suspected controlled substances to the Sheriff’s Office where he placed them in an evidence locker for preliminary testing. Detective Micah Phillips conducted two field tests on the substances, resulting in “two positive preliminary” results. After receiving the preliminary positive results, the substances were repackaged and sent to the North Carolina State Crime Lab for further testing. Thomas Rockhold, a Forensic Scientist with the State Crime Lab, conducted forensic chemical analyses on the suspected controlled substances. The forensic chemical analyses revealed the white powdered substance to be 498.46 grams of cocaine; the pills contained no controlled substances.

On 10 July 2017, Defendant was indicted with Maintaining a Vehicle for Controlled Substances, Assault on a Female by Male, Battery of an Unborn Child, Trafficking in Cocaine by Possessing 400 Grams or More, and Trafficking in Cocaine

by Transporting 400 Grams or More. On 12 April 2018, Defendant filed a pretrial motion captioned Motion to Exclude Evidence Obtained via Search Without Warrant (Motion to Suppress). Defendant argued the law enforcement officers did not have probable cause to search Defendant's rental car and therefore the search was unconstitutional.

On 23 April 2018, Defendant's case came on for trial. Prior to trial, the trial court heard arguments on Defendant's Motion to Suppress. The trial court denied Defendant's Motion and orally rendered the following Findings of Fact and Conclusions of Law:

The Court finds -- would make the following findings of fact. . . . The State has presented the certificates for . . . Officer Benhart as well as the dog, Valor, showing that each has been certified by a relevant certifying agency. Valor is a detection dog and has been trained in detecting cocaine, heroin, methamphetamine and marijuana. . . . That the dog and the handler have had extensive both training and experience as well as actual experience in the field. That the Court has been presented with and admitted into evidence. . . the training records for the dog and handler spanning the period August 2014 through July 2017, that being the date of the present action as well as the State has tendered and the Court has admitted . . . the deployment records, showing both handler and dogs were from September 2014 until July 2017. The Court finds that over this relevant period of time there have been 156 true positives, 10 false positives that corresponds to a -- in [excess] of a 93 percent success rate. The Court does acknowledge that the -- that figure does not take into account or is not -- the additional step hasn't been taken to verify if some of those substances were tested to show otherwise, and the Court does not find that this is determinative in the Court's determination as to the dog's reliability and training. The Court finds that the dog has

been more than proficient in the field and training exercises in detecting the narcotics to which he has been trained to detect.

Based upon these findings the Court would further find that . . . the dog gave an initial search of the vehicle, that upon that initial walk around the vehicle he alerted on the back passenger area, that he bracketed in addition to alerting and coming back to the area and thereby bracketing the area, that the dog demonstrated a clear change in behavior. . . . But clearly it's shown in the video the dog's change in behavior. The dog completed the initial sweep then came back. At that time Sergeant Benhart pointing out seams for the dog to examine. The Court finds from the evidence presented that the dog again alerted on that portion of the vehicle as the dog came back through and, in fact, gave a final response as he had been trained to do at the back passenger door as observed by Sergeant Benhart, his trained handler. That the -- that this, based upon the reliability of the dog and handler and the dog's final response created at that point probable cause to proceed further with the search of the vehicle.

That the Court would find and conclude that at that point the totality of the circumstances, the officers could have simply searched the vehicle and its contents to include the trunk under *U.S. v. Ross*[, 465 U.S. 798, 72 L. Ed. 2d 593 (1982),] and *State v. Isleib*[, 319 N.C. 634, 356 S.E.2d 573 (1987)]. However, Sergeant Benhart opened the passenger side door, having determined probable cause was present, and allowed the dog inside. The dog further alerted, aggressively alerted in the back portion and again gave a final response inside -- at this point inside the vehicle. That thereafter the officers began their search and found the contraband that is the subject of this motion to suppress, that being what the State alleges to be 2.2 pounds of cocaine and some type of pills.

. . . .

The Court would further find that probable cause existed to conduct a search of the vehicle and its contents. The Court

concludes that the search was lawful and that the evidence seized thereafter is admissible in the subsequent trial of this case.

The trial court proceeded with Defendant's trial, during which the State called Chopski as a witness. Chopski's testimony highlighted her ongoing and tumultuous relationship with Defendant. Chopski testified she was pregnant with Defendant's child or children at the time of the July 2017 assault but she lost the pregnancy shortly after. Chopski admitted, however, she "led [Defendant] on for a long time" after that and "finally told him in October [2017] that [she] lost the baby." Chopski further described a plan she made with Defendant to change her story about the 2 July 2017 assault to implicate her ex-husband and exonerate Defendant. Chopski testified about a statement she provided the District Attorney stating it was her ex-husband, not Defendant, who assaulted her on 2 July 2017 after he discovered Defendant was visiting her. Chopski's statement also alleged her ex-husband planted the drugs in Defendant's rental car. However, when questioned at Defendant's trial, Chopski testified her statements implicating her ex-husband were false.

At the close of the State's evidence, Defendant moved to dismiss all charges against him (Motion to Dismiss). The State voluntarily dismissed the charge of Maintaining a Vehicle for Controlled Substances. The trial court denied Defendant's motion as to the remaining charges, "find[ing] that there has been substantial evidence presented to each element of each of the remaining charges and that the defendant was the perpetrator of the offenses." The jury returned verdicts finding

Defendant guilty of Trafficking in Cocaine by Possessing 400 Grams or More, Trafficking in Cocaine by Transporting 400 Grams or More, and Assault on a Female. The jury found Defendant not guilty of Assault of an Unborn Child.

Defendant stipulated his prior record level was IV, and Defendant's conviction for Assault on a Female was consolidated for judgment with his conviction for Trafficking by Possession. The trial court found Defendant had "10 months pretrial confinement to which he would be entitled to credit." The trial court made "the same findings as before" as to Defendant's conviction for Trafficking by Transportation. The trial court sentenced Defendant to a concurrent, active sentence of 175 months to 222 months and imposed two mandatory, minimum fines of \$250,000.00 each for his trafficking violations. Defendant gave Notice of Appeal in open court.

Issues

Defendant presents four issues on appeal: (I) whether the trial court erred in denying his Motion to Suppress on the basis the search of the rental car's trunk constituted an unconstitutional search without probable cause; (II) whether the trial court erred in denying his Motion to Dismiss the trafficking charges due to insufficiency of the evidence presented at trial; (III) whether the trial court's imposition of two fines—totaling \$500,000.00—violated his Eighth Amendment right against excessive fines; and (IV) whether the trial court erroneously omitted credit

for 304 days served in pretrial confinement for Defendant's Trafficking by Transportation sentence.

Analysis

I. Motion to Suppress

Defendant challenges the trial court's denial of his Motion to Suppress evidence seized during the search of the rental car, arguing there was a lack of probable cause to justify the warrantless search of the car's trunk. Here, the trial court held pretrial arguments on Defendant's Motion to Suppress. At the conclusion of the arguments, the trial court denied Defendant's Motion to Suppress and orally rendered Findings of Fact and Conclusions of Law into the Record, ultimately finding probable cause existed under the totality of the circumstances to search the car and the trunk.

When reviewing a trial court's denial of a motion to suppress, we are 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. Wells, 225 N.C. App. 487, 489, 737 S.E.2d 179, 180-81 (2013) (citation and quotation marks omitted); see *Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) ("Findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if there is evidence to the contrary." (alterations, citation, and quotation marks omitted)). "Competent

evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *State v. Chukwu*, 230 N.C. App. 553, 561, 749 S.E.2d 910, 916 (2013) (citation and quotation marks omitted).

A. Findings of Fact

Defendant argues the evidence did not demonstrate Valor positively alerted to both the interior compartment *and* trunk of Defendant’s rental car and therefore probable cause did not exist to justify a warrantless search of the rental car’s trunk. Defendant contends several aspects of the trial court’s oral findings are not supported by competent evidence and therefore do not support the existence of probable cause to justify the warrantless search.

First, Defendant challenges the trial court’s finding Valor was proficient in detecting narcotics. During the pretrial hearing on Defendant’s Motion to Suppress, the trial court heard testimony and received evidence regarding the extensive training and certification of both Valor and Sergeant Benhart. Sergeant Benhart testified he began working with Valor as a K-9 handler in 2014—over two years before the search at issue in the case *sub judice*. Sergeant Benhart described the annual training and certification processes he completed with Valor through the United States Police Canine Association for the detection of narcotics. The trial court also found, and Defendant did not challenge, from September 2014 to July 2017 Valor had “156 true positives, 10 false positives that corresponds to a -- in [excess] of a 93

percent success rate.” Thus, considering the more than two years Sergeant Benhart worked as Valor’s handler, their annual training, certification, and recertification processes, and Valor’s more than ninety-three percent success rate, there is competent evidence to support the trial court’s finding Valor was “proficient in the field and training exercises in detecting narcotics.”

Second, Defendant contends the trial court’s finding Valor gave a final response by the *back* passenger door is erroneous, instead asserting Valor’s final response was only to the *front* passenger door. Sergeant Benhart testified on Valor’s detailed search of the car’s premises, Valor gave a final response by sitting after sniffing the *front* passenger window. Thus, it appears the trial court may have misspoken when it found Valor alerted to the back passenger door.¹ However, viewing the trial court’s oral finding in its totality, the trial court generally accurately captured the interaction, including:

[T]he dog gave an initial search of the vehicle, that upon that initial walk around the vehicle he alerted on the back passenger area, that he bracketed in addition to alerting and coming back to the area and thereby bracketing the area, that the dog demonstrated a clear change in behavior. . . . But clearly it’s shown in the video the dog’s change in behavior. The dog completed the initial sweep then came back. At that time Sergeant Benhart pointing out seams for the dog to examine. The Court finds from the evidence presented that the dog again

¹ Although, to be fair, in addition to Sergeant Benhart’s testimony, the trial court also viewed bodycam video of the stop and search and, in part, based its findings on its own independent viewing. Thus, it may well have reached its own conclusion from seeing that video. However, the State, on appeal, makes no argument this was the case or that the video departs in any fashion from the Sergeant’s testimony.

alerted on that portion of the vehicle as the dog came back through[.]

Thus, even excluding the trial court's statement Valor gave a final response by the back passenger door, taken in context and in totality, the trial court's findings as to Valor's initial search outside the vehicle (including specifically the rear portion of the car) are overall supported by the evidence.

Defendant further asserts the trial court's finding Valor, once inside the car, "aggressively alerted in the back portion and gave a final response" inside the car is not supported by competent evidence because Sergeant Benhart testified Valor is a "passive alert dog" and thus Defendant argues Valor's aggressive behavior in the rear of the car could not constitute a "passive" final response. However, the evidence reflects after Valor gave a final response outside of the car, Sergeant Benhart let Valor inside to "pinpoint" the location of any narcotics. Sergeant Benhart observed Valor exhibit a "really unusual change in behavior" when Valor "lay down in the back seat and after sniffing the armrest that folds down in the back . . . [was] trying to push his head into the trunk." Valor then moved to the front seat of the car where he sniffed the steering wheel and gear shift and lay down on the floorboard to give another final response. Before exiting the car, Valor returned to the backseat and, again, lay down. Accordingly, the trial court's finding Valor "gave a final response inside the vehicle" is supported by competent evidence. The portion of the trial court's finding Valor "aggressively alerted" is supported by Valor's "unusual change in

behavior” in the backseat where he “tr[ied] to push his head into the trunk.” Therefore, the trial court’s finding is also supported by competent evidence.

B. Conclusions of Law

Having determined the trial court’s findings are generally supported by the evidence in the Record, our inquiry now becomes whether those supported findings in turn support the trial court’s conclusions “probable cause existed to conduct a search of the vehicle and its contents[]” and “the search was lawful and that the evidence seized thereafter is admissible in the subsequent trial of this case.” “A trial court’s conclusions of law on a motion to suppress are reviewed *de novo* and are subject to a full review, under which this Court considers the matter anew and freely substitutes its own judgment for that of the trial court.” *State v. Ashworth*, 248 N.C. App. 649, 658, 790 S.E.2d 173, 179-80 (2016).

In *United States v. Ross*, the United States Supreme Court held, “[t]he scope of a warrantless search of an automobile . . . is defined by the object of the search and the places in which there is probable cause to believe that it may be found.” 456 U.S. 798, 824, 72 L. Ed. 2d 572, 593 (1982); *see also Arizona v. Gant*, 556 U.S. 332, 347, 173 L. Ed. 2d 485, 498 (2009) (“If there is probable cause to believe a vehicle contains evidence of criminal activity, [*Ross*] authorizes a search of any area of the vehicle *in which the evidence might be found*.” (emphasis added)). Thus, there must be probable

cause to support a warrantless search of both the interior compartment and trunk of Defendant's car. Considering the circumstances of this case, we conclude there was.

In the present case, Chopski called 911 and reported Defendant assaulted her. Chopski provided dispatch with her name and location, as well as with a detailed description of Defendant—including his height, weight, birthday, and residence—as well as a description of his rental car. Deputies Brown and Stiles responded to the call and spoke with Chopski. Deputies Brown and Stiles testified Chopski had injuries consistent with an assault. Chopski also provided Deputies Brown and Stiles with descriptions of Defendant and his car consistent with the descriptions provided to dispatch and informed Deputies Brown and Stiles Defendant had “dope.” When Deputy Stoller responded to Officer Buckner's report, he was able to corroborate Chopski's allegations by finding Defendant in a grey Ford with Florida tags, as Chopski described. Moreover, Defendant admitted to Deputy Stoller he had been visiting “a girl” in the area and they had gotten into an argument earlier that morning—further corroborating Chopski's report.

Deputy Brown arrived at the scene of the stop and informed Deputy Stoller about Chopski's report Defendant possessed “dope.” Deputy Stoller called for a K-9, and Sergeant Benhart and Valor responded to the scene of the stop. Sergeant Benhart deployed Valor, and Valor bracketed at the rear trunk of the car as well as alerted to the front passenger side—behaviors Sergeant Benhart testified were

consistent with the detection of the odor of narcotics. The trial court found Valor was proficient at the detection of narcotics and exhibited a clear change in behavior by bracketing at the rear of the car. In addition to Valor's uncharacteristic behavior in the rear seat, trying to dig into the back seat, Valor gave a final passive response in the front seat of the car, indicating the presence of narcotics, and, as the trial court found, returned to the rear seat and again gave a passive response. Thus, considering both Chopski's report—the specific details of which had been corroborated by the arrest of Defendant—and Valor's alerts at both the rear trunk and the front passenger side, which further corroborated Chopski's report, probable cause existed to search both the car and its trunk. *See State v. Washburn*, 201 N.C. App. 93, 100, 685 S.E.2d 555, 560 (2009) (“[A] positive alert for drugs by a specially trained drug dog gives probable cause to search the area or item where the dog alerts.”). The trial court's findings, supported by competent evidence, support its conclusion probable cause existed to search the car, including the trunk. Accordingly, the trial court did not err when it denied Defendant's Motion to Suppress.

II. Motion to Dismiss

Defendant contends the trial court erred in denying his Motion to Dismiss for insufficient evidence because the State failed to present substantial evidence of each element of the offense of trafficking—namely, that Defendant “knowingly possess[ed] or transport[ed] the controlled substances.” We disagree.

“Upon defendant’s motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation and quotation marks omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994).

In the present case, Defendant was convicted for Trafficking Cocaine under N.C. Gen. Stat. § 90-95(h)(3), which states, “[a]ny person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine . . . shall be guilty of a felony, which felony shall be known as ‘trafficking in cocaine[.]’ ” N.C. Gen. Stat. § 90-95(h)(3) (2019). “To establish both trafficking by possession and trafficking by transportation the State must show that defendant knowingly possessed or transported, respectively, the requisite amount of cocaine.” *State v. Lopez*, 219 N.C. App. 139, 150, 723 S.E.2d 164, 172 (2012). “The possession element of [trafficking in cocaine] can be proven by showing either actual possession or constructive

possession.” *State v. Siriguanico*, 151 N.C. App. 107, 110, 564 S.E.2d 301, 304 (2002) (citation omitted).

Defendant contends the “mere presence” of Defendant in the car combined with Chopski’s “wholly incredible and self-serving allegations” did not rise to substantial evidence. However, this Court has repeatedly held where “the evidence showed defendant was driving the vehicle which contained cocaine, this alone was enough to show that defendant’s possession was knowing and to support the denial of the defendant’s motion to dismiss.” *Lopez*, 219 N.C. App. at 150, 723 S.E.2d at 172; see *State v. Nettles*, 170 N.C. App. 100, 103-04, 612 S.E.2d 172, 174-75 (2005) (“This Court previously has stated that an inference of constructive possession arises when the State’s evidence shows a defendant was the ‘custodian of the vehicle where the controlled substance was found.’” (citation omitted)); see also *State v. Dow*, 70 N.C. App. 82, 85, 318 S.E.2d 883, 886 (1984) (“[P]ower to control the automobile where a controlled substance was found is sufficient, in and of itself, to give rise to the inference of knowledge and possession sufficient to go to the jury.”).

Here, we conclude the State presented substantial evidence “(1) of each essential element of the offense charged . . . and (2) of defendant’s being the perpetrator of such offense.” *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (citation and quotation marks omitted). Although Chopski testified at trial to having previously lied to Defendant and admitted she previously fabricated a story implicating her ex-

husband, we resolve any contradictions in the evidence in favor of the State. *See Rose*, 339 N.C. at 192, 451 S.E.2d at 223.

The evidence taken in the light most favorable to the State unequivocally established Defendant was driving the vehicle at the time of the stop and, in fact, was the only occupant. Defendant's name was the only name on the rental agreement, and Defendant could not identify anyone to take the car after his arrest. Here, as in *Lopez*, "the evidence showed [D]efendant was driving the vehicle which contained cocaine," which "alone was enough to show that [D]efendant's possession was knowing and to support the denial of the [D]efendant's motion to dismiss." 219 N.C. App. at 150, 723 S.E.2d at 172. Thus, the trial court did not err in denying Defendant's Motion to Dismiss.

III. Excessive Fines

Defendant next contends the imposition of two mandatory \$250,000.00 fines pursuant to N.C. Gen. Stat. § 90-95(h)(3)(c) violates his right to be free from excessive fines under the Eighth Amendment of the United States Constitution. However, "a constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal." *State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982). At Defendant's sentencing hearing, Defendant did not object to the imposition of the fines required by N.C. Gen. Stat. § 90-95(h)(3)(c) under either the United States or North Carolina Constitutions. Accordingly, "[D]efendant waived

[his] Eighth Amendment argument by failing to raise it before the sentencing court.”

State v. Meadows, 371 N.C. 742, 749, 821 S.E.2d 402, 407 (2018).²

IV. Pretrial Credit

Lastly, Defendant argues, and the State concedes, the trial court erred by failing to provide credit for 304 days of pretrial confinement as to both of Defendant’s convictions.

Under N.C. Gen. Stat. § 15-196.1 . . . , a defendant is entitled to credit for “the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional institution as a result of the charge that culminated in the sentence.” Defendant thus has a statutory right to credit against his sentence for any time spent in custody on that particular charge, whether pre-trial or post-conviction.

State v. Reynolds, 164 N.C. App. 406, 408, 595 S.E.2d 788, 789 (2004) (alterations and citation omitted).

At Defendant’s sentencing, the trial court found Defendant had 304 days of pretrial confinement “to which he would be entitled credit[,]” and the Judgment for Trafficking by Possession reflects this pretrial credit. When the trial court sentenced Defendant for Trafficking by Transportation, it indicated it “would make the same

² Defendant cites the United States Supreme Court’s recent decision in *Timbs v. Indiana*, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019), which held the Eighth Amendment’s Excessive Fines Clause applied to the states. We review unpreserved arguments if “[a] significant change in law, either substantive or procedural, applies to the proceedings leading to defendant’s conviction or sentence.” N.C. Gen. Stat. § 15A-1446(d)(19). Even if we were to construe Defendant’s discussion of *Timbs* as a “significant change in law” argument, he does not explain how this is the case given that our State constitution forbade “excessive fines” throughout the course of the trial and appellate proceedings. N.C. Const. art. I, § 27.

findings as before.” However, the separate Judgment for Trafficking by Transportation (designated with file number 17 CRS 052202 52)³ does not reflect the 304 days of pretrial confinement credit. The State concedes Defendant is entitled to 304 days of pretrial credit for his conviction of Trafficking by Transportation. Therefore, we vacate that Judgment (17 CRS 052202 52) and remand to the trial court for entry of a new judgment crediting Defendant for his 304 days of pretrial confinement towards his Trafficking by Transportation conviction and sentence.

Conclusion

Accordingly, for the foregoing reasons, we conclude the trial court did not err in denying Defendant’s Motion to Suppress or Motion to Dismiss. We do, however, vacate the Judgment for Trafficking by Transportation (17 CRS 052202 52) and remand to the trial court for entry of a new judgment for Trafficking in Cocaine by Transportation by crediting Defendant for his pretrial confinement as conceded by the State.

NO ERROR IN PART; VACATED IN PART AND REMANDED.

Judges TYSON and BROOK concur

Report per Rule 30(e).

³ In contrast, the consolidated Judgment for Trafficking by Possession and Assault on a Female is designated by file number 17 CRS 052202 51.