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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-817

Filed 7 May 2025

Watauga County, Nos. 21CRS51189-940, 21CRS51190-940

STATE OF NORTH CAROLINA

v.

DAVID LEE COLLINS, Defendant.

Appeal by defendant from judgments entered 8 December 2022 by Judge Gregory R. Hayes in Superior Court, Watauga County. Heard in the Court of Appeals 11 June 2024.

*Attorney General Jeff Jackson, by Assistant Attorney General John H. Schaeffer, for the State.*

*Patterson Harkavy LLP, by Paul E. Smith, for defendant-appellant.*

STROUD, Judge.

Defendant appeals from judgments entered upon jury verdicts finding him guilty of three counts of trafficking in methamphetamine and two counts of maintaining a vehicle or dwelling place for keeping and selling controlled substances. For the following reasons, we hold the trial court did not err in denying Defendant's motions to suppress and motion to dismiss the charge of maintaining a vehicle.

## **I. Background**

On 11 June 2021, Detective Todd Arnette with the Watauga County Sheriff's Office applied for an order authorizing the installation and monitoring of an electronic tracking device on Defendant's 2021 Dodge Ram 1500 truck. Detective Arnette's supporting affidavit disclosed the following information:

Since 2019, multiple law enforcement agencies had been investigating the drug distribution activities of a criminal organization operating in and around Watauga County, North Carolina. During the investigation, law enforcement identified Defendant as "an integral part of the drug trafficking organization supplying individuals in Watauga County . . . with substantial quantities of methamphetamine."

On 12 April 2021, a confidential reliable informant ("CRI") conducted a controlled buy from Defendant, purchasing seven grams of methamphetamine. The CRI told officers that Defendant "was making trips off the mountain to pick up methamphetamine[,] obtaining rides from whoever was available because Defendant's license was suspended and he did not have a vehicle of his own.

On 14 April 2021, the CRI conducted another controlled buy from Defendant, purchasing twenty-eight grams of methamphetamine. The CRI conducted two more controlled buys from Defendant, purchasing fifty-six grams of methamphetamine on both 21 April 2021 and 26 May 2021. Prior to these controlled buys, detectives were made aware that Defendant "had recently made a trip to purchase a large quantity

of methamphetamine in order to restock his supply.”

On 26 May 2021, the CRI informed officers that Defendant “had just purchased a new Dodge Ram 1500” truck and that Defendant “had made a statement about going to pick up a kilogram of methamphetamine from off the mountain” the “next week.” Officers confirmed the Dodge truck was registered to Defendant and his daughter and observed the vehicle at Defendant’s place of work.

On 11 June 2021, Judge Michael Duncan entered an order authorizing the installation and monitoring of a GPS tracking device on Defendant’s vehicle for a period of sixty days, finding probable cause to believe that the Dodge truck was being used and would likely be used in the future to traffic methamphetamine.

On 2 August 2021, Sergeant<sup>1</sup> Garrett Norris with the Watauga County Sheriff’s Office was on duty as a patrol deputy when narcotics detectives requested his assistance in conducting a traffic stop of a vehicle that was the subject of a narcotics investigation. Detectives informed Sergeant Norris that there was a dark gray or black newer model Dodge truck “that was traveling towards Watauga County from off the mountain that contained an illegal substance.” Around 11:30 p.m., Sergeant Norris observed the Dodge truck traveling northbound on U.S. Highway 421 South towards Boone. Sergeant Norris pulled his vehicle behind the truck and ran the license plate, which revealed that Defendant was the registered owner of the

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<sup>1</sup> Norris was promoted to Sergeant in November 2021.

vehicle and had a suspended license. Sergeant Norris initiated a traffic stop by activating his blue lights.

After approaching the vehicle, Sergeant Norris identified the driver of the truck as Kathy Shelton, who also did not have a valid driver's license, and the male passenger as Defendant. Sergeant Norris observed a large amount of money in Ms. Shelton's wallet while she was looking for her identification. He also observed that both individuals appeared nervous and that Defendant had leaned back in his seat and "raised his leg up towards the dash of the vehicle."

Upon returning to his vehicle, Sergeant Norris requested K-9 Officer Evan Laws with the Boone Police Department conduct a free-air sniff of the vehicle with his K-9, Ziva. Ziva indicated a positive alert for narcotics at the driver's open window. As a result, Sergeant Norris asked Ms. Shelton and Defendant to exit the vehicle and conducted a search of the truck. Officers found a "Ziplock bag under the passenger dash in a hidden compartment containing a large amount of a crystal substance" that was later confirmed to be methamphetamine and "\$492.00 in cash located in the vehicle."

After officers discovered the drugs in the vehicle, Defendant and Ms. Shelton consented to a search of their home. During the search, officers located three clear plastic bags of methamphetamine: one containing sixty-eight grams, one containing approximately four grams, and one containing approximately one gram. Officers also found \$545.00 in cash inside the home.

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*Opinion of the Court*

On 14 March 2022, Defendant was indicted on three counts of trafficking in methamphetamine, one count of maintaining a vehicle for the purpose of selling or keeping controlled substances, and one count of maintaining a dwelling for the purpose of selling or keeping controlled substances.

Prior to trial, Defendant moved to suppress the evidence seized as a result of the GPS tracking device, the search of his vehicle, and the search of his home. Defendant argued Detective Arnette’s affidavit failed to establish probable cause that the Dodge truck “would be used for specific illegal activities[,]” and failed to establish probable cause justifying the installation of the GPS tracking device for sixty days. Regarding the motions to suppress evidence seized from the search of his vehicle and house, Defendant argued Ziva’s positive alert did not provide probable cause to search the vehicle following the legalization of hemp, and Defendant’s consent to search the house following the search of his vehicle was not voluntary and was the product of intimidation and coercion.

Following a suppression hearing held 26 and 27 October 2022, the trial court denied Defendant’s motions. The court later memorialized its rulings in separate orders in which it concluded that “[b]ased on . . . [D]efendant’s prior history as set forth in the [a]ffidavit and his conversations with the CRI, it was reasonable for detectives to conclude . . . [D]efendant would be using the truck to purchase and transport methamphetamine[.]” The court concluded that “[b]ased on the totality of the circumstances,” Judge Duncan “had a substantial basis for concluding that

probable cause existed for the installation of the GPS tracking device[ ]” and that “[t]he sixty day time period was reasonable under the circumstances[.]”

The trial court also concluded that K-9 Ziva’s positive alert provided probable cause to search the vehicle, and that the alert “in conjunction with prior controlled buys of methamphetamine from . . . [D]efendant, the GPS tracking device information, false statement by the driver of where they had been, observation of cash in the vehicle, and . . . [D]efendant placing his foot up under the dash area provided probable cause to search[.]” Finally, the court concluded that the consent to search the home provided by Defendant and Ms. Shelton “was freely and voluntarily given without coercion or duress[.]”

Defendant’s case came on for trial on 5 December 2022. At the close of the State’s evidence, Defendant moved to dismiss the charges for insufficient evidence, which the trial court denied. Defendant did not present any evidence and renewed his motions to dismiss, which the court again denied. The jury found Defendant guilty on all counts charged. The trial court consolidated one count of trafficking methamphetamine with the maintaining a vehicle conviction and sentenced Defendant to four consecutive sentences totaling 258 to 352 months of imprisonment. Defendant gave oral notice of appeal.

## **II. Motions to Suppress**

On appeal, Defendant challenges the trial court’s denials of his motions to suppress evidence obtained as a result of the installation of the GPS tracking device,

the search of his vehicle, and the search of his home.

“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) (citation omitted). “[T]he trial court’s findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *State v. Allen*, 197 N.C. App. 208, 210, 676 S.E.2d 519, 521 (2009) (citation and quotation marks omitted). Unchallenged findings of fact “are deemed to be supported by competent evidence and are binding on appeal.” *Biber*, 365 N.C. at 168, 718 S.E.2d at 878 (citation omitted). “The trial court’s conclusions of law are subject to *de novo* review.” *Allen*, 197 N.C. App. at 210, 676 S.E.2d at 521 (citation omitted). “Under a *de novo* review, the [C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citation and quotation marks omitted). However, “[a] trial court’s ruling on a motion to suppress is afforded great deference upon appellate review as it has the duty to hear testimony and weigh the evidence.” *State v. Cobb*, 381 N.C. 161, 164, 872 S.E.2d 21, 25 (2022) (citation and quotation marks omitted).

#### **A. GPS Monitoring**

Defendant argues the trial court erred in denying his motion to quash the order permitting the installation of the GPS tracking device on his vehicle and to suppress

all evidence seized following the installation of the GPS tracker. Defendant argues the affidavit in support of the warrant to install the GPS tracking device failed to show probable cause that the truck would be used for methamphetamine trafficking and the authorization of the GPS monitoring for sixty days was an unreasonably long period of time.

### ***1. Challenged Findings***

Defendant first challenges finding of fact 6, which states “as set forth in the [a]ffidavit, . . . [D]efendant has exhibited a pattern of possessing and selling large quantities of methamphetamine, increasing in amounts from approximately seven grams on [12 April 2021] to approximately 56 grams on [26 May 2021].” Defendant argues this finding “is not supported by competent evidence to the extent it can be read as inconsistent with Det. Arnette’s affidavit[ ]” which identified four controlled buys of methamphetamine: seven grams on 12 April 2021; twenty-eight grams on 14 April 2021; fifty-six grams on 21 April 2021; and fifty-six grams on 26 May 2021. Defendant does not elaborate on how this finding is inconsistent with the affidavit. The affidavit identifying the four controlled buys and the increasing quantity purchased from the first buy to the fourth buy is competent evidence to support the finding. The fact that the third and fourth buys were for the same fifty-six gram quantity does not negate the finding.

Defendant next challenges finding of fact 9, in which the court found “[t]hat on [26 May 2021], . . . [D]efendant’s circumstances changed in that narcotics detectives



learned that . . . [D]efendant had purchased a Dodge Ram truck, and on that same date discussed ‘going to pick up a kilogram of methamphetamine from off the mountain.’” Defendant argues this finding is not supported “to the extent it is incomplete, omitting the [CRI’s] statement that [Defendant] ‘talked about making this trip “next week.”’” However, the omission of “next week” does not render the finding unsupported by the evidence. The affidavit stated that on 26 May 2021, the CRI told detectives that Defendant had just purchased a new Dodge Ram 1500 and “had made a statement about going to pick up a kilogram of methamphetamine from off the mountain from a friend of his that he went to high school with” the “next week.” This is competent evidence to support finding of fact 9, and therefore Defendant’s challenge is overruled.

## ***2. Probable Cause***

Defendant argues the trial court erred in denying his motion to quash and suppress evidence because Detective Arnette’s affidavit did not establish probable cause that the Dodge truck would be used to traffic methamphetamine. Defendant contends the affidavit lacked any information connecting the truck to methamphetamine trafficking.

“The Fourth Amendment protects citizens from ‘unreasonable searches and seizures’ and permits warrants to be issued only upon a showing of probable cause.” *State v. McKinney*, 368 N.C. 161, 164, 775 S.E.2d 821, 824 (2015) (quoting U.S. Const. amend. IV). “North Carolina appellate courts have held Article I, Section 20 of the

Constitution of North Carolina provides the same protections against unreasonable search and seizure as the Fourth Amendment to the Constitution of the United States.” *State v. Perry*, 243 N.C. App. 156, 165, 776 S.E.2d 528, 535 (2015) (citation omitted).

The installation of a GPS tracking device on a vehicle, and its use to monitor the vehicle’s movements, constitutes a search under the Fourth Amendment. *See U.S. v. Jones*, 565 U.S. 400, 404, 181 L. Ed. 2d 911, 918-19 (2012). “Courts interpreting the Fourth Amendment have expressed a strong preference for searches conducted pursuant to a warrant. A grudging or negative attitude by reviewing courts toward warrants is inconsistent with that preference.” *McKinney*, 368 N.C. at 164, 775 S.E.2d at 824 (citations and quotation marks omitted). “[C]ourts should not invalidate warrants by interpreting affidavits in a hypertechnical, rather than a commonsense, manner. The resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.” *State v. Sinapi*, 359 N.C. 394, 398, 610 S.E.2d 362, 365 (2005) (citation, quotation marks, and brackets omitted).

“Under North Carolina law, an application for a search warrant must be supported by an affidavit detailing ‘the facts and circumstances establishing probable cause to believe that the items are in the places to be searched.’” *McKinney*, 368 N.C. at 164, 775 S.E.2d at 824 (quoting N.C. Gen. Stat. § 15A-244(3) (2023)). In determining whether probable cause exists to issue a search warrant, the judicial

officer “must make a practical, common-sense decision, based on the totality of the circumstances, whether there is a fair probability that contraband will be found in the place to be searched.” *Id.* (citations and quotation marks omitted). Additionally, the magistrate or other judicial official “is entitled to draw reasonable inferences from the material supplied to him by an applicant for a warrant.” *Sinapi*, 359 N.C. at 399, 610 S.E.2d at 365 (brackets omitted) (quoting *State v. Riggs*, 328 N.C. 213, 222, 400 S.E.2d 429, 434-35 (1991)).

Our Courts employ a totality of the circumstances test to determine whether probable cause existed to issue the search warrant. *See State v. Arrington*, 311 N.C. 633, 641, 319 S.E.2d 254, 259 (1984). “[U]nder the totality of the circumstances test, a reviewing court must determine whether the evidence as a whole provides a substantial basis for concluding that probable cause exists.” *Sinapi*, 359 N.C. at 398, 610 S.E.2d at 365 (citations and quotation marks omitted). “In adhering to this standard of review, we are cognizant that great deference should be paid a [judicial officer’s] determination of probable cause and that after-the-fact scrutiny should not take the form of a *de novo* review.” *Id.* (citation and quotation marks omitted).

Here, Detective Arnette’s affidavit established that: multiple law enforcement agencies had been investigating the drug distribution activities of a criminal organization operating in and around Watauga County, North Carolina since 2019; Defendant was identified as an individual distributing quantities of methamphetamine in the area and had been a known methamphetamine source for

eight months at the time of the affidavit; a CRI conducted four controlled buys of methamphetamine from Defendant between 12 April and 26 May 2021 increasing in quantity from seven grams to fifty-six grams; Defendant “was making trips off the mountain to pick up methamphetamine” to restock his supply; Defendant initially did not have a vehicle of his own so he was getting rides to make the trips; on 26 May 2021, detectives learned Defendant had just purchased a Dodge Ram truck and had “made a statement about going to pick up a kilogram of methamphetamine from off the mountain” the “next week”; and officers had observed the truck at Defendant’s place of work.

Defendant argues the affidavit lacked any information that he drove the truck. However, the affidavit stated that detectives had observed the vehicle at Defendant’s place of work. Thus, it was reasonable for the judge to infer that Defendant drove the truck to his job. Moreover, the affidavit also recognized that Defendant may use the vehicle for his personal use while not necessarily driving it himself, stating that the tracking device would enhance the ability “to conduct surveillance of [Defendant] and/or his drivers[.]”

Defendant also argues the affidavit was insufficient because it did not contain any information regarding the use of the vehicle by Defendant’s daughter, who co-owned the vehicle, or her involvement in narcotics. He also challenges the affidavit for its failure to include any information regarding possible work Defendant was having done on the truck, including when the work would be completed and whether

the truck would be operable in the meantime. However, the lack of this information did not render the affidavit insufficient to show probable cause. “Probable cause does not mean actual and positive cause nor import absolute certainty.” *Arrington*, 311 N.C. at 636, 319 S.E.2d at 256 (citation omitted).

Based on the allegations and circumstances contained in the affidavit, it was reasonable for the judge to infer that Defendant, a known methamphetamine source in the area, would use his newly purchased Dodge truck to conduct his resupply trips rather than rely on others for a vehicle. “These are just the sort of commonsense inferences that a [judicial officer] is permitted to make when determining whether probable cause exists.” *State v. Allman*, 369 N.C. 292, 297, 794 S.E.2d 301, 305 (2016). Under the totality of the circumstances, we conclude the affidavit established a sufficient “probability or substantial chance” that Defendant would use the Dodge truck to transport methamphetamine. *McKinney*, 368 N.C. at 165, 775 S.E.2d at 821 (citation, quotation marks, and emphasis omitted). Accordingly, we hold the affidavit provided probable cause for the court to enter its order authorizing the GPS tracking.

### ***3. Length of Surveillance***

Defendant also argues the motion to suppress should have been granted because the sixty days of surveillance authorized by the order was unreasonable. He contends that the information upon which the warrant was based only demonstrated that Defendant “might be engaging in unlawful conduct sometime over the following week[,]” (emphasis omitted), which was insufficient to authorize law enforcement to

track his vehicle more than two months later.

Defendant's argument ignores the other facts presented in the affidavit demonstrating his ongoing involvement in the methamphetamine distribution in the area. The affidavit indicated that Defendant had been involved in methamphetamine distribution for at least eight months at the time of the affidavit. During that period, Defendant conducted numerous drug sales and had made multiple trips off the mountain to restock his drug supply. Thus, it was reasonable to infer that he would continue making his routine trips to maintain his drug business beyond the trip planned for the following week.

Defendant also contends the length of the surveillance period caused the search of his vehicle to be based on stale evidence. Defendant cites *State v. Lindsey* for the "general rule" that "an interval of two or more months between the alleged criminal activity and the affidavit has been held to be such an unreasonably long delay as to vitiate the search warrant." 58 N.C. App. 564, 566, 293 S.E.2d 833, 834 (1982) (citation omitted). He argues that "[t]he standard in *Lindsey* exists to prevent reliance on stale evidence, recognizing that undue delay reduces the 'likelihood that the evidence sought [will still be] in place' when the search occurs." Defendant contends the 68-day delay from when the officers learned the information underlying the affidavit to when the search of the vehicle occurred on 2 August 2021 "implicates the same staleness concerns addressed in *Lindsey*."

Defendant's reliance on *Lindsey* is misplaced. First, this Court in *Lindsey* went

on to explain that “[t]his rule may not be appropriate in all cases, depending upon such variable factors as the character of the crime and the criminal, the nature of the item to be seized and the place to be searched.” *Id.* (citation omitted) Moreover, this “rule” pertained to the timing of information on which a search warrant was based, not the time period for which surveillance was authorized in a warrant. Here, only two weeks had passed since the CRI made the last controlled buy and informed detectives that Defendant had purchased a new vehicle and intended to make a trip down the mountain the following week. Thus, the affidavit did not rely on stale evidence in authorizing the surveillance.

Defendant has not shown the sixty-day period was unreasonable. The affidavit showed that Defendant had made multiple trips off the mountain since law enforcement identified him as a distributor eight months prior; Defendant had made a trip to purchase a large quantity of methamphetamine in order to restock his supply shortly before the CRI’s controlled buys beginning on 12 April 2021; and that on 26 May 2021, Defendant indicated he intended to make another trip the following week. The affidavit was submitted two weeks later, on 11 June 2021. Thus, it was reasonable for the judge to infer that Defendant restocked his methamphetamine supply approximately every two months, and if he had just made a run the first week in June, he would need to make another trip sometime within the next two months. Thus, the authorization of the GPS monitoring for a period of sixty days was reasonable. Therefore, we hold the trial court did not err in denying Defendant’s

motion to suppress evidence based on the GPS monitoring.

## **B. Automobile and Home**

Defendant further argues that the evidence seized from the search of the truck during the traffic stop and the search of his home should have been suppressed as fruit of the poisonous tree stemming from the alleged invalid authorization of the installation of the GPS tracker. Because we have held the trial court did not err in denying Defendant's motion to suppress based on the GPS monitoring, these arguments are likewise overruled. To the extent Defendant contends the search of the vehicle was invalid because it exclusively relied on the dog sniff alert, Defendant's argument also fails.

Defendant contends Ziva's positive alert "is significantly undermined by the legalization of Delta-7 and CBD products in North Carolina, and by the fact that [Ziva] had a history of falsely identifying legal THC substances." However, this Court recently reaffirmed that "[t]he legalization of hemp does not alter [the] well-established general principle[ ]" that "[a] positive alert for drugs by a specially trained drug dog gives probable cause to search the area or item where the dog alerts." *State v. Guerrero*, 292 N.C. App. 337, 341-42, 897 S.E.2d 534, 537 (2024) (citations and quotation marks omitted); *see also State v. Walters*, 286 N.C. App. 746, 758, 882 S.E.2d 730, 739 (2022) ("The legalization of hemp has no bearing on the continued illegality of methamphetamine, and the Fourth Amendment does not protect against the discovery of contraband, detectable by [a] drug-sniffing dog[.]").



At the time of the stop in *Guerrero*, the investigating officer believed the defendant may have had heroin in his vehicle. *Guerrero*, 292 N.C. App. at 342, 897 S.E.2d at 538. Officers did not smell any marijuana, nor did they have any suspicion that the defendant had marijuana in his possession. *Id.* The dog alerted to the presence of narcotics and officers “discovered heroin in [the d]efendant’s vehicle, not marijuana or hemp.” *Id.* This Court held that the drug sniffing dog’s “alert alone was sufficient to establish probable cause[ ]” to search the defendant’s vehicle for illegal contraband. *Id.* at 344, 897 S.E.2d at 539.

Here, as in *Guerrero*, officers did not have any suspicion that Defendant may have had marijuana in the vehicle. Ziva alerted to the presence of narcotics, and officers found only methamphetamine in the vehicle, not marijuana or hemp. “Not only has our case law made it clear the legalization of hemp has no bearing on our Fourth Amendment jurisprudence, but the argument also does not comport with the facts of this case.” *Id.* at 342, 897 S.E.2d at 538 (citation omitted). Accordingly, we hold that Ziva’s alert was reliable and provided law enforcement the necessary probable cause to search Defendant’s vehicle.

While Ziva’s positive alert alone was sufficient to provide probable cause, we note the trial court also concluded this was a

“sniff plus” case, meaning the K9 sniff in conjunction with prior controlled buys of methamphetamine from . . . [D]efendant, the GPS tracking device information, false statement by the driver of where they had been, observation of cash in the vehicle, and . . . [D]efendant

placing his foot up under the dash area, provided probable cause to search[.]

Therefore, the trial court did not err in concluding the officers had probable cause to search Defendant's vehicle and in denying Defendant's motion to suppress. *See State. v. Watkins*, 220 N.C. App. 384, 725 S.E.2d 400 (2012) (holding officers had probable cause to search the vehicle based on an anonymous tip that a vehicle containing "a large amount of pills and drugs" would be traveling through the area, drug paraphernalia being found on the defendant's passenger, outstanding arrest warrants for the vehicle's owner, the defendant's nervous behavior while driving and upon exiting the vehicle, and the positive alert by the drug sniffing dog).

### **III. Ineffective Assistance of Counsel**

While Defendant contends his trial counsel preserved the above issues for appeal by repeatedly objecting during the trial to the evidence obtained from the searches underlying the motions to suppress, he alternatively asserts "[t]o the extent [he] failed to preserve any of the arguments above for appellate review, that failure amounted to ineffective assistance of counsel." Defendant did not identify any specific instance where counsel failed to object. In light of our holdings above, we need not address this claim.

### **IV. Motion to Dismiss**

Finally, Defendant argues the trial court erred in denying his motion to dismiss the charge of maintaining a vehicle because the State presented insufficient

evidence that Defendant used the truck for the purpose of keeping or selling drugs. Defendant contends the evidence only showed that the truck was used to transport drugs from one location “to [his] home, where it was stored and sold.”

“This Court reviews [a] trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). When conducting *de novo* review, this Court “considers the matter anew and freely substitutes its own judgment for that of the trial court.” *State v. Sanders*, 208 N.C. App. 142, 144, 701 S.E.2d 380, 382 (2010) (citation omitted).

In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator. Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion.

*State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (citation and quotation marks omitted). “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) (citation omitted).

“A defendant may properly be convicted of maintaining a vehicle for keeping or selling a controlled substance if the State proves beyond a reasonable doubt that the defendant knowingly kept or maintained a vehicle ‘used for the keeping or selling

of controlled substances.” *State v. Dunston*, 256 N.C. App. 103, 105, 806 S.E.2d 697, 699 (2017) (quoting N.C. Gen. Stat. § 90-108(a)(7)).

The keeping of drugs referred to in N.C. Gen. Stat. § 90-108(a)(7) means the storing of drugs. However, subsection 90-108(a)(7) does not require that a car be used to store drugs for a certain minimum period of time—or that evidence of drugs must be found in the vehicle, building, or other place on more than one occasion—for a defendant to have violated subsection 90-108(a)(7). Nonetheless, subsection 90-108(a)(7) does not create a separate crime simply because the controlled substance was temporarily in a vehicle. In other words, merely possessing or transporting drugs inside a car—because, for instance, they are in an occupant’s pocket or they are being taken from one place to another—is not enough to justify a conviction under the ‘keeping’ element of subsection 90-108(a)(7).

*State v. Weldy*, 271 N.C. App. 788, 794-95, 844 S.E.2d 357, 363 (2020) (citations, quotation marks, brackets, and ellipses omitted).

“The determination of whether a vehicle is used for keeping or selling controlled substances will depend on the totality of the circumstances.” *State v. Dudley*, 270 N.C. App. 775, 782, 842 S.E.2d 615, 620 (2020) (citation, quotation marks, and ellipses omitted). Additionally, “the State must produce other incriminating evidence of the totality of the circumstances and more than just evidence of a single sale of illegal drugs or merely having drugs in a car (or other place) to support a conviction under this charge.” *Weldy*, 271 N.C. App. at 795, 844 S.E.2d at 363 (citation and quotation marks omitted). “Circumstances our courts have considered relevant to this determination include: the amount of controlled

substances found, the presence of drug paraphernalia, the presence of large amounts of cash, and whether the controlled substances were hidden in the vehicle.” *Dudley*, 270 N.C. App. at 782, 842 S.E.2d at 620 (citations omitted).

Here, the State presented substantial evidence that Defendant was using the Dodge truck to store methamphetamine. Officers found the bag of methamphetamine hidden in the truck in a compartment located behind a loose panel of upholstery under the glove box. *See Rogers*, 371 N.C. at 404, 817 S.E.2d at 155 (“[A] defendant who wants to store contraband will, all other things equal, want to store it in a hidden place[.]”). The bag contained 305 grams of methamphetamine, a trafficking amount. *See* N.C. Gen. Stat. § 90-95(h)(3b)(b). Officers also found “\$492.00 in cash located in the vehicle.”

“While ‘merely having drugs in a car . . . is not enough to justify a conviction under subsection 90-108(a)(7)[,]’ viewing the evidence in this case in the light most favorable to the State and drawing all reasonable inferences from that evidence, a reasonable jury could find that” Defendant used the Dodge truck to store the methamphetamine. *Dudley*, 270 N.C. App. at 783, 842 S.E.2d at 621 (internal citation omitted) (upholding the trial court’s denial of the defendant’s motion to dismiss where the defendant attempted to hide the methamphetamine in a false-bottomed tire-sealant can inside the vehicle, the sealant can contained a trafficking amount of methamphetamine, and officers discovered drug paraphernalia in the vehicle). Therefore, the trial court did not err in denying Defendant’s motion to

dismiss the charge of keeping or maintaining a vehicle which is used for the keeping or selling of controlled substances.

**V. Conclusion**

We conclude the trial court did not err in denying Defendant's motions to suppress evidence obtained as a result of the installation of the GPS tracking device, the search of his vehicle, and the search of his home. We further conclude the trial court did not err in denying Defendant's motion to dismiss the charge of maintaining a vehicle to keep or sell controlled substances.

NO ERROR.

Judges COLLINS and STADING concur.

Report per Rule 30(e).