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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-532

Filed 21 May 2025

Catawba County, No. 21CRS052730-170

STATE OF NORTH CAROLINA

v.

CHRISTOPHER DOUGLAS COOK

Appeal by defendant from judgment entered 29 November 2023 by Judge Gregory R. Hayes in Catawba County Superior Court, No. 21CRS052730-170. Heard in the Court of Appeals 28 January 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General David D. Larson, Jr., for the State.*

*Deveruex & Banzhoff, PLLC, by Andrew B. Banzhoff, for the defendant.*

FREEMAN, Judge.

Defendant appeals from a judgment entered upon a jury verdict of guilty on the charges of trafficking methamphetamine by possession and trafficking methamphetamine by transportation. On appeal, defendant argues that the trial court erred by: (1) denying his motion to dismiss both charges, and (2) admitting certain evidence under N.C.G.S. § 8C-1, Rule 404(b) (2023). We disagree.

**I. Factual and Procedural History**

On 15 June 2021, Officer Dayton Sigmon of the Hickory Police Department observed a black Chrysler Pacifica fail to properly use a turn signal. After conducting a search on the vehicle's license plate and registration, Officer Sigmon learned both were expired and Sierra Marie Jimenez was the owner of the vehicle. Officer Sigmon turned on his body camera and initiated a traffic stop. Upon approaching the car, Officer Sigmon observed defendant as the driver and sole occupant of the "messy and cluttered" vehicle.

Officer Sigmon asked defendant for his driver's license and defendant told him "it was laundry day," at which point Officer Sigmon noticed a knife in the same area where defendant was reaching for his license. Officer Sigmon asked defendant to exit the vehicle, checked him for weapons, and discovered several pocketknives on defendant's person. Officer Sigmon later testified defendant appeared to be nervous and defendant's hands and voice were shaky.

At this time, Officer Clay Albrecht arrived at the scene. While Officer Sigmon initiated a warrant check, Officer Albrecht deployed Ricky, his K-9 unit, who alerted the officers to contraband in the car. Based on Ricky's positive alert, the officers searched the vehicle and located a black backpack in the front passenger seat and another black drawstring bag in the middle rear floorboard of the vehicle. Officers Sigmon and Albrecht discovered what they believed to be methamphetamine inside both bags. A field test confirmed their suspicion, indicating a positive result for 44

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grams of methamphetamine.<sup>1</sup> Following the search of the car, defendant consented to a search of his room at the Quality Suites Hotel where no contraband was found.

Defendant was not arrested, charged, or taken into custody because he agreed to act as an informant. However, defendant failed to cooperate, so a warrant for his arrest was issued on 21 June 2021.

On the same day the warrant was issued, Officer Albrecht initiated a traffic stop after he observed the same black Pacifica at the same Quality Suites Hotel where defendant was staying six days prior. Officer Albrecht testified that although he did not observe a traffic violation, he believed he “had reasonable suspicion to stop [defendant] pending the warrant.” Officer Sigmon confirmed that he took out charges against Defendant on 21 June 2021 related to the 15 June 2021 incident.

Upon approaching the car, Officer Albrecht observed defendant in the driver’s seat and a woman, Mindy Dyson, in the passenger seat. Officer Albrecht saw knives on or around defendant, so he ordered defendant to exit the vehicle and frisked him for weapons. Another officer arrived at the scene and conducted a record check of defendant while Officer Albrecht deployed Ricky, his K-9, to conduct an open-air scan of the car. Ricky positively alerted to the presence of narcotics, so Officer Albrecht conducted a search of the vehicle and found a black backpack in the backseat. The backpack appeared to be the same one in which methamphetamine was found during

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<sup>1</sup> The State Crime Lab’s test later indicated a positive result for 37.25 grams of methamphetamine.

the 15 June 2021 search, and, just as it did on 15 June, the backpack again contained methamphetamine.

On 27 June 2022, defendant was indicted, based on the 15 June 2021 incident, for trafficking methamphetamine by possession and trafficking methamphetamine by transportation. Defendant's matter came on for trial on 27 November 2023 in Catawba County Superior Court. The State moved to introduce Officer Sigmon and Officer Albrecht's testimony regarding the 21 June 2021 incident under Rule 404(b), and the trial court allowed this evidence, with the following limiting instruction:

That evidence is going to be received solely for the following purposes:

The identity of the person who committed the crime charged in this case, if you find it was committed; that the defendant had the intent, which is a necessary element of the crime charged in this case; that there existed in the mind of the defendant a plan, scheme, system, or design involving the crime charged in this case; that the defendant had the knowledge, which is a necessary element of the crime charged in this case; and that the defendant – there was a lack of accident or mistake to the crime charged in this case.

That evidence of the stop and arrest on June 21, 2021, may only be considered for those limited purposes. You may not consider that evidence for any other purpose. Essentially, you cannot convict Mr. Cook based on this evidence for the crime that he is charged with now. You can only consider it for those very limited purposes. I will re-instruct you on that again during my final jury instruction to you.

The trial court again repeated its instruction during the court's final jury instruction.

The trial court specifically ruled when admitting Officer Sigmon and Officer Albrecht's testimony:

I'm going to find there's sufficient evidence that the defendant committed the offense that is alleged on June 21, 2021. It serves a proper purpose to show intent, plan, knowledge, identity, a lack of accident or mistake. It is sufficiently similar to the June 15 event. It's in the same car. It involves allegedly methamphetamine found in a book bag again. It meets the temporal proximity test because it's six days after the alleged event.

The trial court denied defendant's oral motion to dismiss all charges at the close of the State's evidence. On 29 November 2023, the jury found defendant guilty of both charges, and the trial court sentenced defendant to 70–93 months imprisonment. Defendant timely appealed.

## **II. Jurisdiction**

This Court has jurisdiction to review “any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere[.]” N.C.G.S. § 7A-27(b)(1) (2023). As defendant's judgment is not based on a plea of guilty or nolo contendere, we have jurisdiction to review defendant's appeal.

## **III. Standard of Review**

“Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo.” *State v. Crockett*, 368 N.C. 717, 720 (2016). “Under a de novo review, the court considers the matter anew and freely substitutes its own judgment

for that of the lower tribunal.” *State v. Clapp*, 235 N.C. App. 351, 359–60 (2014) (cleaned up) (citation omitted).

When the trial court makes “findings of fact and conclusions of law to support its 404(b) ruling . . . we look to whether the evidence supports the findings and whether the findings support the conclusions.” *State v. Beckelheimer*, 366 N.C. 127, 130 (2012). Therefore, when reviewing rulings that apply Rules 404(b) and 403, “we conduct distinct inquiries with different standards of review.” *Id.* First, “[w]e review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b).” *Id.* Then, we “review the trial court’s Rule 403 determination for abuse of discretion.” *Id.* “A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision.” *State v. Cagle*, 346 N.C. 497, 506–07 (1997) (citation omitted).

#### IV. Discussion

Defendant contends that the trial court erred by: (1) denying his motion to dismiss both charges and (2) allowing evidence under N.C.G.S. § 8C-1, Rule 404(b).<sup>2</sup> We address each argument in turn.

##### A. Motion to Dismiss

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<sup>2</sup> Although defendant presents arguments regarding the constitutionality of N.C.G.S. § 90-95(g) (2016), this Court does not consider arguments appellants did not make at the trial court. See N.C.R. App. P. 10(a)(1) (2023). Because defendant failed to properly preserve this argument, we decline to reach it. See *State v. Valentine*, 357 N.C. 512, 525 (2003) (“The failure to raise a constitutional issue before the trial court bars appellate review.”)

Defendant first contends the trial court erred in denying his motion to dismiss both the trafficking methamphetamine by possession and trafficking methamphetamine by transportation charges. Specifically, defendant argues that because he was not the owner of the vehicle, the State failed to present substantial evidence to prove the constructive possession element of trafficking methamphetamine. We disagree.

“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.” *State v. Blagg*, 377 N.C. 482, 487 (2021) (cleaned up) (citation omitted). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate evidence to support a conclusion,” and only requires “more than a scintilla of evidence[.]” *State v. Blake*, 319 N.C. 599, 604 (2005) (cleaned up) (citation omitted). When this Court evaluates whether substantial evidence supports a criminal conviction, “the evidence must be considered in the light most favorable to the State,” and the State is entitled to “every reasonable intendment and every reasonable inference to be drawn[.]” *Blagg*, 377 N.C. at 487–8 (citation omitted). “Any contradictions or conflicts in the evidence are resolved in favor of the State.” *State v. Miller*, 363 N.C. 96, 98 (2009) (citation omitted).

A person commits the crime of trafficking in methamphetamine if he or she “sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or any mixture containing such substance.”

N.C.G.S. § 90-95(h)(3b)(a) (2023). Therefore, “the State must present substantial evidence that [d]efendant (1) knowingly possessed . . . methamphetamine, and (2) that the amount possessed was greater than 28 grams.” *State v. Christian*, 288 N.C. App. 50, 53 (2023) (cleaned up) (citations omitted).

The first element, that the defendant knowingly possessed methamphetamine, “may be established by a showing that (1) the defendant had actual possession, (2) the *defendant had constructive possession*, or (3) the defendant acted in concert with another to commit the crime.” *Id.* at 53–4 (citations omitted) (emphasis added). “A person has actual possession of a substance if it is on his person, he is aware of its presence, and either by himself or together with others he has the power and intent to control its disposition or use.” *State v. Ferguson*, 204 N.C. App. 451, 459 (2010) (cleaned up) (citation omitted). A person has constructive possession of a substance when they lack actual possession, and yet, have “the power and intent to control its disposition.” *State v. Wirt*, 263 N.C. App. 370, 373 (2018) (cleaned up) (citation omitted). Our Court has long recognized that:

[A]n inference of constructive possession can . . . arise from evidence which tends to show that a defendant was the custodian of the vehicle where the [contraband] was found. In fact, the courts in this State have held consistently that the driver of a borrowed car, like the owner of the car, has the power to control the contents of the car. Moreover, power to control the automobile where [contraband] was found *is sufficient, in and of itself*, to give rise to the inference of knowledge and possession sufficient to go to the jury.

*State v. Mitchell*, 224 N.C. App. 171, 177 (2012) (cleaned up) (citation omitted). Therefore, “[a] driver generally has power to control the vehicle he is driving, even if it is not owned by the driver[.]” *id.* at 178, but “this inference is rebuttable and if the accused offers evidence rebutting the inference, the State must show other incriminating circumstances before constructive possession may be inferred,” *State v. Tisdale*, 153 N.C. App. 294, 298 (2002) (citation omitted).

In *State v. Chekanow*, our Supreme Court provided factors for appellate courts to consider when determining whether other incriminating circumstances support a finding of constructive possession:

(1) the defendant's ownership and occupation of the property . . . ; (2) the defendant's proximity to the contraband; (3) indicia of the defendant's control over the place where the contraband is found; (4) the defendant's suspicious behavior at or near the time of the contraband's discovery; and (5) other evidence found in the defendant's possession that links the defendant to the contraband.

370 N.C. 488, 496 (2018) (cleaned up) (citations omitted). Further, our Supreme Court noted in applying these factors, “[n]o one factor controls, and courts must consider the totality of the circumstances.” *Id.* (citations omitted).

Here, viewing the evidence in the light most favorable to the State, defendant’s contention that the State failed to present substantial evidence of constructive possession is without merit because defendant was the driver of the vehicle. In this case, defendant, as the driver of the vehicle, possessed the “power to control the contents of the car[.]” and therefore, such power “*is sufficient in and of itself*, to give

rise to the inference of knowledge and possession sufficient to go to the jury.” *Mitchell*, 224 N.C. App. at 177 (citation omitted). Regardless of the ownership of the vehicle, the evidence that defendant was the driver of the vehicle tends to show that defendant was the custodian of the vehicle where the methamphetamine was found.

Defendant attempts to rebut the inference of constructive possession by stating the car was “cluttered” and “no drugs or drug paraphernalia [were] found on [ ] defendant[,]” however, this evidence does not impact our analysis where this Court considers the *Chekanow* factors in the totality of circumstances. *Chekanow*, 370 N.C. at 496. Even presuming, without deciding, defendant has rebutted the inference of constructive possession, here, the State has shown other incriminating circumstances that satisfy the *Chekanow* factors. The State demonstrated that defendant was the driver of the vehicle, nervous at the time he was pulled over, and in close proximity to the methamphetamine found in the front passenger seat in a backpack and in the middle rear floorboard of the car. Such evidence constitutes sufficient incriminating circumstances to support the inference that defendant constructively possessed methamphetamine. Therefore, the trial court did not err in denying defendant’s motion to dismiss the trafficking methamphetamine by possession and trafficking methamphetamine by transportation charges.

#### **B. 404(b) Evidence**

Defendant next argues the trial court erred by admitting evidence of the 21 June 2021 arrest pursuant to N.C.G.S. § 8C-1, Rule 404(b) (2023). Specifically,

defendant contends that the trial court (1) “failed to make sufficient findings of fact and conclusions of law to support the court’s ruling[,]” and (2) erred in determining the evidence was substantially similar to defendant’s convicted crimes.<sup>3</sup>

Rule 404(b) of our Rules of Evidence provides that:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

N.C.G.S. § 8C-1 (2023). Rule 404(b) is “general rule of inclusion . . . subject to” only, “one exception” that is “if [the evidence’s] only probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged.” *State v. Coffey*, 326 N.C. 268, 278–79 (1990) (cleaned up) (citations omitted). Other acts may be admissible even if the “defendant was never arrested, charged, or convicted” in connection with this other act, *State v. Adams*, 220 N.C. App. 319, 321 (2012), and “[e]vidence of both prior and subsequent bad acts by a defendant is admissible under Rule 404(b),” *State v. Twitty*, 212 N.C. App. 100, 103 (2011) (citations omitted).

Our Supreme Court has explained:

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<sup>3</sup> Defendant also alleges the trial court “abused its discretion in determining [the] evidence was more probative than prejudicial[,]” but fails to argue this point beyond stating this Court’s standard of review for trial court rulings under N.C.G.S. § 8C-1, Rule 403 (2023). Accordingly, this issue is abandoned. *See* N.C. R. App. P. 28(b)(6) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”)

404(b) evidence is constrained by the requirements of similarity and temporal proximity. Prior [or subsequent] acts are sufficiently similar under Rule 404(b) if the facts tend to support a reasonable inference that the same person committed both the earlier and later acts. These facts *need not rise to the level of unique and bizarre*. Rather, the ultimate question is one of logical relevancy.

*State v. Gillard*, 386 N.C. 797, 811 (2024) (cleaned up and emphasis added) (citations omitted).

“Our case law is clear that near identical circumstances are not required . . . ; rather, the incidents need only share some unusual facts that go to a purpose other than propensity for the evidence to be admissible.” *State v. Nova*, 906 S.E.2d 337, 341 (N.C. App. 2024) (citations omitted and cleaned up). Further, our Supreme Court has explained the “analysis for admissibility of Rule 404(b) evidence involves focusing on the similarities and not the differences between the two incidents.” *State v. Pickens*, 385 N.C. 351, 359 (2023) (citations omitted).

Defendant’s argument that “unusual facts” were not provided to demonstrate sufficient similarity is unavailing. Though our case law does not require identical, nor “unique and bizarre” facts to satisfy Rule 404(b)’s sufficient similarity prong, we are satisfied the 21 June 2021 event was sufficiently similar because it was *nearly identical* to the 15 June 2021 incident. *See Gillard*, 386 N.C. at 811 (2024); *Nova*, 906 S.E.2d at 341. Defendant was pulled over by law enforcement near the same Quality Suites Hotel, in the same car, wherein methamphetamine was found in what appeared to be the same bag. Further, these incidents satisfy Rule 404(b)’s

temporally proximate requirement because the incidents occurred less than a week—exactly six days—apart. Because the incidents in this case are sufficiently similar, beyond what our precedent demands, and temporally proximate, the subsequent 21 June 2021 event satisfies Rule 404(b)’s requirements. Therefore, the trial court made sufficient findings of fact and conclusions of law where it found the same facts and explicitly articulated the 21 June 2021 incident was both sufficiently similar and temporally proximate to the 15 June 2021 event under Rule 404(b)’s requirements.

Similarly, defendant’s argument that the trial court failed to address differences in these incidents urges this Court to ignore precedent. The trial court’s analysis properly focused on the similarities rather than the differences of the two incidents because they both involved the (1) the same car, (2) the same substance, and (3) the substance being located in the same or very similar book bag. Such similarities, noted by the trial court, demonstrate the logical relevancy between the 15 June 2021 arrest and the 21 June 2021 incident that go to the proper purpose of showing intent, plan, knowledge, identity, and a lack of accident or mistake. Therefore, the trial court did not err in admitting the subsequent incident under Rule 404(b).

## **V. Conclusion**

The trial court did not err in denying defendant’s motion to dismiss the charges of trafficking methamphetamine by possession and trafficking methamphetamine by transportation because the State presented substantial evidence that defendant

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constructively possessed the methamphetamine and that the amount possessed was greater than 28 grams. Further, because the 21 June incident was substantially similar and temporally proximate to the 15 June incident, the trial court properly admitted evidence of the subsequent incident under Rule 404(b). Accordingly, we conclude that defendant received a fair trial, free from prejudicial error.

NO ERROR

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).