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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-831

Filed 7 October 2026

Cleveland County, Nos. 22CR001013-220, 22CR252850-220

STATE OF NORTH CAROLINA

v.

AVERY CORNELIUS STROUD

Appeal by Defendant from Judgment entered 31 January 2025 by Judge W. Todd Pomeroy in Cleveland County Superior Court. Heard in the Court of Appeals 25 March 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Todd R. Russell, for the State.

Hayes Law Offices, PLLC, by Mark L. Hayes, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Avery Cornelius Stroud (Defendant) appeals from the denial of his Motion to Suppress and a subsequent Judgment entered upon jury verdicts finding him guilty of Trafficking in Cocaine; Possession with Intent to Manufacture, Sell, or Deliver

Marijuana; and Possession of Firearm by a Felon.¹ The Record before us, including evidence presented at trial, reflects the following:

On 26 July 2022, Derek Toney, a narcotics investigator with the Cleveland County Sheriff's Office (CCSO), applied to a magistrate for a warrant to search the premises located at 1806 Weaver Road in Kingstown (the Residence). In an attachment describing the items to be seized, Deputy Toney² listed, *inter alia*: cocaine and other controlled substances, drug paraphernalia, firearms, financial proceeds from drug sales, and records related to drug sales. Deputy Toney sought authority to search the Residence, described as “a white/beige single wide trailer”; Defendant's person; a blue Chevrolet Silverado truck; and any other vehicles on the curtilage of the Residence.

Deputy Toney attached a probable cause affidavit (the Affidavit) to the Search Warrant Application. In the Affidavit, Deputy Toney described his training; education; experience; and his duties and tasks as a narcotics investigator, which included coordinating controlled drug buys through the use of confidential informants and undercover officers.

In the Affidavit, Deputy Toney further averred:

The information contained within this affidavit is based upon information Affiant has gained from this investigation, the

¹ The Judgment in the Record is not file-stamped.

² The Record shows the CCSO personnel involved in this investigation had various job titles. In some cases, their job titles at the time of the July 2022 search had changed by the January 2025 trial. For simplicity, we refer to all CCSO personnel as “Deputy [Last Name]” in this opinion.

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Affiant's personal observations, training, and experience, and/or information relayed to the Affiant by other law enforcement officers and/or agents. Since this affidavit is being submitted for the limited purpose of securing a search warrant, Affiant has not included each and every fact known to him concerning this investigation. Affiant has set forth the facts that he believes are necessary to establish probable cause.

In a section labeled "Probable cause[.]" Deputy Toney averred:

During [the] month of June 2022 a narcotics investigation began on [Defendant] in reference to [Defendant] selling cocaine at [the Residence]. From June until July multiple controlled buys of cocaine were conducted by the use of a cooperating witness from [Defendant] and have taken place at [the Residence]. Sometime during the past 72 hours of July 25th, 2022 a controlled buy of cocaine from [Defendant] took place at [the Residence].

Based on the Affiant's training and experience, and the information provided during the course of this investigation, Affiant believes evidence pertaining to the crime of Possession with intent to sell/deliver cocaine . . . could be located on the property of [the Residence.]

The Affiant requests the court to find probable cause to allow a search of the above-mentioned residence.

The magistrate issued the requested Search Warrant on 26 July 2022; CCSO executed it that same day. In an inventory of items seized at the Residence, Deputy Toney listed: cocaine, marijuana, a SCCY nine-millimeter firearm, a firearm box, drug paraphernalia, mail, and \$16,708 in cash.

On 12 September 2022, Defendant was indicted for Possession of Firearm by a Felon. On 6 January 2025, an additional indictment charged Defendant with two more offenses: Trafficking in Cocaine and Possession with Intent to Manufacture,

Sell, or Deliver Marijuana (PWIMSD Marijuana).

A jury trial began on 21 January 2025. That day, Defendant filed a Motion to Suppress the items seized by CCSO in the 26 July 2022 search. In the Motion, Defendant argued Deputy Toney's Affidavit was "simply insufficient to support a finding of probable cause to conduct the search[.]"

At a suppression hearing the following day, the State declined to call Deputy Toney as a witness to explain "the basis" for the Search Warrant. Instead, the State confirmed it would "stick to the four corners" of the Search Warrant. Defense counsel called Deputy Toney for a voir dire examination and asked him questions about the Affidavit. The State also questioned Deputy Toney. After hearing argument from both parties, the trial court denied the Motion to Suppress and later entered a written Order reflecting this ruling.

During the State's case-in-chief, Deputy Toney testified that on the morning of 26 July 2022, after obtaining the Search Warrant but before CCSO performed the search, he and Deputy Jonathan Spiering surveilled the Residence from an unmarked vehicle. Their purpose was to "confirm what vehicles were there" by collecting tag numbers. After running the tags on vehicles parked at the Residence through a database, the deputies determined a blue Chevrolet truck, a Mercedes-Benz, and a Harley-Davidson motorcycle were registered to Defendant. Additionally, the license plate on a Ford Mustang was registered "to an Acura in [Defendant's] name."

After collecting the vehicle information, Deputies Toney and Spiering drove

away from the Residence and parked in a nearby lot. They “[c]ould not see the [R]esidence” from this vantage point, “only . . . the stop sign for Weaver Road.” About twenty minutes later, they saw a vehicle “come to the end of Weaver Road.” The deputies confirmed Defendant was the driver and the vehicle was the Chevrolet truck they had just seen parked at the Residence.

Soon thereafter, Deputy Chris Canipe pulled Defendant over at the request of Deputies Toney and Spiering. Deputy Canipe testified he smelled “the odor of marijuana coming from inside” the truck. During a subsequent roadside search of the truck, Deputy Canipe found a marijuana blunt in the ashtray. CCSO then took Defendant into custody.

CCSO executed the Search Warrant later that morning. Testimony was heard from multiple deputies who participated in the search.

The “main bedroom” in the Residence had a bed in it (the Main Bedroom). In the Main Bedroom, CCSO found the SCCY nine-millimeter handgun (the Handgun) tucked under the mattress. Also recovered from the Main Bedroom were an SCCY-branded box listing the same serial number as the Handgun, nine-millimeter ammunition, a “large duffel bag that contained numerous vacuum-sealed bags of marijuana[,]” and “envelopes with money and ammunition inside a dresser drawer.”

On the kitchen table, CCSO found marijuana, cocaine, and digital scales. “[G]lass cookware that had [an] off-white, powder-like substance” on it was also recovered from the kitchen.

CCSO deputies also testified about mail, bills, and records connected to Defendant found inside the Residence. Among these documents were: a 2019 tax return for “AVERY C STROUD” listing a “Home address” of “1806 WEAVER ROAD”, a North Carolina Certificate of Title for a vehicle registered to “AVERY CORNELIUS STROUD” at “1806 WEAVER ROAD”, a document from Fifth Third Bank indicating a business checking account had been opened in March 2021 for “AVERY CORNELIUS STROUD STROUD LANDSCAPING AND DETAILING”, a Duke Energy bill addressed to “AVERY C STROUD JR” at “1806 WEAVER RD”, and a bill of sale for a Yamaha motorcycle listing “Avery Stroud” as the buyer. Copies or photographs of these documents were introduced into evidence.

CCSO also found one piece of mail addressed to Tiffany Wray. Deputy Toney testified he had interviewed Wray by phone during the investigation. During their phone call, Deputy Toney “believe[d]” Wray had said that “in months past there had been” other people living at the Residence. Deputy Toney also confirmed he had checked property records prior to applying for the Search Warrant, which showed Patricia Schenck owned the Residence.

Deputy Toney conducted a recorded interview with Defendant at CCSO’s office on the day of the search. The State played portions of the interview at trial. Defendant referred to the Residence as “my house” multiple times during the interview. For instance, responding to Deputy Toney’s questions about the cocaine CCSO had found inside the Residence, Defendant said, “you got what you got out [of] my house.”

At the close of the State's evidence, Defendant moved to dismiss all charges, which the trial court denied. After resting without presenting evidence, Defendant renewed his Motion to Dismiss at the close of all the evidence. The trial court denied the renewed Motion.

On 31 January 2025, the jury found Defendant guilty of Trafficking in Cocaine, PWIMSD Marijuana, and Possession of Firearm by a Felon. The trial court entered Judgment sentencing Defendant to 175 to 222 months of imprisonment and imposing a \$250,000 fine. Defendant provided written Notice of Appeal on 7 February 2025.

Issues

The issues are whether the trial court erred by denying: (I) Defendant's Motion to Suppress and (II) Defendant's Motion to Dismiss.

Analysis

I. Motion to Suppress

"When reviewing the denial of a motion to suppress, 'the reviewing court must determine whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law.'" *State v. Caddell*, 267 N.C. App. 426, 431, 833 S.E.2d 400, 405 (2019) (quoting *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012)). "The trial court's findings of fact on a motion to suppress are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. Conclusions of law are reviewed de novo." *Id.* (citations and quotation marks omitted).

A. Findings of Fact in Written Order

Defendant first challenges the Findings of Fact in the written Order denying his Motion to Suppress.

“Section 15A-977 of the General Statutes prescribes the procedure that the [trial] court must follow to decide a motion to suppress evidence.” *State v. Bartlett*, 368 N.C. 309, 313, 776 S.E.2d 672, 674 (2015). In ruling on a motion to suppress, the trial court “must set forth in the record [its] findings of fact and conclusions of law.” N.C. Gen. Stat. § 15A-977(f) (2025). “Although the statute’s directive is in the imperative form, only a material conflict in the evidence—one that potentially affects the outcome of the suppression motion—must be resolved by explicit factual findings that show the basis for the trial court’s ruling.” *Bartlett*, 368 N.C. at 312, 776 S.E.2d at 674 (citations omitted). Thus, findings are required “only when there is a material conflict in the evidence” and may be made “either orally or in writing.” *Id.*

Here, at the conclusion of the suppression hearing, the trial court ruled:

[Trial Court]: [By a] preponderance of the evidence after review of the four corners of the document and the evidence presented here in court that probable cause existed for the magistrate to enter that order. [The] findings of fact essentially are going to be the contents of the [S]earch [W]arrant, including the law will be that probable cause existed at the time the search warrant was executed. And [the] order will be that motion is denied.

In its written Order, the trial court made six Findings of Fact:

1. That during the month of June 2022, a Cleveland County Sheriff’s Office narcotics investigation began on [Defendant] in reference to [Defendant] selling cocaine at 1806 Weaver Road[.]

2. That from June until July of 2022, multiple controlled buys of cocaine were conducted with the use of a cooperating witness from [Defendant].
3. That the controlled buys took place at 1806 Weaver Road[.]
4. That sometime within the 72 hours prior to July 26, 2022, a controlled buy of cocaine took place at 1806 Weaver Road[.]
5. That on July 26, 2022, a search warrant was applied for and granted for the residence of 1806 Weaver Road[.]
6. That the search warrant included the [D]efendant, . . . with a date of birth of 01/03/1988, as well as a blue Chevrolet Silverado truck.

On appeal, Defendant’s sole substantive objection to the Order is that the trial court erred by “failing to state that [it] limited its analysis to the four corners of the warrant, as all parties agreed” at the suppression hearing. Defendant does not explain why this issue creates a material conflict in the evidence requiring a separate Finding. *See id.* In any case, the six Findings demonstrate the trial court *did* limit its analysis to the four corners of the Search Warrant and Deputy Toney’s Search Warrant Application, consistent with its oral ruling. Findings 1 through 4 are drawn from the probable cause Affidavit; Findings 5 and 6 are drawn from the face of the Search Warrant.

Thus, the trial court fulfilled its statutory obligation to set forth its findings of fact in the record. *See* N.C. Gen. Stat. § 15A-977(f). Moreover, as competent evidence drawn from the Search Warrant Application, the Affidavit, and the Search Warrant

supports the six Findings, they are conclusive on appeal. *Caddell*, 267 N.C. App. at 431, 833 S.E.2d at 405. Consequently, we reject Defendant's arguments challenging the Findings of Fact in the written Order.

B. Probable Cause

Defendant argues the Affidavit did not establish probable cause to justify the issuance of the Search Warrant. On that ground, Defendant contends the trial court erred by denying his Motion to Suppress.

The Fourth Amendment to the United States Constitution provides "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV; *accord* N.C. Const. Art. 1, § 20. "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.'" *State v. McKinney*, 368 N.C. 161, 164, 775 S.E.2d 821, 824 (2015) (quoting N.C. Gen. Stat. 15A-244(3) (2013)). "Probable cause is a flexible, common-sense standard. It does not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical probability is all that is required." *State v. Zuniga*, 312 N.C. 251, 262, 322 S.E.2d 140, 146 (1984) (citation omitted). Our Supreme Court has stated, "an affidavit is sufficient [to establish probable cause] if it supplies reasonable cause to believe that the proposed search for evidence probably will reveal the presence upon the described premises of

the items sought and that those items will aid in the apprehension or conviction of the offender.” *State v. Arrington*, 311 N.C. 633, 636, 319 S.E.2d 254, 256 (1984) (citation omitted).

We recognize minimum standards for probable cause affidavits, namely: “a magistrate cannot lawfully issue a search warrant based on an affidavit that is purely conclusory and that does not state the underlying circumstances allegedly giving rise to probable cause.” *State v. Allman*, 369 N.C. 292, 294, 794 S.E.2d 301, 303-04 (2016) (citation and quotation marks omitted). Further, to provide probable cause, the affidavit “must establish a nexus between the objects sought and the place to be searched.” *State v. McCoy*, 100 N.C. App. 574, 576, 397 S.E.2d 355, 357 (1990) (citing *State v. Campbell*, 282 N.C. 125, 191 S.E.2d 752 (1972)) (other citations omitted). “Usually this connection is made by showing that criminal activity actually occurred at the location to be searched or that the fruits of a crime that occurred elsewhere are observed at a certain place.” *Id.*

Moreover, because “affidavits attached to search warrants are normally drafted by nonlawyers in the haste of a criminal investigation, courts are reluctant to scrutinize them in a hypertechnical, rather than a commonsense, manner.” *McKinney*, 368 N.C. at 164, 775 S.E.2d at 824 (citation, quotation marks, and ellipsis omitted). Thus, the magistrate must view the information in an officer’s probable cause affidavit “from the perspective of a police officer with the affiant’s training and experience, and the commonsense judgments reached by officers in light of that

training and specialized experience[.]” *Id.* at 164-65, 775 S.E.2d at 825 (citations omitted). In determining whether probable cause exists, “a magistrate is entitled to draw reasonable inferences from the material supplied to him by an applicant for a warrant.” *State v. Sinapi*, 359 N.C. 394, 399, 610 S.E.2d 362, 365 (2005) (citation omitted).

“[W]hen addressing whether a search warrant is supported by probable cause, a reviewing court must consider the totality of the circumstances.” *Id.* at 398, 610 S.E.2d at 365 (citations and quotation marks omitted). In a totality of the circumstances analysis,

[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed.

Illinois v. Gates, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983) (citation, quotation marks, ellipsis, and brackets omitted). *See also State v. Riggs*, 328 N.C. 213, 219, 400 S.E.2d 429, 433 (1991) (recognizing *Illinois v. Gates* “has been accepted by [the North Carolina Supreme Court] as setting the appropriate standard for showing probable cause under both the federal and state constitutions.” (citation omitted)). “In adhering to this standard of review, we are cognizant that great deference should be paid a magistrate’s determination of probable cause, and

that after-the-fact scrutiny should not take the form of a *de novo* review.” *Sinapi*, 359 N.C. at 398, 610 S.E.2d at 365 (citation and quotation marks omitted).

In the case *sub judice*, Defendant first argues the Affidavit lacks “any indication as to the source” of its allegations of criminal activity. Thus, on the ground there was no reasonable way to evaluate the reliability of the information in the Affidavit, Defendant claims the magistrate erred by concluding the Affidavit supplied probable cause. We disagree.

Deputy Toney stated his Affidavit was “based upon information” he had “gained from this investigation,” including his “personal observations, . . . and/or information relayed to [him] by other law enforcement officers and/or agents.” The magistrate was entitled to draw two reasonable inferences from these sworn statements, *see Sinapi*, 359 N.C. at 399, 610 S.E.2d at 365, namely: (1) Deputy Toney had participated in the investigation; and (2) Deputy Toney had obtained knowledge of the criminal activity alleged in the Affidavit. Moreover, as Defendant concedes, a law enforcement officer may rely on the direct observations of other officers to establish probable cause. *See State v. Leonard*, 87 N.C. App. 448, 454, 361 S.E.2d 397, 400 (1987) (“The direct personal observation by the officer/affiant or his fellow officers is plainly a reliable basis for issuance of a warrant.” (citations omitted)); *State v. Lucas*, 286 N.C. App. 321, 334, 880 S.E.2d 418, 428 (2022) (“direct observations” by the officer affiant’s colleague helped establish probable cause). Therefore, to the extent Deputy Toney used information in the Affidavit he had learned from other

CCSO deputies involved in the investigation, the magistrate was permitted to consider this cumulative law enforcement knowledge in determining whether the Affidavit established probable cause.

Defendant next argues the Affidavit was inadequate because it alleged only that controlled buys took place “at 1806 Weaver Road” without specifying the precise location on the property those transactions occurred. Per Defendant, this imprecision means the Affidavit failed to provide probable cause to search the residential dwelling in which CCSO discovered contraband. We disagree.

In his Search Warrant Application, Deputy Toney claimed there was probable cause to believe incriminating evidence “is located . . . in the following premises[:] . . . 1806 Weaver Rd. Kingstown, NC[.]” In his Affidavit, Deputy Toney referred to a “narcotics investigation” related to Defendant “selling cocaine at 1806 Weaver Rd.” and described multiple controlled buys “at 1806 Weaver Rd.” Deputy Toney further averred he believed evidence related to cocaine sales “could be located on the property of 1806 Weaver Rd.” and “request[ed] the court to find probable cause to allow a search of the above-mentioned residence.” In light of Deputy Toney’s reference to 1806 Weaver Road as “the above-mentioned residence[.]” the magistrate could reasonably infer, *see Sinapi*, 359 N.C. at 399, 610 S.E.2d at 365, the controlled buys took place at the dwelling located at that address: a “white/beige single wide trailer[.]” as described in a separate document attached to the Search Warrant Application. Indeed, this Court construes the language in an officer’s probable cause affidavit in a

“common-sensical, non-technical[,] and realistic way.” *State v. Windham*, 57 N.C. App. 571, 574, 291 S.E.2d 876, 879 (1982) (citation omitted); *accord McKinney*, 368 N.C. at 164, 775 S.E.2d at 824. Reviewing the Affidavit in this manner, we conclude that by describing controlled drug buys “at 1806 Weaver Rd” and thereafter describing that location as “the above-mentioned residence[,]” Deputy Toney established a nexus between the contraband sought and the place to be searched. *See McCoy*, 100 N.C. App. at 576, 397 S.E.2d at 357.

Finally, we turn to the substantive information in the Affidavit to determine whether it supplied probable cause, i.e., reasonable cause to believe Deputy Toney’s proposed search probably would reveal incriminating evidence at the Residence. *See Arrington*, 311 N.C. at 636, 319 S.E.2d at 256. As the State observes, the Affidavit’s statement of probable cause is based principally on allegations of prior criminal activity by Defendant—specifically alleging he had sold cocaine at the Residence in multiple controlled buys conducted by CCSO.

“When evidence of previous criminal activity is advanced to support a finding of probable cause, a further examination must be made to determine if the evidence is stale.” *McCoy*, 100 N.C. App. at 577, 397 S.E.2d at 358. “Generally, two factors determine whether evidence of previous criminal activity is sufficient to later support a search warrant: (1) the amount of criminal activity and (2) the time period over which the activity occurred.” *Id.* “Before a search warrant may be issued, proof of probable cause must be established by facts so closely related to the time of issuance

of the warrant so as to justify a finding of probable cause at that time.” *State v. Lindsey*, 58 N.C. App. 564, 565, 293 S.E.2d 833, 834 (1982) (citation omitted). “The general rule is that no more than a ‘reasonable’ time may have elapsed.” *Id.* “Common sense must be used in determining the degree of evaporation of probable cause.” *Id.* at 566, 293 S.E.2d at 834. In determining whether the facts used to establish probable cause are “stale,” courts consider “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). Our Supreme Court has observed probable cause dissipates at a slower rate where the alleged crime is “regenerating” rather than “chance” and where the place to be searched is a “secure operational base” rather than a “mere criminal forum of convenience.” *State v. Louchheim*, 296 N.C. 314, 323, 250 S.E.2d 630, 636 (1979) (citation and quotation marks omitted), *cert. denied*, 444 U.S. 836, 100 S. Ct. 71, 62 L. Ed. 2d. 47 (1979).

In *State v. Ledbetter*, this Court reviewed a search warrant issued on the basis of an affidavit describing, among other investigative details, a single controlled drug buy at the defendant’s residence within “the six days prior” to the warrant application. 120 N.C. App. 117, 119, 461 S.E.2d 341, 343 (1995). Considering the character of the alleged crime, we observed, “drug dealing is ordinarily a regenerating activity carried on over a period of time[.]” *Id.* at 125, 461 S.E.2d at 346 (citation and quotation marks omitted). We also noted “particularly that the ‘regenerating activity’ of the sale of cocaine depicted in the affidavit . . . was stated and observed to have

been conducted at [the] defendant's residence, indisputably a 'secure operational base.' ” *Id.* (quoting *Louchheim*, 296 N.C. at 323, 250 S.E.2d at 636). We concluded the affidavit supplied probable cause because it “contained sufficient timely information to support a finding there was a fair probability that the controlled substance sought was to be found in the location to be searched.” *Id.* (citations and quotation marks omitted).

Here, Deputy Toney's 26 July 2022 Affidavit stated that in the previous month of June, CCSO had started investigating allegations Defendant was selling cocaine at the Residence. Deputy Toney further averred: “From June until July [2022] multiple controlled buys of cocaine were conducted by use of a cooperating witness from [Defendant] and have taken place at [the Residence]. Sometime during the past 72 hours of July 25th, 2022 a controlled buy of cocaine from [Defendant] took place at [the Residence].”

As in *Ledbetter*, the Affidavit stated Defendant was engaged in the regenerating activity of cocaine sales. *See id.* All of the controlled buys occurred at the Residence, making it a secure operational base. *See id.* The Affidavit described a minimum of three controlled buys, exceeding the single controlled buy in *Ledbetter*. Finally, Deputy Toney averred the most recent controlled buy had taken place within four days of submitting the Search Warrant Application on 26 July 2022—a shorter interval than the maximum six-day-old transaction described in the *Ledbetter* affidavit. *See id.* at 119, 461 S.E.2d at 343. Thus, the information in the Affidavit was

sufficiently timely to permit the magistrate to conclude it was fairly probable CCSO would find evidence of cocaine sales at the Residence; therefore, the statements alleging prior criminal activity were not stale. *See id.* at 125, 461 S.E.2d at 346. *See also McCoy*, 100 N.C. App. at 577-78, 397 S.E.2d at 357-58 (affidavit describing two controlled buys within ten days of warrant application sufficient to withstand staleness objection); *State v. Clark*, 299 N.C. App. 445, 452, 918 S.E.2d 225, 232 (2025) (information not stale where affidavit described “multiple” controlled buys at the defendant’s residence within one to two weeks of warrant application).

Thus, under the totality of the circumstances, the Affidavit’s allegations Defendant had sold cocaine in multiple controlled buys at the Residence were sufficient to establish probable cause. *See Sinapi*, 359 N.C. at 398, 610 S.E.2d at 365. Therefore, the magistrate had a substantial basis to conclude probable cause existed to issue a search warrant. *See Gates*, 462 U.S. at 238-39, 103 S. Ct. at 2332, 76 L. Ed. 2d at 548. Consequently, because the Search Warrant Application was supported by probable cause and the magistrate properly issued the Search Warrant, the trial court did not err by denying Defendant’s Motion to Suppress. *See Caddell*, 267 N.C. App. at 431, 833 S.E.2d at 405.

II. Motion to Dismiss

Defendant contends the State failed to present substantial evidence he had constructive possession of the drugs or firearm CCSO found in the Residence. On that basis, Defendant argues the trial court erred by denying his Motion to Dismiss the

charges for insufficient evidence. We disagree.

“This Court reviews the 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). “Upon [a] 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). “The evidence is ‘substantial’ if it is relevant and adequate to convince a reasonable mind to accept a conclusion.” *State v. Ford*, 388 N.C. 713, 720, 923 S.E.2d 549, 554 (2025) (citation and quotation marks omitted). However, “[i]f the evidence is sufficient only to raise a suspicion or conjecture” that the defendant committed the offense, the trial court must grant the motion. *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (citation and quotation marks omitted). “What matters is the sufficiency, not the weight, of the evidence presented.” *Ford*, 388 N.C. at 720, 923 S.E.2d at 554 (citation 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). However, “[w]hether the State has offered such substantial evidence is a question of law for the trial court.” *State v. McKinney*, 288 N.C. 113,

119, 215 S.E.2d 578, 583 (1975) (citations omitted).

Possession is an essential element of all three offenses of conviction.³ Defendant only contests the State's evidence showing his possession of the cocaine, marijuana, and firearm underlying the charges. Thus, we analyze only the possession element of the offenses. Further, on appeal, the State does not argue its evidence showed Defendant had actual possession of this contraband. Therefore, we address only whether the State presented substantial evidence of *constructive* possession at trial. *See State v. Mitchell*, 224 N.C. App. 171, 177, 735 S.E.2d 438, 443 (2012) (noting possession of any item may be actual or constructive).

“A person has constructive possession of an item when the item is not in his physical custody, but he nonetheless has the power and intent to control its disposition.” *Id.* (citation and quotation marks omitted). To prove constructive possession, “[t]he State is not required to prove that the defendant owned the [contraband], or that [the] defendant was the only person with access to it.” *State v. Rich*, 87 N.C. App. 380, 382, 361 S.E.2d 321, 323 (1987) (citations omitted). However,

³ The elements of Trafficking in Cocaine are: (1) knowing possession or transportation of cocaine (2) in an amount of twenty-eight grams or more. *State v. Lopez*, 219 N.C. App. 139, 150, 723 S.E.2d 164, 172 (2012); N.C. Gen. Stat. § 90-95(h)(3).

The elements of PWIMSD Marijuana are: (1) the defendant possessed marijuana (2) with the intent to sell or distribute it. *State v. Chisholm*, 225 N.C. App. 592, 596, 737 S.E.2d 818, 822 (2013); N.C. Gen. Stat. § 90-95(a)(1).

The elements of Possession of Firearm by a Felon are: (1) the defendant was previously convicted of a felony (2) thereafter possessed a firearm. *State v. Mitchell*, 224 N.C. App. 171, 176, 735 S.E.2d 438, 442-43 (2012); N.C. Gen. Stat. § 14-415.1. Defendant stipulated to a prior felony conviction at trial.

“[w]hen the defendant does not have exclusive control over the premises where the contraband is found, the State must show other incriminating circumstances sufficient for the jury to find the defendant had constructive possession” of the contraband. *State v. Sawyers*, 256 N.C. App. 339, 345-46, 808 S.E.2d 148, 153 (2017) (citation, quotation marks, and brackets omitted).

Here, there was evidence suggesting Defendant did not have exclusive control over the Residence: CCSO found a letter addressed to Tiffany Wray; Deputy Toney testified Wray had told him other people had been living there; and Deputy Toney had determined the Residence’s owner was Patricia Schenck, not Defendant, before he applied for a warrant. Thus, we must determine “whether the State presented sufficient evidence of other incriminating circumstances[,]” which “depends on the totality of the circumstances in each case. No single factor controls, but ordinarily the questions will be for the jury.” *State v. Alston*, 193 N.C. App. 712, 716, 668 S.E.2d 383, 387 (2008) (citation, quotation marks, and emphasis omitted).

Evidence the defendant “owned other items found in proximity to the contraband” is an “[i]ncriminating circumstance relevant to [the] constructive possession” inquiry. *Id.* at 716, 668 S.E.2d at 386 (citation and quotation marks omitted). Here, on the morning of the search, Deputies Toney and Spiering observed three vehicles registered to Defendant at the Residence: a Chevrolet truck, a Mercedes-Benz, and a Harley-Davidson. The plate on a Ford Mustang was registered to an Acura in Defendant’s name. The presence at the Residence of four vehicles

connected to Defendant via government records tends to show he “owned other items found in proximity to the contraband” found at the Residence later that day. *Id.*

Evidence the defendant “resided in, had some control of, or regularly visited the premises where the contraband was found” is another incriminating circumstance relevant to constructive possession. *Id.* (citation and quotation marks omitted). Here, the State presented evidence Defendant lived at the Residence or regularly stayed there. There was evidence someone had been sleeping in the Main Bedroom: CCSO found the Handgun under the bed’s mattress, envelopes with money and ammunition in a dresser drawer, and a duffel bag containing marijuana. Defendant called the Residence “my house” multiple times during his recorded interview, which also supports an inference he resided there. *See id.*

The documents listing Defendant’s name and the address of the Residence also tended to show he lived there. *See id.* Our appellate courts have often considered law enforcement’s discovery of identifying documents in the same rooms as contraband an incriminating circumstance indicating constructive possession of that contraband. *See State v. Allen*, 279 N.C. 406, 412, 183 S.E.2d 680, 684 (1971) (evidence that heroin found under a mattress in the same bedroom in which defendant’s “Army identification card and other personal papers bearing his name” were found supported inference he constructively possessed the heroin); *State v. Bradshaw*, 366 N.C. 90, 96-97, 728 S.E.2d 345, 349-50 (2012) (receipt, bill, and paystub listing defendant’s name found in same bedroom as cocaine and firearm supported

constructive possession inference); *Rich*, 87 N.C. App. at 382-83, 361 S.E.2d at 323 (“letters with defendant’s name on them” found in same room as cocaine was an incriminating circumstance supporting constructive possession inference).

Thus, viewing the evidence in the light most favorable to the State, *Rose*, 339 N.C. at 192, 451 S.E.2d at 223, and considering the totality of the circumstances, *Alston*, 193 N.C. App. at 716, 668 S.E.2d at 387, there was substantial evidence Defendant had nonexclusive control of the Residence and substantial evidence of other incriminating circumstances linking Defendant to the contraband CCSO found there, *see Sawyers*, 256 N.C. App. at 345-46, 808 S.E.2d at 153. Therefore, a reasonable jury could find Defendant constructively possessed the cocaine, marijuana, and firearm underlying the charges. *See id.* Consequently, because the State presented substantial evidence of the essential element of possession common to the three offenses, the trial court did not err by denying Defendant’s Motion to Dismiss. *See Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error at Defendant’s trial and affirm the Judgment.

NO ERROR.

Judges STROUD and CARPENTER concur.

Report per Rule 30(e).