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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1146

Filed 4 November 2026

Beaufort County, Nos. 22CR313976-060, 22CR313979-060, 22CR315944-060

STATE OF NORTH CAROLINA

v.

KASHON E. MOORE, Defendant.

Appeal by Defendant from judgment entered 15 January 2025 by Judge Cy A. Grant in Beaufort County Superior Court. Heard in the Court of Appeals 16 September 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Nathan D. Childs, for the State.

Emehel Law, PLLC, by Johneric C. Emehel, for Defendant–Appellant.

MURRY, Judge.

Kashon E. Moore (Defendant) appeals from judgment upon his convictions for possession of a firearm by felon (POFBF), possession of cocaine with intent to sell or deliver (PWISD), possession of cocaine paraphernalia, possession of less than one-half ounce of marijuana, possession of marijuana paraphernalia, and no operator's license. Defendant argues that the trial court erred in denying his motion to dismiss

the POFBF charge for insufficient evidence and that he received ineffective assistance of counsel (IAC). We discern no error.

I. Background

In September 2022, Lieutenant Russell Davenport of the Beaufort County Sheriff's Office began investigating Defendant for cocaine and marijuana distribution based on two confidential sources alleging Defendant's involvement in that activity. Lieutenant Davenport surveilled Defendant at his girlfriend's residence and at 105 Daniels Court, his deceased grandmother's house (the residence). On multiple occasions after Defendant arrived at the residence, Lieutenant Davenport observed short-duration, high-volume traffic consistent with narcotics distribution. He also followed Defendant from the residence to other homes known from prior controlled-substance investigations.

On 7 October 2022, Lieutenant Davenport observed Defendant enter the residence, briefly exit to move items to a parked vehicle, and then depart. Based on his knowledge that Defendant lacked a valid driver's license, Lieutenant Davenport directed Investigator Jason Cleary to conduct a traffic stop. Investigator Cleary smelled marijuana and recovered approximately one gram from Defendant's person.

Investigator Cleary then conducted a knock-and-talk at the residence with Defendant present. No one answered, but he observed indicia of drug activity outside: a plastic bag on the windowsill, a black backpack on the front porch, an ashtray with marijuana blunts, and the odor of marijuana. Lieutenant Davenport tested one of

Defendant's keys that unlocked the front door. Lieutenant Davenport then secured the residence and obtained a search warrant.

The search of the residence yielded three firearms, controlled substances, and related drug paraphernalia. In a bedroom, officers discovered a .22-caliber pistol inside a locked safe that opened with a key from Defendant's keyring. In another bedroom, officers found a .45-caliber pistol beneath a sofa cushion, a digital scale bearing cocaine hydrochloride residue, sandwich bags containing cocaine residue, and a Visa debit card in Defendant's name atop the scale. In a third bedroom, officers found an AR-15 rifle concealed under pillows. Defendant moved to suppress the evidence seized under the search warrant on 26 July 2023; the trial court entered an order denying the motion on 7 January 2025.

At trial on 13 January 2025, Lieutenant Davenport testified that Defendant had a prior felony conviction for assault with a deadly weapon with intent to kill inflicting serious injury that was entered 6 December 2016. He also testified that the first confidential source had reported Defendant's involvement in drug trafficking and that the second confidential source had reported Defendant's presence at the residence. A North Carolina State Crime Lab technician testified to the chemical makeup of the various substances found in the residence. Defendant's counsel neither objected to any of these testimonies nor requested any limiting instructions. Defendant did not present any evidence or testimony in his own defense.

Defendant moved to dismiss all charges at the close of State's evidence and

renewed this motion at the close of all evidence. The trial court granted the motion as to the possession-of-a-stolen-firearm charge but denied the motion as to the remaining charges. On 15 January 2025, the jury returned verdicts finding Defendant guilty of PWISD regarding cocaine, possession of cocaine paraphernalia, possession of less than one-half ounce of marijuana, possession of marijuana paraphernalia, no operator's license, and POFBF. The trial court sentenced Defendant to consecutive active terms amounting to 41–63 months of total imprisonment for the convictions. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction over Defendant's appeal of the trial court's final judgment under N.C.G.S. §§ 7A-27, 15A-1444. *See* N.C.G.S. § 7A-27(b) (2025) (final judgment of a trial court); *id.* § 15A-1444(a) (pleaded not guilty but found guilty). This Court may also resolve IAC claims on direct appeal when "the cold record reveals that no further investigation is required." *State v. Fair*, 354 N.C. 131, 166 (2001).

III. Analysis

Defendant argues (1) that the trial court erred in denying his motion to dismiss the POFBF charge for insufficient evidence and (2) that he received IAC. Having reviewed both claims *de novo*, we hold that the trial court did not err and Defendant did not receive IAC. *See State v. Smith*, 186 N.C. App. 57, 62 (2007) (motions to dismiss); *State v. Wilson*, 236 N.C. App. 472, 475 (2014) (IAC claims).

A. Sufficiency of the Evidence

First, Defendant argues that the State failed to present substantial evidence that Defendant constructively possessed any of the three firearms recovered from the residence. We disagree.

To successfully prosecute a defendant for POFBF, the State must show "substantial evidence . . . that (1) the defendant has been [previously] convicted of . . . a felony and (2) that [he] . . . possessed a firearm" at any point thereafter. *State v. Taylor*, 203 N.C. App. 448, 458 (2010) (outlining essential elements of N.C.G.S. § 14-415.1(a)). The defendant may evince constructive possession through "aware[ness] of [the firearm's] presence," along with "both the power and intent to control its . . . use." *Id.* at 459; *see also State v. Alston*, 131 N.C. App. 514, 519 (1998). Substantial evidence is "more than a scintilla," *State v. Bracey*, 388 N.C. 689, 692 (2025) (quotation omitted), that otherwise "raise[s] a suspicion or conjecture" as to either statutory element, *State v. Fritsch*, 351 N.C. 373, 378 (2000).

We review this evidence "in the light most favorable to the State" by giving it "the benefit of every reasonable inference" and resolving any contradictions in its favor. *State v. Dover*, 381 N.C. 535, 547 (2022). Contradictions are for the jury to resolve alone. *State v. Coley*, 257 N.C. 156, 160 (2020). Circumstantial evidence may support a conviction "even when the evidence does not rule out every hypothesis of innocence," *State v. Stone*, 323 N.C. 447, 452 (1988), and the State may prove its case through "a chain of facts and circumstances" from which reasonable inferences may be drawn, *State v. Adcock*, 310 N.C. 1, 36 (1984).

Defendant–firearm proximity paired with other incriminating circumstances may suffice for constructive possession. *See State v. Livingston*, 290 N.C. App. 526, 529–30 (2023). A non-exhaustive set of factors include the defendant-specific:

> (1) Ownership and occupation of the property;
> (2) Proximity to the firearm;
> (3) Indicia of control over the place where the firearm is found;
> (4) Suspicious behavior at or near the time of the firearms discovery; and
> (5) Other evidence found that links him to the firearm.

Chekanow, 370 N.C. at 496 (citation modified). This factorial analysis is a "case-by-case, fact-specific consideration" that evaluates "the totality of the circumstances." *Blagg*, 377 N.C. at 493–94.

Viewed in the light most favorable to the State, the evidence raised a jury question of Defendant's constructive possession of each firearm. The State need not show that he "owned or leased the premises on which the contraband is found" to prove control. *State v. Tate*, 105 N.C. App. 175, 179 (1992). And in close cases, we have "consistently expressed a preference for submitting issues to the jury." *Blagg*, 377 N.C. at 489. Considering the five *Chekanow* factors cumulatively, there is a reasonable inference of constructive possession as to each firearm.

1. Ownership & Occupation

Although Defendant did not formally own or reside at the residence, the record implies his exercise of dominion over the property. Although his grandmother died approximately three years prior, Defendant had a key that unlocked the front door.

Lieutenant Davenport had observed Defendant repeatedly coming and going during surveillance. And when officers asked Defendant to consent to a search using that key, he suggested that they contact his long-deceased grandmother. This evidence supports Defendant's ownership or occupation of the residence.

2. Indicia of Control & Suspicious Behavior

Beyond the key and physical access, Lieutenant Davenport observed short-duration, high-volume traffic to the residence on multiple occasions following Defendant's arrivals—a pattern consistent with narcotics distribution. Defendant was followed from the residence to other homes known from prior controlled-substance investigations. This pattern of "regularly visit[ing] and s[elling] drugs" permits the inference that Defendant used the residence as an operational base. *State v. Alston*, 193 N.C. App. 712, 716–17 (2008).

3. Personal Effects & Other Evidence

Each firearm carries an additional link to Defendant. Officers discovered a .22-caliber pistol inside a locked safe in the first bedroom and used a key from Defendant's keyring to open the safe. That is not merely proximity considered "in terms of space and time" but the exclusive means of access to the firearm. *Chekanow*, 370 N.C. at 497. Officers found a .45-caliber pistol under a sofa cushion in the middle bedroom next to a digital scale containing cocaine hydrochloride residue, with Defendant's debit card resting on top of the scale. Defendant's debit card tied him to the area where officers recovered the pistol, and the scale connected that room to the

drug distribution Lieutenant Davenport surveilled. *Accord Alston*, 193 N.C. App at 716–17. Officers recovered an AR-15 rifle from beneath pillows in the third bedroom. Read against the other incriminating circumstances—Defendant's key to the front door, his repeated presence at the residence, his evasive reference to his deceased grandmother, and the drug-distribution activity observed by officers—the rifle concealment falls within the same operational sphere. *See Chekanow*, 370 N.C. at 496; *Blagg*, 377 N.C. at 494.

The evidence is substantially stronger than the mere access our Supreme Court has held insufficient in previous cases. *See State v. Miller*, 363 N.C. 96, 99 (2009). Because the totality of the circumstances governs, the State's evidence was substantial as to each firearm, and the trial court did not err in denying Defendant's motion to dismiss the POFBF charge. *Blagg*, 377 N.C. at 494.

B. Ineffective Assistance of Counsel

Next, Defendant argues that his trial counsel rendered constitutionally ineffective assistance by failing to request limiting instructions on evidence of both his prior felony conviction and the confidential-informant statements. In the alternative, Defendant contends either that the omissions were cumulatively prejudicial or that they merit dismissal of the IAC claims without prejudice for a motion for appropriate relief (MAR). We disagree on all counts.

To prevail on an IAC claim, a defendant must satisfy *Strickland v. Washington*'s two-pronged constitutional test: (1) that counsel's performance fell

below an objective standard of reasonableness, and (2) that but for counsel's deficient performance, "there is a reasonable probability that . . . the result of the proceeding would have been different." 466 U.S. 668, 687–94 (1984); *State v. Braswell*, 312 N.C. 553, 561–63 (1985) (adopting *Strickland*). A "reasonable probability" is one "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Where no reasonable probability exists, though, we need not address the question of counsel's performance itself. *See Braswell*, 312 N.C. at 563.

1. Prior Felony Conviction

Defendant contends that his trial counsel was ineffective in failing either to object to Lieutenant Davenport's testimony identifying the specific nature and date of Defendant's prior conviction or to request a limiting instruction. To establish POFBF under N.C.G.S. § 14-415.1, the State must prove the defendant's previous felony conviction. *State v. Sharpe*, 289 N.C. App. 84, 87 (2023) (citations omitted). Because the State introduced competent evidence of defendant's prior deadly-assault conviction, Defendant has not shown *Strickland* prejudice. And as detailed above, the State's evidence of Defendant's guilt on the POFBF charge was substantial. There is no reasonable probability that a limiting instruction would have altered the verdict. *See* N.C.G.S. § 15A-1443(a); *Braswell*, 312 N.C. at 563.

2. Confidential Informant Statements

Defendant also contends that trial counsel was ineffective in failing to request a limiting instruction concerning Lieutenant Davenport's testimony that each

confidential source had reported Defendant's involvement in cocaine and marijuana distribution.

A confidential informant's out-of-court statements offered to explain an officer's subsequent course of investigation are not hearsay. *State v. Steele*, 260 N.C. App. 315, 320 (2018); N.C. R. Evid. 801(c). A defendant *may* request a limiting instruction, N.C. R. Evid. 105, but a decision to not request a limiting instruction is ordinarily strategic (*e.g.*, to avoid undue emphasis of the challenged testimony) and thus merits substantial deference on appeal. *See State v. Pemberton*, 228 N.C. App. 234, 241 (2013) (reviewing courts do not second-guess the strategic or tactical decisions made by a defendant's counsel). Defendant has not shown that counsel's approach here fell below an objective standard of reasonableness.

Defendant's alternative arguments of cumulative error and dismissal without prejudice fail for the same reason. The State's evidence of guilt as to each conviction was substantial without reference to the challenged omissions, so their cumulative effect does not create a reasonable probability of a different result. *See State v. Wilkerson*, 363 N.C. 382, 426 (2009); *Braswell*, 312 N.C. at 563. The cold record on direct appeal sufficiently resolves the IAC claims on their merits, so dismissal without prejudice is unwarranted. *See Fair*, 354 N.C. at 166.

IV. Conclusion

For the reasons discussed above, this Court affirms the trial court's denial of Defendant's motion to dismiss. We also dismiss Defendant's ineffective assistance of

counsel claims with prejudice.

NO ERROR.

Judges COLLINS and STADING concur.

Report per Rule 30(e).