An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1107

Filed 18 November 2026

Moore County, Nos. 20CR052503-620; 20CR052504-620; 22CR000571-620

STATE OF NORTH CAROLINA

v.

LESTER MARCELLAS WHITTED, Defendant.

Appeal by Defendant from judgments entered 3 April 2025 by Judge Michael A. Stone in Moore County Superior Court. Heard in the Court of Appeals 15 September 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Kellie E. Army, for the State.

Patterson Harkavy LLP, by Paul E. Smith, for Defendant-Appellant.

CARPENTER, Judge.

Defendant appeals from judgments entered after a jury found him guilty of trafficking heroin by possession, trafficking heroin by transportation, possession of a controlled substance, possession of drug paraphernalia, and possession of a firearm by a felon. On appeal, Defendant argues that the trial court erred in denying his motion to dismiss the charges. After careful review, we discern no error.

I. Factual & Procedural Background

On 15 August 2022, a grand jury indicted Defendant on one count each of trafficking heroin by possession, trafficking heroin by transportation, possession with intent to sell or deliver a controlled substance, possession of drug paraphernalia, and possession of a firearm by a felon. On 1 April 2025, the case proceeded to trial, where the evidence tended to show the following.

In August 2020, Defendant and his wife, Sierra Ladson, were driving to a celebration. Defendant was a passenger in Ladson's car. Officer Frye of the Moore County Sheriff's Office pulled the vehicle over for an inoperable tag light. After discovering that Ladson had two active warrants for her arrest, Frye instructed Ladson to exit the vehicle, and Ladson gave Frye permission to search the vehicle.

When Frye asked Defendant to exit the vehicle, Frye noticed a handgun at Defendant's feet. Frye testified that the vehicle was "trashy, but the firearm . . . was just right in plain view" and was loaded. Frye found no contraband near the driver's seat. On Defendant's passenger side, Frye spotted an open container of alcohol and "baggies" stuck between Defendant's seat and the console. One of the bags held "powder," and the other bag "was almost like tinfoil wrappers, like bubble gum wrappers." Frye thought the bags held "[h]eroin or fentanyl." Forensic testing revealed that the baggies contained 4.03 grams of heroin.

At trial, Defendant testified that the drugs and firearm did not belong to him and instead implied that the contraband belonged to his wife or a previous passenger.

Defendant claimed that he could not see the contraband because it was dark and there was too much trash in the car. Defendant admitted to being a felon and to prior convictions involving the sale of drugs and possessing a firearm as a convicted felon.

After the State presented its case-in-chief, Defendant moved to dismiss the charges, arguing that the State's evidence was insufficient. Defendant renewed his motion at the close of all the evidence. The trial court again denied Defendant's motion. On 3 April 2025, a jury convicted Defendant of both trafficking offenses, possession of a controlled substance, possession of drug paraphernalia, and possession of a firearm by a felon. After the jury's verdict, the trial court sentenced Defendant to between seventy and ninety-three months active in the Department of Adult Correction, with a $100,000 fine. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2025).

III. Issue

The issue on appeal is whether the trial court erred in denying Defendant's motion to dismiss.

IV. Analysis

Defendant argues that the trial court erred in denying his motion to dismiss the charges against him. Specifically, he contends the State's evidence was insufficient to establish that he possessed the contraband. We disagree.

A. Standard of Review

"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 motion to dismiss, " '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 [the] 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) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)).

"Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980) (citations omitted). "It 'is the same as more than a scintilla of evidence.' " *State v. Norris*, 390 N.C. 211, 216, 933 S.E.2d 786, 791 (2026) (quoting *State v. Tucker*, 380 N.C. 234, 237, 867 S.E.2d 924, 927 (2022)). "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, 192–93, 451 S.E.2d 211, 223 (1994) (citing *State v. Sumpter*, 318 N.C. 102, 107, 347 S.E.2d 396, 399 (1986)).

"Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve." *Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455 (citing *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992)). The trial court should also

disregard the defendant's evidence "unless it is favorable to the State or does not conflict with the State's evidence." *Id.* at 379, 526 S.E.2d at 455 (citing *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 653 (1982)). Accordingly, "the trial court should be concerned only about whether the evidence is sufficient for jury consideration, not about the weight of the evidence." *See id.* at 379, 526 S.E.2d at 455–56 (citing *Earnhardt*, 307 N.C. at 67, 296 S.E.2d at 652).

B. Possession

As an initial matter, each conviction at issue requires Defendant to possess the contraband at issue. *See* N.C. Gen. Stat. § 14-415.1(a) (2025) ("It is unlawful for any person who has been convicted of a felony to . . . possess, or have in the person's custody, care, or control any firearm . . . ."); *id.* § 90-113.22(a) ("It is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia to . . . package, repackage, store, [or] contain . . . a controlled substance . . . ."); *id.* § 90-95(h)(4) ("[A]ny person who . . . transports[] or possesses four grams or more of opium . . . including heroin . . . shall be guilty of . . . 'trafficking' . . . ."); *id.* § 90-95(a)(3) ("[I]t is unlawful for any person . . . [t]o possess a controlled substance.").

"[A]ctual and constructive possession 'often so shade into one another that it is difficult to say where one ends and the other begins.' " *State v. McNeil*, 359 N.C. 800, 813, 617 S.E.2d 271, 279 (2005) (quoting *Nat'l Safe Deposit Co. v. Stead*, 232 U.S. 58, 67, 34 S. Ct. 209, 212 (1914)). Thus, " '[i]n a prosecution for possession of contraband materials, the prosecution is not required to prove actual physical possession of the

materials.' " *State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 270 (2001) (quoting *State v. Perry*, 316 N.C. 87, 96, 340 S.E.2d 450, 456 (1986)). "Proof of nonexclusive, constructive possession is sufficient." *Id.* at 552, 556 S.E.2d at 270 (citing *Perry*, 316 N.C. at 96, 340 S.E.2d at 456).

" 'Constructive possession of contraband material exists when there is no actual personal dominion over the material, but there is an intent and capability to maintain control and dominion over it.' " *Norris*, 390 N.C. at 217, 933 S.E.2d at 792 (quoting *State v. Brown*, 310 N.C. 563, 568, 313 S.E.2d 585, 588 (1984)). "If the defendant shared control of the location with another person, . . . 'the State must show other incriminating circumstances sufficient for the jury to find [that the] defendant had constructive possession.' " *Id.* at 218, 933 S.E.2d at 792 (quoting *State v. Miller*, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2008)). " 'Whether incriminating circumstances exist to support a finding of constructive possession is a fact-specific inquiry.' " *Id.* at 218, 933 S.E.2d at 792 (quoting *State v. Chekanow*, 370 N.C. 488, 496, 809 S.E.2d 546, 552 (2018)).

In determining whether sufficient incriminating circumstances support constructive possession, we consider five relevant factors:

> (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.

Id. at 218, 933 S.E.2d at 792 (quoting *Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552). We " 'consider[] proximity in terms of space and time.' " *Id.* at 220, 933 S.E.2d at 793 (quoting *Chekanow*, 370 N.C. at 497, 809 S.E.2d at 553). " '[A] defendant's opportunity to place contraband in the place where it was found is additional indicia of control.' " *Id.* at 221, 933 S.E.2d at 794 (quoting *Chekanow*, 370 N.C. at 497, 809 S.E.2d at 553). "Because '[n]o one factor controls, . . . courts must consider the totality of the circumstances.' " *Id.* at 218, 933 S.E.2d at 792 (quoting *Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552).

Here, the State presented evidence of incriminating circumstances sufficient for the jury to find that Defendant had constructive possession of the contraband. *See Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455; *Norris*, 390 N.C. at 218, 933 S.E.2d at 792. First, although Defendant insists that he was no more than a passenger, his wife owned the car. *See Norris*, 390 N.C. at 218, 933 S.E.2d at 792. Additionally, Defendant had more opportunity to control the contraband and greater access to it than any prior passenger or his wife. Indeed, the firearm was at Defendant's feet, and the drugs were beside his leg. *See id.* at 218, 933 S.E.2d at 792. Accordingly, viewing the totality of the circumstances, *see id.* at 218, 933 S.E.2d at 792, in the light most favorable to the State, *see Rose*, 339 N.C. at 192–93, 451 S.E.2d at 223, the State's evidence was sufficient to establish constructive possession, *see Norris*, 390 N.C. at 218, 933 S.E.2d at 792; *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455. Thus, the

trial court properly denied Defendant's motion to dismiss. *See Fritsch*, 351 N.C. at 378–79, 526 S.E.2d at 455–56.

V. Conclusion

In sum, because the State presented substantial evidence that Defendant constructively possessed the contraband, the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges STROUD and GORE concur.

Report per Rule 30(e).