NO. COA12-1464
NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2013

STATE OF NORTH CAROLINA

v. Durham County
No. 07 CRS 46771

BASWELL LEON FRANCIS

Appeal by defendant from judgments entered 4 May 2012 by Judge Abraham Jones in Durham County Superior Court. Heard in the Court of Appeals 24 April 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Anne J. Brown, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Charlesena Elliott Walker, for defendant appellant.

McCULLOUGH, Judge.

Baswell Leon Francis ("defendant") appeals from his conviction for one count of felonious trafficking in cocaine by possession, one count of felonious conspiracy to traffic in cocaine by possession, one count of misdemeanor simple possession of marijuana, and one count of misdemeanor possession of drug paraphernalia. On appeal, defendant contends (1) the

trial court plainly erred in admitting evidence that he confessed to possessing marijuana where the statement was made in response to questioning by a police officer while he was in custody and prior to being advised of his ***Miranda*** rights; (2) the trial court erred in instructing the jury on confessions; and (3) the trial court erred in denying his motion to dismiss the charges of trafficking in cocaine by possession and conspiracy to traffic in cocaine by possession for insufficient evidence that he possessed the cocaine. We dismiss in part and find no error in part.

I. Background

On 30 May 2007, at approximately 7:00 p.m., Durham County Deputy Sheriff D.S. Fowler ("Deputy Fowler") drove his marked patrol car into the parking lot of a service station and convenience store located in Durham County, North Carolina, to complete a report. As Deputy Fowler drove into the parking lot, he observed an unoccupied four-door green vehicle with its windows down parked in the middle of the lot. The vehicle was registered to defendant.

Deputy Fowler backed his patrol car into a parking space approximately fifty feet behind the green vehicle and continued to observe the parking lot. Approximately two minutes later,

Deputy Fowler observed a small dark blue or black truck driven by an Hispanic male turn into the parking lot and pull up next to the green vehicle very slowly. Without stopping, the driver of the truck tossed what appeared to be a white plastic bag of trash through the open window of the green vehicle into its passenger area. The truck then continued out the other side of the parking lot and drove away.

Less than one minute later, Deputy Fowler observed defendant exit the convenience store and continue towards the green vehicle while scratching a lottery ticket. As defendant reached halfway across the parking lot, he looked up and made eye contact with Deputy Fowler. Defendant stopped scratching his lottery ticket and appeared "startled." Defendant then proceeded to the driver's side of his vehicle, opened the door, popped the vehicle's hood, lifted the hood of the vehicle, and began "jiggling" the battery cables. Deputy Fowler pulled his patrol car up next to defendant's vehicle, exited his patrol car, and asked defendant if he needed any assistance. Defendant stated that he was "having problems with his car." Standing next to the driver's door of defendant's vehicle, Deputy Fowler noticed a small bag of green vegetable substance that, based upon his training and five years' experience in law enforcement, he

believed to be marijuana lying in plain view in the vehicle's center console area. Deputy Fowler asked defendant for identification and inquired about the bag of marijuana. Defendant did not respond to Deputy Fowler's questions, but he became "fidgety," appeared "very nervous," and began pacing back and forth in front of the vehicle.

A marked Durham City Police K-9 patrol car drove by, turned into the service station parking lot, and asked Deputy Fowler if he needed any assistance. As Deputy Fowler responded, defendant "took off on foot" and ran approximately fifty yards across the street and into the woods. Deputy Fowler radioed for assistance, pursued defendant, and caught defendant when defendant stumbled and fell to the ground, whereupon defendant wrestled with Deputy Fowler in an attempt to escape. With the assistance of the K-9 officer and dog, Deputy Fowler subdued defendant, handcuffed and arrested him, and escorted him back to the service station parking lot. Deputy Fowler then patted defendant down for weapons and asked defendant why he ran. Defendant had not been informed of his *Miranda* rights at this point. Defendant responded to Deputy Fowler's question that he ran because he knew he had marijuana in the vehicle and he did not have a

driver's license. Deputy Fowler then opened the door of defendant's vehicle and removed the small bag of marijuana.

Once other officers arrived at the scene, Deputy Fowler continued to search defendant's vehicle. Deputy Fowler discovered $3,000 cash under the driver's seat of the vehicle. An assisting officer also discovered the white plastic bag that Deputy Fowler had observed being tossed into defendant's vehicle in the passenger seat. The white plastic bag contained $15,075 cash and two gray duct-taped brick-shaped objects. Subsequent analysis of the two brick-shaped objects confirmed that they contained 1981 grams of the Schedule II controlled substance cocaine hydrochloride.

Narcotics Officers Corporal Raheem Aleem ("Corporal Aleem") and Lieutenant Derrick O'Mary of the Durham County Sheriff's Office were among the officers to arrive at the scene. Corporal Aleem introduced himself to defendant as a narcotics investigator and advised defendant of his *Miranda* rights. Defendant was then transported to the magistrate's office for booking.

While at the magistrate's office, defendant asked to speak to the narcotics officer who had spoken to him at the scene. Deputy Fowler radioed Corporal Aleem, and Corporal Aleem arrived

at the magistrate's office approximately fifteen minutes later. Corporal Aleem again reminded defendant of his *Miranda* rights and then asked defendant what he wished to talk about. Defendant related to Corporal Aleem that he was not a drug dealer "per se," but he brokered the deals and knew people who both sold and wanted to buy quantities of cocaine. Defendant stated that he had purchased three kilos of cocaine for $19,000 per kilo but informed the buyers that the purchase price was $20,000 per kilo. Defendant stated that he took $1,000 off the top for each of the three kilos, thus resulting in the $3,000 that was found underneath the driver's seat of his vehicle. Defendant stated that the individuals from whom he was purchasing were Hispanic and explained that rather than being supplied with three kilos, he was supplied with only two kilos and a partial refund of his money.

On 20 August 2007, defendant was indicted for one count of felonious trafficking in cocaine by possession of more than 400 grams of cocaine, one count of felonious conspiracy to traffic in cocaine by possession, one count of felonious possession with the intent to sell and deliver cocaine, one count of misdemeanor possession of less than 1.5 ounces of marijuana, and one count of misdemeanor possession of drug paraphernalia. Defendant was

tried by jury beginning 26 June 2008. Following a two-day trial, the trial court instructed the jury, and on the afternoon of Friday, 27 June 2008, the jury began its deliberations. Defendant, who was then free on bond, fled the jurisdiction and was absent for the remainder of the trial. On Monday, 30 June 2008, the jury resumed deliberations and returned a verdict of guilty on all charges. However, because the jury convicted defendant of both possession with intent to sell and deliver cocaine as well as the lesser-included offense of simple possession of cocaine, the State elected to voluntarily dismiss the charge of possession with the intent to sell and deliver cocaine.

Following defendant's apprehension by law enforcement officers, defendant was sentenced by the trial court on 4 May 2012. The trial court sentenced defendant within the presumptive range to 45 days' imprisonment for the two consolidated misdemeanor offenses and a consecutive term of 175 to 219 months' imprisonment for the two consolidated felony offenses. Defendant gave oral notice of appeal in open court.

II. Admission of Confession Evidence

Defendant’s first argument on appeal is that the trial court plainly erred in admitting evidence that he confessed to

possessing marijuana. Defendant maintains that the statement he made to Deputy Fowler acknowledging the marijuana inside defendant's vehicle was made in response to Deputy Fowler's question asking why defendant ran and was made while defendant was in custody and prior to being advised of his *Miranda* rights.

Prior to trial, defendant moved *in limine* to suppress a number of statements that he had made to law enforcement officers on the night of 30 May 2007. During this hearing, the State conceded that the statement defendant made to Deputy Fowler in response to the officer's question of why defendant ran should be suppressed. Specifically, the State conceded:

> Frankly, Your Honor, it would be the State's opinion, and I did not intend to introduce into evidence, was after he was placed in custody, in handcuffs, brought back to his car with the -- I believe it was the K-9 handler, I'll call it the K-9 handler, the city police officer, I believe testimony came out that Deputy Fowler asked why did you run? Well, we didn't hear anything about any *Miranda* rights being read then. And so in that case, Your Honor, I think everything he said before Deputy Aleem -- Corporal Aleem arrived and after he was placed in custody and put -- after he was placed in custody but before Deputy Aleem arrived that was made at the front of the car, but if he's asking for that to be suppressed, I have no argument.
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> . . . .
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> . . . So I'm not going to -- if he's

> seeking to have that suppressed about statements made to Deputy Fowler after he's taken into custody but before Corporal Aleem advised him of his *Miranda* rights, then I have no argument. In fact, I think under those circumstances, they should be suppressed.

Defendant now complains on appeal that his statement to Deputy Fowler was subsequently admitted into evidence at trial. However, the record reveals that defendant's statement was elicited by defense counsel on cross-examination. During direct examination of Deputy Fowler, the State asked no questions about, nor did Deputy Fowler testify to, any statements defendant had made. Thereafter, the following exchange occurred during cross-examination:

> [DEFENSE COUNSEL] Q. Okay. Now, you -- you approached him and he took off running. He didn't get very far. You said he was slow. Tumbled down the hill. You put him in handcuffs and you engaged him in some conversation at that time, did you not?
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> [DEPUTY FOWLER] A. I just asked him why he ran.
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> Q. And he told you.
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> A. He said the bag of marijuana and no driver's license.

"'Statements elicited by a defendant on cross-examination are, even if error, invited error, by which a defendant cannot be prejudiced as a matter of law.'" *State v. Fraley*, 202 N.C.

App. 457, 465, 688 S.E.2d 778, 785 (2010) (quoting *State v. Gobal*, 186 N.C. App. 308, 319, 651 S.E.2d 279, 287 (2007)). Assuming *arguendo* that the elicited statement made by defendant to Deputy Fowler acknowledging his possession of the marijuana was error, defendant cannot be prejudiced by it as a matter of law because he invited it. *Id.* at 466, 688 S.E.2d at 785. Accordingly, we dismiss defendant's first argument on appeal.[1]

III. Jury Instruction on Confessions

Defendant's second argument on appeal is that the trial court erred in instructing the jury on confessions. Defendant contends that the language used by the trial court in instructing the jury on confessions was not supported by the evidence, impermissibly conveyed to the jury the trial court's opinion on the evidence, and was prejudicial in that it permitted the jury to find defendant guilty of all charged

[1] We note that the record plainly reveals that the statement now challenged by defendant on appeal was elicited by defense counsel on cross-examination. However, the argument presented to this Court in defendant's appellate brief implies that the State elicited this evidence and defense counsel failed to object to its admission – a misleading and inaccurate characterization of the proceedings below. We remind appellate counsel for defendant in this case that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous[.]" N.C. Rev. R. Prof. Conduct 3.1 (2013); *see also* N.C.R. App. P. 34(a)(1), (3) (2013).

offenses rather than only those offenses to which he might have confessed in accordance with the evidence presented.

In instructing the jury on confessions, the trial court utilized North Carolina Criminal Pattern Jury Instruction 104.70: "If you find that the defendant has confessed that [he] committed the crime[s] charged in this case, then you should consider all of the circumstances [of] which it was made in determining whether it was a truthful confession and the weight you will give to it." N.C.P.I.--Crim. 104.70 (2005).

Defendant made two statements to law enforcement officers on the night of 30 May 2007 that he now challenges on appeal. The first statement was made to Deputy Fowler in response to the officer's question to defendant asking why defendant ran, to which defendant acknowledged his possession of marijuana. The second statement was made to Corporal Aleem at the magistrate's office, in which defendant described his involvement in cocaine transactions between buyers and dealers.

Defendant contends that his "statements, at most, supported a finding that he *confessed* only to the charge of possessing marijuana." However, defendant argues that his statement to Corporal Aleem concerning the cocaine transactions "merely described his general *modus operandi*" and in no way referenced

the cocaine found in his vehicle. Accordingly, defendant argues there is no evidence to support an instruction on confessions as to the two cocaine-related charges. Defendant asserts that because there was no evidence that he confessed to the two cocaine-related charges, the trial court's instruction on confessions permitted the jury to find that he had in fact confessed to these crimes and impermissibly conveyed to the jury the trial court's view that defendant had in fact confessed to these crimes, thereby warranting a new trial.

"[Arguments] challenging the trial court's decisions regarding jury instructions are reviewed *de novo* by this Court." *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). "The prime purpose of a court's charge to the jury is the clarification of issues, the elimination of extraneous matters, and a declaration and an application of the law arising on the evidence." *State v. Cameron*, 284 N.C. 165, 171, 200 S.E.2d 186, 191 (1973). "[A] trial judge should not give instructions to the jury which are not supported by the evidence produced at the trial." *Id.* "Where jury instructions are given without supporting evidence, a new trial is required." *State v. Porter*, 340 N.C. 320, 331, 457 S.E.2d 716, 721 (1995).

Here, the evidence elicited by defendant on cross-examination of Deputy Fowler supported the trial court's instruction on confessions as to the charge of possessing marijuana. Therefore, the only remaining issue is whether the evidence supported the trial court's instruction on confessions as to the two cocaine-related charges of trafficking in cocaine by possession and conspiracy to traffic in cocaine by possession.

A confession is a "'voluntary statement made by one who is [a] defendant in [a] criminal trial at [a] time when he is not testifying in trial and by which he acknowledges certain conduct of his own constituting [a] crime for which he is on trial; a statement which, if true, discloses his guilt of that crime.'" *State v. Cannon*, 341 N.C. 79, 89, 459 S.E.2d 238, 244-45 (1995) (alterations in original) (quoting Black's Law Dictionary 296 (6th ed. 1990)).

> The pattern jury instruction concerning confessions . . . should not be given in cases in which the defendant has made a statement which is only of a generally inculpatory nature. When evidence is introduced which would support a finding that the defendant in fact has made a statement admitting his guilt of the crime charged, however, the instruction is properly given.

State v. Young, 324 N.C. 489, 498, 380 S.E.2d 94, 99 (1989).

In the present case, the two cocaine-related charges for which defendant was charged are trafficking in cocaine by possession and conspiracy to traffic in cocaine by possession. "A criminal conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means." *State v. Lipford*, 81 N.C. App. 464, 465, 344 S.E.2d 307, 308 (1986). The possession of twenty-eight grams or more of cocaine is an unlawful felonious act known as "trafficking in cocaine." N.C. Gen. Stat. § 90-95(h)(3) (2011).

In the present case, defendant's statement to Corporal Aleem admitted that defendant had engaged in certain conduct which constituted the crimes of trafficking in cocaine by possession and conspiracy to traffic in cocaine by possession. Corporal Aleem testified that defendant requested to talk to him because defendant "wanted to break it down to [Corporal Aleem] about . . . what was going on." Corporal Aleem testified that defendant stated that "he wasn't a drug dealer per se[,]" but that "he brokered the deals, . . . that he knew people who sold drugs, cocaine. And he knew people who wanted to buy quantities of cocaine." Corporal Aleem testified that defendant stated "[h]e was kind of like the broker in the middle." Corporal

Aleem testified that defendant "bought the kilos for [$]19,000, but he told the people he was selling them to he got them for [$]20,000. So for three [kilos], he got $1,000 off the top." Corporal Aleem testified that defendant explained "that's why the $3,000 was found underneath [defendant's] seat, because that was his cut." Corporal Aleem further testified that "only two [kilos] were found in the car" because "they were supposed to bring three [kilos]. They didn't bring three [kilos] and they should have returned [defendant's] money, but they didn't return all of his money." Corporal Aleem testified that defendant stated he was "buying these drugs" from "Hispanic drug dealers[.]" Corporal Aleem further testified that defendant stated he went to the service station "for the deal" and that the drug dealers he was working with had "surveillance people" at the service station.

A reasonable reading of Corporal Aleem's testimony reveals that defendant admitted that prior to the night of 30 May 2007, he brokered a cocaine deal in which he agreed to purchase and take delivery of three kilos of cocaine from a group of Hispanic drug dealers at a price of $19,000 per kilo, which he would then sell to a group of purchasers for $20,000 per kilo, and defendant would keep the $1,000 per kilo difference. Corporal

Aleem's testimony reveals that defendant admitted to having paid these drug dealers in advance for the three kilos, to taking his $3,000 cut up front, and that instead of delivering the agreed-upon three kilos, he received only two kilos and a partial refund of the purchase money.

Although defendant argues that his statement described only his general role in brokering cocaine deals, rather than admitting knowledge about the actual cocaine found in his car, defendant's statements clearly concern the two kilos of cocaine that were found inside his vehicle, the $3,000 cash found underneath the driver's seat of his vehicle, and the remaining cash found inside his vehicle accompanying the two kilos of cocaine on the night of 30 May 2007. Defendant's statement amounted to a confession to both trafficking in cocaine by possession, in that defendant acknowledged taking delivery of and possessing more than twenty-eight grams of cocaine in his vehicle, and conspiracy to traffic in cocaine by possession, in that defendant acknowledged an agreement that he made with certain drug dealers to purchase more than twenty-eight grams of cocaine for which he took delivery and possessed. *See Cannon*, 341 N.C. at 90, 459 S.E.2d at 245 (holding that the defendant's statement amounted to a confession when he admitted that he had

engaged in certain acts which constituted the crime of felony murder); *State v. Hamilton*, 298 N.C. 238, 245, 258 S.E.2d 350, 354 (1979) (holding that the defendant's statement amounted to a confession when he admitted that he had committed certain acts which constituted the crimes of rape and burglary).

"Regardless of defendant's characterization of the statements, . . . an instruction on confession[s] is appropriate if defendant has admitted taking certain actions that, if true, would constitute a criminal offense." *State v. Shelman*, 159 N.C. App. 300, 308, 584 S.E.2d 88, 94 (2003). Here, despite defendant's characterization of his statements as describing his general "*modus operandi*," the trial court's instruction on confessions as it relates to the two cocaine-related offenses was "'based upon a state of facts presented by some reasonable view of the evidence[,]'" and therefore, the trial court's instruction was proper. *Cannon*, 341 N.C. at 89, 459 S.E.2d at 244 (quoting *State v. Lampkins*, 283 N.C. 520, 523, 196 S.E.2d 697, 699 (1973)). As the trial court's instruction on confessions was properly supported by the evidence as to both the two felony cocaine charges and the misdemeanor possession of marijuana charge, defendant's argument that the trial court's instruction impermissibly conveyed to the jury the trial court's

opinion that defendant had confessed to those crimes is without merit. The trial court's instruction, consistent with the pattern jury instruction, "left it entirely for the jury to determine whether the evidence showed that the defendant in fact had confessed." *Young*, 324 N.C. at 498, 380 S.E.2d at 99.

IV. Motion to Dismiss for Insufficient Evidence of Possession

Defendant's remaining argument on appeal is that the trial court erred in denying his motion to dismiss the charges of trafficking in cocaine by possession and conspiracy to traffic in cocaine by possession for insufficient evidence that he constructively possessed the cocaine found in his vehicle.

"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). "'Upon 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) (quoting *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980)). "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). "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).

In the present case, defendant challenges only the sufficiency of the evidence as to the element of possession. *See State v. Alston*, 193 N.C. App. 712, 715, 668 S.E.2d 383, 386 (2008) ("In order to support a charge of trafficking cocaine, the State must prove that defendant (1) knowingly possessed cocaine and (2) that the amount possessed was twenty-eight grams or more."). There is no dispute that defendant did not actually possess the cocaine for which he was charged. Thus, defendant argues that the State presented insufficient evidence that he constructively possessed the cocaine for which he was charged.

"'Constructive possession [of a controlled substance] occurs when a person lacks actual physical possession, but nonetheless has the intent and power to maintain control over the disposition and use of the [controlled] substance.'" *Id.*

(alterations in original) (quoting *State v. Wilder*, 124 N.C. App. 136, 139-40, 476 S.E.2d 394, 397 (1996)).

> In car cases, not only is ownership sufficient, but
>
> > "[a]n inference of constructive possession can also arise from evidence which tends to show that a defendant was the custodian of the vehicle where the controlled substance 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 a controlled substance 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. Hudson, 206 N.C. App. 482, 490, 696 S.E.2d 577, 583 (alteration in original) (quoting *State v. Dow*, 70 N.C. App. 82, 85, 318 S.E.2d 883, 886 (1984) (internal quotation marks and citations omitted)), *disc. review denied*, 364 N.C. 619, 705 S.E.2d 360 (2010).

> [W]here contraband material is found in a vehicle under the control of an accused, . . . this fact is sufficient to give rise to an inference of knowledge and possession which *may* be sufficient to carry the case to the jury. 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, 569 S.E.2d 680, 682 (2002) (internal quotation marks and citations omitted).

Other incriminating circumstances relevant to constructive possession include evidence that defendant owned other items found in proximity to the contraband, acted nervously in the presence of law enforcement, was near contraband in plain view, or possessed a large amount of cash. *Alston*, 193 N.C. App. at 716, 668 S.E.2d at 386. "Evidence of conduct by the defendant indicating knowledge of the controlled substance or fear of discovery is also sufficient to permit a jury to find constructive possession." *Id.* "Our determination of whether the State presented sufficient evidence of incriminating circumstances depends on 'the totality of the circumstances in each case. No single factor controls, but ordinarily *the questions will be for the jury*.'" *Id.* at 716, 668 S.E.2d at 386-87 (quoting *State v. McBride*, 173 N.C. App. 101, 106, 618 S.E.2d 754, 758 (2005)).

In the present case, the State presented evidence tending to show that the vehicle in which the cocaine was found was registered to defendant and that defendant was the custodian of the vehicle. This evidence was sufficient to give rise to the inference that defendant had both knowledge and possession of

the contraband found inside his vehicle, sufficient to go to the jury. *State v. Wiggins*, 185 N.C. App. 376, 387, 648 S.E.2d 865, 873 (2007); *Hudson*, 206 N.C. App. at 490, 696 S.E.2d at 583.

In addition, the State presented evidence of other incriminating circumstances sufficient to submit the case to the jury. Deputy Fowler testified that defendant acted nervously when he approached defendant and asked him about his vehicle. Defendant also admitted to possessing the small bag of marijuana in plain view located in the center console of his vehicle. Defendant likewise admitted to possessing the $3,000 found underneath the driver's seat of his vehicle. Defendant further admitted to brokering a cocaine deal and explained the circumstances surrounding how the cocaine and accompanying cash ended up in his vehicle. At the time the cocaine was discovered inside defendant's vehicle, defendant was the only person in close proximity to the vehicle, and upon returning to the vehicle, defendant reached inside, unlatched the hood, and proceeded to manipulate the car's wires. Upon further questioning by Deputy Fowler about the small bag of marijuana and defendant's identification, defendant attempted to flee the scene and resisted arrest when caught by Deputy Fowler. In light of these circumstances, the State presented ample evidence

that defendant both knew about and constructively possessed the cocaine inside his vehicle. The fact that no evidence was presented that defendant had actually been inside the vehicle or that he was not actually inside the vehicle at the time the cocaine was discovered is immaterial. The trial court did not err in denying defendant's motion to dismiss the two cocaine-related charges. Defendant's argument is without merit.

V. Conclusion

We hold the trial court did not commit plain error in admitting evidence that defendant confessed to possessing marijuana, as such evidence was elicited by defense counsel on cross-examination and was therefore invited error by which defendant cannot be prejudiced as a matter of law. We also hold the trial court did not err in instructing the jury on confessions as to both the two felony cocaine charges and the misdemeanor marijuana possession charge, as the instruction was supported by the evidence adduced at trial. Finally, we hold the trial court did not err in denying defendant's motion to dismiss the charges of trafficking in cocaine by possession and conspiracy to traffic in cocaine by possession, as the State presented ample evidence that defendant both knew about and constructively possessed the cocaine discovered in his vehicle.

Dismissed in part; no error in part.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).