

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT**

JULY TERM 2001

TYRONE THOMAS DEMPS,

Appellant,

v.

CASE NO. 5D00-3449

STATE OF FLORIDA,

Appellee.

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Opinion filed August 24, 2001

**Appeal from the Circuit
Court for Orange County,
Dorothy J. Russell, Judge.**

**James B. Gibson, Public Defender, and
Susan A. Fagan, Assistant Public Defender,
Daytona Beach, for Appellant.**

**Robert A. Butterworth, Attorney General, Tallahassee, and
Anthony J. Golden, Assistant Attorney General,
Daytona Beach, for Appellee.**

HARRIS, J.

The issue in this case is whether the driver and sole occupant of a vehicle in which cocaine is found in "an ashtray cover in front of the drive shaft" (which places it immediately beside the driver) can be found to be in possession of that cocaine when there is testimony that others have occupied the vehicle earlier in the day.

As we have done before, we again say it is a jury question. In *Parker v. State*, 641 So. 2d 483 (Fla. 5th DCA 1994), we held in a case in which the cocaine was found under the

passenger seat of a vehicle in the sole possession of the driver that it was the jury's function to believe or not to believe testimony that others had previously occupied the vehicle and had left the cocaine behind.

AFFIRMED.

COBB and PETERSON, JJ., concur.