

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

BENJAMIN JAROD FREDERICK,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

Case No. 2D06-5072

Opinion filed May 7, 2008.

Appeal from the Circuit Court
for Polk County;
Judith J. Flanders, Judge.

James Marion Moorman, Public
Defender, and Judith Ellis, Assistant
Public Defender, Bartow, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Susan D. Dunlevy,
Assistant Attorney General, Tampa,
for Appellee.

KELLY, Judge.

Benjamin Frederick was convicted of various offenses he committed when fleeing from police officers attempting to conduct a traffic stop. In this appeal, he challenges only his convictions for possession of cocaine and possession of drug

paraphernalia.¹ The attorney general acknowledges, and we agree, that the State failed to prove that Frederick either actually or constructively possessed the contraband found in his car during a search of his vehicle. Accordingly, we reverse Frederick's convictions for possession of cocaine and possession of paraphernalia and the corresponding sentences. See Watson v. State, 961 So. 2d 1116 (Fla. 2d DCA 2007); Spataro v. State, 179 So. 2d 873 (Fla. 2d DCA 1965). We affirm the remaining counts without comment.

Affirmed in part; reversed in part.

WHATLEY and STRINGER, JJ., Concur.

¹ The paraphernalia Frederick was charged with possessing was the "baggie" which contained the crack cocaine. See § 893.145(10), Fla. Stat. (2006).