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NO. COA01-1587

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v.

Cleveland County  
No. 01 CRS 3375

DERRICK ANDRE GOODSON

Appeal by defendant from judgment entered 25 September 2001 by Judge Beverly T. Beal in Cleveland County Superior Court. Heard in the Court of Appeals 29 July 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Jill F. Cramer, for the State.*

*Michael E. Casterline for defendant-appellant.*

BIGGS, Judge.

Defendant appeals his conviction for possession of a firearm by a felon. We find no error and affirm the judgment of the trial court.

The State's evidence tended to show the following: Shortly after midnight on 15 April 2001, Shelby Police Officer Stephen Seate stopped a 1981 Cadillac car at the interchange of Lafatte Street and State Highway 74. Defendant was driving the car, and a male identified as Mr. Glover was in the front passenger's seat. Defendant told Seate that he did not have a driver's license. After running the Cadillac's tag number through the computer

system, Seate told defendant to exit the vehicle and arrested him for driving without a license. Seate then opened the car's driver's side door and "saw a Ruger [nine-millimeter] handgun on the driver's seat right near where the driver would be seated." The gun was in plain view on the seat. Defendant told Seate that the gun belonged to his father, who had placed it in the car. Police found a second handgun under the passenger's seat and arrested Glover. Seate was unable to contact the car's owner, Betty Gill Jefferies.

The State introduced a judgment reflecting defendant's conviction for assault with a deadly weapon inflicting serious injury on 30 July 1996.

Defendant's father, Charles Hamrick, testified that he had mistakenly accused defendant of stealing his gun in a police report he filed with Officer Seate "a couple of days" after 15 April 2001. Hamrick had been cleaning the gun at approximately 11:00 p.m. on 14 April 2001, when defendant arrived at his house in the Cadillac for a short visit. When the gun was missing the following morning, Hamrick assumed defendant had taken it. Following defendant's arrest, however, defendant told Hamrick, "Daddy you left that gun in my car and I got charged for it." Hamrick then remembered that he had driven the Cadillac briefly to a gas station and had left the gun in the seat by mistake. On cross-examination, Hamrick admitted telling Seate that he had never been inside the Cadillac. He also acknowledged he had never contacted the police to correct his initial report.

Defendant testified that his father had left the gun in the car and that defendant had not been aware that it was on the seat.

Defendant first asserts that the trial court erred in denying his motion to dismiss. Specifically, he claims the State failed to adduce sufficient evidence that he possessed the handgun found in the driver's seat of the Cadillac. However, "[d]efendant has failed to cite any authority in his brief in support of this argument, and, therefore, this argument is deemed abandoned." *State v. Chavis*, 141 N.C. App. 553, 568 n.3, 540 S.E.2d 404, 415 n.3 (2000) (citing N.C.R. App. P. 28(b)(5)). We note that defendant's status as the driver of a borrowed car creates a rebuttable inference that he was both aware and in control of the car's contents. See *State v. Searcy*, 37 N.C. App. 68, 245 S.E.2d 412 (1978). Although defendant presented testimony that, if believed, would rebut the inference created by the State's proffer, his status as driver of the Cadillac and his close proximity to the gun found in his seat were sufficient facts to take the issue of possession to the jury. See *id.*; *State v. Wolfe*, 26 N.C. App. 464, 216 S.E.2d 470, cert. denied, 288 N.C. 252, 217 S.E.2d 677 (1975); *State v. Glaze*, 24 N.C. App. 60, 210 S.E.2d 124 (1974).

Defendant next challenges the trial court's jury instruction on constructive possession. Because defendant did not object to the instruction at trial and has neither assigned nor argued plain error on appeal, this issue was not preserved for review on appeal and is not properly before this Court. See *State v. Robinson*, 355 N.C. 320, 561 S.E.2d 245 (2002); N.C.R. App. P. 10(b)(2), (c)(4).

In addition, we find no merit to defendant's claim. The trial court instructed the jury as follows: "A person has constructive possession of an article if he does not have it on his person, but is aware of its presence and has both the power and intent to control its disposition or use." This instruction is correct in all respects. See *State v. Williams*, 136 N.C. App. 218, 523 S.E.2d 428 (1999). Equally without merit is defendant's assertion that a finding of constructive possession is somehow insufficient to establish possession of a firearm under N.C.G.S. § 14-415.1 (1999). See *State v. Alston*, 131 N.C. App. 514, 508 S.E.2d 315 (1998).

The record on appeal contains an additional assignment of error which is not addressed in defendant's appellate brief. By rule, we deem it abandoned. N.C.R. App. P. 28(b)(5).

No error.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).