

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

NO. COA05-994

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2006

STATE OF NORTH CAROLINA

v.

Robeson County
No. 03 CRS 12260

CLEGON ROSE

Appeal by defendant from an order entered 11 January 2005 by Judge Gary E. Trawick in Robeson County Superior Court. Heard in the Court of Appeals 27 March 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General J. Allen Jernigan, for the State.

Miles & Montgomery, by Lisa Miles, for defendant.

BRYANT, Judge.

Defendant Clegon Rose was indicted on charges of trafficking in cocaine by possession, trafficking in cocaine by transportation, conspiracy to traffic in cocaine, possession with intent to sell or deliver cocaine, possession of drug paraphernalia, and resisting a public officer.

The evidence presented tended to show the following: On 13 August 2003, Detective Steven Ray Lovin of the Robeson County Sheriff's Department stopped a vehicle being driven by Tony Johnson because the license plate was partially obscured. Defendant was a passenger in Johnson's vehicle. Detective Lovin wrote Johnson a

warning ticket and gave Johnson back his license and registration and told him he was free to leave. However, after doing so, Detective Lovin asked Johnson if he could ask him a few questions. Detective Lovin told Johnson that "we had a lot of problems on Interstate 95, people transporting illegal guns and drugs, large sums of money exceeding \$10,000, drugs like cocaine, marijuana, things like that." Detective Lovin then asked Johnson if he had anything "like that" in his vehicle. Johnson said no, and Detective Lovin asked for consent to search his vehicle. Johnson consented to the search and opened the rear hatch of the van he was driving. Detective Lovin found ten kilograms of cocaine and placed both Johnson and defendant under arrest.

Prior to trial, both Johnson and defendant moved to suppress the evidence. The trial court denied Johnson's motion, concluding that Johnson consented to the search of the vehicle. The trial court summarily denied defendant's motion, concluding that he lacked standing. Defendant then pled guilty, reserving his right to appeal the denial of his motion to suppress. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by denying his motion to suppress. We are not persuaded.

"The scope of review on appeal of the denial of a defendant's motion to suppress is strictly limited to determining whether the trial court's findings of fact are supported by competent evidence, in which case they are binding on appeal, and in turn, whether those findings support the trial court's conclusions of law."

State v. Corpening, 109 N.C. App. 586, 587-88, 427 S.E.2d 892, 893 (1993). However, where, as here, defendant does not assign error to the trial court's findings of fact, they are deemed to be supported by competent evidence and are binding on appeal. *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36 (2004) (citing *State v. Baker*, 312 N.C. 34, 37, 320 S.E.2d 670, 673 (1984)). Thus, the sole issue here is whether the trial court's findings support its conclusion of law.

In the case *sub judice*, the trial court made the following findings of fact: (1) defendant was a passenger in a vehicle driven by Tony Johnson; (2) the vehicle was stopped by Detective Lovin on 13 August 2003; (3) Johnson gave consent to search the vehicle; and (4) the detective found approximately ten kilograms of cocaine pursuant to the consensual search. Defendant argues the continued detention of defendant after the issuance of the warning ticket was not based upon reasonable and articulable suspicion that criminal activity was afoot, and thus the search and seizure was unconstitutional. However, the trial court found that Johnson, the driver of the vehicle, consented to the search. Thus, the trial court concluded that defendant lacked standing to contest the search and seizure. We agree. See *State v. VanCamp*, 150 N.C. App. 347, 350, 562 S.E.2d 921, 924-25 (2002) (defendant, as a mere passenger and claiming no ownership or possessory interest in the vehicle, had no legitimate expectation of privacy and thus lacked standing to assert any alleged illegality of the search of the vehicle); *State v. Swift*, 105 N.C. App. 550, 556, 414 S.E.2d 65, 69

(1992) ("Standing requires both an ownership or possessory interest and a reasonable expectation of privacy."); see also *Rakas v. Illinois*, 439 U.S. 128, 138, 58 L. Ed. 2d 387, 428 (1978). Accordingly, we affirm.

Affirmed.

Chief Judge MARTIN and Judge GEER concur.

Report per Rule 30(e).