

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1357

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 05 CRS 231962

DARRELL CASON

Appeal by defendant from judgment entered 1 June 2006 by Judge James W. Morgan in Mecklenburg County Superior Court. Heard in the Court of Appeals 30 April 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Attorney General Mabel Y. Bullock, for the State.

Brannon Strickland, PLLC, by Anthony M. Brannon, for defendant-appellant.

LEVINSON, Judge.

Darrell Cason (defendant) appeals from a judgment entered on a jury verdict finding him guilty of possession of a firearm by a convicted felon. The court sentenced him to an active term of imprisonment for a minimum of twelve months and a maximum of fifteen months.

The State presented evidence tending to show the following: On 9 July 2005, Officer Matthew Thomas Yoder of the Charlotte-Mecklenburg Police Department brought a tracking canine to a crime scene in an effort to locate a person seen leaving a crime scene at 5221 Nevin Road. Officer Yoder followed the dog, which was trained

to detect the scent of humans, to a parking lot at 5245 Nevin Road. Officer Yoder observed two men, one of whom he identified as defendant, exit a white Toyota Camry automobile. Officer Yoder observed defendant exit from the passenger side of the vehicle. Officer Yoder detained the men and radioed for assistance. Officer W.C. Armstrong, Jr. answered the call. Both officers looked in the vehicle and observed a handgun on the floorboard of the front right passenger side partially beneath the passenger seat. Defendant told the officers that the gun belonged to him and that he had been convicted of a felony. Defendant also told Officer Armstrong that he was sitting in the front passenger seat.

Defendant's brother testified that he placed the gun in the vehicle and left it there while he went inside defendant's residence at the Nevin Apartments. Defendant testified that he did not have a gun that night, that he did not put a gun in the vehicle, and that he did not know or see that a gun was underneath the seat of the vehicle. He also denied telling the officers that the gun belonged to him.

Defendant's sole assignment of error is to the denial of his motion to dismiss for insufficient evidence. The question before the court on a motion to dismiss is whether there is substantial evidence to establish each element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651-52 (1982). "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, 265 S.E.2d 164, 169 (1980). In making this determination, the court must examine the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference that may be deduced from the evidence and leaving contradictions or discrepancies in the evidence for the jury to resolve. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992).

Defendant argues the evidence is insufficient to show he possessed the handgun found in the vehicle. He does not challenge the sufficiency of the evidence to establish his status as a convicted felon.

Possession of an item may be actual, as when the person has actual physical custody of the item, or constructive, as when the person has the power to control the item's disposition or use. *State v. Alston*, 131 N.C. App. 514, 519, 508 S.E.2d 315, 318 (1998). Constructive possession may be found when the item is discovered on premises under the exclusive control of the defendant or "'within such close juxtaposition'" to the defendant as to justify a conclusion that the item was in the defendant's possession. *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972) (quoting *State v. Allen*, 279 N.C. 406, 411, 183 S.E.2d 680, 684 (1971)).

Viewed in the light most favorable to the State, the evidence shows that the officers observed a handgun partially underneath the passenger seat in which defendant had been seated. Defendant told the officers that the gun belonged to him. We hold this evidence

sufficed to take the charge to the jury and to overcome the motion to dismiss. We overrule the assignment of error.

No error.

Judges MCCULLOUGH and STEELMAN concur.

Report per Rule 30(e).