

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-346

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

STATE OF NORTH CAROLINA

v.

Guilford County  
No. 05 CRS 75767

KEVIN L. DUNHAM

Appeal by defendant from judgment entered 26 September 2005 by Judge Howard R. Greeson, Jr., in Guilford County Superior Court. Heard in the Court of Appeals 29 September 2006.

*Attorney General Roy Cooper, by Assistant Attorney General David N. Kirkman, for the State.*

*Charlotte Gail Blake, for defendant-appellant.*

TYSON, Judge.

Kevin L. Dunham ("defendant") appeals from judgment entered after he pled no contest to possession of a firearm by a felon. We affirm.

### I. Background

The State's evidence tended to show on the evening of 20 April 2005 Greensboro Police Officers W.D. Coble ("Officer Coble") and J.L. LeGrand ("Officer LeGrand") were working at the Police Neighborhood Resource Center in a public housing complex in Greensboro. Officer Coble testified he and several other police officers were members of a special police unit assigned to the five

major public housing complexes managed by the Greensboro Housing Authority.

The officers had received complaints about drug activities occurring in an apartment rented by Patricia Williams ("Williams"), a unit subject to the rules and regulations of the Greensboro Housing Authority. Officer Coble testified he was familiar with the rules, regulations, and conditions of the lease which does not allow tenants to provide accommodations to boarders and lodgers. The officers were further aware that the rules do allow visitors of tenants to stay in their apartment for one week without prior approval by the Greensboro Housing Authority.

On the evening of 20 April 2005, Officers Coble and LeGrand and several other police officers approached Williams's apartment to conduct a "knock and talk." Officers Coble and LeGrand knew that the only persons legally permitted to reside in the apartment were Williams and her son. As the officers approached Williams's apartment, they observed a man, later identified as defendant, leave the front porch of Williams's apartment and go inside. The officers had not observed defendant prior to that time.

When the officers arrived at the apartment, they viewed the interior through the screen door and observed defendant inside. The officers knocked on the door and introduced themselves to Williams. The officers asked if they could enter and she allowed them to enter her apartment. The officers informed Williams that they had received complaints about drug activities in her apartment. She denied any drug activities had occurred.

Officer Coble asked Williams to identify defendant. She introduced defendant as her nephew. Defendant then introduced himself and gave the officers his true identity, Kevin Dunham. The officers asked defendant if he possessed an identification card. Defendant informed the officers that his card was in an upstairs bedroom. The officers asked defendant if they could go upstairs with him to search for his identification card and he consented. Defendant informed the officers that he did not know exactly where his identification card was located in the bedroom. While attempting to locate defendant's identification card, the police officers searched the front bedroom where defendant had indicated his identification card was located. The officers noticed a box of ammunition located on the dresser in the bedroom. They asked defendant if the ammunition belonged to him and if he was a convicted felon. Defendant admitted he was a convicted felon, but denied the ammunition belonged to him. Officer Coble picked up a jacket on the bed to look for defendant's identification card. A gun that is the subject of defendant's motion to suppress was found under the jacket. Defendant denied the gun was his and denied he occupied the bedroom.

While in the front bedroom, the officers also noticed pictures of defendant on the walls, as well as men's clothing hanging in the closet. Defendant's identification card was found in the pocket of a pair of jeans in the bedroom's closet. After the officers and defendant returned downstairs, Williams denied that defendant was her nephew. She informed the officers that defendant had been

living on the street and that she had taken him in. Williams further informed the officers that defendant lived in the front upstairs bedroom from time to time.

On 13 June 2005, defendant was indicted for possession of a firearm by a felon. On 6 September 2005, defendant moved to suppress evidence of the firearm. The motion was denied and defendant conditionally pled no contest, preserving his right to appeal the denial of his motion to suppress. The trial court entered judgment for possession of a firearm by a felon. Defendant appeals.

## II. Issue

Defendant contends the trial court erred by denying his motion to suppress.

## III. Motion to Suppress

Defendant argues Williams did not consent for the police officers to search the upstairs front bedroom of her apartment and defendant did not have the authority to consent to the search. Defendant further argues the officers knew that he was not entitled by law to live in the apartment and defendant did not have the authority to consent to the search.

Defendant argues the search of the upstairs bedroom was unreasonable and the seizure of the evidence found invokes the protections afforded him under the Fourth Amendment to the United States Constitution, which states, "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S.

Const. amend. XIV, § 1. "The Fourth Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment." *State v. Barnes*, 158 N.C. App. 606, 609, 582 S.E.2d 313, 317 (2003) (quotation omitted).

Defendant asserts only Williams possessed the sole authority to consent to the search of the upstairs front bedroom in her apartment. Because Williams did not consent, defendant argues the officers' search of the front bedroom was unreasonable and the seizure of the gun should have been suppressed.

The State counters that two problems exist with defendant's assertions. First, the State argues that if Williams's constitutional right to be free from unreasonable searches and seizures was violated by the officers because she did not consent to their search of the upstairs bedroom, defendant lacks standing to assert these violations on her behalf. Second, the State argues that defendant had an expectation of privacy in the bedroom because he was staying there and he consented to the officers' search for his identification card in the bedroom. We agree and hold the trial court properly denied defendant's motion to suppress.

A. "Personal" Rights

A defendant's rights to be free "against unreasonable searches and seizures under the Fourth Amendment are personal and, unlike some constitutional rights, may not be asserted by another." *State v. Monk*, 291 N.C. 37, 50, 229 S.E.2d 163, 172 (1976) (citing *Brown v. United States*, 411 U.S. 223, 36 L. Ed. 2d 208 (1973)).

Before defendant can assert the protection afforded by the Fourth Amendment, however, he

must demonstrate that any rights alleged to have been violated were his rights, not someone else's. A person's right to be free from unreasonable searches and seizures is a personal right, and only those persons whose rights have been infringed may assert the protection of the Fourth Amendment.

*State v. Ysut Mlo*, 335 N.C. 353, 377, 440 S.E.2d 98, 110, *cert. denied*, 512 U.S. 1224, 129 L. Ed. 2d 841 (1994). Under N.C. Gen. Stat. § 15A-972 (2005), only "a defendant who is aggrieved may move to suppress evidence[.]"

Our Supreme Court interprets this statute as follows:

[A] defendant is aggrieved and may move to suppress evidence under G.S. 15A-972 only when it appears that his *personal* rights, not those of some third party, may have been violated, and such defendant has the burden of establishing that he is an aggrieved party before his motion to suppress will be considered.

*State v. Taylor*, 298 N.C. 405, 415-16, 259 S.E.2d 502, 508 (1979) (internal quotations omitted).

Defendant failed to demonstrate any search and seizure alleged to have been violated were his rights to assert. Rather, he argues that the officers should have obtained Williams's consent to search the upstairs bedroom. Presuming, without deciding, the officers should have obtained Williams's consent to search the upstairs bedroom of her apartment and their failure to obtain her consent was a violation of her Fourth Amendment rights, defendant cannot vicariously assert the violation of her Fourth Amendment rights. See *State v. Melvin*, 53 N.C. App. 421, 424, 281 S.E.2d 97, 100 (1981) ("an individual's Fourth Amendment rights are personal rights which may not be vicariously asserted by another"), *cert.*

*denied*, 305 N.C. 762, 292 S.E.2d 578 (1982). Defendant has failed to show *his* Fourth Amendment rights were violated and that he was an aggrieved party. *Taylor*, 298 N.C. at 415-16, 259 S.E.2d at 508. This assignment of error is overruled.

B. Expectation of Privacy

Although a defendant's entitlement to Fourth Amendment protections is frequently referred to as his 'standing' to object to a search, the United States Supreme Court explained in *Minnesota v. Carter*, 525 U.S. 83, 84, 142 L. Ed. 2d 373, 376 (1998), that 'the rubric of standing doctrine [has been] expressly rejected . . . to claim Fourth Amendment protection, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable.' Under some circumstances a defendant who is not the legal owner or lessee of a house may nonetheless have a reasonable expectation of privacy while on the premises.

*Barnes*, 158 N.C. App. at 613, 582 S.E.2d at 318-19 (quoting *Minnesota v. Carter*, 525 U.S. 83, 84, 142 L. Ed. 2d 373, 376 (1998)).

Here, defendant failed to show or argue he had a reasonable expectation of privacy in the upstairs bedroom of Williams's apartment. Defendant failed to meet his burden of establishing an infringement of his personal rights by the officers' search of the bedroom.

The trial court concluded defendant had a possessory interest in the upstairs front bedroom. We hold this conclusion is supported by the trial court's findings of fact and the evidence presented at the suppression hearing. Given that defendant had a

possessory interest in the upstairs bedroom, defendant had a reasonable expectation of privacy in the upstairs bedroom.

Defendant concedes in his brief he consented to the officers' search of the upstairs bedroom. A search is not unreasonable within the meaning of the Fourth Amendment when lawful consent to a search is given. *State v. Barden*, 356 N.C. 316, 340, 572 S.E.2d 108, 125 (2002), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074 (2003).

#### IV. Conclusion

We hold the trial court did not err in denying defendant's motion to suppress. *Id.* at 340-41, 572 S.E.2d at 125. The trial court's judgment is affirmed.

Affirmed.

Judges BRYANT and LEVINSON concur.

Report per Rule 30(e).