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NO. COA08-88

NORTH CAROLINA COURT OF APPEALS

Filed: 15 July 2008

STATE OF NORTH CAROLINA

v.

Pitt County
Nos. 06 CRS 6994
06 CRS 6996-7000
06 CRS 53242-43

MICHAEL LASHAWN GREENE

Court of Appeals

Appeal by defendant from judgment entered 29 June 2007 by Judge Clifton W. Everett, Jr. in Pitt County Superior Court. Heard in the Court of Appeals 30 June 2008.

Attorney General Roy A. Cooper, by Special Deputy Attorney General Thomas H. Miller, for the State.

Slip Opinion

D. Tucker Charns for defendant-appellant.

MARTIN, Chief Judge.

Defendant appeals from judgments entered on jury verdicts finding him guilty of three counts of possession of a firearm by a felon, two counts of possession of a weapon of mass destruction, two counts of assault with a deadly weapon inflicting serious injury, and discharging a weapon into occupied property. The sole assignment of error brought forward presents the following issue for resolution: whether the court erred by denying his motion at the close of all the evidence to dismiss the charges of possession of a firearm by a felon and of possession of weapons of mass

destruction.

The evidence of the State tends to show that on 3 April 2006 Matthew D'Antonio saw defendant place a nine millimeter handgun in the glove box and two sawed off shotguns in the trunk of D'Antonio's automobile. As he drove the vehicle with defendant riding as a passenger on the evening of 3 April 2006, defendant directed D'Antonio to make a turn onto Ford Street in Greenville. As the vehicle traveled down the street, defendant retrieved the handgun from the glove box and fired it at two men walking out of a residence. D'Antonio "punched the gas and took off."

Police officers who were present in the area heard gunshots. They saw a vehicle leaving the area at a high rate of speed. The officers pursued and stopped the vehicle. The officers saw two men exit the vehicle and run. The officers apprehended defendant and D'Antonio at a nearby house. During a search of the abandoned vehicle, the officers found two sawed off shotguns in the trunk of the vehicle. They also found a nine millimeter handgun on the roof of a shed at the house where they apprehended the two men. Forensic analysis subsequently revealed that the gun fired the expended cartridge cases found at the scene of the shooting.

Upon a motion to dismiss, the court determines 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 (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, 78-79, 265 S.E.2d 164, 169 (1980). In deciding the motion, the court must consider 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 pistol and the shotguns. He does not challenge the sufficiency of the evidence to establish his status as a convicted felon or the character of the shotguns as weapons of mass destruction.

Possession of an item may be actual or constructive. *State v. Alston*, 131 N.C. App. 514, 519, 508 S.E.2d 315, 318 (1998). Constructive possession exists when a person not having actual possession of contraband has the intent and capability to maintain control and dominion over it. *State v. Williams*, 307 N.C. 452, 455, 298 S.E.2d 372, 374 (1983). 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). When the contraband is found on premises not under the exclusive control of the defendant, constructive possession may not be inferred in the absence of evidence of other incriminating circumstances. *State v. Davis*, 325 N.C. 693, 697,

386 S.E.2d 187, 190 (1989).

D'Antonio testified that he and defendant had been sharing a residence for a little less than a year before the shooting. Because defendant did not have an automobile, he often used D'Antonio's vehicle or they rode together. He and defendant purchased the handgun through an intermediary. They purchased the sawed off shotguns from a pickle farmer. On the date of the incident, defendant placed all three weapons in D'Antonio's vehicle, defendant directed D'Antonio where to drive the automobile that evening, defendant retrieved the pistol from the glove box and fired it, and defendant took the pistol with him and discarded it as they fled from the vehicle.

We conclude that based upon the foregoing testimony, a jury could reasonably find that defendant exercised dominion and control over the three weapons and thus possessed them. We overrule defendant's assignment of error.

No error.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).