

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-377

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2010

STATE OF NORTH CAROLINA

v.

Guilford County
No. 08 CRS 23202

JEFFREY SCOTT REESE

Appeal by defendant from judgment entered 17 September 2009 by Judge Ronald E. Spivey in Guilford County Superior Court. Heard in the Court of Appeals 25 October 2010.

Attorney General Roy Cooper, by Assistant Attorney General Brent D. Kiziah, for the State.

A. Wayne Harrison, for defendant-appellant.

MARTIN, Chief Judge.

Defendant was indicted for three counts of assault with a deadly weapon with intent to kill, three counts of discharging a weapon into an occupied vehicle, three counts of attempted first degree murder, and possession of a firearm by a felon. He pleaded not guilty. Defendant stipulated to having a prior felony conviction. The jury acquitted defendant of all offenses except for possession of a firearm by a felon. Thereafter, defendant pleaded guilty to having achieved habitual felon status. The trial court sentenced defendant to an active term of a minimum of 85 months to a maximum of 111 months imprisonment. Defendant appeals.

The State's evidence at trial tends to show that on 31 July 2008, Warren Timothy Watkins was operating his car sometime between six and eight o'clock in the evening on Green Street in High Point. He testified that he has known defendant for about fifteen to twenty years. He stopped his car in a parking lot about fifty feet from defendant's mother's house to speak to a friend. He observed defendant approaching in his direction from the house of defendant's mother. Mr. Watkins pulled his car back onto the street, and then he saw defendant holding a gun and firing shots at his car. Mr. Watkins drove away and went to his aunt's house.

Mr. Watkins stated he saw four bullet holes in his car. He proceeded to the magistrate's office where he filled out paperwork. Later on, he spoke with officers from the High Point Police Department, told them what had happened, and identified defendant as the person who fired shots at his car. Officer Barry Lemons testified that on the day of the incident, he observed Mr. Watkins' car with three bullet holes in it.

Defendant and his mother were on the front porch of the house when police arrived to investigate. Defendant was identified and arrested; he did not have a weapon on his person. Police subsequently obtained a search warrant. No weapons were found in a search of a bedroom on the west side of the kitchen, including that bedroom's closet. The house also has a den, a kitchen, a living room which had been turned into a bedroom, and two other bedrooms with a bathroom in between them. In the living room that had been turned into a bedroom, the following items were

discovered: a bank statement with defendant's name on it, an envelope addressed to defendant containing personal photographs, a statement from a financial company with defendant's name on it, defendant's North Carolina driver's license, a Winchester .22-caliber rifle, a twenty-gauge shotgun, ammunition, and articles of male clothing. The rifle and shotgun were found in a closet inside the room, as was defendant's driver's license. The address listed on the license, the envelope, and the two statements was that of the house which was being searched. No other firearms were found anywhere else in the house. No other items with defendant's name on it were found in any other parts of the house.

Defendant's mother testified at trial on his behalf. She stated that she was the one who put the guns in the closet of the living room, that the guns used to belong to defendant's grandfather, and it was defendant's father who brought the guns to the house. She stated that the bedroom in which the guns were found was not defendant's bedroom, but admitted that she told police that defendant comes and goes, that he is "[i]n and out, sometimes."

On rebuttal, Officer Lemons stated that defendant's mother told him that defendant lived in the back bedroom and that she does not go into that room. He testified that he asked her if there were any guns in the house, and she told him no, and that "[i]f there was anything in the house it does not belong to me and that it belonged to [defendant]."

At the close of the State's evidence and again at the close of all the evidence, defendant moved to dismiss the charges. The trial court denied both motions.

Defendant contends the trial court erred in denying his motion to dismiss where the evidence is insufficient to show that defendant had either actual or constructive possession of the firearms found in his mother's house. He argues that there is no indication that defendant had both the intent and the capability to maintain control over the guns in order to show constructive possession, where the uncontested evidence showed that the guns were brought to the house by defendant's father many years ago and placed in the closet by defendant's mother. He asserts that the evidence, at most, shows that defendant was merely present in the room where the guns were located. We disagree.

When a trial court is faced with a motion to dismiss for lack of sufficient evidence, the court must determine whether the State has presented substantial evidence (1) of each essential element of the offense charged or a lesser included offense and (2) of defendant's identity as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). "Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Jarrett*, 137 N.C. App. 256, 262, 527 S.E.2d 693, 697 (2000) (quoting *State v. Jacobs*, 128 N.C. App. 559, 563, 495 S.E.2d 757, 760-61, *disc. review denied*, 348 N.C. 506, 510 S.E.2d 665 (1998)). Further, substantial evidence may consist of either direct or circumstantial evidence.

See *State v. Herring*, 322 N.C. 733, 738, 370 S.E.2d 363, 367 (1988). Any contradictions or discrepancies in the evidence are for the jury to resolve and do not warrant dismissal of the case. *State v. Scott*, 356 N.C. 591, 596, 573 S.E.2d 866, 869 (2002). Upon appellate review, we are compelled to view the evidence in the light most favorable to the State, with all reasonable inferences to be drawn therefrom. *Id.*

Possession of a firearm by a felon is prohibited by law:

It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction. . . .

N.C. Gen. Stat. § 14-415.1(a) (2009). "Possession of any item may be actual or constructive." *State v. Clark*, 159 N.C. App. 520, 525, 583 S.E.2d 680, 683 (2003) (citation omitted). Constructive possession may be shown where a person does not have physical custody of the item, but he or she "has the power and intent to control its disposition." *Id.* (citation omitted). Proof of constructive possession is often achieved by submission of circumstantial evidence. See *State v. Smith*, 192 N.C. App. 690, 695, 666 S.E.2d 191, 194 (2008), *disc. review denied*, 363 N.C. 380, 680 S.E.2d 206 (2009). However, constructive possession "may not be inferred without other incriminating circumstances." *Clark*, 159 N.C. App. at 525, 583 S.E.2d at 683 (citation omitted). Whether the evidence is sufficient to support constructive possession "depends on the totality of the circumstances," and "[n]o single factor controls, but ordinarily the questions will be for the

jury.'" *Smith*, 192 N.C. App. at 695, 666 S.E.2d at 194 (quoting *State v. Glasco*, 160 N.C. App. 150, 156-57, 585 S.E.2d 257, 262, *disc. review denied*, 357 N.C. 580, 589 S.E.2d 356 (2003)).

Here, the State's evidence tended to establish that defendant resided in his mother's home based on several items belonging to defendant that listed his address as the house where the search was conducted. Defendant's driver's license was found in the same closet where two guns were found, and other items belonging to defendant were found in the room where the guns were found. However, no items with defendant's name on them were found elsewhere in the house. Further, defendant's mother told law enforcement that defendant lived in the back bedroom, the same room where the guns were found, and when asked, she told the police that there were no guns in the house, and if there were, they belonged to defendant.

Viewing the evidence in the light most favorable to the State, we find this evidence sufficient to raise a jury question regarding defendant's possession of the guns found at the residence, and in particular, the Winchester rifle. The evidence, while circumstantial, is sufficient to allow the jury to infer that defendant had the intent and capability to exercise dominion and control over the rifle, such that he had constructive possession of it. Therefore, the trial court did not err in denying defendant's motion to dismiss and submitting the charge of possession of a firearm by a felon to the jury.

No error.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).