

IN THE SUPREME COURT OF NORTH CAROLINA

No. 629A06

FILED: 9 NOVEMBER 2007

STATE OF NORTH CAROLINA

v.

DESPERADOS, INC. and CYNTHIA L. PEREZ

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 180 N.C. App. 378, 638 S.E.2d 4 (2006), vacating defendants' convictions which resulted in judgments entered 13 January 2005 by Judge Thomas D. Haigwood in Superior Court, Beaufort County. Heard in the Supreme Court 17 October 2007.

*Roy Cooper, Attorney General, by John G. Barnwell, Assistant Attorney General, for the State-appellant.*

*Jeffrey S. Miller for defendant-appellees.*

PER CURIAM.

The constitutional issue addressed in the Court of Appeals' majority opinion was not raised and preserved in the trial court and, therefore, was not properly before the Court of Appeals. N.C. R. App. P. 10(b)(1). Accordingly, the decision of the Court of Appeals as to the constitutional issue is reversed, and the case remanded to the Court of Appeals for determination of the remaining issues on their merits.

REVERSED IN PART AND REMANDED.

Justice HUDSON did not participate in the consideration or decision of this case.