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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-975

Filed 7 May 2025

Pitt County, Nos. 22CRS052987, 23CRS001155

STATE OF NORTH CAROLINA

v.

TJUAN XAZIER BLACKMON, Defendant.

Appeal by defendant from judgment entered 10 April 2024 by Judge Marvin K. Blount III of Pitt County Superior Court. Heard in the Court of Appeals 8 April 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Anne Goco Kirby, for the State.*

*Stephen G. Driggers, for defendant-appellant.*

FLOOD, Judge.

Defendant Tjuan Xazier Blackmon appeals from the trial court’s judgment finding him guilty of possession of a firearm by a felon. On appeal, Defendant argues: first, the trial court erred in denying Defendant’s motion to dismiss the possession of a firearm by a felon charge, where the State failed to present substantial evidence that Defendant constructively possessed the firearm; second, N.C.G.S. § 14-415.1 (2023)—which prohibits a convicted felon from possessing a firearm—facially violates

the United States and North Carolina Constitutions; and third, Defendant received ineffective assistance of counsel (“IAC”). Upon review, we conclude the State met its evidentiary burden of demonstrating possession of a firearm by a felon, and therefore affirm the trial court’s denial of Defendant’s motion to dismiss. Moreover, we decline to invoke Rule 2 to consider Defendant’s constitutional contention, conclude Defendant was not prejudiced by trial counsel’s allegedly deficient performance, and therefore dismiss Defendant’s second and third arguments.

**I. Factual and Procedural Background**

On the evening of 25 May 2022, at approximately 9:29 p.m., Deputy Lyn Cartwright of the Craven County Sheriff’s Office was patrolling the south side of Farmville, North Carolina, at which time he observed a burgundy Toyota Camry traveling south on South Main Street. Deputy Cartwright pulled behind the Camry, ran the vehicle’s license plate through the police department’s database, and determined that the Camry’s tag was revoked. Deputy Cartwright initiated a stop by activating his blue lights and siren, and the Camry continued driving for almost a mile before it pulled off to the shoulder of the road and stopped.

After the Camry stopped and pulled over, Deputy Cartwright approached the Camry and encountered the driver—who was later identified as Phyllis Sandra Bryant—and Defendant, who was sitting in the front passenger seat. Deputy Cartwright began speaking with Bryant to gather information regarding the stop, at which time he detected an odor of what he believed to be marijuana emanating from

the vehicle, and observed a “twisted clear plastic bag” in the cup holder of the front passenger door directly beside Defendant.

As Deputy Cartwright was speaking with Bryant, “[w]ithin a minute or so of the stop[,]” Detective Christopher Robertson of the Farmville Police Department arrived on the scene. Detective Robertson approached the passenger side of the Camry and observed that Defendant was “slightly leaning forward where his arm was dropped down towards the floorboard . . . . [and] his legs were pushed very closely together, which drew [Detective Robertson’s] attention to the floorboard.” Detective Robertson then shined his flashlight on the passenger floorboard, and saw a liquor bottle between Defendant’s feet, and what appeared to be a handgun sticking out from under the liquor bottle. Detective Robertson later clarified that, as to the handgun, “[t]he handle of the grip was sticking out from just behind [Defendant’s] right foot and then the back of the firearm was sticking out to the right side of [Defendant’s] right foot.” Detective Robertson could not see Defendant’s hands, as they were dropped down towards the floorboard, so Detective Robertson ordered Defendant to show him his hands. Defendant then leaned forward and began to show his hands, after which Detective Robertson opened the passenger side door, and escorted Defendant “out of the [Camry] to the rear of the [Camry,]” to separate Defendant from the handgun.

After Detective Robertson removed Defendant from the Camry, Deputy Cartwright also observed the handgun on the floorboard of the Camry’s passenger

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seat, which he ascertained to be a 9mm Glock 43X (the “Glock”), and later determined the Glock to be loaded with a fully-loaded magazine. Deputy Cartwright then searched the vehicle, whereby he again observed the Glock, observed an open and unsealed bottle of tequila on the floorboard, and located a bag of marijuana in the front passenger door. After he searched the Camry, Deputy Cartwright spoke with Defendant, and Defendant admitted the tequila bottle and marijuana were his. Defendant denied that the Glock was his, however, and claimed it belonged to his girlfriend, who was not Bryant.

Deputy Cartwright placed Defendant under arrest, and on 21 August 2023, Defendant was charged by a bill of indictment for possession of a firearm by a felon, and for being a habitual felon. On 9 April 2024, this matter came on for hearing before the trial court. During evidence, the State presented without objection a certified copy of a judgment of commitment entered against Defendant on 25 July 2005, whereby Defendant had pled guilty to committing felony robbery with a dangerous weapon (the “prior felony”). The State, however, did not present any evidence regarding the facts and circumstances of the prior felony. The State also presented testimonies from Deputy Cartwright and Detective Robertson, who testified to the facts delineated above.

At the close of the State’s evidence, Defendant brought a motion to dismiss the possession of a firearm by a felon charge, arguing the State failed to present evidence sufficient to support a finding that Defendant possessed the Glock. The trial court

denied this motion. Defendant put on no evidence, and at the close of all evidence, Defendant renewed his motion to dismiss, which the trial court again denied. The trial court thereafter provided jury instructions, and as to the possession of a firearm by a felon charge, instructed the jury on both actual and constructive possession.

On 10 April 2024, the jury found Defendant guilty of possession of a firearm by a felon. Defendant subsequently pled guilty to habitual felon status, and was sentenced to 82 to 111 months' imprisonment. Defendant timely appealed.

## **II. Jurisdiction**

Appeal to this Court lies of right from the final judgment of a superior court pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a) (2023).

## **III. Analysis**

On appeal, Defendant argues: (A) the trial court erred in denying Defendant's motion to dismiss the possession of a firearm by a felon charge; (B) N.C.G.S. § 14-415.1 facially violates the United States and North Carolina Constitutions; and (C) Defendant received IAC. We address each argument, in turn.

### **A. Possession of a Firearm by a Felon**

Defendant contends the trial court's denial of his motion to dismiss was in error, as the State failed to meet its evidentiary burden of demonstrating Defendant constructively possessed the Glock. We disagree.

In our review of a trial court's denial of a defendant's motion to dismiss, we consider whether the State presented to the trial court "substantial evidence of each

essential element of the crime and that the defendant is the perpetrator.” *State v. Winkler*, 368 N.C. 572, 574 (2015) (citation and internal quotation marks omitted). Where the State has met its evidentiary burden of substantial evidence, it is not error for the trial court to deny a defendant’s motion to dismiss. *See State v. Smith*, 300 N.C. 71, 81 (1980) (concluding the trial court did not err in denying the defendant’s motion to dismiss where the State presented “substantial evidence of each essential element of the crime of attempted armed robbery” and that the defendant was the perpetrator). “‘Substantial evidence’ is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *State v. Cox*, 303 N.C. 75, 87 (1981) (citation omitted). “In evaluating the sufficiency of the evidence to support a criminal conviction, the evidence must be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom.” *State v. Golder*, 374 N.C. 238, 249–50 (2020) (citation omitted).

For a defendant to properly be found guilty of possession of a firearm by a felon, that defendant must have, (1) been “previously convicted of a felony[,] and (2) thereafter possessed a firearm.” *State v. Dawkins*, 196 N.C. App. 719, 725 (2009). The second prong, possession of a firearm, may be actual or constructive. *See State v. Harvey*, 281 N.C. 1, 12 (1972). “A defendant constructively possesses [a firearm] when he . . . does not have actual possession of the [firearm] but he has ‘the intent and capability to maintain control and dominion over it.’” *State v. Chekanow*, 370

N.C. 488, 493 (2018) (citation omitted). “A finding of constructive possession requires a totality of the circumstances analysis.” *Id.* at 493. Where such analysis reveals, however, that a defendant was not in exclusive possession of the firearm—such as when the defendant was in a vehicle with another occupant—then “the State must [have] show[n] other incriminating circumstances linking the defendant to the [firearm].” *Id.* at 496 (citations omitted). Factors that may be considered in determining whether the State demonstrated such incriminating circumstances include:

- (1) [T]he defendant’s ownership and occupation of the property[;]
- . . . (2) the defendant’s proximity to the [firearm];
- (3) indicia of the defendant’s control over the place where the [firearm] is found;
- (4) the defendant’s suspicious behavior at or near the time of the [firearm’s] discovery; and
- (5) other evidence found in the defendant’s possession that links the defendant to the [firearm].

*Id.* at 496 (citations omitted). “Two of the most common factors [considered] are the defendant’s proximity to the [firearm] and indicia of the defendant’s control over the place where the [firearm] is found.” *State v. Bradshaw*, 366 N.C. 90, 94 (2012) (citation and internal quotation marks omitted). Although proximity to the firearm, on its own, is insufficient to demonstrate constructive possession, when considered together with other factors that indicate incriminating circumstances, the State may meet its evidentiary burden. *See State v. Livingston*, 290 N.C. App. 526, 529 (2023); *see also State v. King*, 291 N.C. App. 264, 270 (2023) (providing that evidence

indicating a defendant's awareness of the contraband's presence may be sufficient to support a finding of constructive possession).

Here, for Defendant to have been properly found guilty of felony possession of a firearm, the State must have proved Defendant was a felon who had constructive possession of the Glock. *See Chekanow*, 370 N.C. at 493. As set forth above, the State presented uncontroverted evidence of Defendant's prior felony, meaning the State satisfied the first prong of demonstrating possession of a firearm by a felon. *See Dawkins*, 196 N.C. App. at 725; *Winkler*, 368 N.C. at 574.

As to the second prong—that Defendant either actually or constructively possessed the Glock—Defendant contends the State presented no incriminating factors, other than Defendant's proximity to the Glock, from which a reasonable juror could conclude that Defendant constructively possessed the Glock. We are unpersuaded by Defendant's contention. A review of the Record reveals that: Defendant was seated in the passenger seat of the Camry; Deputy Cartwright detected an odor of marijuana emanating from the Camry; Detective Robertson observed Defendant leaning forward, with his arms lowered towards the floorboard, where the Glock was located between his feet and underneath an opened tequila bottle; and Defendant himself admitted that the Glock belonged not to Bryant, but to his girlfriend.

From this evidence, considered under the totality of the circumstances and viewed in the light most favorable to the State, a rational juror could conclude that:



while not exclusive, Defendant—as a passenger of the Camry, with the Glock directly under his feet—had control over the premises where the Glock was found; Defendant was behaving suspiciously just before the Glock’s discovery, and the Glock was found under suspicious circumstances; and Defendant was aware of the Glock’s presence underneath his feet. *See Chekanow*, 370 N.C. at 496; *Bradshaw*, 366 N.C. at 94; *Golder*, 374 N.C. at 249–50. These are all incriminating circumstances that support a finding Defendant had the intent and power to maintain control over the disposition and use of the Glock; as such, the State met its burden of demonstrating constructive possession, and thereby the charge of possession of a firearm by a felon. *See Livingston*, 290 N.C. App. at 529; *King*, 291 N.C. App. at 270. The trial court did not err in denying Defendant’s motion to dismiss, and we affirm.

#### **B. N.C.G.S. § 14-415.1**

Defendant next argues that N.C.G.S. § 14-415.1 is facially unconstitutional under both the United States and North Carolina Constitutions, but concedes that he failed to preserve this argument for appellate review. Defendant therefore requests this Court invoke Rule 2 of the North Carolina Rules of Appellate Procedure to reach the merits of this argument. In our discretion, we decline to do so.

Under Rule 2, “[t]o prevent manifest injustice to a party . . . either court of the appellate division may . . . suspend or vary the requirements or provisions of any of these rules in a case pending before it . . . upon its own initiative[.]” N.C.R. App. P. 2. An appellate court’s decision to invoke Rule 2 and suspend the appellate rules is

always an exercise of discretion. *See State v. Bursell*, 372 N.C. 196, 201 (2019). Rule 2, however, “relates to the residual power of our appellate courts to consider, *in exceptional circumstances*, significant issues of importance in the public interest or to prevent injustice which appears manifest to the Court *and only in such instances*.” *State v. Campbell*, 369 N.C. 599, 603 (2017) (citation omitted).

Here, Defendant has failed to demonstrate that the basis of his argument constitutes an “exceptional circumstance[]” warranting invocation of Rule 2. In making his constitutional argument, Defendant cites the United States Supreme Court’s decision of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, wherein the Court set forth the standard that, for an allegedly unconstitutional firearm regulation to pass constitutional muster, the State must demonstrate that said regulation is “consistent with this Nation’s historical tradition of firearm regulation[.]” 597 U.S. 1, 34 (2022). Defendant contends that, per this standard, N.C.G.S. § 14-415.1 is facially unconstitutional. The Fourth Circuit Court of Appeals, however, has recently held that, while the

law of the Second Amendment is in flux, and courts (including this one) are grappling with many difficult questions in the wake of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, . . . the *facial* constitutionality of [possession of a firearm by a felon] is not one of them.

*United States v. Canada*, 123 F.4th 159, 161 (2024) (emphasis added). As such, Defendant has failed to demonstrate why his case constitutes an “extraordinary

circumstance” justifying this Court invoke Rule 2, and we dismiss Defendant’s argument. *See Campbell*, 369 N.C. at 603.

### C. IAC

Defendant lastly argues that he received IAC where his trial counsel failed to stipulate to his prior felony, and thereby keep the nature of his prior felony conviction from the jury. We disagree.

Per the United States Supreme Court opinion in *Strickland v. Washington*, a defendant must satisfy a two-part test to show IAC:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense.

466 U.S. 668, 687 (1984). To demonstrate prejudice, a defendant must “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. “[T]here is no reason for a court deciding an [IAC] claim to . . . address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697.

Here, as explained above, the State met its evidentiary burden of demonstrating Defendant’s guilt of possession of a firearm by a felon. As such, assuming counsel’s failure to stipulate to Defendant’s prior felony amounted to deficient performance, there is not a reasonable possibility that, but for counsel’s

alleged unprofessional errors, the outcome of the trial would have been different. *Id.* at 687, 694. Defendant has failed to demonstrate prejudice, and as such, has failed to show he received IAC. *Id.* at 687, 697. We therefore dismiss Defendant's IAC claim.

#### **IV. Conclusion**

Upon review, we conclude the State met its evidentiary burden of demonstrating possession of a firearm by a felon, and therefore affirm the trial court's denial of Defendant's motion to dismiss. Moreover, we decline to invoke Rule 2 to consider Defendant's argument, find Defendant was not prejudiced by trial counsel's allegedly deficient performance, and therefore dismiss both his argument concerning N.C.G.S. § 14-415.1 and that concerning ineffective assistance of counsel.

AFFIRMED In Part, and DISMISSED In Part.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).