An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1108

Filed 4 November 2026

Rowan County, Nos. 22CR051618-790, 24CR001123-790, 24CR001124-790, 24CR001125-790

STATE OF NORTH CAROLINA

v.

TAVION LEMONT SHIPP, Defendant.

Appeal by defendant from judgment entered 29 April 2025 by Judge Michael S. Adkins in Rowan County Superior Court. Heard in the Court of Appeals 22 April 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Raymond Wesley Goodwin, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Brandon B. Mayes, for defendant-appellant.

GORE, Judge.

Defendant Tavion Lemont Shipp appeals the judgments revoking his probation for willful violation of the probation conditions. Defendant appeals of right pursuant to N.C.G.S. §§ 7A-27(b)(1) and 15A-1347(a). Upon review of the briefs and the record, we affirm.

I.

On 5 January 2023, defendant was convicted of felony possession with intent to sell or distribute marijuana in Rowan County and was given a suspended sentence of 24 months' supervised probation. On 14 September 2023, defendant was convicted of multiple counts of breaking and entering a motor vehicle and one count of felony larceny in the Superior Court, Iredell County. Defendant was given another suspended sentence of 24 months' supervised probation that was transferred to Rowan County for supervision.

On 24 October 2024, the probation officer filed a violation report in Rowan County for willfully violating the conditions of probation after defendant was charged with possession of a firearm by a felon. At the revocation hearing, the State presented evidence tending to show the probation officer had initiated a warrantless search of defendant after discovering a Facebook photo of defendant holding a handgun. The probation officers and law enforcement officers found defendant and his girlfriend sleeping in a vehicle outside of his residence. Officers requested defendant exit the vehicle, and upon exiting the vehicle, officers saw a handgun stuck between the passenger seat (where defendant was sitting) and the center console. Law enforcement officers initiated a search of the vehicle.

The officers also conducted a warrantless search of defendant's bedroom. Officers discovered loaded magazines and a speed loader by defendant's bed. The ammunition and magazines found in the residence did not match the firearm

discovered in the vehicle. The trial court determined there was sufficient evidence defendant violated the terms and conditions of probation. The trial court revoked defendant's probation and reinstated the original sentences. Defendant orally appealed.

II.

Defendant seeks review of the following issues: (1) whether defendant received ineffective assistance of counsel due to defense counsel's failure to move to suppress evidence obtained from the warrantless search of the vehicle; and (2) whether the evidence was insufficient for the trial court to determine defendant constructively possessed a firearm. We review each issue in turn.

A.

Defendant contends defense counsel should have moved to suppress the evidence because the warrantless search of the vehicle was illegal pursuant to section 15A-1343(b)(13). Defendant contends this failure was a violation of his right to effective assistance of counsel. We disagree.

To prevail on an ineffective assistance of counsel claim, defendant has the burden of demonstrating both, "his counsel's performance was deficient, and that counsel's deficient performance prejudiced his defense." *State v. Allen*, 360 N.C. 297, 316 (2006) (cleaned up). To show prejudice, "[t]he 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." *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

Defendant argues the probation officers unlawfully searched him under section 15A-1343(b)(13) because the statute only allows warrantless searches of the probationer's person and the probationer's vehicle. *See* N.C.G.S. § 15A-1343(b)(13) (2021). Defendant contends the vehicle belonged to his brother, and therefore, the officers could not search the vehicle without a warrant. We disagree.

Probation officers may conduct warrantless searches of the probationer's person and/or the probationer's vehicle. § 15A-1343(b)(13). The legal exceptions for warrantless searches also apply to probationers, including the plain view doctrine. *See State v. Smith*, 371 N.C. 469 (2018) (per curiam) (reversing the Court of Appeals decision for "the reasons stated in the dissenting opinion"), 255 N.C. App. 138, 148 (2017) (Arrowood, J., dissenting) (stating the Court should "uphold the warrantless seizure of the shotgun under the plain view doctrine" because of the defendant's probation status and knowledge of the regular conditions of probation).

> A seizure is lawful under the plain view exception when the officer was in a place where he had a right to be when the evidence was discovered and when it is immediately apparent to the police that the items observed constitute evidence of a crime, are contraband, or are subject to seizure based upon probable cause.

State v. Mickey, 347 N.C. 508, 516 (1998) (cleaned up). Further, under North Carolina law, the discovery must be "inadvertent." *Id.*

In the present case, defendant focuses on the search of the vehicle while dismissing the progression that led to the search. The probation officer and law enforcement officers were at defendant's residence to conduct a warrantless search because the probation officer discovered a Facebook picture of defendant holding a handgun. The officers found defendant in a vehicle outside of the residence. The probation officer could lawfully require defendant to exit the vehicle to search his person pursuant to section 15A-1343(b)(13). The officers immediately saw a handgun located in between the passenger seat (where defendant was sitting) and the center console when defendant exited the vehicle. Officers were in a lawful place when they saw the handgun in plain view. It was immediately apparent the handgun was contraband because of defendant's probation conditions. Accordingly, the subsequent search of the vehicle was lawful.

Because the officers discovered the handgun in plain view during a lawful search, defense counsel's performance was not deficient. Nor was defendant prejudiced by defense counsel's performance. Accordingly, defendant's ineffective assistance of counsel claim is without merit.

B.

Next defendant argues there was insufficient evidence for the trial court to find defendant violated the terms of his probation by possessing a firearm. We review the trial court's finding that defendant violated a condition of probation for abuse of discretion. *State v. Young*, 190 N.C. App. 458, 459 (2008). The trial court must be

"reasonably satisfied" by the evidence that "the defendant has willfully violated a valid condition of probation." *Id.* (cleaned up).

Specifically, defendant contends the State failed to prove he constructively possessed the firearm to support the trial court's determination that he violated the terms of probation. We disagree.

"A defendant constructively possesses a firearm when he has the intent and capability to maintain control and dominion over it." *State v. Miller*, 363 N.C. 96, 99 (2009) (cleaned up). "The defendant may have the power to control either alone or jointly with others." *Id.* In a probation revocation hearing, the evidence need only "reasonably satisfy" the trial court that defendant willfully violated the terms of probation rather than prove guilt beyond a reasonable doubt. *State v. Duncan*, 270 N.C. 241, 245 (1967).

In the present case, the trial court determined that the evidence "considered in the whole" supported a finding of defendant's possession of a firearm. It determined there were "sufficient circumstances to reasonably satisfy" the court that defendant was in possession of a firearm in violation of his probation. Evidence included: a Facebook social media photo of defendant holding a handgun, discovering a handgun immediately beside defendant in the passenger seat of the vehicle, and further discovering loaded magazines and a speed loader in defendant's bedroom. Although defendant argues mere proximity is insufficient to determine constructive possession, the evidence taken as a whole and under the less exacting probation

standard is sufficient. Therefore, the trial court did not abuse its discretion by revoking defendant's probation and reinstating his underlying sentences.

III.

For the foregoing reasons, we affirm the trial court's judgment revoking probation and reinstating the underlying judgments entered against defendant.

AFFIRMED.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).