

Criminal Procedure

Jury Deliberations

State v. Perry, __ N.C. App. __, __ S.E.2d __ (Sept. 18, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0zMjltMS5wZGY=>). Based on the circumstances of this felon in possession case, the trial court's failure to further inquire into and answer the jury's questions regarding constructive possession of the gun constituted plain error. The circumstances included the fact that the jury was instructed on actual possession even though the State had argued to the jury that there was no evidence of actual possession and that the jury was instructed on constructive possession when no evidence supported such an instruction.

Criminal Offenses

Weapons

State v. Perry, __ N.C. App. __, __ S.E.2d __ (Sept. 18, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0zMjltMS5wZGY=>). (1) In a felon in possession case, evidence that the defendant was "playing with" the guns in question "likely" constituted sufficient evidence to support an instruction on actual possession of the guns. (2) The trial court erred by instructing the jury on constructive possession of the guns. The defendant did not have exclusive control of the apartment where the guns were found (the apartment was not his and he was not staying there; numerous people were at the apartment when the gun was found but the defendant himself was not present at that time). Thus, the State was required to show evidence of "other incriminating circumstances" to establish constructive possession. The court rejected the State's argument that the fact that the defendant said he had played with the gun and that his fingerprints were on it constituted other incriminating circumstances, reasoning that showed actual not constructive possession. The court also found evidence that the defendant saw the gun in the apartment when another person brought it there insufficient to establish constructive possession.