

1 of 4 DOCUMENTS

**STATE OF NEW JERSEY, Plaintiff-Respondent, v.  
MORGAN SCOTT, Defendant-Appellant.**

**A-115 September Term 2006**

**SUPREME COURT OF NEW JERSEY**

**2008 N.J. LEXIS 1**

**October 10, 2007, Argued  
January 10, 2008, Decided**

**PRIOR HISTORY: [\*1]**

On appeal from the Superior Court, Appellate Division, whose opinions are reported at N.J. Super. (2006).

**SYLLABUS**

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

***State of New Jersey v. Morgan Scott (A-115-06)***

(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in the Appellate Division's majority opinion.)

**Argued October 10, 2007 -- Decided January 10, 2008**

**PER CURIAM**

The issue in this appeal as of right -- arising from the dissent filed by Judge Jose Fuentes-- is whether defendant actually or constructively possessed cocaine that was found in the vehicle in which he was a passenger.

On October 28, 2002, Officers Felix Arroyo and Stanley Rodriguez of the Paterson Police Department, while on patrol in an unmarked police car in the area of Tenth Avenue and East 30th Street, observed a swerving white Jeep Cherokee driven [\*2] with its headlights off. The officers activated their overhead lights and sirens and followed the Jeep until Tenth Avenue and 33rd Street, at which point the Jeep pulled over and stopped in a Dunkin' Donuts parking lot. The vehicle was driven by co-defendant Shariffe Parks and defendant Morgan Scott was a passenger. Officer Arroyo approached the driver's side of the vehicle and Officer Rodriguez the passenger's side. Officer Arroyo noted a strong odor of raw marijuana emanating from the vehicle and Parks told Arroyo that he did not have a driver's license, at which point Arroyo asked Parks to step out of

the vehicle. Officer Rodriguez used a flashlight to illuminate the inside of the vehicle and Officer Arroyo observed a large plastic bag in plain view on the floor of the vehicle, driver's side, which he believed contained CDS. Subsequent testing revealed that the plastic bag contained fifty-nine bags of crack cocaine and one bag of marijuana.

On January 12, 2004, a jury found Parks and Scott guilty of third-degree possession of cocaine, third-degree possession of cocaine with intent to distribute, and third-degree possession of cocaine with intent to distribute within 1,000 feet of [\*3] school property. In addition, they were found guilty of possession of marijuana in a motor vehicle, a disorderly persons offense.

Testimony at trial focused, in part, on the location of the bag containing the crack cocaine and marijuana. Neither Scott nor Parks testified, but Scott moved for judgment of acquittal after the State rested and again at the end of the entire case. The trial judge denied the motions, essentially concluding that there were "plenty of inferences" that could be drawn in support of the State's argument that Scott was not merely a passenger.

Scott appealed. In a split-decision, the Appellate Division remanded the matter for further proceedings in respect of the voluntary nature of certain statements attributed to Scott, and for resentencing. The Appellate Division concluded that the State had established physical and constructive possession, agreeing with the trial court's analysis, and adding that the smell of raw marijuana combined with other circumstances and inferences supported the court's decision to deny Scott's motion for acquittal.

Judge Fuentes filed a dissenting opinion, concluding that the State failed to establish physical or constructive possession.

**HELD:** [\*4] The judgment of the Appellate Division is **AFFIRMED** substantially for the reasons expressed in the Appellate Division's majority opinion.

**COUNSEL:** *Cecelia Urban*, Assistant Deputy Public Defender, argued the cause for appellant (*Yvonne Smith Segars*, Public Defender, attorney).

*Christopher W. Hsieh*, Senior Assistant Prosecutor, argued the cause for respondent (*James F. Avigliano*, Passaic County Prosecutor, attorney).

**JUDGES:** CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, WALLACE, RIVERA-SOTO, and HOENS join in the Court's opinion. JUSTICES LONG and ALBIN have filed a separate dissenting opinion.

## OPINION

PER CURIAM

This matter came to the Court on defendant's appeal as of right pursuant to *Rule 2:2-1(a)(2)*. The sole issue before the Court --

whether defendant actually or constructively possessed cocaine that was found in the vehicle in which he was a passenger -- arose from the dissent filed by Judge Fuentes. In respect of that issue, the judgment of the Appellate Division is affirmed, substantially for the reasons expressed in the majority opinion of the Appellate Division, reported at N.J. Super. (2006).

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, WALLACE, RIVERA-SOTO, and HOENS join in the Court's opinion. [\*5] JUSTICES LONG and ALBIN have filed a separate dissenting opinion.

**DISSENT BY:** LONG; ALBIN

**DISSENT**

JUSTICES LONG and ALBIN, dissenting.

We would reverse defendant's conviction and sentence, substantially for the reasons expressed in the dissenting opinion of Judge Fuentes, reported at N.J. Super. (2006).