



POLICE / PROSECUTOR UPDATE

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Two recently decided cases discussed the concept of constructive possession of drugs.

The facts indicate that the accused was stopped for a traffic infraction. He did not have a driver's license or a registration for the vehicle he was driving. From a routine computer check, the police officer learned that the defendant had never held a valid driver's license and that the license plate on the vehicle was stolen. While the officer was checking these computer records, the defendant fled on foot, abandoning the vehicle. The officer called for assistance and pursued on foot. After several minutes, a group of officers captured the defendant as he attempted to crawl under a parked car. They discovered that the defendant had over \$900 in cash stuffed in various pockets.

After the officers and the defendant returned to the abandoned vehicle, it was prepared for impounding and a tow truck was called. The subsequent inventory search of the vehicle discovered two pagers, a cellular telephone, a digital scale, a plastic bag of marijuana, and a quantity of empty plastic bags in the front seat area. In the trunk were several bags of men's clothing, a second stolen license plate, and a large quantity of cocaine. (The search of the vehicle was proper because IC 9-18-2-43 requires the impoundment of a vehicle without proper certificate of registration or license plate, and the officer's departmental policies required an inventory search before the vehicle could be towed).

The defendant argued that the State did not prove that he knew the drugs were in the vehicle or that he constructively possessed the drugs found during the search. In the absence of actual possession of drugs, "constructive" possession may support a conviction for a drug offense. To prove constructive possession, it must be shown that the defendant has *both* (1) the *intent* to maintain dominion and control and (2) the *capability* to maintain dominion and control over the drugs.

To show *intent*, the defendant's knowledge of the presence of the drugs must be shown. This knowledge may be inferred from either the exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. The defendant argued that he had only borrowed the car. However, the issue is not ownership but possession. The defendant's exclusive possession of the vehicle was sufficient to raise a reasonable inference of intent. Other ways of showing intent when possession is non-exclusive include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant.

The defendant also argued that he did not have the *capability* of maintaining dominion and control over the cocaine because it was in the trunk of the vehicle. But this capability requirement is met when it is shown that the defendant has the ability to reduce the drugs to his personal possession. In this case, while the cocaine was in the trunk of the car when it was stopped, the defendant possessed the key that opened it. Also, he had been living out of the vehicle, and the clothes found in the trunk near the cocaine were his. There was a sufficient showing of constructive possession of the cocaine.

Goliday v. State, ___ N.E.2d ___ (Ind. 03/19/99).

Ladd v. State, ___ N.E.2d ___ (Ind. App. 03/26/99).