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NO. 512556-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

IVON CRANSHAW,

Appellant.

RESPONDENT'S BRIEF

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**HALL OF JUSTICE
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I. ISSUES

1. Did the State present sufficient evidence to prove beyond a reasonable doubt that Mr. Cranshaw was in possession of a controlled substance?
2. Does the recently passed legal financial obligation legislation require this court to strike the trial court's imposition of the criminal filing fee and DNA collection fee?

II. SHORT ANSWERS

1. Yes. The State presented sufficient evidence to prove beyond a reasonable doubt that Mr. Cranshaw was in constructive possession of a controlled substance.
2. The State takes no position on the issue involving legal financial obligations.

III. FACTS

On May 11, 2017, Ivon Cranshaw, the Appellant, was observed by Longview Police Department Detective Michael Bokma driving a Mini Cooper. Detective Michael Bokma had been searching for the Mini Cooper and the passenger, Traditia Wood, based upon probable cause for an unrelated matter. 2RP at 191-92. With the aid of a patrol officer, Detective Bokma initiated a traffic stop and contacted Ms. Wood. 2RP at 192-94. Detective Bokma learned from Ms. Wood that there would likely be controlled substances within the Mini Cooper and decided to have the vehicle impounded and obtain a search warrant. 2RP at 195.

During the course of the stop, Mr. Cranshaw was placed under arrest for a reason unrelated to the initial traffic stop. 2RP at 194. Longview Police Department Officer Trevor Eades arrived to the scene to assist Detective Bokma. 2RP at 201. Mr. Cranshaw was placed inside of Officer Eades' patrol vehicle and transported to the Cowlitz County jail. 2RP at 195, 202. During the course of this trip, Mr. Cranshaw asked Officer Eades about the Mini Cooper and what was going to happen with it. 2RP at 203. After being told that a search warrant was going to be executed on the Mini Cooper, Mr. Cranshaw told Officer Eades that they would probably find contraband, including drugs, inside of the Mini Cooper. 2RP at 203-204.

Detective Bokma obtained a search warrant for the Mini Cooper. 2RP at 195. Longview Police Detectives Seth Libbey and Brian Durbin participated in the execution of the search warrant. 2RP at 215, 234. In the backseat of the vehicle, Detective Libbey located paperwork with Mr. Cranshaw's name. 2RP at 220. Within the center console, between the driver's and front passenger's seat, Detective Durbin located a cigarette pack that contained a large bag with a small amount a white crystalline substance. 2RP at 235. Detective Durbin recognized the substance as methamphetamine. 2RP at 235. Detective Durbin also located rental documents for the Mini Cooper in the center console. 2RP at 242. Neither

Ms. Wood nor Mr. Cranshaw's name appeared on the rental documents. 2RP at 242.

Mr. Cranshaw was charged with possession of a controlled substance. CP 3-4. The case proceeded to trial on November 16, 2017. After the completion of the two-day trial, the jury found Mr. Cranshaw guilty of possession of a controlled substance. 3RP at 422. On November 20, 2017, the trial court sentenced Mr. Cranshaw to 15 months prison and 12 months of community custody. 3RP at 434-35; CP 42. The trial court also imposed the non-discretionary legal financial obligations - \$500 victim penalty, \$200 criminal filing fee, and \$100 DNA collection fee. 3RP at 435; CP 44. Mr. Cranshaw then timely filed his appeal.

IV. ARGUMENT

1. **The State presented sufficient evidence to prove beyond a reasonable doubt that Mr. Cranshaw was in possession of a controlled substance.**

- a. *Standard of review*

The standard of review for sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the necessary facts to be proven beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). For purposes of a

challenge to the sufficiency of the evidence, the appellant admits the truth of the State's evidence. *State v. Jones*, 63 Wn. App. 703, 707-08, 821 P.2d 543, *review denied*, 118 Wn.2d 1028, 828 P.2d 563 (1992). All reasonable inferences must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993). A reviewing court need not itself be convinced beyond a reasonable doubt, *Jones*, 63 Wn. App. at 708, and must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

b. *Mr. Cranshaw was in constructive possession of a controlled substance.*

Since Mr. Cranshaw was the driver of the vehicle, was in close proximity to the methamphetamine, had the ability to reduce it to actual possession, and knew about its presence, he, therefore, had dominion and control over the methamphetamine. Possession of a controlled substance may be actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). "Actual possession means that the goods are in the personal custody of the person charged with possession; whereas constructive possession means that the goods are not in actual, physical possession, but

that the person charged with possession has dominion and control over the goods.” *Id.* (citing *State v. Walcott*, 72 Wn.2d 959, 435 P.2d 994 (1967)).

Close proximity is not enough to establish dominion and control. Rather, other factors must be established to enable the trier of fact to infer dominion and control. *State v. Spruell*, 57 Wn. App. 383, 388-89, 788 P.2d 21 (1990). The ability to take actual possession of an object is an aspect of dominion and control. *State v. Echeverria*, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). No single factor is dispositive. Instead, the totality of the circumstances must be considered. *State v. Collins*, 76 Wn. App. 496, 501, 888 P.2d 243, *review denied*, 126 Wn.2d 1016, 894 P.2d 565 (1995).

For this inquiry, a vehicle is a “premises.” *State v. Huff*, 64 Wn. App. 641, 654, 826 P.2d 698, *review denied*, 119 Wn.2d 1007, 833 P.2d 387 (1982). “Courts have found sufficient evidence of constructive possession, and dominion and control, in cases which the defendant was...the driver/owner of the vehicle where the contraband was found.” *State v. Chouinard*, 169 Wn. App. 895, 899-900, 282 P.3d 117 (2012) (citing *State v. Bowen*, 157 Wn. App. 821, 828, 239 P.3d 1114 (2010); *State v. Turner*, 103 Wn. App. 515, 521, 13 P.3d 234 (2000); *State v. McFarland*, 73 Wn. App. 57, 70, 867 P.2d 660 (1994), *aff'd*, 127 Wn.2d 322, 899 P.2d 1251 (1995); *State v. Reid*, 40 Wn. App. 319, 326, 698 P.2d 588 (1985); *Echeverria*, 85 Wn. App. at 783. “[W]here there is control of a

vehicle and knowledge of a firearm inside it, there is a reasonable basis for knowing constructive possession...” *Turner*, 103 Wn. App. at 524.

In the present matter, Mr. Cranshaw was in control of the vehicle. The methamphetamine was in the center console next to the driver’s seat; thus, it was in close proximity to Mr. Cranshaw and he was able to reduce it to actual possession. Additionally, without being questioned or prompted, Mr. Cranshaw informed Detective Eades that there would possibly be drugs inside of the vehicle, thereby inferring knowledge of the methamphetamine. Taking this evidence in light most favorable to the State, there clearly was sufficient evidence presented to the jury to sustain the finding of guilt.

As stated above, Washington courts have regularly held that dominion and control exists as to the driver of the vehicle. The cases relied upon by Mr. Cranshaw are misplaced. The defendant in *State v. George*, 146 Wn. App. 906, 193 P.3d 693 (2008), was the backseat passenger of a vehicle that contained marijuana. The analysis in *George* focused directly on dominion and control in relation to the backseat passenger of a vehicle. Likewise, the defendant in *Chouinard* was the backseat passenger of a vehicle where a firearm was found in the trunk. Both *Callahan* and *Spruell* involved guests within an actual residence and momentary handling of contraband.

On the other hand, the defendants in *Bowen, Turner, and Echeverria* were all the drivers of the vehicles where contraband was located. They were each in close proximity to the contraband, were able to reduce the contraband to actual possession, and were aware of the contraband's presence within the vehicle as they were in control of it.

Mr. Cranshaw would have this court analyze this case as if he was a passenger in the vehicle or that he only momentarily handled the methamphetamine. This is not the evidence that was presented to the jury. The evidence clearly showed that he was in dominion and control of the methamphetamine because he was in control of the vehicle, was in close proximity, was able to take actual possession of the methamphetamine, and was aware of its presence. This court should affirm Mr. Cranshaw's conviction for possession of a controlled substance.

2. The State takes no position in regards to Mr. Cranshaw's legal financial obligations argument.

Mr. Cranshaw was determined to be indigent at the time of sentencing. The trial court imposed only non-discretionary legal financial obligations. Mr. Cranshaw is now requesting this court to retroactively apply an amendment to the legal financial obligation legislation and strike the criminal filing fee and DNA collection fee. The State simply defers to this court's judgment.

V. CONCLUSION

The State presented sufficient evidence that Mr. Cranshaw was in constructive possession of methamphetamine. The evidence presented to the jury established that he was the driver of the vehicle, the methamphetamine was in close proximity and was able to be reduced to actual possession, and that Mr. Cranshaw was aware of its presence. Thus, in viewing the totality of the circumstances, and viewing this evidence in the light most favorable to the State, the jury properly found Mr. Cranshaw guilty of possession of a controlled substance.

The State takes no position in regards to Mr. Cranshaw's challenge to his legal financial obligation.

The Court should affirm his conviction.

Respectfully submitted this 3 day of October, 2018.

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on October 3rd, 2018.



Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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