

**FILED**

JAN 13, 2014

Court of Appeals  
Division III  
State of Washington

**NO. 31682-3-III**

**STATE OF WASHINGTON**

**COURT OF APPEALS - DIVISION III**

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**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**ULISES RAMIREZ**

**Appellant.**

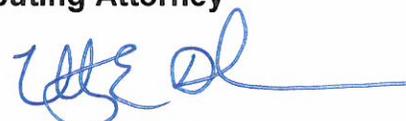
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**APPEAL FROM THE SUPERIOR COURT FOR**

**FRANKLIN COUNTY**

**BRIEF OF RESPONDENT**

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**Prosecuting Attorney**



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## A. FACTS

On January 30, 2013, Detectives Jones and Pettijohn were looking for people that had warrants, one of whom was Ulises Ramirez, the appellant. RP 22, 42. The detectives observed the appellant going into and out of Room 212 at the Motel 6 in Pasco. RP 22, 42. Their observations included the appellant interacting with a motel staff person, possibly receiving towels and pacing them on the balcony. RP 42-44.

The detectives learned that the room had been rented for multiple days to Miguel Leon and that Mr. Leon would not be checking out on that day. RP 25.

The detectives decided to approach the door of the motel room and knock. RP 25. There was no response from inside the room. RP 25. Detective Jones heard some "scuffling" from inside the room and approximately 15 seconds later heard the television volume go up extremely loud. RP 94. The detectives continued to knock as Detective Pettijohn left to seek a search warrant. RP 25, 45.

Shortly after Detective Pettijohn walked away, the appellant advised detectives that he would be coming out in a minute. RP

26. Soon thereafter, the appellant stepped out and was arrested.  
RP 26.

Inside the room detectives observed an individual known to them as Miguel Leon. RP 46. There was a strong odor of burnt marijuana emanating from the room. RP 46, 70, 96. Detective Pettijohn observed that the room was very small and guessed it to be approximately 15 feet by 15 feet. RP 75. Mr. Leon made spontaneous statements indicating he and the appellant had just finished smoking marijuana. RP 97.

Detective Jones asked Mr. Leon if he could search the room for other people. RP 46, 95. Instead of Leon, the appellant, from outside the room forcibly yelled to Leon "Let them in the room. Let them look for bodies. Only let them into the bathroom to look for bodies only." RP 46. Mr. Leon then consented to a search of the room for people. RP 46. No other individuals were located inside the small room. RP 47.

Pursuant to a search warrant for room 212, detectives conducted a search of the room. RP 26. Items of contraband were located throughout the room and included smoking devices, a digital scale, multiple empty plastic baggies consistent with drug packaging, multiple baggies of cocaine, multiple baggies of

methamphetamine, a bag of Psilocyn mushrooms, a large quantity of marijuana and cocaine in the toilet bowl. RP 27,48, 50-51, 53, 55-56, . Detectives also located a wallet belonging to Miguel Leon which contained a room key, a wallet containing \$2,964.00 in small denomination bills, four cell phones. RP 32-33, 59 . Detectives observed that the room appeared to contain clothing and toiletries for two individuals. RP 69, 100.

Detective Jones interviewed Mr. Leon in the jail following his arrest. RP 101. Leon admitted that the appellant had been selling drugs out of the room for approximately one week. RP 101-104. Leon told Detective Pettijohn that the drugs in the room belonged to the appellant. RP 117.

At trial, Mr. Leon testified that he and the appellant had been staying in the room for approximately three days. RP 78. Mr. Leon admitted to only owning one of the cell phones located in the room. RP 81. Mr. Leon stated that he was the one who attempted to flush cocaine down the toilet. RP 81. Mr. Leon testified that he was the one that was selling drugs out of the room and that the appellant knew nothing about it, despite being present during the transactions. RP 86-87.

At the conclusion of the evidentiary portion of the trial, the court found the appellant guilty of Unlawful Possession of a Controlled Substance with Intent to Deliver, Cocaine, Unlawful Possession of a Controlled Substance with Intent to Deliver, Methamphetamine, Unlawful Possession of a Controlled Substance with Intent to Deliver, Marijuana and Unlawful Possession of a Controlled Substance, Psilocyn. RP 141 -143, CP 28-29. On May 22, 2013, the court entered Findings of Fact and Conclusions of Law on Bench Trial as proposed by the State, including “The Court does not find Mr. Leon’s testimony credible” in Finding of Fact 7. CP 20-22. Appellant was then sentenced within the standard ranges. CP 6-19.

**B. QUESTION PRESENTED**

- 1. WAS THERE SUFFICIENT EVIDENCE TO ESTABLISH THAT MR. RAMIREZ POSSESSED THE DRUGS IN THE MOTEL ROOM WITH THE INTENT TO DELIVER?**

### C. BRIEF ANSWER

There was sufficient evidence presented at trial to establish that Mr. Ramirez constructively possessed the drugs and other items of contraband located in the motel room with the intent to deliver.

### D. ARGUMENT

There was sufficient evidence presented at trial to establish that Mr. Ramirez constructively possessed the drugs and other items of contraband located in the motel room with the intent to deliver RCW 69.50.401(1).

Appellant argues that there was insufficient evidence established at trial to prove beyond a reasonable doubt that he possessed the drugs found in the motel room and that he possessed the cocaine, methamphetamine and marijuana with the intent to deliver. Appellant does not argue the sufficiency of the proof that the offenses occurred in the State of Washington.

Evidence is sufficient to support a conviction if after viewing the evidence and all reasonable inferences from it in a light most favorable to the State, a rational trier of fact could find each element of the crime proved beyond a reasonable doubt. State v. Homan, 172 Wash.App. 488, 490-91, 290 P.3d 1041 (2012), review denied, 177 Wash.2d 1022, 303 P.3d 1064 (2013). A reviewing

court defers to the trier of fact on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. State v. Thomas, 150 Wash.2d 821, 874-75, 83 P.3d 970 (2004).

Possession may be actual or constructive. State v. Jones, 146 Wash.2d 328, 333, 45 P.3d 1062 (2002). A person has actual possession when he or she has physical custody of the item and constructive possession when he or she has dominion and control over the item. Jones, 146 Wash.2d at 333, 45 P.3d 1062. Whether a person had dominion and control over an item depends on the totality of the circumstances. State v. Jeffrey, 77 Wash.App. 222, 227, 889 P.2d 956 (1995). And a person's dominion and control over a premises allows the trier of fact to infer that the person has dominion and control over items in the premises. State v. Shumaker, 142 Wash.App. 330, 333, 174 P.3d 1214 (2007) (dominion and control of premises is one factor indicating constructive possession); State v. Contabrana, 83 Wash.App. 204, 208, 921 P.3d 572 (1996) (showing dominion and control raises rebuttable presumption of constructive possession). Dominion and control need not be exclusive and can be established by circumstantial evidence. State v. Weiss, 73 Wn.2d 372, 375, 438 P.2d 610 (1968).

In this case, the evidence presented at trial established that the appellant was residing in Room 212 of the Motel 6 in Pasco, Washington, on January 30, 2013, and that he had been residing there for some time prior. The evidence showed that the appellant resided in the room with Miguel Leon, the person who rented the room and possessed a key to the door. The evidence showed that the appellant interacted with hotel staff, came and went freely, and instructed Mr. Leon on how to handle the police searching the room. The evidence established that there were two sets of clothing and toiletries found inside the room, corresponding to the presence of the appellant and Mr. Leon. It should be noted that the presence of intimate, personal property can be used to help establish dominion and control over a premises. State v. Woods, 5 Wn.App. 399, 404, 487 P.2d 624 (1971). This is clearly sufficient to support the conclusion that appellant had dominion and control over the room.

The next question is whether the appellant had dominion and control over the items located inside the motel room. While the room was tiny and the appellant was close to all items of contraband (i.e. drugs, packaging, scales etc.) proximity does not alone establish dominion and control it is evidence of dominion and

control. State v. Sanders, 7 Wn.App. 891, 894-95, 503 P.2d 467 (1972). Proximity to the drugs combined with hostility towards officers, or lack of cooperation, can help to establish constructive possession of the drugs. State v. Porter, 58 Wn.App. 57, 791 P..2d 905 (1990). The evidence established that the room was very small and contained clothing and toiletries associated with two separate individuals. The evidence showed that the small room was serving as a virtual recreational drug store, with drugs being found throughout the room and in the toilet bowl. The evidence showed that the appellant was using marijuana in the room immediately prior to his arrest. Finally, the appellant's actions in answering the door, interacting with motel staff and directing Mr. Leon indicate that he was in control of the room and the items located therein. Dominion and control over the items was clearly shared between the appellant and Mr. Leon but this is consistent with the trial court's inference that the two of them were jointly operating a drug store from the motel room.

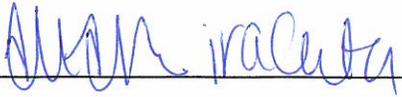
Finally, the evidence presented at trial clearly established that the appellant not only possessed the drugs but he, along with Mr. Leon, intended to distribute the drugs. First, the statements by Mr. Leon made on the day of the arrest clearly indicate that

appellant was engaging in the sale of various drugs from the room. Second, the items of evidence and contraband located in the room corroborate this statement. Detectives located multiple cell phones, a large quantity of small denomination bills, large quantities of marijuana, cocaine and methamphetamine, drug packaging materials and a digital scale. Finally, there was a substantial period of time between the detectives knocking on the door and the appellant finally coming out followed by the observation of cocaine in the toilet bowl which clearly indicates a guilty attempt to cover up evidence of their business, actions in a tiny room that could not have occurred without the knowledge of all those present inside the room.

As to the credibility of Mr. Leon, the trial court found his statements and testimony to not be credible. Upon arrest he blamed appellant. After conviction he took the blame. While not to be believed on his statements alone, the other evidence in this case clearly shows that appellant and Mr. Leon were engaged in a joint endeavor to sell a variety of illegal drugs and to collect a profit.



Attorney, 701 Melbourne Tower, 1511 Third Ave, Seattle WA  
98101, by depositing in the mail of the United States of America a  
properly stamped and addressed envelope.

  
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Signed and sworn to before me this 13<sup>th</sup> day of January, 2014.

  
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Notary Public in and for  
the State of Washington,  
residing at Kennewick  
My appointment expires:  
May 19, 2014

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