

65865-4

65865-4

NO. 65865-4-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

DEREK A. HARLIN,

Appellant.

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BRIEF OF RESPONDENT

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2011 SEP 20 11:16 AM  
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## **I. ISSUES**

Officers executing a search warrant found the defendant and his wife in a residence. In an adjacent shed/garage, they found the defendant's adult son and an extensive marijuana "grow op" of 289 plants, weighing some 5.5 lbs. There was a picture of the defendant and his wife in the master bedroom of the residence. A different bedroom contained property of the son. The odor of growing marijuana could be detected from outside the shed. The defendant told police that this was "no big deal," since "Obama was going to legalize" whatever they might find. He also told police later he would like them to return his property, seized from his house. And he complained to them that they had taken away his source of income. Viewed in the light most favorable to the State, was there sufficient evidence that the defendant had dominion and control over the substance, to sustain his conviction for possessing more than 40 g of marijuana?

## **II. STATEMENT OF THE CASE**

In the spring of 2009 police received information about a possible marijuana "grow op" at a particular property in Arlington off 156<sup>th</sup> St. NE. 2 RP 178, 192-93. Officers investigated further. Walking past the property, they could see a makeshift vent on top

of a large shed, and could smell the odor of growing marijuana emanating from the property. 2 RP 178-79. Officers swore out a warrant and executed it on May 5, 2009. 1 RP 22, 42; 2 RP 106-07, 137-38, 179-80.

As they approached the property along a driveway, they could see the defendant, Derek Harlin, in an upstairs window. They did not have to batter the door down because the defendant came down and opened it. Officers took him in custody. His wife Merlinda was in the house and she was taken into custody as well. 1 RP 25-26, 35-36, 43-44, 54; 2 RP 139-42, 180-82.

A search of the house yielded several firearms, including one on the kitchen counter, one in the master bedroom, and one in another bedroom, this last with identification belonging to the defendant's son, Cody Harlin. 1 RP 27-28, 32, 46-47; 2 RP 94-95, 155-68, 183, 233-38. No drugs were found in the house.

Officers obtained a key<sup>1</sup> and used it to open the large shed adjacent to the house. 1 RP 44-45; 2 RP 108, 143-44, 184, 192-94; Ex. 53.<sup>2</sup> Before entering – while still outside – officers could

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<sup>1</sup> Particulars about how officers found the keys were suppressed pretrial. 2 CP \_\_, \_\_ (sub 33, minute entry, and sub 68, CrR 3.5 certificate).

<sup>2</sup> A reduced-size copy of exhibit 53, a detective's sketch, is appended hereto,

smell an odor of marijuana coming from the building. 1 RP 44; 2 RP 186.

As they entered, officers saw what looked like a 2' – 3' marijuana plant lying on the floor. 2 RP 185, 226-30; Exs. 29, 33. They found what appeared to be marijuana in coolers in two locations on the ground floor. They also found a Triple-I beam scale on a shelf. 2 RP 147-48, 150, 198-202, 222-27, 230-31.

There was also an upstairs loft area, accessible by a ladder. Officers climbed up, opened a door, and announced themselves, but got no answer. They came back down and peered through the upstairs-loft door using a camera on a pole. 1 RP 28-29, 45-46; 2 RP 185-87. This revealed the presence of Cody Harlin, the defendant's son. He was called out and taken into custody as well. 1 RP 29-30, 37, 56; 2 RP 144-45, 187-88, 243.

The upstairs loft area was divided into three rooms containing a fairly large marijuana growing operation. 2 RP 108-29, 147; Exs. 46, 47. The "grow op" included a watering system, timer, clippers, temperature gauge, rooting hormone, a wiring control box, and switches for 1000-watt bulbs. 2 R 109-10, 116-19, 121-23. There were ducts to vent both the heat and the smell. 2 RP 108-10, 128; Ex. 49. Officers confiscated 289 plants. Officers cut them

down and put them in burlap bags (so they would not get moldy). Their weight came to 5.5 lbs. 2 RP 79-82, 129. A sample of leaf from one of the bags tested positive for marijuana. 2 RP 70, 72, 74, 76-78.

While the search progressed, officers told the defendant they were looking for marijuana. The defendant responded that he did not see what the big deal was, “since [President] Obama was going to legalize” what they might or might not find in the garage. 2 RP 190.

Within a day or two, the lead detective got several cell phone calls from the defendant. In one, the defendant repeated his “no big deal” statement. 2 RP 232-33. In others, he asked that some paperwork that was taken be returned, and that one or more of his guns, taken from his house, be returned as well. Id. In yet another, he complained that now he would have to contact his ex-wife about child support – something he very much did not want to do – because police had taken away his source of income. Id.

Charges against Merlinda Harlin were dismissed pretrial. 1 RP 2-3. The defendant was charged by amended information with one count of possession of over 40 g of marijuana while armed with a firearm. 1 CP 13-14. His son Cody Harlin was charged by

amended information with conspiracy to commit manufacture of a controlled substance. 2 CP \_\_\_ (sub 9, cause 09-1-02290-3). The two defendants were joined for trial 2 CP \_\_, \_\_ (sub 44, trial minutes; sub 26, trial minutes, cause 09-1-02290-3). After the State rested, both defendants moved to dismiss based on insufficiency of the evidence. The trial court denied defendant Derek Harlin's motion, recognizing it was a constructive possession case. 2 RP 263-64. The trial court dismissed the firearm allegation, holding that a sufficient nexus had not been shown tying the firearms to the crime. 3 RP 275-77. As to the co-defendant, Cody Harlin, the trial court ultimately agreed that that his father's statements to police were not admissible as statements in furtherance of a conspiracy, since once police were onscene any conspiracy had stopped. This left insufficient evidence of the charged crime of conspiracy, and the trial court dismissed the charge. 3 RP 294-95, 306.

With the charge against Cody Harlin dismissed and his own firearm enhancement now stripped away, the defendant waived jury and elected to put on no evidence. 3 RP 306. Faced now with being the trier of fact, the trial court reviewed the photographs admitted into evidence. 3 RP 314. It heard closing argument. 3

RP 315-23 (plaintiff's), 323-330 (defendant's). The trial court found the charge proved beyond a reasonable doubt. 3 RP 330-336 (attached). It based the finding of guilt on the following: That (1) both the defendant and his wife were in the home; (2) however the police obtained the keys to the shed/garage, they certainly didn't get them from co-defendant Cody Harlin, who was inside the shed; (3) there was an odor emanating from the shed; (4) the defendant said any fruits of the search were "no big deal," since President Obama was going to legalize it; (5) the defendant said he wanted seized paperwork and firearms returned, indicating some possessory interest in the home; and, lastly, (6) the defendant complained that the police had taken away his source of income, and now he would have to talk to his ex-wife about child support. Id. This appeal followed.

### **III. ARGUMENT**

#### **THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE DEFENDANT'S CONVICTION FOR POSSESSION OF OVER 40 GRAMS OF MARIJUANA.**

The defendant repeats the argument he made below, that there was insufficient evidence to convict him.

Under the applicable standard of review, there will be sufficient evidence to affirm a criminal conviction if any rational trier

of fact, viewing the evidence most favorably toward the State, could have found the essential elements of the charged crime were proved beyond a reasonable doubt. State v. Wentz, 149 Wn.2d 342, 347, 68 P.3d 282 (2003); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A challenge to the sufficiency of the evidence admits the truth of the States' evidence. Salinas, 119 Wn.2d at 201; State v. Porter, 58 Wn. App. 57, 791 P.2d 905 (1990). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas at 201; State v. Soderholm, 68 Wn. App. 363, 373, 842 P.2d 1039 (1993).

In testing the sufficiency of the evidence, the reviewing court does not weigh the persuasiveness of the evidence. Rather, it defers to the trier of fact on issues involving conflicting testimony, credibility of witnesses, and the weight of the evidence. State v. Stewart, 141 Wn. App. 791, 795, 174 P.3d 111 (2007) (citing State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). State v. Hernandez, 85 Wn. App. 672, 675, 935 P.2d 623 (1997). Evidence favoring the defendant is not considered. State v. Randecker, 79 Wn.2d 512, 521, 487 P.2d 1295 (1971) (negative effect of defendant's explanation on State's case not considered), State v.

Jackson, 62 Wn. App. 53, 58 n.2, 813 P.2d 156 (1991) (defense evidentiary inference cannot be used to attack sufficiency of evidence to convict).

The rules apply equally to a circumstantial evidence case, for circumstantial evidence is no less reliable than direct evidence. State v. Stewart, 141 Wn. App. at 795; State v. Delmarter, 94 Wn.2d at 638; State v. Zamora, 63 Wn. App. 220, 223, 817 P.2d 880 (1991); see WPIC 5.01. Circumstantial evidence is sufficient to prove any element of a crime. State v. Garcia, 20 Wn. App. 401, 405, 579 P.2d 1034 (1978) (citing State v. Lewis, 69 Wn.2d 120, 123-24, 417 P.2d 618 (1966)).

The crime of possessing more than 40 grams of marijuana required the State prove the defendant, on or about May 5, 2009, possessed a controlled substance (marijuana),<sup>3</sup> in an amount over 40 grams, in the State of Washington. RCW 69.50.4013; see RCW 69.40.4014 (possession of 40 g or less a misdemeanor); see WPIC 50.02 (possessory elements generally). The crime is one of strict liability, requiring no intent. State v. Vike, 125 Wn.2d 407, 412, 885 P.2d 824 (1994) (“[a]side from the unwitting possession defense, possession is a strict liability crime”). That there was over 40

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<sup>3</sup> Marijuana is a Schedule I controlled substance. RCW 69.50.204(c)(22).

grams of marijuana in the shed – or at least in the upstairs loft – is not seriously at issue. See 2 RP 74, 76-82, 108-29, 147; Exs. 46, 47. There were 289 plants, weighing 5.5 lbs. 2 RP 79-82, 129. The question is whether there was sufficient evidence that the defendant “possessed” them.

Possession can be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969); WPIC 50.03. “Constructive possession occurs when there is no actual physical possession but there is dominion and control over the substance.” WPIC 50.03; State v. Olivarez, 63 Wn. App. 484, 820 P.2d 66 (1991). Dominion and control need not be exclusive. State v. Weiss, 73 Wn.2d 372, 375, 438 P.2d 610 (1968). On the other hand, mere proximity to the drugs, by itself, is not enough. State v. Amezola, 49 Wn. App. 78, 86, 741 P.2d 1024 (1987). One of the indicia of constructive possession is evidence that the defendant resides at the premises. Amezola, 49 Wn. App. at 87. But this factor, standing alone, is not necessarily determinative. State v. Tadeo-Mares, 86 Wn. App. 813, 816-17, 939 P.2d 220 (1997). Knowledge that drugs are there is not enough by itself, either. State v. Davis, 16 Wn. App. 657, 558

P.2d 263 (1977). Rather, dominion and control is determined from the totality of the circumstances. State v. Partin, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977). For example, proximity plus an admission can be enough. State v. Ibarra-Raya, 145 Wn. App. 516, 518, 187 P.3d 301 (2008) (cocaine on ground by defendant, plus admission, “if you saw me drop it, then I’ll admit it’s mine,” sufficient to take question to jury). “Constructive possession cases are fact sensitive.” State v. George, 146 Wn. App. 906, 920, 193 P.3d 693 (2008). And the cumulative effect of a number of factors is a strong indication of constructive possession. Partin, 88 Wn.2d at 906.

Here, under the requisite, highly deferential standard of review of an insufficiency claim, there was sufficient evidence that the defendant constructively possessed more than 40 grams of marijuana, based on the following:

1. The defendant and his wife were found in the house. 1 RP 25-26, 35-36, 43-44, 54; 2 RP 139-42, 180-82.
2. There was evidence the defendant’s son Cody lived in the house, in a bedroom separate from that identified as the master bedroom. Compare 2 RP 155-68 (co-defendant Cody’s room) with 1 RP 32, 46-47; 2 RP 94-95; Exs. 20, 21 (master bedroom). And

there was a picture of the defendant and his wife in the master bedroom. BOA 8; Exs. 20, 21.

3. There was an odor of growing marijuana emanating from the garage/shed, detectible not only while outside it, but even from the adjacent road. 1 RP 44; 2 RP 179-80, 186.

4. There was a makeshift vent atop the shed. 2 RP 178-79.

5. The shed was adjacent to the house. Ex. 53.

6. There was a plant that appeared consistent with marijuana lying on the floor of the garage right after one walked in. 2 RP 185, 226-30; Exs. 29, 33. Also in the shed, downstairs on a shelf, was a "Triple I-beam" scale commonly used to weigh controlled substances. 2 RP 230-31.

7. The "grow op" in the upstairs loft was extensive. 2 RP 108-29, 147; Exs. 46, 47. It required a fairly large duct to vent the heat and smell. 2 RP 108-10, 128; Ex. 49.

8. However the keys were obtained, it was not from Cody, who was inside the shed when the police unlocked it. See 1 RP 44-45; 2 RP 143-44, 184.

9. Told by police they were searching for marijuana, the defendant said he did not see what the big deal was, since the President was going to legalize whatever they might or not find in

the garage. 2 RP 190. The defendant repeated this statement in a phone call a day or two later. 2 RP 232-33.

10. In other calls a day or two after the search, the defendant asked that paperwork that had been seized be returned, and asked that his guns, taken from his house, be returned as well. 2 RP 232-33.

11. In a phone call a day or two after the search, the defendant complained to police that he would have to contact his ex wife – which he did not want to do – about child support, since police had now taken away his source of income. 2 RP 232-33.

Viewed in the light most favorable to the State, admitting the truth of the State's evidence and drawing all reasonable inferences therefrom, and disregarding evidence favoring the defendant, there was sufficient evidence to prove that the defendant had dominion and control over the substance (which is the only issue). Certainly proximity was established. See Ex. 53 (sketch showing shed adjacent to house). The defendant articulated a possessory interest in the home by asking to have *his* guns, seized from *his* house, returned. See RP 232. Even without the defendant's statements, one can reasonably infer knowledge of the drugs from the proximity of the shed, Ex. 53, its makeshift vent and the size of the venting

duct, 2 RP 178-79, Ex. 49, the odor coming from the shed, 1 RP 44, 2 RP 179-80, 186, the extensiveness of the operation, 2 RP 108-29, 147, Exs. 46, 47, a plant that looked like marijuana lying right on the shed floor as one walks in, 2 RP 185, 226-30, Exs. 29, 33, and from the shed key, however obtained, not having been in the co-defendant's possession. 1 RP 44-45, 2 RP 143-44, 184. The defendant's "no big deal" statements take the inquiry beyond inferences, as they directly implicate knowledge. See 2 RP 232. Lastly, the defendant endorsed the "grow op" as his own when he complained that the police had eliminated his source of income. See 2 RP 232.

"Constructive possession occurs when there is no actual physical possession but there is dominion and control over the substance." WPIC 50.03; State v. Shumaker, 142 Wn. App. 330, 333, 174 P.3d 1214 (2007). "Dominion and control" can be described as the "power or authority to determine what happens to the substance," or exercising "care, control, or management over the drug." COMMENT to WPIC 50.03. A person will certainly be in constructive possession of drugs – he or she will certainly have "managed" or "determined what happens to" them – if he or she

describes them as having been his or her “source of income.”  
Converting marijuana into cash certainly involves “possessing” it.

The defendant argues that an inference is “reasonable” only if it is also “sufficiently compelling.” BOA 9. But no Washington case examining an insufficiency claim articulates such a standard. “A verdict does not rest on speculation or conjecture when founded on reasonable inferences drawn from circumstantial facts.” Lamphiear v. Skagit Corp., 6 Wn. App. 350, 356, 493 P.2d 1018, 1023 (1972) (examining sufficiency of evidence for jury verdict on liability and loss of profits). That an inference must also be “compelling” is nowhere in the requisite standard of review.

The defendant appears to complain that the State’s case is based on inferences drawn from circumstantial evidence. But circumstantial evidence is no less reliable than direct evidence. State v. Stewart, 141 Wn. App. at 795; State v. Delmarter, 94 Wn..2d at 638; State v. Zamora, 63 Wn. App. at 223; see WPIC 5.01.

The defendant also argues that the evidence is insufficient because other inferences, more favorable to him, can be drawn, too. BOA 15-16 (arguing other inferences are “equally plausible”). This is not the standard either. State v. Jackson, 62 Wn. App. at 58

n.2 (defense evidentiary inference cannot be used to attack sufficiency of evidence to convict).

In the end, the defendant would have this Court examine the evidence below under a stricter standard of review than is applicable. It is understandable that he should urge this, but he is wrong. There was sufficient evidence to support the defendant's conviction for possession of more than 40 g of marijuana.

#### **IV. CONCLUSION**

The judgment and sentence should be affirmed.

Respectfully submitted on April 27, 2011.

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\_\_\_\_\_  
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Appendices

Appendix A – Court's ruling, 3 RP 330-336

Appendix B – copy of Ex. 53 (reduced)

**APPENDIX A**

**TRIAL COURT'S RULING, FINDING DEFENDANT GUILTY**

**3 RP 330-336**



1 that the long list of items that Mr. Mestel suggests  
2 should have been presented to strengthen the State's  
3 allegations is a red herring. That's an argument  
4 that could be made in any case, and admittedly some  
5 more than others.

6 But the question is whether or not the evidence  
7 that has been admitted that's before the court  
8 establishes beyond a reasonable doubt that the  
9 defendant is guilty as charged. And I would suggest  
10 that it does.

11 Finally, as a guiding principle, I would  
12 encourage the court to consider the definition of  
13 circumstantial evidence, which truly is what this  
14 case boils down to. Circumstantial evidence, as the  
15 jury would have been instructed, refers to evidence  
16 from which, based on your common sense and  
17 experience, you may reasonably infer something that  
18 is at issue in this case.

19 The evidence in this case, Judge, from a common  
20 sense perspective, is clear in that the defendant  
21 possessed marijuana on his property on May 5 of 2009  
22 in an amount of more than 40 grams.

23 To deviate from that common sense conclusion,  
24 you do have to stretch the bounds of reasonableness.  
25 That's what Mr. Mestel is encouraging the court to

1 determination are uncontroverted, essentially.  
2 There was only testimony from the State's witnesses.  
3 The testimony was that on May 5th of 2009, that a  
4 search warrant was served on a residence in  
5 Arlington, and that at the time of the search  
6 warrant, a male who was later identified as the  
7 defendant, Derek Harlin, was inside the house. He  
8 was taken into custody along with a woman who was  
9 identified as his wife.

10 The only things of evidentiary value found in  
11 the house that were submitted into evidence were a  
12 gun that was on the kitchen counter, a gun that was  
13 found in a master bedroom, some guns that were found  
14 in a bedroom that was identified as being associated  
15 with the defendant's adult son and former  
16 co-defendant Cody Harlin in a downstairs bedroom,  
17 along with his identification, and some other  
18 paperwork that tied Cody Harlin to that room.

19 The officers subsequently obtained a key and  
20 made entrance to a looked outbuilding where, in sum,  
21 a large marijuana grow operation was found.

22 Cody Harlin was found in the loft area, which is  
23 where the grow operation -- I can't remember the  
24 number of plants, over 200 growing plants, along  
25 with all the paraphernalia associated with the grow

1 operation, lights, watering systems, venting  
2 systems, et cetera, were all found. There were  
3 scales found in the garage. There was some dried  
4 plants in just the garage, and there was some green  
5 vegetable matter that was consistent with marijuana  
6 that was found in a cooler in the garage downstairs  
7 from the loft area where the main marijuana plants  
8 and grow operation appeared to be taking place.

9 And I think Mr. Mestel is correct, the question  
10 in the case, there was no marijuana that was  
11 actually found on the person of Derek Harlin. So  
12 the question is whether or not the State has  
13 submitted sufficient evidence for the court to find  
14 constructive possession.

15 The instruction gives some guidance to the court  
16 with respect to constructive possession which occurs  
17 when there's no actual physical possession, but  
18 there is dominion and control over the substance in  
19 this case, marijuana.

20 The marijuana that I believe in the main that  
21 would be -- well, all the marijuana that was found  
22 in the case was found in the garage. Exhibit 28  
23 that was admitted into evidence consisted of a  
24 burlap bag with marijuana plants. Leafy section of  
25 one plant was tested at random and found to contain

1 marijuana. It weighed out, I believe the testimony  
2 was, at 5.5 pounds.

3 So, again, we're really back down to  
4 constructive possession, and whether or not, since  
5 the defendant Derek Harlin was not in actual  
6 possession of any marijuana that was found, whether  
7 or not the State has proved that there was  
8 sufficient dominion and control by the defendant to  
9 allow the court to make a finding beyond a  
10 reasonable doubt of constructive possession.

11 The instruction and the case law gives further  
12 guidance to the court, and indicates that proximity  
13 alone is insufficient to establish constructive  
14 possession. It also indicates dominion and control  
15 need not be exclusive. And it instructs the court  
16 to consider all the relevant circumstances in this  
17 case, including but not exclusively whether the  
18 defendant had an immediate ability to take actual  
19 possession of the substance, whether the defendant  
20 had capacity to exclude others from possession of  
21 the substance, and whether the defendant had  
22 dominion and control over the premises where the  
23 substance was located, and indicates no single one  
24 of these factors necessarily controls your decision.

25 The evidence that the State urges the court to

1 consider in support of that constructive possession,  
2 I believe, would consist as follows. One, that the  
3 defendant and his wife and adult son were the only  
4 ones present at the residence and in the garage at  
5 the time of the search warrant.

6 Two. That items were confiscated in the search  
7 warrant which the defendant subsequently called  
8 requesting the return of, and they consisted of guns  
9 and paperwork, I believe was the testimony, which  
10 would be consistent with some possessory interest in  
11 those items which were found in the residence.

12 And then I guess an inference that since the  
13 defendant possessed items that were in the  
14 residence, he also was a resident or had dominion  
15 and control over the premises.

16 Thirdly, that the defendant made statements both  
17 at the time of the search warrant and subsequent to  
18 the search warrant to the effect of, "Well, I don't  
19 know what the big deal is, President Obama is going  
20 to legalize whatever you find in the shop in any  
21 event," indicating knowledge of what was in the  
22 shop. And again, I suppose, a request to draw an  
23 inference that he would know what was in the shop  
24 because he had the ability to go to the shop.

25 And then, lastly, a statement from the defendant

1           that he was going to have to contact his ex-wife  
2           based on the fact that the officers had impacted his  
3           ability to pay child support, which would indicate a  
4           financial interest in the manufacturing operation  
5           that the officers had dismantled during the course  
6           of the search warrant.

7           And the question is, can the court take all that  
8           evidence, draw what would need to be a series of  
9           inferences from that evidence, and find beyond a  
10          reasonable doubt that the defendant had dominion and  
11          control over the residence?

12          There was also testimony that the garage where  
13          the grow operation was taking place was locked.  
14          There was testimony that there was a key that was  
15          obtained to unlock it. There was not testimony as  
16          to how or where the key was obtained, but it was  
17          clearly not obtained from Cody Harlin, because he  
18          was in the loft which was in the locked garage.  
19          It's just another factor.

20          There was also, from the testimony, a very  
21          strong odor of marijuana that was apparently  
22          emanating from the outbuilding as well that was, I  
23          guess, would only be relevant in terms of knowledge.

24          So, again, I think what it comes down to is  
25          constructive possession and whether or not the

1 evidence that's submitted by the State is sufficient  
2 to establish dominion and control.

3 And essentially, the court, I think, would need  
4 to make a finding from the evidence that this was  
5 the defendant's residence in the absence of any  
6 documents showing that it was his residence, any  
7 testimony from anyone saying that he resided there,  
8 and the other, I guess for lack of a better term,  
9 more typical evidence that the court would see in a  
10 constructive possession case.

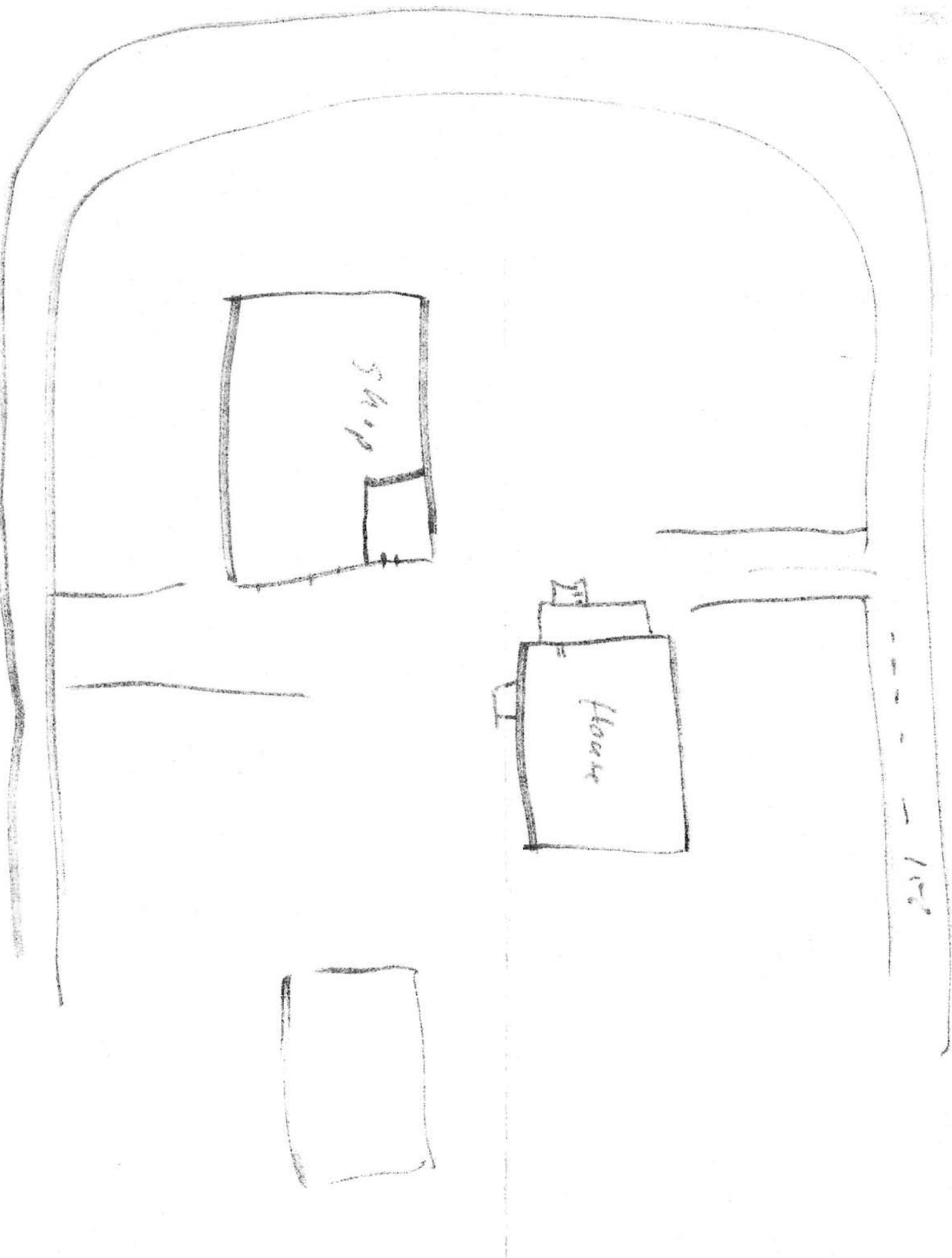
11 Having given the matter a fair amount of  
12 thought, obviously starting from yesterday during  
13 the Green motion, and then today subsequent to the  
14 motions that we have, I am going to find that I am  
15 convinced beyond a reasonable doubt that this was,  
16 based on the circumstantial evidence, the residence  
17 of the Defendant Derek Harlin; and that based on  
18 that, the State has proven dominion and control  
19 sufficient to establish constructive possession.

20 So I will find that the defendant is guilty of  
21 the crime of possession of a controlled substance  
22 over 40 grams. That the act occurred in Snohomish  
23 County, and will find the defendant guilty as  
24 charged. Obviously minus the firearm enhancement,  
25 which the court previously dismissed.

**APPENDIX B**

**EXHIBIT 53 (SKETCH BY DETECTIVE)**

**(reduced)**



Shop

House

100