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November 24, 2014
Court of Appeals
Division III
State of Washington

No. 91084-7
COA No. 31682-3-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ULISES RAMIREZ,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR FRANKLIN COUNTY

The Honorable Robert G. Swisher

PETITION FOR REVIEW

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STATE OF WASHINGTON *CR*

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A. IDENTITY OF PETITIONER

Ulises Ramirez asks this Court to accept review of the Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), petitioner seeks review of the unpublished Court of Appeals decision in *State v. Ulises Ramirez*, No. 31682-3-III (October 23, 2014). A copy of the decision is in the Appendix at pages 1 to 8.

C. ISSUE PRESENTED FOR REVIEW

Due process requires the State prove all of the essential elements of an offense beyond a reasonable doubt. Is a significant question of law under the United States Constitution involved where Mr. Ramirez was convicted of possession and possession with intent to deliver controlled substances in the motel room of another, where: 1) none of controlled substances were found on Mr. Ramirez's person; 2) none of the items in the room had Mr. Ramirez's identifying information on them; 3) all of the claimed items were Mr. Leon's; 4) Mr. Leon rented the room; and 5) Mr. Ramirez did not have a key to the room?

D. STATEMENT OF THE CASE

On January 30, 2013. Detectives Jones and Pettitjohn were looking for people with warrants, and Ulises Ramirez happened to be on their list. RP 22, 42. The officers saw Mr. Ramirez go in and out of a Motel 6 room. RP 22, 42-43. The officers were unable to see what, if anything, was happening inside of the room. RP 62. The room was rented by Miguel Leon, and only Mr. Leon possessed a key to the room. RP 83, 85. Upon seeing Mr. Ramirez, the detectives called Sergeant Monroe for assistance. RP 22. The detectives knocked on the motel room door and announced they were there to arrest on the warrant. RP 26. Mr. Ramirez followed the detectives command and appeared at the door. RP 26.

When Mr. Ramirez was searched incident to his arrest on the warrant, the detectives found nothing illegal. RP 37. The detectives noticed Mr. Leon was also in the room. RP 46. Detective Jones testified that he asked Mr. Leon and not Mr. Ramirez if he could “look through the room for bodies.” RP 95. 96. According to testimony by Detectives Pettitjohn and Jones, Mr. Ramirez heard this request and told Mr. Leon to let the officers search the bathroom for “bodies.” RP 46, 95.

However, Sergeant Monroe testified that he did not hear Mr. Ramirez make any statements. RP 29.

The detectives smelled the odor of marijuana in the room and applied for a search warrant. RP 38, 46, 107. The search warrant only listed Mr. Leon's name on it because he was the person responsible for the room. RP 107. During the search, the officers found two wallets that belonged to Mr. Leon. RP 31-32. One of the wallets contained \$2.964, the Motel 6 room key, lists of phone numbers and a Quest card. RP 33-34. In addition, the detectives also discovered narcotics, scales, baggies, a pipe, and clothes. RP 48-59. This evidence was discovered in a closet area that was outside the bathroom and for the most part the items were inside of bags, containers, or clothing. RP 48-59. A black backpack that contained Mr. Leon's identification was found next to the other bags, and in this bag, the officers discovered cocaine, other narcotics, and packaging materials. RP 52-53. The officers also discovered cocaine in the toilet bowl, and marijuana in Mr. Leon's pants. RP 51, 58. Additionally, four cell phones were seized but not searched; one of the cell phones belonged Mr. Leon. RP 59, 61, 67.

After the officers searched the room, Detective Jones questioned Mr. Leon. RP 104. Mr. Leon's answers vacillated between saying Mr.

Ramirez was involved in dealing drugs to saying Mr. Ramirez was not involved in dealing drugs. RP 110-111. Further, when Detective Jones asked if Mr. Leon was “[leaving] a bunch of stuff out . . . to protect [himself],” Mr. Leon nodded “yes”. RP 114.

After the search, Mr. Ramirez and Mr. Leon were charged with possession of cocaine with the intent to deliver (count I FB), methamphetamine (count II FB), and marijuana (count II FC). CP 6. He was also charged with unlawful possession of Psilocyn (count IV, FC). CP 7, 16. Mr. Leon subsequently pled guilty to unlawful possession of controlled substances with intent to deliver. RP 77.

Mr. Ramirez waived his right to a jury trial and the matter proceeded to the bench. At trial, Mr. Leon testified for the State, and said he had rented the room. RP 90. Mr. Leon also admitted he lied to the detective when he asserted a bag of clothing was Mr. Ramirez’s. RP 80-81. He also testified that items in the room were his: all of the bags containing controlled substances, the clothes, and the cocaine he tried to flush down the toilet. RP 80-82. Further, he testified that Mr. Ramirez was not aware he was selling drugs and that he did not sell the drugs or handle money in front of Mr. Ramirez. RP 86. Finally, he

testified that none of the drugs in the room belonged to Mr. Ramirez.
RP 87, 88.

Detective Pettitjohn testified that he did not have any personal knowledge linking Mr. Ramirez to the seized items, and that all of the items were connected to Mr. Leon. RP 66, 68, 74. Detective Jones testified that nothing linked Mr. Ramirez to the bathroom, that “no items of dominion in the room [belonged] to Mr. Ramirez,” and that there were items that belonged to Mr. Leon. RP 107-08.

At the close of the State’s case, Mr. Ramirez moved to dismiss because the evidence was not sufficient to prove that he either possessed drugs or possessed them with the intent to deliver. RP 124. The court denied the motion. RP 128. The court subsequently found Mr. Ramirez guilty looking at the totality of the evidence. CP 22. The evidence it relied on was that the room was small, and there was a large quantity of controlled substances, cash, packaging materials, scales, and testimony and statements from Mr. Leon. CP 22. However, the court found Mr. Leon’s testimony and statements were not credible. CP 21, RP, 142.

On appeal, Mr. Ramirez submitted that, at best, the evidence established only his mere presence in the motel room which was not

sufficient to support convictions for the charged offenses. The Court of Appeals disagreed and affirmed Mr. Ramirez's convictions. Decision at 6-8.

E. ARGUMENT ON WHY REVIEW SHOULD BE GRANTED

THE STATE FAILED TO PROVE EITHER ACTUAL
OR CONSTRUCTIVE POSSESSION OF
CONTROLLED SUBSTANCES BY MR. RAMIREZ
WHILE IN THE MOTEL ROOM OF ANOTHER

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is “[w]hether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Under RCW 69.50.401 (1), the State was required to prove that Mr. Ramirez unlawfully possessed a controlled substance and had the intent to deliver the controlled substance. RCW 69.50.401(1).

Similarly, under RCW 69.50.4013, the State was required to prove Mr. Ramirez unlawfully possessed a controlled substance. RCW 69.50.4013(1). Here, there was no question Mr. Ramirez did not have actual possession of the controlled substances, but the trial court nonetheless found Mr. Ramirez had constructive possession of the substances. CP 22.

Constructive possession exists when the person has dominion and control over the controlled substance but he does not have actual possession of the controlled substance. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Mere proximity is not sufficient to prove constructive possession where dominion and control over the premises is not found as well. *State v. Gutierrez*, 50 Wn.App. 583, 592-93, 749 P.2d 213 (1988).

Contrary to the Court of Appeals' conclusion, there was not sufficient evidence of Mr. Ramirez's possession of the controlled substances, while there was ample evidence of the actual and constructive possession of those substances by Mr. Leon. Mr. Ramirez

neither rented the room nor possessed a key, he did not admit he stayed in the motel room, and there is no credible testimony that he stayed in the motel room. RP 83, 85. Mr. Ramirez did not have any controlled substances on his person. RP 37, 90. None of the items in the room were identified as Mr. Ramirez's; Mr. Leon testified that the items were his. It was undisputed that the wallets and one of the bags of drugs were Mr. Leon's, and the officers testified that none of the items belonged to Mr. Ramirez. RP 31, 32, 53, 80-81, 107. Finally, the majority of the evidence was found in the closet area inside black bags. RP 48-59.

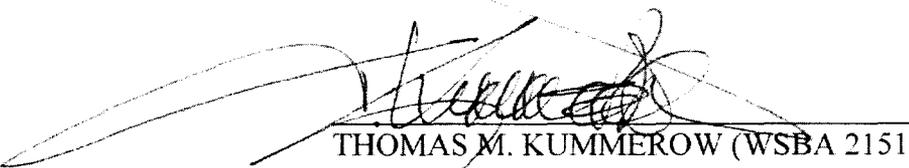
This Court should accept to review to clarify the rule on constructive possession of controlled substances inside a motel room, and reverse Mr. Ramirez's convictions with instructions to dismiss.

F. CONCLUSION

Mr. Ramirez asks this Court to grant review and reverse his convictions.

DATED this 21st day of November 2014.

Respectfully submitted,



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APPENDIX

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

STATE OF WASHINGTON,)	No. 31682-3-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
ULISES RAMIREZ,)	
)	
Appellant.)	

LAWRENCE-BERREY, J. — Ulises Ramirez was found guilty of multiple counts of possession of a controlled substance, with intent to deliver, after Pasco police searched a motel room where Mr. Ramirez and another man were staying and found cocaine, marijuana, methamphetamine, psilocybin mushrooms, and items typically used to package and deliver controlled substances. Mr. Ramirez appeals. He contends that the State failed to present sufficient evidence to prove that he knowingly possessed the controlled substances. Viewing the evidence in the light most favorable to the State, sufficient evidence supports the trial court’s finding. We therefore affirm.

FACTS

On January 30, 2013, Detectives Jeremy Jones and Chad Pettijohn were looking for people who had warrants, one of which was Mr. Ramirez. Detective Pettijohn received information that Mr. Ramirez was staying at the Motel 6 in Pasco. During their surveillance of the motel, the detectives saw Mr. Ramirez enter and exit a motel room. They also saw him open the door in response to a knock from motel staff and appear to accept linens from the staff member. Sergeant Michael Monroe joined the detectives.

Sergeant Monroe determined that Miguel Leon rented the room for multiple days. The law enforcement officers knocked on the door, informing those inside the room that they were law enforcement, that Mr. Ramirez needed to come out, and that there was a warrant for Mr. Ramirez's arrest. Initially, detectives did not receive a response. Detective Jones heard some noise inside the room. Then, approximately 15 seconds later, the volume on the television became louder. As the law enforcement officers continued to knock, Detective Pettijohn left to get a search warrant.

After Detective Pettijohn walked away, Mr. Ramirez advised officers that he would be coming out. He exited the room. Officers searched Mr. Ramirez incident to his arrest and found nothing illegal. The detectives saw that Mr. Leon was also in the room.

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Also, they noticed a strong odor of marijuana emanating from the room. Mr. Leon told officers that he and Mr. Ramirez had just finished smoking marijuana.

Detective Jones asked Mr. Leon if he could search the room for other people. Mr. Ramirez told Mr. Leon to allow the officers to search the bathroom for bodies only. No other individuals were found in the room.

The detectives obtained a warrant and conducted a search of the room. The detectives found multiple baggies of cocaine, multiple baggies of methamphetamine, a bag of psilocybin mushrooms, a large quantity of marijuana, smoking devices, a digital scale, and multiple empty plastic baggies. Cocaine was also discovered in the toilet bowl, starting to dissolve in the water. In addition, the detectives found two wallets that belonged to Mr. Leon. One of the wallets contained a room key, \$2,964 in cash, phone numbers, and a Qwest card. Four cell phones were also found in the room. Mr. Leon told Detective Pettijohn that the drugs in the room belonged to Mr. Ramirez.

Detectives arrested Mr. Ramirez and Mr. Leon. Detective Jones interviewed Mr. Leon at the jail. Mr. Leon admitted that Mr. Ramirez was selling drugs out of the room for approximately one week.

Mr. Ramirez was charged with various drug offenses. A bench trial was held. The detectives testified about the events surrounding Mr. Ramirez's arrest. Mr. Leon testified

that he and Mr. Ramirez had been staying in the room for approximately three days and that Mr. Ramirez had clothing and at least one cell phone in the room. However, contrary to the statements he made after his arrest, he also testified that none of the drugs belonged to Mr. Ramirez. He said that he did not think Mr. Ramirez knew he was selling drugs because he conducted drug transactions in the motel room bathroom and not in front of Mr. Ramirez. He said that he was the person who flushed cocaine down the toilet. The court did not find Mr. Leon's testimony to be credible.

Mr. Ramirez was found guilty of the crimes charged. The trial court concluded, "[b]ased upon the totality of the circumstances and evidence before the court the defendant had dominion and control over the small room and its contents sufficient to establish constructive possession and knowledge of all items contained in the room beyond a reasonable doubt, including the Psilocyn mushrooms." Clerk's Papers (CP) at 22. The trial court also concluded that Mr. Ramirez possessed the drugs with the intent to deliver, considering the large quantity of drugs, cash, packing materials, scale, and testimony of Mr. Leon. The trial court sentenced him to 90 months.

Mr. Ramirez appeals. He contends that the evidence was not sufficient to support the trial court's conclusion that he knowingly possessed the drugs.

ANALYSIS

In every criminal prosecution, due process requires that the State prove, beyond a reasonable doubt, every fact necessary to constitute the charged crime. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). When a defendant challenges the sufficiency of the evidence, the proper inquiry is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

“A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* 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 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

To be convicted of unlawful possession of a controlled substance with intent to deliver, the State must prove beyond a reasonable doubt that a defendant unlawfully possessed a controlled substance and had the intent to deliver the controlled substance. RCW 69.50.401(1). Possession may be proved by actual possession or constructive

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possession. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). A person has actual possession when he or she has physical custody of the item. *Id.* A person has constructive possession when he or she has dominion and control over the item. *Id.*

Whether a person has dominion and control over an item depends on the totality of the circumstances. *State v. Jeffrey*, 77 Wn. App. 222, 227, 889 P.2d 956 (1995).

Dominion and control can be proved with circumstantial evidence. *State v. Gutierrez*, 50 Wn. App. 583, 592, 749 P.2d 213 (1988). While evidence of temporary residence, personal possessions on the premises, or knowledge of the presence of drugs are insufficient individually to show dominion and control, these factors can establish dominion and control of the premises if found together. *State v. Collins*, 76 Wn. App. 496, 501, 886 P.2d 243 (1995). A person's dominion and control over a premises is one factor indicating constructive possession and allows the trier of fact to infer that the person has dominion and control over the items in the premises. *State v. Shumaker*, 142 Wn. App. 330, 333, 174 P.3d 1214 (2007).

Here, sufficient evidence supports the trial court's conclusion that Mr. Ramirez knowingly possessed the controlled substances with the intent to deliver. First, the evidence showed that Mr. Ramirez had dominion and control over the motel room. Mr. Ramirez stayed in the motel room for multiple days. He kept clothing and toiletries in the

room. He answered the door of the room, interacted with motel staff, and appeared to receive linens. He told Mr. Leon to allow the officers to search the bathroom. The evidence shows that Mr. Ramirez used the room as his temporary residence.

Second, Mr. Ramirez's close proximity to all of the contraband in the small motel room infers that he had dominion and control over the controlled substances inside the room. He was using marijuana in the room immediately prior to his arrest. Also immediately prior to arrest, one of the parties attempted to flush cocaine down the toilet bowl. The court could infer that the actions that took place in this small motel room could not have occurred without the knowledge of all those present inside. In short, the combination of evidence shows that Mr. Ramirez used the motel as a temporary residence, kept personal possessions in the motel, and had knowledge of the controlled substances at the motel. Sufficient evidence supports the court's conclusion that Mr. Ramirez had dominion and control over the controlled substances in the room.

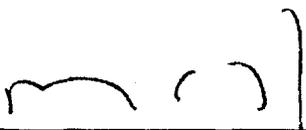
Third, and most important, the statements by Mr. Leon made on the day of the arrest clearly indicate that Mr. Ramirez possessed the controlled substances and was engaging in the sale of various drugs from the room. Two detectives heard Mr. Leon state on the day of the arrest that the controlled substances belonged to Mr. Ramirez. The evidence found in the room was consistent with packaging controlled substances for

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distribution. Although Mr. Ramirez made contradictory statements at trial, the trial court found these statements not credible. Sufficient evidence supports the trial court's finding that Mr. Ramirez possessed the controlled substances.

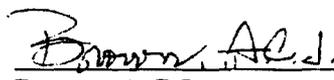
We affirm.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

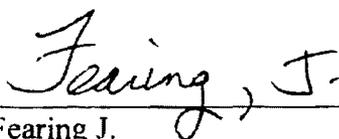


Lawrence-Berrey, J.

WE CONCUR:



Brown, A.C.J.



Fearing J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
RESPONDENT,)
)
v.) COA NO. 31682-3-III
)
ULISES RAMIREZ,)
)
APPELLANT.)

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF NOVEMBER, 2014, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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	1016 N 4 TH AVE		
	PASCO, WA 99301		
<input checked="" type="checkbox"/>	ULISES RAMIREZ	<input checked="" type="checkbox"/>	U.S. MAIL
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SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF NOVEMBER, 2014.

X _____

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WASHINGTON APPELLATE PROJECT

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Court of Appeals
Division III
State of Washington

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Court of Appeals Case Number: 31682-3

Party Represented: PETITIONER

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