

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of D.M., a person under)	(Not For Official Publication)
eighteen years of age.)	
_____)	Case No. 20090588-CA
)	
State of Utah,)	F I L E D
)	(November 4, 2010)
Appellee,)	
)	2010 UT App 307
v.)	
)	
D.M.,)	
)	
Appellant.)	

Third District Juvenile, Salt Lake Department, 445115
The Honorable Kimberly K. Hornak

Attorneys: Kristine M. Rogers and Sara D. Dienemann, Salt Lake City, for Appellant
Mark L. Shurtleff and Kenneth A. Bronston, Salt Lake City, for Appellee

Before Judges Davis, Thorne, and Roth.

ROTH, Judge:

D.M. appeals the juvenile court's determination that there was sufficient evidence to support his adjudication for unlawful possession of a controlled substance, see Utah Code Ann. § 58-37-8(2)(a)(i) (Supp. 2010).¹ We affirm.

"When reviewing a juvenile court's decision for sufficiency of the evidence, we must consider all the facts, and all reasonable inferences which may be drawn therefrom, in a light most favorable to the juvenile court's determination." In re

¹Although Utah Code section 58-37-8 was amended subsequent to D.M.'s arrest, the relevant provision remains unchanged. See Utah Code Ann. § 58-37-8 (Supp. 2010) (amend. notes). We therefore cite to the current version of the code as a convenience to the reader.

V.T., 2000 UT App 189, ¶ 8, 5 P.3d 1234 (citation and internal quotation marks omitted). We will reverse a juvenile court's decision "only when it is against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made." Id. (citation and internal quotation marks omitted).

D.M. was charged with unlawful possession of a controlled substance under Utah Code section 58-37-8(2)(a)(i), which makes it "unlawful . . . for any person knowingly and intentionally to possess or use a controlled substance" absent certain exceptions that are not applicable here. Utah Code Ann. § 58-37-8(2)(a)(i). To possess a controlled substance the defendant is not required to have "[a]ctual physical possession . . . of a controlled substance." State v. Hansen, 732 P.2d 127, 131 (Utah 1987) (per curiam). Rather, "constructive possession . . . will satisfy the possession element." Id. at 132.

To prove constructive possession, there must be "'a sufficient nexus between the accused and the drug . . . to permit an inference that the accused had both the power and the intent to exercise dominion and control over the drug.'" State v. Layman, 1999 UT 79, ¶ 13, 985 P.2d 911 (quoting State v. Fox, 709 P.2d 316, 319 (Utah 1985)). See generally State v. Cristobal, 2010 UT App 228, ¶ 16, 238 P.3d 1096 ("A reasonable inference is a conclusion reached by considering . . . facts and deducing a logical consequence from them" where "there is a reasonable probability that the conclusion flows from the proven facts," making "one possibility . . . more probable than another." (internal quotation marks omitted)). Further, the State must prove constructive possession beyond a reasonable doubt. See Layman, 1999 UT 79, ¶ 16. There are a number of nonexhaustive factors to consider in determining whether a defendant had constructive possession over a drug; among those factors are (1) "ownership and/or occupancy of the residence or vehicle where the drugs were found," (2) "presence of defendant at the time drugs were found," (3) the "defendant's proximity to the drugs," (4) "previous drug use," (5) "incriminating statements or behavior," and (6) "presence of drugs in a specific area where the defendant had control." State v. Workman, 2005 UT 66, ¶ 32, 122 P.3d 639; see also Fox, 709 P.2d at 319 (listing some factors to consider in a constructive possession analysis); State v. Salas, 820 P.2d 1386, 1388 (Utah Ct. App. 1991) (same). "[C]onstructive possession is a highly fact-sensitive" determination, Layman, 1999 UT 79, ¶ 14, and "depends on the unique facts and circumstances of each case," Hansen, 732 P.2d at 132.

Here, marijuana was found in a car driven by D.M., following a routine traffic stop.² The officer smelled the odor of marijuana coming from the car and asked D.M. whether he had been smoking marijuana and whether there was any marijuana in the car. D.M. responded that he had smoked marijuana earlier that day and stated that there may be a pipe in the car. D.M. then consented to a search of the car. During the search, the officer found a dime-sized piece of marijuana on the driver's side floor, laying on top of some loose pieces of trash; the officer also found a small plastic bag containing marijuana on the floor behind the driver's seat, between the driver's seat and the center console. D.M. told the officer that the marijuana was not his.

The car belonged to D.M.'s mother (Mother), but he had borrowed it from her that day with her permission.³ Mother had driven the car earlier that day but stated that the marijuana did not belong to her. Mother had also given a ride to three people earlier that same day, one of whom had been inebriated and had recently been released from prison. When asked whether one of these other people could have placed the bag of marijuana between the driver's seat and the center console, Mother replied that if someone had placed a hand in that area while she was driving, she would have either seen or felt it.

Based on the facts and circumstances of this case, it can be reasonably "infer[red] that [D.M.] . . . had both the power and the intent to exercise dominion and control over the [marijuana], " creating "a sufficient nexus between [D.M.] . . . and the [marijuana]" to prove constructive possession. See Layman, 1999 UT 79, ¶ 13 (quoting Fox, 709 P.2d at 319). D.M. occupied the car where the marijuana was found, at the time the marijuana was found. The marijuana was found on the floor around the driver's seat--the area of the car occupied by D.M. and where he could easily reach. The single dime-sized piece of marijuana was also located on top of some loose pieces of trash, suggesting that it had fallen on the floor recently. The odor of marijuana was present while D.M. occupied the car, and D.M. admitted to the officer that he had smoked marijuana earlier that day.

D.M. contends that the marijuana could have been placed in the car by one of the three people Mother had given a ride to

²During the traffic stop, a friend was in the car with D.M., sitting in the front passenger seat. Neither party has argued that the marijuana belonged to the friend rather than D.M.

³D.M. had been driving the car for about fifteen minutes before he was pulled over. Mother's daughter also occasionally borrows the car but had not driven it recently.

earlier that day. Although D.M.'s interpretation of the evidence is possible, the facts of this case support an inference that it is more probable that the marijuana belonged to D.M. and not the unknown persons, see generally Cristobal, 2010 UT App 288, ¶ 16, and these inferences are strong enough to prove D.M.'s constructive possession of the marijuana beyond a reasonable doubt, see Layman, 1999 UT 79, ¶ 16. Mother testified that had one of the three passengers placed a hand between the driver's seat and the center console, she would have seen or felt it, making it unlikely that one of these persons simply left marijuana in Mother's car. The odor of the marijuana and its placement on top of the other pieces of trash on the floor of the car suggest that the marijuana was placed in the car recently. And D.M.'s admitted use of marijuana earlier that day also supports an inference that the marijuana belonged to him.

Accordingly, we conclude that there is sufficient evidence to support D.M.'s adjudication in the juvenile court for unlawful possession of a controlled substance because the evidence and the reasonable inferences drawn therefrom is sufficient to support beyond a reasonable doubt the juvenile court's conclusion that D.M. had constructive possession of the marijuana found in the car. We therefore affirm.

Stephen L. Roth, Judge

WE CONCUR:

James Z. Davis,
Presiding Judge

William A. Thorne Jr., Judge