

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 65865-4-I
)
 v.) DIVISION ONE
)
 DEREK AVERY HARLIN,) UNPUBLISHED OPINION
)
 Appellant.) FILED: January 23, 2012

Grosse, J. — When the trier of fact could find from the evidence that the defendant admitted that he lived in a house that was adjacent to a shed housing an obvious extensive marijuana grow operation and further admitted that the marijuana in the shed was his source of income, the evidence was sufficient to establish constructive possession. Accordingly, we affirm.

FACTS

In the spring of 2009, police received information about a possible marijuana grow operation at a property in Arlington. Officers went to investigate further and as they walked past the property, they saw a makeshift vent on top of a large shed and smelled the odor of growing marijuana. They then obtained a search warrant and executed it on May 5, 2009. As they approached the property to serve the warrant, they could see Derek Harlin in an upstairs window. Harlin came down and opened the door and the officers took him into custody. His wife Merlinda¹ was also in the house and was taken into police custody.

¹ To avoid confusion, the other Harlin family members will be referred to by first name only.

A search of the house yielded several firearms, including one on the kitchen counter, one in the master bedroom, and two in another bedroom that contained identification belonging to Harlin's son, Cody. No drugs were found in the house. Police also obtained a key to the large shed adjacent to the house. Before entering the shed, the officers could smell the odor of marijuana coming from the building.

Once inside the shed, officers saw what appeared to be a 2- to 3-foot marijuana plant lying on the floor. They also found what appeared to be marijuana in coolers in two locations on the ground floor and a triple beam balance scale on a shelf. They also saw an upstairs loft area and climbed up a ladder to it, opened a door and announced their presence. They came back down, looked through the door using a camera on a pole and saw Cody. Cody was then taken into police custody.

Police then entered the loft area, which was divided into three rooms set up as a marijuana growing operation. In addition to several plants, they observed a watering system, timer, clippers, temperature gauge, rooting hormone, wiring control box, switches for 1000-watt bulbs, and ducts to vent both the heat and smell. Officers seized 289 plants, a sample leaf of which tested positive for marijuana.

While the search progressed, officers told Harlin that they were looking for marijuana. He responded that he did not see what "the big deal" was since "Obama was going to legalize" whatever they might find in the shed. In the next few days, Harlin called the lead detective on the case several times, reiterating that he thought it was no "big deal," asking for the return of some of his paperwork and guns that were taken from his house, and complaining that he would now have to reconsider his child

support payments because the police had taken away his source of income.

The State charged Harlin, Merlinda, and Cody with one count of conspiracy to commit manufacture of a controlled substance. The State dismissed the charge against Merlinda pretrial, and filed an amended information charging Harlin with one count of possession of over 40 grams of marijuana while armed with a firearm. The conspiracy charge against Cody remained and was joined with Harlin's possession charge for trial.

After the State rested, both Harlin and Cody moved to dismiss for insufficiency of the evidence. The trial court granted Cody's motion and dismissed the charge against him, concluding that Harlin's statements to police were inadmissible as a co-conspirator's statements because the conspiracy ceased once the police arrived on the scene. In Harlin's case, the court found there was sufficient evidence to go to the jury on constructive possession, but dismissed the firearm allegation, finding that there was insufficient nexus tying the firearms to the crime.

Harlin then decided to waive his right to a jury trial on the constructive possession charge and chose not to put on any evidence. The court found the charge proved beyond a reasonable doubt and entered a guilty finding on the possession charge. The court sentenced Harlin to 45 days in the county jail. He appeals.

ANALYSIS

Harlin challenges the sufficiency of the evidence, contending that the State failed to prove he constructively possessed the marijuana because there was insufficient evidence to establish that he had dominion and control over it. We

disagree.

To evaluate a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the charged crime proved beyond a reasonable doubt.² A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences must be drawn in favor of the State and interpreted against the defendant.³ We defer to the trier of fact to weigh the evidence, resolve conflicts in testimony, and evaluate witness credibility.⁴ Circumstantial evidence is no less reliable than direct evidence and is sufficient to prove any element of the crime.⁵

To prove the crime of possession of more than 40 grams of marijuana, the State must establish that the defendant possessed that amount either by actual or constructive possession.⁶ Actual possession of contraband means that the goods are in the personal custody of the person charged with possession; whereas, constructive possession means that the person charged with possession has dominion and control over the goods.⁷ Constructive possession is established by proof that the person charged with possession had dominion and control of either the drugs or the premises upon which the drugs were found.⁸

² State v. Wentz, 149 Wn.2d 342, 347, 68 P.2d 282 (2003).

³ State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

⁴ State v. Stewart, 141 Wn. App. 791, 795, 174 P.3d 111 (2007).

⁵ State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

⁶ RCW 69.50.4013; State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969); see also 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 50.03, at 949 (3d ed. 2008).

⁷ Callahan, 77 Wn.2d at 29.

⁸ Callahan, 77 Wn.2d at 31.

To determine whether there is constructive possession, courts examine the “totality of the situation” to ascertain if substantial evidence exists that tends to establish circumstances from which the trier of fact can reasonably infer the defendant had dominion and control over the contraband.⁹ Constructive possession may be proved by circumstantial evidence.¹⁰ Proof of the defendant’s exclusive control is not necessary to establish constructive possession, but the defendant’s mere proximity to the contraband is insufficient.¹¹

Here, viewing the evidence in the light most favorable to the State and drawing all reasonable inferences therefrom, the State produced sufficient evidence from which a rational trier of fact could find that Harlin was in constructive possession of the premises on which the marijuana was found. Harlin was present in the house at the time of the seizure, a picture of him and his wife was in the master bedroom of the house, and his son Cody had a separate bedroom in the house. The shed was adjacent to the house and the keys to the shed were not obtained from Cody, who was inside the shed when police unlocked it. The shed housed an obvious extensive grow operation, had a makeshift vent on top that was visible from the outside and emanated a marijuana odor that was detectable from outside the shed.

More importantly, there was evidence of Harlin’s admission that this was his house. The detective testified that Harlin asked police to return his paperwork and guns seized from the house and stated that the guns were seized from *his* house.

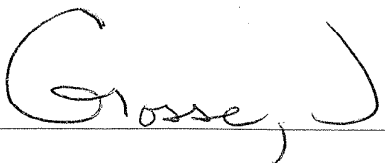
⁹ State v. Partin, 88 Wn.2d 889, 906, 567 P.2d 1136 (1977) (emphasis omitted).

¹⁰ State v. Sanders, 7 Wn. App. 891, 893, 503 P.2d 467 (1972).

¹¹ State v. Davis, 117 Wn. App. 702, 708-09, 72 P.3d 1134 (2003), review denied, 151 Wn.2d 1007 (2004).

Harlin contends that this was not his verbatim statement, but a summary of his statement to the detective and was therefore insufficient evidence of an admission. But we defer to the trier of fact to determine the weight of this statement, which is sufficient to support a finding that Harlin admitted that this was his house. The detective also testified that Harlin complained that the detective “took away his source of income.” The reasonable inference to be drawn from this statement is that he was referring to the seized marijuana plants as his source of income, which establishes his possessory interest in the marijuana. Finally, Harlin made statements to the detective that “he didn’t think this was a big deal at all because Obama was going to legalize what was found in the shop anyway.” Again, a reasonable inference to be drawn from this statement is that Harlin admitted to housing an illegal operation in the shed. Thus, applying “the totality of circumstances” standard, all of this evidence and the reasonable inferences drawn therefrom provide sufficient evidence to support a finding of guilt.

We affirm the judgment and sentence.



A handwritten signature in cursive script, reading "Grosse, J.", is written above a horizontal line.

WE CONCUR:

Schiveller, J

Cox, J.