



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Drug “Stashes” and Constructive Possession

Question: Can a suspect be in constructive possession of drugs stashed in a location different from where the suspect is found?

Answer: Yes. If the factors for constructive possession, including proximity, access, use, and control, are present, a suspect can constructively possess drugs or other contraband not found on his or her person.

Case: *George Spell v. State of Maryland*
Court of Special Appeals of Maryland
Decided November 28, 2018

The Traffic Violation and the Search of the Suspect

On June 15, 2017, at approximately 2:00 p.m., Officers Anthony Casabona and Norman Jones of the Baltimore City Police Department were driving down Madison Street in Baltimore patrolling for crimes related to the sale of narcotics. They saw George Spell (“Spell”), someone they both knew from a previous encounter, sitting in the driver’s seat of a silver Hyundai Sante Fe, with the motor running. The officers had encountered Spell in February 2017, when they arrested him in connection with a search and seizure warrant relating to a narcotics investigation. The officers

knew from the prior encounter that Spell did not have a driver’s license and decided to investigate further.

The officers activated their body cameras and Officer Casabona parked parallel to Spell’s car. Officer Jones began to speak with Spell from the passenger side of the patrol car. Officer Jones asked Spell what he was doing driving when he didn’t have a license. Spell responded that he knew he didn’t have a license, but that he wasn’t doing anything, that he was “just chilling.”

At this point, both officers believed they had probable cause to arrest Spell for driving without a license. Officer Jones exited the patrol car and Spell got out of his car. As soon as Spell stepped out of the car, Officer Jones searched him. He recovered a plastic bag containing ten vials of suspected cocaine. Nine of the vials had a yellow top, and one vial had a white top. Spell was then handcuffed.

The Vehicle Search, the Search of the Utility Room, and the Finding of the Handgun

When the officers searched Spell’s vehicle, they found a key which Officer Casabona removed. The

key looked like a utility room key that Spell had on his person when he was searched by them in February 2017. Officer Jones then exchanged text messages with a confidential informant (“CI”). The CI texted that Spell had a handgun and was still using the same “stash” locations that he had been using in February 2017. The locations were utility rooms in apartment buildings at 1534 and 1536 East Madison, just across the street from where Spell had been sitting in his car. The CI texted that the gun “was stashed in one of the buildings.”

The officers walked towards the buildings. They first went to 1536 Madison, and used the key found in Spell’s vehicle to open the two utility rooms in that building. Finding nothing, they then used the key to open the second-floor utility room at 1534 Madison. They found large amounts of cocaine and heroin, as well as a 9mm semiautomatic pistol in the room. The cocaine was in vials which had colored tops identical to those recovered from Spell just minutes before.

The Charges, the Motion to Suppress, and the Conviction

Spell was charged with numerous drug and firearms crimes, including possession of a regulated firearm after conviction of a disqualifying crime. Spell moved to suppress the evidence. His motion was denied. He was convicted by a jury of all charges and sentenced to a total of twelve years of imprisonment. He appealed.

The Outcome on Appeal

On appeal, Spell did not challenge the initial traffic stop for operating the vehicle without a license. However, he did challenge the officers’ actions following the initial stop. Basically, Spell argued that the legitimate traffic stop quickly turned into an unconstitutional narcotics investigation. The State countered that Spell’s driving (the car’s engine was running and Spell was sitting behind the wheel) without a license provided probable cause to arrest him. The Court of Special Appeals agreed as

driving without a license (TR §26-202(a)) is an arrestable offense.

Spell next argued that even if the officers had probable cause to arrest him, the search of his person was not lawful because it occurred prior to his being handcuffed. The court disagreed with Spell, finding that a search incident to arrest is valid as long as the search is “essentially contemporaneous” with the arrest, regardless of whether the search or the arrest occurs first. Here, the body camera footage corroborated the officers’ testimony that they arrested Spell within seconds of the search of his person. Thus, the appeals court upheld the circuit court’s denial of the motion to suppress.

Since Spell lacked standing to contest the search of the utility room as part of a motion to suppress (because he lacked any reasonable expectation of privacy), he argued instead that the evidence recovered from the room could not be sufficiently linked to him and, thus, his conviction was invalid. Specifically, Spell argued that it had not been proven that he “possessed” the drugs, gun, and other evidence found in the utility room. The court rejected Spell’s argument, and, in doing so, discussed the legal meaning of “possession.” The court pointed out that to “possess” something means to exercise actual or constructive dominion or control over a thing by one or more persons.

Finding contraband on a suspect is the most basic kind of *actual* possession. A suspect can also be in *constructive* possession of contraband or other evidence. Constructive possession is determined by four factors: (1) the suspect’s proximity to the contraband; (2) whether the contraband is in plain view of and/or accessible to the suspect; (3) there are signs or indications of mutual use and enjoyment of the contraband; and (4) whether the suspect has an ownership or possessory interest in the location where the contraband is found. These factors are non-exclusive, and the facts and circumstances of each case must be examined.



In this case, Spell did not have an ownership or possessory interest in the utility room. Based on his possession of the key, however, he did have access to the utility room. Further, the matching yellow-topped vials of cocaine created a rational inference that Spell was participating in using the drugs in the utility room and that he exercised control over them. Finally, Spell was located just across the street from where the “stash” was found, so he was close enough to the drugs to satisfy the “proximity” factor. For these reasons, there was sufficient evidence for the jury to find beyond a reasonable doubt that Spell was in constructive possession of the drugs and other evidence recovered from the utility room. As a result, his conviction was affirmed.

Note: Drug dealers “stash” drugs and contraband to try to avoid the “possession” element of drug crimes. This case is important because the defendant was unsuccessful in doing so because of “constructive” possession. Spell constructively possessed the drugs even though they were found in an apartment building across the street from his location. His connection to the room and the drugs in them overcame the physical distance between Spell and the drugs. In any “stash” case, it is important for officers to detail the connection between the suspect and the location where the contraband is found, and to point out any similarities between the drugs found on the suspect and those found in the “stash.”

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