



**LGIT'S ROLL CALL REPORTER
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**Mere presence in a house where drugs are being used
is generally insufficient to convict of possession of CDS**

QUESTION: Is proof of mere presence in a house where marijuana is being smoked sufficient to sustain a conviction for possession of marijuana?

ANSWER: No. In general, mere presence in a residence where drugs are being used is insufficient evidence to convict of possession. Other factors must be taken into account, including the defendant's proximity to the drugs; whether the drugs were in plain view or accessible to the defendant; whether there was evidence of mutual use and enjoyment of the drugs; and whether the defendant had an ownership or possessory interest in the residence where the drugs were being used.

CASE: *Clavon Smith v. State, Court of Appeals of Maryland*
Decided July 23, 2010

In this case, the Court of Appeals considered whether the evidence against Clavon Smith was sufficient to uphold his conviction for possession of marijuana. The evidence showed that Detective David Shields of the Baltimore City Police Department made numerous observations that led him to conclude that drug activity was taking place at 1932 Lanvale Street. Detective Shields applied for a search warrant that was executed on December 6, 2006. The police entered the residence without force as the front door was unlocked. Upon entering the dwelling, officers were immediately engulfed with a heavy cloud of marijuana filtering all through the first floor. The officers conducted a sweep through the house to secure it. There were approximately 12-14 people in the house. When the officers entered the dining room, they observed Clavon Smith seated at the kitchen table with four other persons. A marijuana blunt was burning in an ashtray in the center of the table. The blunt had burned down to the point where just a small portion was left. All four persons at the table were within arm's reach of the blunt. The officers ordered all of the occupants into the living room where they were read their *Miranda* rights. When asked if anyone knew if there were more drugs in the house, no one responded. The officers then searched the house. A search of a jacket draped on the back of one of the kitchen table chairs revealed 15 red Ziploc bags of marijuana. The chair was not the one in which Smith had been sitting. The person who had been sitting in the chair did not claim ownership of the jacket, nor did Smith. Smith was arrested and charged with possession of marijuana.

At his trial, Smith moved for judgment of acquittal, arguing that the State had failed to prove that he had actually or constructively "possessed" any marijuana. Specifically, Smith argued that merely sitting at the table where the blunt was found was insufficient to convict him. He also contended that he had no knowledge of the drugs in the jacket. The trial court denied Smith's

motion and found him guilty. Smith was sentenced to a year with all but sixty (60) days suspended. Smith appealed. After the Court of Special Appeals affirmed Smith's conviction, the Court of Appeals agreed to hear the case.

The Court of Appeals framed the issue as follows: Is proof of presence in a house where marijuana is being smoked sufficient to sustain a conviction for possession of marijuana? Smith argued that he could have only been found guilty if the blunt had been in his hand or if he had confessed that it was his. The court disagreed, stating that, under Maryland law, one possesses something if he or she exercises actual or constructive control over it. Here, although Smith didn't actually possess the marijuana, the circumstantial evidence established that he constructively possessed it. The evidence of constructive possession included the overwhelming smell of burning marijuana in the house and the proximity of Smith to the blunt on the kitchen table. All of the circumstantial evidence, and not just Smith's presence in the house, was sufficient to affirm his conviction.

NOTE: Generally, the mere presence of a suspect at the scene of an offense or even knowledge of the offense does not necessarily make one a party to joint possession in CDS cases. Instead, courts look to the following factors: How close was the defendant to the drugs? Were the drugs in plain view of and/or accessible to the defendant? Was there an indication of mutual use and enjoyment of the drugs? Did the defendant have an ownership or possessory interest in the dwelling where the drugs were found? None of these factors are, in and of themselves, conclusive evidence of possession, and an ownership or other possessory interest in the premises, generally will not be enough. On a final note in this case, the court virtually ignored the evidence of the drugs in the jacket because the evidence pertaining to the blunt was sufficient to affirm the conviction. However, the court did note that if it had needed to consider the issue, it would have decided that the evidence against Smith was insufficient. This was because no reasonable inference could be drawn that the marijuana in the jacket was the source of the marijuana in the blunt. Further, no inference could be drawn that Smith knew that there were drugs in the jacket, since it was on the back of another chair and the drugs were hidden from plain view.

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