

September 20, 2005

LEGAL BULLETIN NO. 05-07

SUBJECT: Conviction for Possession of Controlled Substances Found in Automobile

The purpose of this legal bulletin is to update and clarify Legal Bulletin 04-1 dealing with the case of *Maryland v. Pringle*, 540 U.S. 366 (2003). On July 19, 2005, the Missouri Court of Appeals for the Western District of Missouri handed down its decision in the case of *State of Missouri v. Anthony D. Driskell*, 167 S.W.3d 267 (Mo. App. 2005). This case deals with the requirements for **conviction** for possession of a controlled substance when those substances are found in a motor vehicle, not on a person. Legal Bulletin 04-1 dealt with the standard for **probable cause for arrest** of persons in a vehicle which controlled substances were found.

In *Pringle*, the Supreme Court of the United States found that there was probable cause to arrest all three occupants of a car in which narcotics were found because there was a reasonable inference that any or all of the occupants had knowledge of and exercised control over the narcotics. This Supreme Court case dealt only with the standard of probable cause for the arrest and did not deal with criminal conviction, which requires proof beyond a reasonable doubt.

The facts of the *Driskell* case are as follows. On May 10, 2003, Driskell was sitting in the driver's seat of a vehicle parked at a gas station in Sedalia, Missouri. His companion was outside of the vehicle washing the car windows. Officers approached Driskell and arrested him for an outstanding warrant for an unrelated traffic violation. The vehicle Driskell was sitting in was co-owned by Driskell and another party not at the scene. During a search of the vehicle, officers found a plastic pouch inside the middle console of the vehicle which contained four (4) plastic baggies of methamphetamine powder, one (1) baggie containing marijuana, and a syringe.

In a later jury trial, Driskell was found guilty on the marijuana possession charge and on a lesser included offense of methamphetamine possession. He was acquitted on the charge of possessing drug paraphernalia. He was sentenced to a total of six (6) years.

Driskell challenged his conviction on the basis that there was insufficient evidence to show that he possessed the drugs found in his vehicle. The Court of Appeals, in reversing Driskell's conviction, held that in order to convict Driskell, the State had to prove that Driskell knew that the drugs were in the vehicle and that he exercised control over the drugs through actual or constructive possession.

The State contended that Driskell had actual possession of the drugs because they were found in the console next to the driver's seat and were within his easy reach and convenient control. The court, however, rejected this argument because actual possession cannot be established without proof that the defendant had knowledge of the presence and nature of the drugs. The court found that the mere fact that Driskell was seated next to the closed console did not indicate that he was aware of the contraband hidden inside. Because the evidence was insufficient to show actual possession, the state needed to show that Driskell constructively possessed the narcotics. In order to prove constructive possession, additional facts must be presented that support the defendant's knowledge of the presence of the controlled substance.

The court found that although Driskell was the driver and owner of the car, he did not have exclusive control of the area where the drugs were found. The court presumed the owner of the vehicle who was not present, and the companion who was washing the vehicle windows shared control and access to the vehicle. The court held that Driskell's routine access to the console as an owner and driver of the vehicle was insufficient to prove his knowledge of the hidden drugs. Because there were no personal items belonging to Driskell commingled with the drugs, the drugs were not in plain view, Driskell did not appear nervous, nor did he make any suspicious movements or attempt to flee when the officers approached, the State failed to show that Driskell had any awareness that illegal drugs were hidden in the car.

The court concludes that the evidence was insufficient to prove beyond a reasonable doubt that Driskell had actual or constructive possession of the controlled substances in violation of Section 195.202.1 of the Revised Statutes of Missouri. The convictions were reversed.

This case illustrates the difference between probable cause for an arrest and the amount of evidence needed to prove guilt beyond a reasonable doubt. While the mere presence of a person in a vehicle where drugs are found may subject them to a probable cause arrest, unless further evidence is uncovered linking a particular person in the car to the drugs, there will be no criminal conviction as a possession charge would not be able to be proven beyond a reasonable doubt.

Questions about any aspect of this case may be referred to the Office of the General Counsel. The full text of this case can be accessed at:

<http://www.courts.mo.gov/courts/pubopinions.nsf/ccd96539c3fb13ce8625661f004bc7da/2edf88f60d475eee8625704200564528?OpenDocument&Highlight=0,Driskell>

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