

Legislative Days on Drug Policy Case Law Update

Ted Sampsell-Jones
William Mitchell College of Law
September 29, 2010

Overview

- Possession basics and developing issues in mens rea
- Peck and the mixture rule
- Aggravating factors: School zones and city blocks
- Emerging constitutional questions and baggy pants

2

Possession Crimes – Introduction

- The most frequently prosecuted drug crimes are possession crimes
- E.g.: CS-5
 - “A person is guilty of controlled substance crime in the fifth degree . . . if the person unlawfully possesses one or more mixtures containing a controlled substance classified in schedule I, II, III, or IV”
- Nothing in Ch. 152 defines what the term “possesses” means
- Courts have created a large body of case law, some of which remains in flux

3

Two-part Definition of "Possession"

- MN Courts say that possession has two components:
 - Act of possession (actus reus)
 - Knowledge (mens rea)
- CRIMJIG 20.42:
 - The elements of possession of controlled substance offense are:
 - First*, the defendant knowingly possessed one or more mixtures containing ____.
 - Second*, the defendant knew or believed that the substance the defendant possessed was ____.

4

"Possession" – Actual and Constructive

- The first element – the act of possession – is relatively straightforward, and settled in the case law
- Two types:
 - Actual (i.e., direct physical control)
 - Constructive
- JIG 20.42 again:
 - "In order to find the defendant possessed ____, it is not necessary that it was on the defendant's person. The defendant possessed ____ if it was in a place under the defendant's exclusive control to which other people did not normally have access, or if found in a place to which others had access, defendant knowingly exercised dominion and control over it."

5

Proving Constructive Possession

- Frequently litigated
- State v. Palko (Minn. Ct. App., Aug. 2010) (unpublished)
- Defendant claimed that drugs found in his apartment closet were left by previous tenant
- Court rejected argument because:
 - He had lived there nine months
 - The drugs were in plain view
 - Drugs were also found in defendant's own jacket pocket
 - Landlord checked apartment between tenants and, though there was much left behind, he did not see any drugs

6

Knowledge Requirement for Possession

- The second element – knowledge – is much more problematic, less settled, in the law
- Problems here are symptomatic of problems throughout MN criminal law
- The possession statutes themselves include no guidance
 - No mens rea adverbs like “knowingly” or “intentionally”
- MN Courts in general have a confusing (and unprincipled?) approach to mens rea in the criminal law

7

Knowledge Requirement for Possession

- State v. Florine, 226 N.W.2d 609 (Minn. 1975)
- Knowledge was not even an issue in the case, but the Court created a knowledge requirement
- “[W]e start with the basic proposition that, in order to convict a defendant of unlawful possession of a controlled substance, the state must prove . . . that defendant *had actual knowledge of the nature of the substance.*”
 - Not based on any actual statutory interpretation, but rather based on general principles from around the country
- What does that mean?

8

Knowledge Requirement for Possession

- State v. Ali, 775 N.W.2d 914 (Minn. Ct. App. 2009).
- Defendant was prosecuted for possession of khat.
- *Khat* itself is not a scheduled substance, but it contains *cathinone*, which is a scheduled substance
- Defendant claimed that he did not know that he possessed cathinone – that he did not know the nature of the substance
- Court: “the state need not prove that Ali knew the exact chemical nature of the substance so long as it has proved that he knew he possessed an illegal substance.”

9

Knowledge Requirement for Possession

- Combining Florine and Ali:
- “The state must prove that the defendant had actual knowledge of the nature of the substance.”
BUT
- “The state need not prove that the defendant knew the exact chemical nature of the substance.”
 - So... if you buy a half ounce of marijuana, and it turns out to be laced with meth, you are guilty of CS-1?

10

Related Issues for Involuntary Intoxication

- Involuntary intoxication is a defense to a crime if
 - (1) you are innocently mistaken about the nature of the substance, or
 - (2) you are unaware of your particular susceptibility to an excessive intoxicating effect
- State v. McClenton, 781 N.W.2d 186 (Minn. Ct. App. 2010).
 - Def smoked marijuana which was, unbeknownst to him, laced with PCP
 - “By voluntarily consuming an illegal drug, appellant cannot claim that he was innocently mistaken as to the nature of the drug.”
- Broad theme in MN criminal law: if you do something wrong, even a minor crime, you are liable for whatever happens

11

Mens Rea for Other Elements (Aggravators)

- Strict liability for being in a school or park zone
 - Benniefield (2004): “Having established that mens rea is an implied element in the statute with respect to possession, we see no basis for requiring the state to demonstrate an additional mens rea element with respect to location.”
 - Again, not based on statute itself
- Strict liability for amount
- Strict liability for selling to minors
- But... bringing drugs into prison must be “knowing” and “willful.”

12

The Mixture Rule and Peck

- Offense severity governed, in part, by weight
- Under the mixture rule, weight includes carrying medium – i.e., cutting agents
- Peck: bong water is a “mixture”
- The rationale:
 - “Mixture” means a preparation, compound, mixture, or *substance* containing a controlled substance
 - A “substance” is “that which has mass and occupies space; matter”
 - Water is a “substance”
 - Therefore, bong water containing meth is a “mixture”

13

Problems created by Peck

- Small-time drug users can get massive sentences
- Prosecutors can use the threat of massive sentences to avoid trials, gain pleas
 - Prevent defendants from raising valid defenses to lesser charges
- A variety of absurd results
 - A backpack “has mass and occupies space.” If a backpack “contains” a drug, is the backpack part of the mixture?
 - What about a car?

14

Peck and Mens Rea

- Under Florine and Alij, a defendant must know the nature of the substance, but need not know the exact nature of the substance
- How does that apply to mixtures like bong water? What exactly does a defendant need to *know*?
 - That he possessed water?
 - That he possessed bong water?
 - That the substance smoked in the water was illegal?
 - That the substance smoked in the bong was meth?
 - That the water actually contains meth?

15

Mens Rea Bottom Line

- Substantial body of case law
- In general, some knowledge requirement for baseline criminality, but strict liability for severity
- Still developing, still many difficult open questions
- None of case law is based on the actual text of the statutes

16

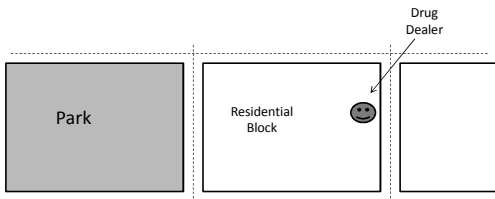
Other Issues with Aggravators

- “Park zones,” “school zones,” “public housing zones”
- “Includes the area within 300 feet or one city block, whichever distance is greater, of the boundary.”
- What is a “city block”?
 - Nicollet to Hennepin at 7th: 750 feet
 - Nicollet to Hennepin at Washington: 200 feet

17

What is a “City Block”?

- State v. Carufel, 783 N.W.2d 539 (Minn. 2010).
- Defense: I was more than a block away



18

What is a "City Block"?

- Court: the term "city block" is not ambiguous
- "When the land surrounding a public park is an area divided into rectangular blocks bounded by city streets on all four sides . . . the park zone includes the entire area of a block that is directly adjacent to the park."
 - What about non-standard, non-rectangular blocks?
 - Would a simpler distance calculation be better?

19

Emerging Constitutional Questions

- Two important cert grants yesterday:
 - (1) Kentucky v. King: Can police "create" exigency that justifies warrantless entry?
 - "Knock-and-talk" procedure: police investigating drugs show up, knock, hear "suspicious" movement inside that
 - (2) Bullcoming v. New Mexico: May the state admit lab tests (showing drug or blood results, e.g.) by calling a lab tech *other than* the tech who actually conducted the tests?

20

Emerging Constitutional Questions

- Future cert grants in complex drug cases:
 - GPS and the "mosaic theory": When police place a GPS monitoring device on a suspect or his car, is that a "search"?
 - May police use the "plain view" doctrine to search entire computers or other data storage devices?
 - When does the use of sophisticated technologies constitute a "search"?
 - Kyllo: Thermal imaging is a search because it's "not in general public use"
 - Davis: In MN, dog sniffs are quasi-searches requiring RS, not PC

21

The Constitution and Baggy Pants

- State v. Wiggins (Minn. Ct. App., Sept. 14, 2010)
- Officer investigating drugs told suspects to raise his hands, and when the suspect complied, his baggy pants fell down
- Officer pulled up the suspect's pants, and felt a gun

- Court: pulling up baggy pants is not a search.
 - "She hoisted his pants presumably to conceal rather than to reveal."
 - "We are confident that our opinion will not be misconstrued to suggest that an officer can freely meddle with a person's clothes to the refrain, "Pants on the ground, pants on the ground" under the guise of providing public assistance."

22
