



Miller and Constructive Possession

Author : Jeff Welty

Categories : [Crimes and Elements](#), [Uncategorized](#)

Tagged as : [possession](#), [supreme court](#)

Date : March 27, 2009

Last week, the North Carolina Supreme Court decided [State v. Miller](#), an interesting and very, very close constructive possession case. Prosecutors, defense lawyers, and judges should all be aware of it. The short version of the facts is as follows: Winston-Salem police obtained a search warrant for a house based on suspicion of drug activity. When the police entered the residence, they found a number of adults present, some in the living room, and two, including the defendant, in an adjoining bedroom, the door to which was open. The defendant was sitting on a corner of the bed, while another male was sitting in a nearby chair. The police ordered everyone to the ground, and the defendant complied.

The police found a small, white, rock-like substance in the light-colored bedclothes near where the defendant had been sitting, and a plastic bag containing more apparent crack cocaine from a corner of the room, behind the open bedroom door. The defendant's birth certificate and state ID card were in the bedroom, though no men's clothes, or other items that tied the defendant to the room were present. Two of the defendant's children lived in the house with their mother. The defendant was charged with, *inter alia*, PWISD cocaine and being a habitual felon. It seems that the trial judge wrestled with the defendant's motion to dismiss, but she ultimately let the case go to the jury. Despite the testimony of the defendant's children's mother that the defendant did not live at the house and that the cocaine was hers, the defendant was convicted.

He appealed, contending that there was insufficient evidence to support his conviction. The Court of Appeals agreed and reversed, in a 2-1 decision. The state asked the supreme court to review the case, and it reinstated the conviction by a 4-3 margin, making a total of 6 judges who thought that the state's evidence was sufficient, and 5 who thought it wasn't.

The opinion is a great source for the black-letter law of constructive possession, which basically requires (1) that the defendant have exclusive control over the area where the item in question is found, or (2) that the defendant have shared control over the area, and that other incriminating circumstances show that the item belongs to the defendant. In *Miller*, the defendant clearly didn't have exclusive control over the bedroom, so the issue was whether there were other incriminating circumstances sufficient to show possession. The majority cites several cases in which sufficient evidence of constructive possession was found, and concludes that the defendant's physical proximity to the cocaine and the presence of his identification documents in the room constituted adequate "incriminating circumstances." That's a really useful holding for prosecutors, who must have lots of cases where the defendant is in a car or a residence, suspiciously near drugs, but with relatively limited additional proof of possession.

On the other hand, Justice Brady's dissent is useful for defense lawyers. He characterizes the law of possession as a "morass of confusion and inconsistency," argues that the defendant's proximity to the drugs was not alone enough, and contends that the presence of the defendant's identification documents was not an *incriminating* circumstance at all. He collects several cases that defense lawyers will find favorable, and concludes rather dramatically by asserting that the majority's ruling gives "the State free reign to prosecute anyone who happens to be at the wrong place at the wrong time." The value of a dissent is always limited by, well, the fact that it's a *dissent*, but this one both contains useful citations and suggests a line of argument that may have some traction. We'll soon see, since there's never a shortage of drug cases on the appellate dockets.

