

DISTRICT OF COLUMBIA COURT OF APPEALS

Kamonte J. Leshar v. United States

149 A.3d 519 (D.C. 2016) · No. 14-CM-1474 · Decided December 1, 2016

SUMMARY

The District of Columbia Court of Appeals affirmed Kamonte Leshar's convictions for attempted possession with intent to distribute marijuana and possession of drug paraphernalia. The court held that the evidence supported constructive possession, the defendant's belief that the substance was marijuana, and the paraphernalia conviction, and that any error concerning testimony about a field test was harmless.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Phyllis D. Thompson; McLeese; Ruiz
JURISDICTION	District of Columbia
DECIDED	December 1, 2016
DOCKET	14-CM-1474
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from convictions after a bench trial for attempted possession with intent to distribute marijuana and possession of drug paraphernalia.
STANDARD OF REVIEW	The evidence is reviewed in the light most favorable to the government, with deference to the factfinder's credibility determinations, weighing of evidence, and reasonable inferences. Evidentiary error is reviewed for prejudice; an error is harmless when the judgment was not substantially swayed by it.
PRECEDENTIAL VALUE	Published precedential opinion of the District of Columbia Court of Appeals.
PARTIES	Kamonte J. Leshar v. United States

TOPICS

- criminal procedure
- evidence
- statutory interpretation
- appellate procedure
- harmless error

PRACTICE AREAS

criminal procedure

criminal law

evidence

drug offenses

appellate procedure

QUESTIONS PRESENTED

1. Whether sufficient evidence established that Lesher constructively possessed the marijuana-like substance found behind the radiator.
2. Whether sufficient evidence supported attempted possession with intent to distribute when the government did not prove that the substance actually was marijuana or another controlled substance.
3. Whether the trial court reversibly erred by admitting testimony concerning a police field test without first qualifying the officer as an expert.
4. Whether sufficient evidence supported the possession-of-drug-paraphernalia conviction when the government did not prove that an actual controlled substance was present.

HOLDINGS

1. The evidence was sufficient to establish constructive possession because Lesher's personal documents in the room, the absence of another apparent occupant, the similarity between the substances found on his person and behind the radiator, and the nearby scale and bags supported findings that he knew of the substance and had the ability and intent to exercise dominion and control over it.
2. The government was not required to prove that the substance Lesher attempted to possess actually was a controlled substance; it was sufficient to prove that he believed the substance was marijuana and intended to distribute it.
3. Any error in admitting the officer's field-test testimony without qualifying him as an expert, or in admitting evidence tending to show that the substance actually was marijuana, was harmless.
4. A conviction under D.C. Code § 48-1103(a)(1) does not require proof that an actual controlled substance was present or that the paraphernalia was used with an actual controlled substance.

KEY QUOTATIONS

“To prove constructive possession of a controlled substance, “the evidence must show that the accused knew of its presence and had both the ability and intent to exercise dominion and control over it.”” (at 520)

““it is not necessary to establish that the substance a defendant attempted to possess was the proscribed substance.”” (at 524)

“Because D.C. Code § 48-1103 (a)(1) does not require the presence of an actual controlled substance (or of any substance at all), this further inference sufficed to prove that the scales and sandwich bags were “intended for use” in weighing or packaging marijuana” (at 529)

FACTUAL BACKGROUND

Police executing a search warrant found Lesher just inside a second-floor room containing his Social Security card, a parking-ticket notice, and a police report bearing his name. The room also contained marijuana-like

material in multiple bags, more than \$2,300 in cash, a digital scale, and empty sandwich bags; officers found similar green weed-like material on Leshher's person. Expert testimony described the substance as smelling and being packaged like marijuana and characterized the quantity, packaging, scale, and bags as consistent with distribution.

PROCEDURAL HISTORY

Following a bench trial in the Superior Court of the District of Columbia, Leshher was convicted of attempted possession with intent to distribute a controlled substance and possession of drug paraphernalia. He appealed, challenging the sufficiency of the evidence and the admission of police testimony concerning a field test. The District of Columbia Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Ortiz v. United States, 942 A.2d 1127, 1131 (D.C. 2008)
- Peery v. United States, 849 A.2d 999, 1001 (D.C. 2004)
- Moore v. United States, 927 A.2d 1040, 1050 (D.C. 2007)
- Rivas v. United States, 783 A.2d 125, 129-30 (D.C. 2001) (en banc)
- Schools v. United States, 84 A.3d 503, 510 (D.C. 2013)
- Guishard v. United States, 669 A.2d 1306, 1312 (D.C. 1995)
- Matthews v. United States, 13 A.3d 1181, 1190 n.8 (D.C. 2011)
- Seeney v. United States, 563 A.2d 1081, 1083 (D.C. 1989)
- Newman v. United States, 49 A.3d 321, 324-26 (D.C. 2012)
- Washington v. United States, 965 A.2d 35, 43 (D.C. 2009)
- Fields v. United States, 952 A.2d 859, 865 (D.C. 2008)
- Duvall v. United States, 975 A.2d 839, 846 n.7 (D.C. 2009)
- Clayborne v. United States, 751 A.2d 956, 968 n.12 (D.C. 2000)
- Kotteakos v. United States, 328 U.S. 750, 765 (1946)
- Posters 'N' Things v. United States, 511 U.S. 513, 517-20 (1994)
- Brooks v. United States, 130 A.3d 952, 955, 958 (D.C. 2016)
- Chambers v. United States, 564 A.2d 26, 27 n.1 (D.C. 1989)
- Berroa v. United States, 763 A.2d 93, 96 (D.C. 2000)
- Williams v. United States, 604 A.2d 420, 421 (D.C. 1992)
- Wiggins v. United States, 521 A.2d 1146, 1149 n.4 (D.C. 1987)