

State v. Cortez

Court of Appeals of Washington, Division Three

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No. 28884-6-III

Reporter

2011 Wash. App. LEXIS 577

THE STATE OF WASHINGTON, *RESPONDENT*, v. EDDIE CORTEZ, *APPELLANT*.

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Subsequent History: Reported at [State v. Cortez, 2011 Wash. App. LEXIS 609 \(Wash. Ct. App., Mar. 8, 2011\)](#)

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Judges: AUTHOR: Stephen M. Brown, J.; Teresa C. Kulik, C.J., Dennis J. Sweeney, J.

Opinion by: Stephen M. Brown

Opinion

¶1 BROWN, J. — Eddie Cortez appeals his juvenile court adjudication for possessing a controlled substance other than marijuana: hydrocodone. He contends the evidence insufficiently supports his hydrocodone possession adjudication, and the court acted outside its authority in imposing certain community supervision conditions. We disagree with his contentions, and affirm.

FACTS

¶2 In March 2009, Moses Lake High School security officer John Franklin was viewing the surveillance camera system when he saw two students seated in a car in the school parking lot and became worried that the students were not going to return to class. Mr. Franklin went outside to approach the students. Eddie Cortez was seated in the driver's seat of the vehicle. Riley Moe was next to him in the front passenger seat. Mr. Franklin smelled marijuana emanating from the vehicle because the passenger side window was [*2] partly open. Stemming from events unconnected to this appeal, Mr. Cortez was arrested by Officer Ray Lopez of the Moses Lake Police Department, a school resource officer. Officer Lopez also smelled marijuana emanating from the vehicle. Officer Lopez and Mr. Franklin saw green vegetable matter they believed to be marijuana in the center console of the vehicle. Officer Lopez impounded the car.

¶3 Officer Lopez obtained a search warrant for the vehicle and completed the search with Detective Juan Rodriguez. Inside the car, Officer Lopez and Detective Rodriguez found a green vegetable matter they believed to be marijuana and a smoking device. They found a prescription bottle of pills in the driver's side door compartment located underneath the arm rest. The bottle was labeled as hydrocodone prescribed to Jamie Hampshire. The green vegetable matter was tested and confirmed to be marijuana and the pills were tested and confirmed to be hydrocodone.

¶4 Officer Lopez and Detective Rodriguez found a textbook of Mr. Cortez's and documents with his name on them in the car. The car is registered to Fidel Cortez Herrera. Mr. Cortez had been seen driving the car before and during this incident.

¶5 Following ¶3 a bench trial, Mr. Cortez was convicted of possession of marijuana and possession of a controlled substance other than marijuana: hydrocodone, as well as fourth degree assault against a school security officer and resisting arrest. As part of the disposition, the trial court ordered six months of community supervision. Among the conditions of community supervision, the following terms were ordered:

F. CURFEW to be set at the discretion of the Juvenile Department.

...

H. Respondent shall participate in counseling, outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as Juvenile Department directs. Respondent shall cooperate fully.

...

J. Respondent shall refrain from using illegal drugs and alcohol and is subject to RANDOM URINALYSIS as directed by the Juvenile Department and shall fully cooperate.

...

M. Respondent shall reside in a placement approved by the Juvenile Department or approved by court order.

Clerk's Papers (CP) at 16. Mr. Cortez appealed.

ANALYSIS

A. Evidence Sufficiency

¶6 The issue is whether sufficient evidence supports Mr. Cortez's possession of hydrocodone adjudication. Mr. Cortez contends ¶4 the State failed to prove he had dominion and control over the bottle of pills found in his car.

¶7 Sufficient evidence supports a juvenile court adjudication if a rational person viewing the evidence in the light most favorable to the State could find each element proven beyond a reasonable doubt. [State v. Echeverria, 85 Wn. App. 777, 783, 934 P.2d 1214 \(1997\)](#). An appellant claiming evidence insufficiency admits the truth of the State's evidence and all inferences reasonably drawn therefrom. [State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 \(1992\)](#). Circumstantial evidence is equally reliable as direct evidence. [State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 \(1997\)](#).

¶8 We review the juvenile court's findings of fact "to determine whether they are supported by substantial evidence, which is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the allegation." [Echeverria, 85 Wn. App. at 783](#) (citing [State v. Halstien, 122 Wn.2d 109, 128-29, 857 P.2d 270 \(1993\)](#)). Under [RCW 69.50.4013\(1\)](#), it is unlawful to possess a controlled substance. To prove possession of a controlled substance, "the State must establish two elements: the nature of the substance and ¶5 the fact of possession by the defendant." [State v. Staley, 123 Wn.2d 794, 798, 872 P.2d 502 \(1994\)](#). The State provided evidence, which Mr. Cortez does not dispute, that the pills found in the car were hydrocodone. Possession of an illegal substance may be either actual or constructive. *Id.* "To prove constructive possession of drugs, the State must show dominion and control over the drugs." [State v. Shumaker, 142 Wn. App. 330, 331, 174 P.3d 1214 \(2007\)](#). We examine the totality of the situation to determine if the defendant had dominion and control over the drugs. [State v. Partin, 88 Wn.2d 899, 906, 567 P.2d 1136 \(1977\)](#).

¶9 Dominion and control over the premises raises a rebuttable inference of dominion and control over the drugs, but is only one factor in determining whether the defendant had dominion and control over the drugs themselves. [State v. Cantabrana, 83 Wn. App. 204, 208, 921 P.2d 572 \(1996\)](#). A vehicle is a "premises" for purposes of this rule. [State v. Mathews, 4 Wn. App. 653, 656, 484 P.2d 942 \(1971\)](#).

¶10 Another factor to consider in determining whether the defendant had dominion and control over the drugs is the ability to reduce an object to actual possession. [State v. McReynolds, 117 Wn. App. 309, 341, 71 P.3d 663 \(2003\)](#) [*6] (citing [State v. Hagen, 55 Wn. App. 494, 499, 781 P.2d 892 \(1989\)](#)). Yet another factor is the ability to exclude others, [State v. Edwards, 9 Wn. App. 688, 690, 514 P.2d 192 \(1973\)](#), though exclusive control is not necessary. [State v. Wheatley, 10 Wn. App. 777, 778-79, 519 P.2d 1001 \(1974\)](#). Mere proximity to the drugs is not enough, [State v. Turner, 103 Wn. App. 515, 521, 13 P.3d 234 \(2000\)](#), but “proximity coupled with other circumstances from which the trier of fact can infer dominion and control is sufficient to show constructive possession.” [State v. Chavez, 138 Wn. App. 29, 35, 156 P.3d 246 \(2007\)](#) (citation omitted).

¶11 Mr. Cortez does not dispute his dominion and control over the car where the hydrocodone was found. This raises a rebuttable inference of dominion and control over the drugs. And, the pill bottle was located in a compartment in the driver's side door. Mr. Cortez's immediate proximity to the drugs as the driver shows he had the ability to take actual possession of the bottle. Considering his dominion and control over the car, he had the ability to exclude others from access to the pill bottle. Although he was not the sole occupant of the car, the totality of the situation [*7] provides substantial evidence to support the juvenile court's finding that Mr. Cortez had dominion and control over the hydrocodone. Thus, viewing these facts in the light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that Mr. Cortez possessed hydrocodone. Accordingly, sufficient evidence supports Mr. Cortez's adjudication.

B. Community Supervision

¶12 The issue is whether the juvenile court exceeded its authority by imposing certain community supervision conditions in its disposition order. Mr. Cortez contends the condition that he participate in counseling programs, and/or classes “as Juvenile Department directs” is an improper delegation of court authority to the probation officer. CP at 16. Further, Mr. Cortez contends a curfew and the requirements that he refrain from using alcohol and reside in a placement approved by a supervising probation officer are unrelated conditions to his offenses.

¶13 At disposition, a juvenile court may impose local sanctions as a suspended disposition alternative. [RCW 13.40.0357](#). Local sanctions include “(a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community restitution; [*8] or (d) \$0-\$500 fine.” [RCW 13.40.020\(16\)](#). “Community supervision is an individualized program comprised of one or more of the following: (a) Community-based sanctions; (b) Community-based rehabilitation; (c) Monitoring and reporting requirements; (d) Posting of a probation bond.” [RCW 13.40.020\(4\)](#). “ ‘Community-based sanctions’ may include one or more of the following: (a) A fine, not to exceed five hundred dollars; (b) Community restitution not to exceed one hundred fifty hours of community restitution.” [RCW 13.40.020\(2\)](#). Community-based rehabilitation includes, “Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district.” [RCW 13.40.020\(1\)](#).

¶14 Mr. Cortez relies on cases involving the Sentencing Reform Act of 1981 (SRA), [chapter 9.94A RCW](#), not the Juvenile Justice Act (JJA), adopted in 1977, [chapter 13.40 RCW](#). “The difference between Washington's juvenile justice [*9] and adult criminal systems are well-defined in our law.” [Monroe v. Soliz, 132 Wn.2d 414, 419, 939 P.2d 205 \(1997\)](#). A critical difference between the adult and juvenile systems is that the juvenile system must respond to the needs of juvenile offenders and focuses on rehabilitation, not punishment. *Id.* at 419-20. While under some conditions, courts may use decisions interpreting the SRA to interpret the JJA, “Meaningful comparison of sentences under the Juvenile Justice Act and the SRA is impossible.” [State v. Miller, 54 Wn. App. 763, 766, 776 P.2d 149 \(1989\)](#).

¶15 Here, the probation officer is expected to be familiar with Mr. Cortez and functions as the court's liaison in dealing with the needs and demands placed upon a juvenile both before and after an adjudicatory hearing. The officer and the court work together to facilitate accomplishment of the local sanctions imposed. Accordingly, Mr. Cortez has failed to demonstrate an improper delegation of authority.

¶16 Regarding the curfew and placement conditions, community supervision includes monitoring and reporting requirements. [RCW 13.40.020\(4\)\(c\)](#). Monitoring and reporting requirements are defined as: “Curfews; requirements to remain at home, [*10] school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer’s supervision; and other conditions or limitations as the court may require which may not include confinement.” [RCW 13.40.020\(18\)](#). The requirements that Mr. Cortez is home at a reasonable hour and that he resides in a safe environment are clearly monitoring requirements contemplated by the JJA and properly imposed by the disposition court.

¶17 Similarly, the condition that Mr. Cortez not use alcohol falls within “other conditions or limitations as the court may require.” [RCW 13.40.020\(18\)](#). Also, though a court’s authority is limited under the SRA to only allow conditions related to the offender’s crime, see [RCW 9.94A.030\(9\)](#), the juvenile court has broad discretion to tailor dispositions to meet the goals of the JJA. See [H.E.J., 102 Wn. App. 84, 87, 9 P.3d 835 \(2000\)](#). In any event, Mr. Cortez will not attain the legal drinking age until 2013. See [RCW 66.44.270\(2\)\(a\)](#). Therefore, the requirement was properly imposed.

¶18 Affirmed.

¶19 A majority of the panel has [*11] determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to [RCW 2.06.040](#).

Kulik, C.J., and Sweeney, J., concur.