



# Roll Call Reporter

June 2015

LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

**QUESTION:** Can one be convicted of criminal possession in the absence of direct evidence of actual physical control?

**ANSWER:** Yes. Criminal possession can be proven by evidence that the possession was actual or constructive, exclusive or joint.

**CASE:** *Jose N. Cerrato-Molina v. State Court of Special Appeals of Maryland, Decided June 1, 2015*

### **The Chase and Recovery of CDS:**

At approximately 10:00 p.m. on June 13, 2008, Detective Jackson of the Prince George's County Police Department was on routine patrol on Sargent Road in Hyattsville in a marked police cruiser. He observed a white Jeep facing southbound, parked, with its motor running. Detective Jackson passed the Jeep, turned around, and re-approached the Jeep from the rear. When Detective Jackson initially passed the Jeep, he observed that two of the occupants were drinking

beer. After he turned around and approached the Jeep, it sped off. The Jeep travelled at a high rate of speed through residential neighborhoods with Detective Jackson in pursuit. As he pursued, Detective Jackson observed a number of objects, including a black bag, being thrown from the front passenger window. A short distance later, the Jeep struck a curb and became disabled. Detective Jackson immediately arrested the driver and passenger. The driver was Marlos Ramos. The passenger was Jose Cerrato-Molina. Detective Jackson went back and searched along the route of the chase and recovered three baggies of suspected drugs in the 6100 Block of Westland Drive. The baggies were submitted to the Crime Lab and found to contain CDS. The Jeep was registered to Ramos.

### **The Trial and Convictions:**

Molina was tried in the Circuit Court for Prince George's County and convicted of possession of marijuana, crack cocaine, and cocaine hydrochloride. Molina appealed. He raised a single issue on appeal: Was the evidence legally sufficient to prove "possession?"



## The Appeal and the Outcome:

The Court of Special Appeals affirmed the convictions. In doing so, the court again turned to the “classic list” of “helpful guidelines” in cases of joint possession. The common thread running through all of the cases affirming convictions based on joint possession is 1) proximity between the defendant and the contraband, 2) the fact that the contraband was within view or otherwise within knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband was found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband. Once again, the court recognized that criminal possession may be actual or constructive, and may be exclusive or joint.

Here, there was a reasonable inference from the evidence that Molina was the one actually throwing the baggies from the car, and, thus, actually possessed them. At its weakest, the evidence established at least constructive and joint possession.

### NOTE:

It is a more than reasonable inference that, where circumstances indicate drug use or selling, people in a car who know each other are *all* engaged in the illegal activity.

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