

Legal Corner

Possession with Intent to Distribute

A number of federal cases have recently been decided regarding an important drug offense in the United States Code: possession with intent to distribute a controlled substance as contained in 21 U.S.C. 841(a)(1).

Recent cases interpreting this statute have reached constitutional dimensions. In *United States v. King*, 485 F. 2d 353 (C.A. N.M. 1973), the court held that 21 U.S.C. 841(a)(1) was a valid exercise by Congress of a power vested in it by the Constitution. The decision goes on to hold that "possession with intent to distribute" in 841(a)(1) is not unconstitutionally vague, and that the question as to the quantity which would permit the inference that the possessor had an intent to distribute is evidentiary in nature and necessarily depends upon all the facts and circumstances of the case on hand. See also *United States v. Dupart*, 483 F. 2d 1393 (C.A. La. 1973).

Possession with intent to distribute means the actual constructive or attempted transfer of a controlled substance, whether or not there exists an agency relationship. *United States v. Marsullo*, 489 F. 2d 217 (C.A. N.Y. 1973). To violate this section of the Controlled Substances Act one must knowingly and intentionally possess a controlled substance and intend to distribute it. Both the possession of the contraband and the intent to distribute it are elements of the offense. *United States v. Hutchinson*, 488 F. 2d 484 (C.A. Minn. 1973).

Possession

Possession may be actual or constructive, and either sole or joint. In *United States v. Hutchinson*, *supra*, "constructive possession" has been defined as knowingly having both the power and intent at a given time to exercise dominion or control over the property. *Rodella v. United States*, 286 F. 2d 306 (C.A. Calif.). The following cases illustrate the fine line of constructive possession:

United States v. Horton, 488 F. 2d 374 (C.A. Tex. 1973)

Although demonstrating the defendant's proximity to an illegal substance and to a person who did have control over heroin, the evidence was insufficient to

sustain a conviction of possessing with intent to distribute since it did not establish any type of working relationship between parties regarding heroin but merely an association.

United States v. Epperson, 485 F. 2d 514, (C.A. Ariz. 1973)

Evidence of mere presence at the scene was insufficient without further evidence to establish guilt of marihuana possession with intent to distribute.

United States v. Martin, 483 F. 2d 974 (C.A. Tex. 1973)

Evidence of mere presence in a room with a roommate, who was later convicted of possessing mescaline with intent to distribute it, together with indications that the defendant may have had knowledge of the sale of the drug, did not demonstrate that the defendant took an active part in the sale and was insufficient to show constructive possession, dominion, or control over the drug by the defendant.

United States v. Nunez, 483 F. 2d 453, (C.A. Ariz. 1973) *cert. denied* 94 S. Ct. 594

Evidence of ownership of the vehicle that stored marihuana, consent given for its use, the raising of bail for a co-conspirator, and a phone call made during negotiations was sufficient to sustain a conviction for possession with intent to distribute.

United States v. Doran, 483 F. 2d 369 (C.A. Mass. 1973)

Evidence of an attempted phone call to a co-conspirator, annoyance at the lateness of the co-conspirator during a sale of heroin, use of the defendant's residence for three heroin transactions, together with the co-conspirator's statement was sufficient to sustain a conviction for possession with intent to distribute.

United States v. Irion, 482 F. 2d 1240 (C.A. Calif. 1973)

Evidence in a prosecution of the defendant on charges of illegal importation and possession with intent to distribute marihuana was sufficient to sustain a