WIDENER UNIVERSITY

Delaware Law School

Summer Advantage Program 2016

Orientation Schedule for June 6, 2016

&

Reading Assignments for Introduction to Professional Skills on June 6 and June 8

SECTION I

SCHEDULE FOR JUNE 6, 2016

10:00 a.m. – 6:00 p. m.	Registration (Admissions Office)
5:45 p.m. – 6:20 p.m.	Light Dinner Fare
6:20 p.m. – 6:40 p.m.	Welcome from Deans and Office of Student Affairs
6:40 p.m. – 7:30 p. m.	Financial Aid Workshop
7:30 p.m. – 7:40 p.m.	Break
7:40 p.m. – 9:30 p.m.	Introduction to Professional Skills Expert Learning: Case Briefing and Analysis

Attendance is required at the orientation sessions beginning at 6:20 p.m. on June 6. A record of attendance is kept for all law school courses, including the program on June 6.

Section II

Introduction to Professional Skills

Many students find law school very different from other school experiences. The subject matters may be new, the workload is heavy, and the vocabulary used in law school seems alien. Even the testing and grading processes in law school are often different from processes employed in other education settings.

The Introduction to Professional Skills program (IPS) is a series of required classes designed to prepare students for unique features of a law school education. The program provides a common body of knowledge for all students in the first semester. In addition, the IPS classes provide opportunities to discuss and practice skills essential to a successful performance as a law student and as a member of the legal profession. Portions of the Lab times scheduled for Wednesday nights in June and July for the Summer Advantage Program will be used to cover many of the learning and lawyering skills addressed in the IPS program.

Students who do not participate in the Summer Advantage Program will complete the IPS classes during the orientation week to be held from August 16 through August 18. Students who complete the Summer Advantage Program are invited – but not required -- to attend all of the orientation sessions that will be held for JD students in August. Why would you want to attend IPS classes in August after completing the Summer Advantage Program? Well, the IPS classes taught in August will use subject matters taught in the first year of law school other than Criminal Law to set contexts.

Please note, however, students in the Summer Advantage Program are required to attend the orientation sessions that will be held August 17, 2016.

Section III

a. Readings to Complete for Introduction to Professional Skills on June 6, 2016

You have two reading assignments to complete before the orientation on Monday, June 6, 2016. First, please read chapters 1 through 4 of Tracey George & Suzanna Sherry, What Every Law Student *Really* Needs to Know: An Introduction to the Study of Law. You may purchase the George & Sherry text from the bookstore on campus as well as from any online book vendor. This book provides a common body of knowledge useful for all students in the first semester of law school. The second assignment for June 6 is to read the materials in Section IV below and prepare to discuss those materials in class.

b. Readings to Complete for the Applied Learning Lab June 8, 2016

The assignment for the Applied Learning Law on June 8, 2016 is to actively read the materials in Section V below and prepare to discuss those materials in class.

c. Professional Duties of Competence and Diligence

Competence and diligence are foundations of the practice of law as a profession.[1] Competence requires knowledge of the law, skill in using that knowledge and thorough preparation. You are expected, therefore, to read the materials assigned for each class and to prepare to address those materials in class. You may initially get confused, frustrated, and intimidated in developing your understanding of the law, but remember you are required to be *diligent* as a lawyer. Professional diligence requires a lawyer "to pursue a matter . . . despite opposition, obstruction, or personal inconvenience . . . ."[2] You can do this! Look at how many others have done so.

SECTION IV

Expert Learning in Law School: Case Briefing and Analysis

Many new law students approach reading in law school as they have approached reading all of their lives – as if reading a narrative -- which is to say passively. *Active reading* skills, however, are necessary for successful performance in law school. Studies have shown that active reading strategies correlate to better grades in law school.[3] In a variety of ways, active readers engage with readings more deeply than passive readers. Active readers wrestle with assigned materials.

[1] Rule 1.1 of the American Bar Association's Model Rules of Professional Conduct provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Model Rule 1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client." Most States have used the ABA's Model Rules as a template.

[2] Model Rules of Professional Conduct 1.3, Comment [1].

[3] See, e.g., Leah M. Christensen, Legal Reading and Success in Law School: An Empirical Study, 30 Seattle U. L. Rev 603 (2007)

Because many law school subjects are taught through reading and discussing judicial opinions ("cases"), your IPS class on June 6 will introduce you to active reading strategies and techniques as means for reading cases effectively. To begin to develop your competence in analyzing cases for meaning and utility, we will apply active reading skills to two cases addressing the concept of *constructive possession* as an element of certain crimes. In particular, we will highlight the process of creating a *case brief*, an active reading process students will continue to hone throughout the first year of law school.

a. Active Reading Strategies

A basic process for active reading includes: (1) pre-reading strategies, (2) strategies while reading, and (3) post-reading strategies. Each step is described below.

1. Pre-Reading Strategies

First, before reading a text, an active reader has a *purpose* for the reading. To set a purpose active readers use *prediction* and *goal setting*. An active reader takes a moment to predict what the reader might get from reading certain materials. What is the case about and why has my professor assigned the reading? During the semester you also might consider how a new reading fits with material previously assigned and discussed.

One can use *context clues* such as headings on a course syllabus, a book's table of contents, or notes and questions following a case[4] in a course text for prediction. Or, if more than one case is assigned on a single topic, such as the two cases on constructive possession that follow, one might predict that the second opinion provides a different explanation of the law than the first opinion provided, provides a different example than the first opinion of fact patterns constituting constructive possession, or provides an example of facts that do not constitute constructive possession.

Before reading, you should set a *goal* for the reading based on the predictions made. For example, with respect to the two cases on constructive possession, "When I am finished reading these cases, I will know all of the elements necessary for constructive possession." Or, "When I am finished reading these cases, I will have constructed a case brief to understand the meaning and precedential value of the cases."

2. Strategies While Reading

While reading a judicial opinion, you should read with your "purpose(s)" in mind. You are not just reading the court's words; you are searching for certain types of information to fulfill your purposes. For example, you will be looking for the court's words describing the necessary elements of constructive possession. You also should research vocabulary that is new to you. Finally, you should work to understand parts of the opinion you initially find confusing before continuing with your reading of the remaining parts of the opinion. If a particular part of an

[4] In many law school text books, a court opinion often is followed by notes and questions providing additional information about the issues addressed in the opinion and raising concerns about the opinion. No rule of law, physics or good nutrition, however, prohibits you from scanning the notes and questions before reading the court opinion.

opinion remains indecipherable on first reading, you could try reading the remainder of the opinion to see if the context of the whole helps to understand how the difficult part fits.[5]

"Briefing" a case is a critical active reading strategy for new law students. Creating a written "brief" of a court opinion provides a *framework* for understanding the new information in an opinion by helping to sort the information into categories useful to a competent lawyer. The sorting will not only help you absorb and recall new information, it also will help you understand how you might competently use the new information. Much of class time during the first year will be devoted to refining your ability to construct such frameworks necessary for professional competence. The skills developed in creating case briefs are vital for class preparation, exam preparation, and for much of the legal analysis lawyers do.

3. Post-Reading Assessment

When you finish reading cases, you should assess whether your predictions for the reading were correct and whether you accomplished your purposes for the reading. For example, does the second case below provide new factual examples of constructive possession? Are you able to set forth accurate and complete statements of the elements of constructive possession? Are you able to identify the material facts each court identified in its opinion for purposes of assessing the precedential value of the opinion?

Experts also recommend *evaluating* a court's decision as a means of engaging deeply in the reading of the opinion. Here are a couple of questions you might use for such an evaluation. "If one of the material facts in the opinion were changed from X to Y, how would that have affected the court's decision?" "Do I agree with the court's decision?"

b. Practicing Active Reading Strategies in Analyzing Precedent

For the judicial opinions that follow, we are asking you to engage in one of the essential skills of a competent lawyer, i.e. "the analysis of precedent."[6] Use the active reading strategies described above, including the creation of case briefs for each opinion.

We appreciate that active reading strategies such as prediction, goal setting and case briefing may be new to you. You will get better at such activities over time. To help with your efforts at briefing cases, the next three pages contain an annotated template for constructing a case brief. The two cases on constructive possession follow the template.

---

[5] For additional means of active reading, see Tracey E. George & Suzanna Sherry, What Every Law Student Really Needs to Know: An Introduction to the Study of Law, 65-71(2009).

[6] Model Rule of Prof'l Conduct R. 1.1, Comment 2 (2014).

CASE OPINION (AND POSSIBLE BRIEF) COMPONENTS

CASE COMPONENT	DESCRIPTION	
1. <u>Case</u> Title, Court & Year	Title of the case, court and date	[Fill in]
2. <u>Parties</u> Names, Procedural Designation	Brief description of who is suing whom and role of each in the litigation	
3. <u>Procedural History</u> a.k.a. Procedural Facts (includes Procedural Posture)	Brief description of what has happened in the case *since the lawsuit was filed*; should be distinguished from the substantive facts of the case (see #4 below). Procedural posture: where the case is now, e.g., on appeal.	
4. <u>Facts</u>	Brief description of what happened to cause one party to initiate litigation and the facts affecting the court's decision. Sometimes these are called the *substantive* facts or *determinative* facts (as distinguished from the *procedural* facts). (As with all components of a brief, you also should be guided by what your professor likes to discuss in class.)	.
5. <u>Issue(s)</u>	The legal question or questions the court must decide. Typically includes substantive facts *plus* reference to a rule of law. There will always be at least one issue, and often there are multiple issues in a case.	

CASE COMPONENT	DESCRIPTION	
6. <u>Holding & Disposition</u>	Holding is the answer to the issue and primary legal conclusion in the case. Disposition is the legal result for the particular case, e.g., "Affirmed" or "Granted." Often found at the end of the opinion.	
7. <u>Rules (a.k.a. the law)</u>	Rules or laws existing prior to the case at hand and which are used to decide the case; can include statutes, regulations, rules of procedure, common law, etc. The laws existing prior to the instant case being decided are referred to as "precedent." Courts also will often announce new rules or interpretations of precedent. The holding(s) in a case are also a form of law or rule upon which future litigants can rely. Some professors consider the rules discussed in a case to be part of the court's reasoning (see #9 below).	
8. <u>Arguments</u> (Made to the court by each party in the case.)	Not always easily discernible; the arguments often merge with or form the basis for the court's reasoning (see #9 below). Arguments are generally an optional component. Include arguments in your brief if your professor likes to discuss the arguments in class.	

CASE COMPONENT	DESCRIPTION	
9. <u>Reasoning</u>	Description of *why* the court ruled as it did. Can include precedent (see #7 above), policy considerations, etc. The court's reasoning is not always apparent.	
10. <u>Miscellaneous</u> a. Concurring and dissenting opinions, if any. b. Dictum c. Your own comments, questions, etc.	a. Concurring and dissenting opinions are not law but they are often the subject of class discussions and can help you understand the main opinion. b. Dictum likewise is not law but may be useful to include in a brief for the same reasons you might include concurring and dissenting opinions. c. You might include in your briefs your own questions and comments to focus your class participation and case understanding.	

United States v. Jenkins, 90 F.3d 814 (3d Cir. 1996)

Before Stapelton , Scirica and Cowen, Circuit Judges.

OPINION OF THE COURT

Stapelton, Circuit Judge:

Sean Jenkins appeals his conviction on drug possession and related firearms charges. He challenges the sufficiency of the evidence to establish his constructive possession of drugs found near him. Because the evidence showed only that he was in an acquaintance's apartment physically near but not in actual possession of drugs and drug distribution paraphernalia, it does not support the jury's finding that he had dominion and control over the drugs. We will, therefore, reverse Jenkins' conviction on all counts.

I

Around 1:30 a.m. on February 10, 1994, Philadelphia police officers Michael Kopecki and James Santomieri responded to a call that shots were being fired near an apartment building. Entering the courtyard of the building, the officers saw Kevin Jones and Larry Harrison, who was holding a handgun. Kopecki yelled, "Police!" Harrison ran into the building, and the officers chased him through a fire escape door, down a hallway, and into apartment C-107. The front door opened into the living room, and the officers found Sam Stallings and Jenkins seated on a couch, both wearing only boxer shorts and a t-shirt. On the coffee table before them were three bags of white powder containing a total of 55.3 grams of cocaine and 42 grams of non-cocaine white powder, two triple-beam scales, two loaded .38 caliber revolvers, small ziplock-style bags, clear plastic vials, and numerous red caps. On the floor was a loaded sawed-off shotgun.

None of the cocaine powder had been put in the bags, vials, or caps, and there was no evidence that either man had been working with the cocaine. No grinders, razor blades, or other "cutting" implements, were on the table, and no pots or other instruments that could be used to cook cocaine were found with any cocaine residue. No cocaine residue was found on Stallings or Jenkins, including their hands, and no residue was found on the scales. Nothing concerning Jenkins' clothing suggested any connection to the drugs. Finally, he made no attempt to hide or destroy the contraband, and fully cooperated with the officers.

Stallings and Jenkins were charged and tried together. Count I of the indictment charged them with possession of cocaine with intent to distribute. At trial, the officers testified to what they saw and found, as described above. An expert witness, DEA agent Ellis Hershowitz, testified that the scales, bags and vials were commonly used by drug traffickers in repackaging drugs for resale. On cross-examination, Hershowitz acknowledged that instruments necessary to cut and apportion the cocaine and insert it into the various packages were not found in the apartment. The manager of the apartment building, Barbara Edward, identified Stallings as a tenant in C-107, Harrison as someone who lived there, and Jenkins as someone who was "in and out" with Stallings and Harrison. Neither defendant testified.

The jury found Jenkins guilty on both counts.

II

In reviewing a jury verdict for sufficiency of the evidence, we view the evidence in the light most favorable to the government, and we will affirm the conviction if a rational trier of fact could have found the defendant guilty beyond a reasonable doubt. See United States v. Brown, 3 F.3d 673, 680 (3d Cir.), *cert. denied*, 510 U.S. 1017, 114 S.Ct. 615, 126 L.Ed.2d 579 (1993). The district court had jurisdiction

pursuant to 18 U.S.C. § 3231, and we have jurisdiction pursuant to 28 U.S.C. § 1291. The notice of appeal was timely filed.

III

A.

The government had no evidence of actual possession of the cocaine powder; consequently, the issue before us is whether there was evidence sufficient to establish constructive possession. Under our precedent, the evidence must show that Jenkins had dominion and control over the drugs:
[T]he government must submit sufficient evidence to support an inference that the individual "knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons. Constructive possession necessarily requires both 'dominion and control' over an object and knowledge of that object's existence." United States v. Iafelice, 978 F.2d 92, 96 (3d Cir.1992) (citations omitted), Brown, 3 F.3d at 680. The kind of evidence that can establish dominion and control includes, for example, evidence that the defendant attempted to hide or to destroy the contraband, see United States v. Davis, 461 F.2d 1026, 1034-36 (3d Cir.1972), or that the defendant lied to police about his identity or the source of large amounts of cash on his person, see United States v. Brett, 872 F.2d 1365, 1368-69 (8th Cir.), *cert. denied*, 493 U.S. 932, 110 S.Ct. 322, 107 L.Ed.2d 312 (1989). Dominion and control are not established, however, by "mere proximity to the drug, or mere presence on the property where it is located or mere association with the person who does control the drug or the property." Brown, 3 F.3d at 680; see also United States v. Dunlap, 28 F.3d 823, 826 (8th Cir.1994); United States v. Zeigler, 994 F.2d 845, 848 (D.C.Cir.1993); United States v. Vasquez-Chan, 978 F.2d 546, 550 (9th Cir.1992).

Jenkins argues that the evidence relied upon by the court was insufficient to prove dominion and control over the cocaine. Nothing but proximity links him to the drugs and drug distribution paraphernalia. No cocaine residue was found on him, nor were his fingerprints found on the drugs. His prior acquaintance with Stallings answers why he was in the apartment, and it is immaterial how long he had been or was going to be there. The presence of the two scales, he contends, is insufficient to link him to the drugs. No evidence suggests that they had been in use or were about to be used by him; if anything, it was more likely that the two scales belonged to and would be used by the two residents of the apartment.

We agree with the defendant that the evidence is insufficient to establish his possession of the cocaine. The evidence does show that he is an acquaintance of Stallings and Harrison and that he was found physically near drugs and drug distribution paraphernalia, including two scales, but those are insufficient facts from which to infer dominion and control over the drugs.

We find this case controlled by our decision in United States v. Brown. The police, acting on a tip, searched Brown's home for drugs. During the search, Ama Baltimore arrived at the house, inserted a key into the lock, and was arrested as she entered. While being arrested, she protested, "But you can't arrest me because I am in my own house." In the upstairs sewing room, the police found a pair of shorts and a switchblade, both of which Baltimore admitted were hers. Substantial quantities of heroin, cocaine powder, and crack cocaine were found in the refrigerator in the kitchen, the kitchen closet, and one of the upstairs bedrooms. Equipment and supplies to prepare, cook, cut and distribute the drugs were also found in the bedroom. The government contended that several facts were sufficient to establish Baltimore's possession of the drugs: her possession of a key to the house, her attempted entry, the presence of the shorts and switchblade in the house, her statement, and the fact that the house was a known "cut house," a place where large quantities of drugs are cut and distributed.

We overturned her conviction for insufficient evidence of possession. The evidence showed that she had access to or resided in the house and knew of the presence of the drugs, but did not show she had dominion and control them. The key, her attempted entry, and her statement merely showed that she had

some control over the house, not the drugs. See 3 F.3d at 682-83. We further noted that her fingerprints were not found on the drugs or drug paraphernalia, and there was no evidence that she ever exerted any indirect control over them. See id. Evidence in addition to knowledge of and access to the drugs was necessary to prove possession. The fact that Brown's home was a "cut house" did not suffice as additional evidence. Because Brown's house was also a residence, the jury could not infer from the fact that Brown's home was a "cut house," that beyond a reasonable doubt, Baltimore was a participant in the drug distribution operation. See id. at 683-84.

Our decision in Brown is consistent with the jurisprudence of other circuits. In United States v. Vasquez-Chan, the Court of Appeals for the Ninth Circuit found evidence of drug possession insufficient even though there was proof that the defendant had access to and was in close proximity with large quantities of drugs. Drug Enforcement Agency officers arranged the purchase of a large amount of cocaine. They observed the drugs being transported from a particular house and went to secure the residence. Inside, they found two women, a housekeeper and an apparent house guest, Julia Gaxiola-Castillo (Gaxiola). Gaxiola waived her rights and told the officers that she was a friend of the housekeeper and had been staying there a few weeks with her infant child. In the bedroom where she had been staying, the officers found 600 kilograms of cocaine in 55 gallon drums. On six of the drums, including the inside of the lid of one drum, they found her fingerprints. She was convicted of conspiracy to possess narcotics with intent to distribute.

The Ninth Circuit overturned the conviction for lack of evidence of possession. She claimed that she had come to visit her friend, and she and her child had to sleep somewhere, and the bedroom with the cocaine may have been the only place to stay. Although the defendant had been caught in "extremely incriminating circumstances" due to her proximity to the drugs, her behavior "was perfectly consistent with that of an innocent person having no stake or interest in the transactions." 978 F.2d at 551 (citations omitted). Proximity and knowledge of the existence and location of the drugs were insufficient to prove dominion and control. See id. The fingerprints by themselves proved nothing but the fact that she had used the bedroom. It was perfectly reasonable to believe that she would have come into contact with the numerous canisters as she moved in and out of the room, or prepared a place to sleep. See id.

Similarly, in United States v. Dunlap, the Court of Appeals for the Eighth Circuit found proximity to drugs under very suspicious circumstances insufficient to support a finding of possession. Acting on a tip that drugs were being sold from Eric Dunlap's apartment, police officers secured a search warrant. As they approached his door, Dunlap opened the door from the inside. Standing behind Dunlap was Cornelius Coleman, who had a handgun in his pocket. In the kitchen, the officers found large amounts of cocaine power and cocaine base, and some of the powder was in the process of being cooked. Coleman's hat was also in the kitchen, and more drugs and drug distribution paraphernalia were found in the apartment. Coleman was convicted of possession with intent to distribute cocaine. The Eighth Circuit overturned his conviction because the evidence was not sufficient for a jury to find beyond a reasonable doubt that Coleman had constructive possession. See 28 F.3d at 826. His mere presence in the apartment, including the evidence that he may have been in the kitchen, did not prove that he possessed the cocaine. He may have been visiting Dunlap to purchase cocaine for his own use, an offense not charged, and it was speculative for the jury to conclude beyond a reasonable doubt that he possessed the drugs, or intended to aid and abet Dunlap in his drug operation. See id. at 827.

The evidence supporting constructive possession in Sean Jenkins' case is no stronger than the evidence found insufficient in Brown, Vasquez-Chan, and Dunlap. In each of those cases, the evidence did not establish the decisive nexus of dominion and control between the defendant and the contraband. The district court believed that Jenkins' being on the couch next to the drugs was decisively different than if he was somewhere else in the apartment, but proximity alone is not enough, no matter how near that proximity is. Without other proof of dominion and control, we can only conclude that it was sheer happenstance that Jenkins was seated on the couch next to the cocaine when the police entered the

apartment. Whether or not he possessed the drugs, he could have been found sitting on the couch, standing next to it, in the bathroom, or in some other room in the apartment. A reasonable jury may not infer dominion and control beyond a reasonable doubt from the defendant's physical distance from the drugs alone.

The government relies on our decisions in United States v. Davis, 461 F.2d 1026 (3d Cir.1972) and United States v. Iafelice, 978 F.2d 92 (3d Cir.1992). In both cases, however, there were significant and substantial factors linking the defendants to the drugs. In Davis, the defendant was convicted for possessing heroin that had been seized in her apartment. Unlike the instant case, in Davis the evidence clearly showed that someone had been recently packaging the drugs, and when the police forced their way in, the persons present, including the defendant, had tried to destroy the drugs. 461 F.2d at 1035-36. Here, Jenkins was in an acquaintance's apartment and no evidence suggests that he had recently physically interacted with the drugs or drug paraphernalia. Neither did he attempt to hide or destroy the drugs. In Iafelice, the defendant drove several individuals in his car to a pre-arranged drug sale to undercover agents, and was convicted for possession of heroin. We upheld the conviction and found relevant that he drove the car in a suspicious manner, transported the drugs and those who sold the drugs to the point of sale, assisted in opening the trunk where the drugs were located, and was called in the car by one of the principal drug dealers during the sale. See Iafelice, 978 F.2d at 95-98. Here, the cocaine was not found in Jenkins' residence, and no evidence suggests his active participation in any drug distribution.

A sufficiency of the evidence challenge requires us to take a careful look at the evidence in the light most favorable to the government. Because the evidence supporting Jenkins' possession of the cocaine, viewed in that light, does not amount to more than close proximity to the drugs and acquaintance with the residents of the apartment in which the drugs were found, we must reverse his conviction for possession with intent to distribute.

SECTION V

Commonwealth v. Jackson, 540 Pa. 556, 659 A.2d 549 (Pa. 1995)

PER CURIAM.

The Court being evenly divided, the Order of the Superior Court is affirmed.

PAPADAKOS, J., did not participate in the decision of this case.
NIX, C.J., files an Opinion in Support of Affirmance.
CASTILLE, J., files an Opinion in Support of Affirmance in which MONTEMURO, J., joins.
ZAPPALA, J., files an Opinion in Support of Reversal in which FLAHERTY and CAPPY, JJ., join.

OPINION IN SUPPORT OF AFFIRMANCE

Nix, C. J.

Following a bench trial, appellant was convicted of possession of a controlled substance and possession of a controlled substance with intent to deliver. Post-trial motions were denied and appellant was sentenced to the mandatory minimum sentence of four to eight years imprisonment. The Superior Court affirmed appellant's judgment of sentence. This Court granted allocatur to examine whether the evidence was sufficient to support appellant's convictions.

Appellant's sole claim before this Court is that the evidence is insufficient to sustain her convictions. It is well established that when reviewing a sufficiency of the evidence claim, an appellate court must determine whether the evidence was sufficient to enable the factfinder to find every element of the crimes charged beyond a reasonable doubt, viewing all the evidence and reasonable inferences therefrom in the light most favorable to the verdict winner. Commonwealth v. Thomas, 527 Pa. 511, 594 A.2d 300 (1991). When viewed properly under this standard, it is clear that there was sufficient evidence at trial to support appellant's convictions for possession of a controlled substance and possession of a controlled substance with the intent to deliver.

Possession of a controlled substance can be proven by showing that a defendant actually possessed drugs through direct evidence, such as finding the controlled substance on the defendant's person, or it can be proven by showing that the defendant constructively possessed a controlled substance. Commonwealth v. Macolino, 503 Pa. 201, 469 A.2d 132 (1983) (possession of controlled substance can be proven by showing actual possession or by showing that defendant constructively possessed the controlled substance). Since the evidence showed that the controlled substance was located in appellant's brother's bedroom in the apartment leased by the appellant, and not on her person, the evidence, taken in the light most favorable to the Commonwealth and affording all reasonable inferences therefrom, must demonstrate beyond a reasonable doubt that appellant had constructive possession of the illegal substances.

In order to prove constructive possession, the Commonwealth must have demonstrated that appellant had the "ability to exercise a conscious dominion over the illegal substance." Id. Constructive possession is: "the power to control the contraband," and "the intent to exercise that control." Id., at 206, 469 A.2d at 134 (1983). These elements may be inferred from the totality of the circumstances, id, and may be established circumstantially. Id. at 205, 469 A.2d at 134. "Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not." Commonwealth v. Mudrick, 510 Pa. 305, 307, 507 A.2d 1212, 1213 (1986). Furthermore, constructive possession may be proven where the item in issue is in an area of joint control and equal access. Id. at 307, 507 A.2d at 1213 (1986) (jury could find constructive possession where contraband was found in an area where defendant and his paramour had joint control and equal access). "Possession of the illegal substance need not be exclusive; two or more can possess the same drug at the same time." Commonwealth v. Macolino, 503 Pa. 201, 208, 469 A.2d 132, 135 (1983).

Viewing the evidence presented at trial and taken in the light most favorable to the Commonwealth, the record establishes that police officers executed a search warrant at an apartment leased to appellant where she resided with her four-year-old son and her brother. Upon execution of the warrant at appellant's apartment, the police found inside appellant's kitchen cabinets two scales (which are commonly used in drug trafficking for weighing controlled substances) and a heat sealing device (which is commonly used in drug trafficking for sealing packets used to sell cocaine). Police testified that the scales and the heat sealing device were immediately visible when appellant's cabinets were opened. Appellant herself admitted she used the cabinets in which the drug processing paraphernalia was found.

In an unlocked closet located next to appellant's bedroom, police officers found a loaded, pump-action, sawed-off shotgun leaning against the wall and a duffle bag which contained thousands of empty vials and packets. Appellant admitted using this closet.

In appellant's brother's bedroom, police officers found a cooler containing 1,683 small plastic vials containing a total of 137.9 grams of crack cocaine, divided into bundles of forty. Also in the cooler were 297 packets containing a total of 118 grams of cocaine powder, packed in bundles of twenty. The police also found a loaded 9 millimeter firearm, another heat sealing device, another scale all in plain view on a shelf in appellant's bedroom, the door to which was unlocked and a .38 caliber handgun under the bed.

The trial judge, sitting as the factfinder, examining all the evidence in its totality, could reasonably conclude that appellant had knowledge of the cocaine in her brother's bedroom along with the items found in the kitchen cabinets and hall closet which are commonly used in cocaine packaging and trafficking, that appellant exercised a conscious dominion and control over the contraband, that the contraband was discovered in areas of joint control and equal access, and that the reasonable inferences established circumstantially that appellant intended to possess the contraband. For this Court to hold that the evidence introduced into this case and the reasonable inferences drawn from the evidence are not sufficient to prove the elements of the crimes charged beyond a reasonable doubt, encourages those living in a joint residence to simply turn a "blind eye" and practice a studied ignorance to the obvious presence of drug dealing in the joint residence. One should only ignore the obvious to one's peril.

In Commonwealth v. Macolino, 503 Pa. 201, 469 A.2d 132 (1983), this Court held that it was reasonable for the factfinder to conclude that the accused husband knew of the cocaine hidden in the closet he shared with his wife, that he had the power to control it and that he had the intent to control it, despite the husband's claim that he had no knowledge of the cocaine. In Commonwealth v. Carroll, 510 Pa. 299, 507 A.2d 819 (1986), this Court found that the accused husband constructively possessed heroin discovered in his wife's jeans which were in a laundry bag lying next to a bed in their motel room. This Court held that their joint access and control over the motel room where the heroin was found established constructive possession. In Commonwealth v. Mudrick, 510 Pa. 305, 507 A.2d 1212 (1986), this Court affirmed that the defendant was in constructive possession of drugs in the home he shared with his girlfriend because the couple shared access to and control of the living room coffee table where contraband was found. Appellant fails to adequately explain how this case differs from the above cases or why they should not be followed in this instance.

As this Court noted in Macolino, the concept of constructive possession is necessary to prevent persons from having "a privileged sanctuary for the storage of illegal contraband." * * * This Court further noted that without the concept of constructive possession, a party, spouse, roommate, or partner would be "impervious to prosecution" simply "by storing contraband in a place controlled by more than one party."

* * *

Appellant here clearly has joint possession of and dominion over drug paraphernalia and an illegal weapon in areas which she readily admitted she used. In the second bedroom of her apartment, which was not locked and was used by her brother, there was contraband in plain view on the shelves. Her conviction, given this evidence, should stand.