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Case No. 20110174-SC

IN THE

UTAH SUPREME COURT

State of Utah,
Plaintiff/Petitioner,

vs.

Patrick Robert Ramirez,
Defendant/Respondent.

Reply Brief of Petitioner

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IN THE

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Plaintiff/Petitioner,

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Patrick Robert Ramirez,
Defendant/Respondent.

Reply Brief of Petitioner

The State responds as follows to the arguments raised in Defendant's brief.

Reply to Point I.A.

THE COURT OF APPEALS' MAJORITY EFFECTIVELY REQUIRED THE PROSECUTION TO PRECLUDE ALL ALTERNATIVE REASONABLE HYPOTHESES OF A DEFENDANT'S INNOCENCE AT PRELIMINARY HEARING

Ramirez disputes that the court of appeals' majority requires the prosecution to preclude all reasonable alternative inferences or hypotheses of a defendant's innocence. Br. Resp. 6. Instead, he contends, the majority affirmed the magistrate's refusal to bind over because the State failed to produce any evidence that "could support a reasonable inference that Mr. Ramirez intended to exercise control over the drug residue and paraphernalia." *Id.* In support, he cites language in the opinion faulting the State for not producing "'evidence showing the nature and character of the motel, or of the Defendant's room in particular, and the exclusivity

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of his control and access.'" *Id.* (quoting *State v. Ramirez*, 2010 UT App 373U, *2). Ramirez argues that without such evidence, "the magistrate and court of appeals would be forced to speculate about Ramirez's relationship to the drug residue in the bag, which does not suffice for a [d]efendant to be bound over." *Id.*

The failure to produce evidence of "the nature and character" of the motel and of the "exclusivity" of Ramirez's "control and access," however, was not a failure to produce evidence that Ramirez knowingly and intentionally possessed the contraband found in his room. At most, the lack of such evidence merely permitted the adverse inference that the magistrate and majority drew: that it was possible that someone else could have entered the room and deposited the contraband in Ramirez's trash without his knowledge. *See Ramirez*, 2010 UT App 373U, *1-2; R36-37; R41:34.

But as Judge Thorne noted in dissent, the existence of that adverse inference does not negate the "alternative reasonable inference from other facts, such as the state of Defendant's motel room, that nobody had accessed his room without his permission, and that Defendant lived alone in the room, [and] that Defendant indeed knew of the drug residue but thought that the residue would not be discovered because he had properly discarded it prior to leaving his room." *Ramirez*, 2010 UT App 373U, *2 (Thorne, J., dissenting).

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By drawing that adverse inference while disregarding reasonable inferences favorable to the prosecution, the majority effectively required the State to not only produce evidence of Ramirez's guilt at the preliminary hearing, but also to produce evidence excluding all possible explanations of his innocence. Thus, while the majority may have stated its reasoning in terms of the "lack of evidence," the practical—even if unintended—consequence of its decision is to increase the standard of proof at preliminary hearing from that of a reasonable belief to proof beyond a reasonable doubt. *See* Br. Resp. 6 & Br. Pet. at 15-16.

But whatever label one attaches to the majority's reasoning, its errors resulted from the majority's failure to view "all evidence in the light most favorable to the prosecution," to draw "all reasonable inferences in favor of the prosecution," and to resolve all conflicts in the evidence and its reasonable inferences in favor of the prosecution. *State v. Clark*, 2001 UT 9, ¶ 10, 20 P.3d 300. *See also State v. Hawatmeh*, 2001 UT 51, ¶ 20, 26 P.3d 223.

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Reply to Point I.B.

THE STATE PRODUCED SUFFICIENT EVIDENCE TO SUPPORT A REASONABLE BELIEF THAT DEFENDANT INTENTIONALLY OR KNOWINGLY POSSESSED THE CONTRABAND FOUND IN HIS LIVING QUARTERS

Like the decisions below, Ramirez contends that the State did not present sufficient evidence to reasonably believe that he "intended to exercise control over the drug residue and paraphernalia." Br. Resp. 6-7.

The elements of possession of illegal drugs are to (1) "knowingly and intentionally" (2) "possess or use a controlled substance." Utah Code Ann. § 58-37-8 (West Supp. 2009). The elements of possession of paraphernalia are to (1) "use, or to possess . . . drug paraphernalia" (2) with the intent to use it. Utah Code Ann. § 58-37a-5 (West Supp. 2009). "Possession" for purposes of both crimes "means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining . . . and includes individual, joint, or group possession or use of controlled substances." Utah Code Ann. § 58-37-2(1)(ii). For "a person to be a possessor or user of a controlled substance . . . it is sufficient if it is shown that the . . . controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it." *Id.*

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Ramirez agrees that the statutory test for showing possession of contraband not found on one's person is whether "a sufficient nexus" exists "between the defendant and the drugs or paraphernalia to permit a factual inference that the defendant had the power and the intent to exercise control over the drugs or paraphernalia." *State v. Layman*, 1999 UT 79, ¶¶ 15-16, 985 P.2d 911; *see* Br. Resp. 7.

Ramirez asserts that the State's only evidence supporting a nexus between him and the contraband was that he "had rented the motel room at *some point.*" Br. Resp. 8 (emphasis in original). Ramirez contends that no evidence showed "how long ago he had rented the room, how long he rented it for, whether he rented the room alone, etc." *Id.* That argument ignores much of the State's evidence and its reasonable inferences. In fact, all the evidence showed that the "some point" at which Ramirez rented the room was immediately before his incarceration and continued through the time of the search. All the evidence likewise showed that Ramirez alone lived in the room.

First, Ramirez told officers that he lived at the motel and he gave them his room number. *See* R41:12-13. Second, Ramirez invited the officers to search the room that he claimed to be his. R41:12-14. Third, Ramirez's representations and invitation to search showed that he believed that the room was still his, that he rightfully continued to exercise authority and control over it, and that the officers

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would find his room as he had left it—with the clean pipe in his bed, under some covers. R41:13-14. Fourth, officers found paperwork and a prescription bottle bearing Ramirez's name in the room and they found nothing in the room identified as belonging to someone else. R41:20, 23. Taken together, this evidence leads to the reasonable inference that Ramirez alone occupied the room and that he was currently renting it.

Ramirez also asserts that "countless others" and "numerous people, including individuals not associated with the motel, had ready access to the motel room." Br. Aple. 7-8. Again, the record does not bear this out. True, an officer conceded that the manager and housekeeping could have had prior access to Ramirez's room. R41:22-23. But no evidence suggested that they had entered the room before police searched it. Certainly, no evidence suggested that "countless" or "numerous" people not associated with the motel had access to the room without Ramirez's knowledge or permission. Indeed, the record citations Ramirez relies on to make this claim merely state that before talking to police, Ramirez had asked a friend to go to the room to find the pipe, that the room was locked and could only be opened with a key, and that the officer "imagined" that motel staff had a key. *See* Br. Aple. 8 (citing R41:6, 23). If anything, those facts show that Ramirez continued to view the

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room as his and that only someone with a key would have been able to access the room without his permission.

Ramirez also contends that because others—the management and housekeeping—had access to his room, it is not "reasonable to infer that it was he who was in possession of the contraband found in the wastebasket." Br. Resp. 7. In support, he cites *State v. Salas*, 820 P.2d 1386 (Utah App. 1991), which, he claims, is "analogous" to this case. Far from being "analogous," *Salas* is readily distinguishable. First, *Salas* involved a jury conviction and thus applied the higher beyond a reasonable doubt standard. Second, unlike this case, the defendant's connection to the drugs there was weak, while evidence of others' connection to the drugs was strong.

Salas was convicted of possessing cocaine found in the crack of the backseat on the driver's side of the car that Salas was driving and jointly owned with his wife. *Id.* at 1386-87. When the cocaine was found, Salas had two passengers, one in the front and one in the back. *Id.* at 1387-88. Police had pulled Salas over after receiving a tip that he would be in possession of cocaine at the time. *Id.* at 1386. Just before the stop, the backseat passenger, who sat behind Salas, furtively moved around and shifted to the passenger's side. *Id.* at 1388. Police told Salas about the tip and asked if they could search his car. *Id.* at 1387. Salas readily agreed, stating

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that he did not "have anything to worry about." *Id.* After a lengthy search, the cocaine was found in a place different from where the tipster had said it would be and in a place not "easily accessible" to Salas. *Id.* at 1387, 1389. Salas immediately disclaimed any knowledge of the drugs. *Id.* at 1387.

The court of appeals held that this evidence was insufficient to prove beyond a reasonable doubt that "a sufficient nexus existed between Salas and the cocaine." *Id.* at 1387-89. The court explained that "'mere [o]wnership and/or occupancy of the premises upon which the drugs [were] found'" may not alone establish a sufficient nexus "'especially when occupancy is not exclusive.'" *Id.* at 1388 (quoting *State v. Fox*, 709 P.2d 316, 319 (Utah 1985)). This is particularly true, the court stated, when the drugs are "found in an automobile" in which the accused "was not the sole occupant of, and did not have sole access to." *Id.* In that case, "there must be other evidence to buttress such an inference," which might include "incriminating statements, suspicious or incriminating behavior, sale of drugs, use of drugs, proximity of defendant to location of drugs, drugs in plain view, and drugs on defendant's person." *Id.* at 1388-89.

The evidence against Salas did not prove guilt beyond a reasonable doubt because although Salas "owned and occupied the vehicle, the ownership and occupancy were not exclusive"; two passengers occupied the vehicle at the same

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time; one passenger was closer to and had better access to the cocaine and was seen moving furtively just before the stop; *and* the drug was not "easily accessible" to Salas. *Id.* at 1389. The only evidence linking Salas to the cocaine, besides his ownership and occupancy of the vehicle, was the informant's tip to police. *Id.* But the substance of the tip had not been introduced into evidence for the truth of the matter stated. *Id.* Thus, the evidence at Salas's jury trial did not exclude all alternative reasonable hypotheses of his innocence.

But as explained in the State's opening brief and above, the prosecution is not required to exclude all alternative reasonable hypotheses of the defendant's innocence at the preliminary hearing stage. Nor does the fact that others might also have or have had access to contraband negate probable cause to believe that the contraband belonged to the accused either individually or jointly. Indeed, the United States Supreme Court has held that an officer had probable cause to arrest all occupants in a car holding $763 in cash in the glove compartment and five baggies of cocaine behind the backseat armrest, even though they each denied knowing anything about the drugs or money. *Maryland v. Pringle*, 540 U.S. 366, 371-73 (2003). The *Pringle* court found it "an entirely reasonable inference" from the facts "that any or all three of the [car's] occupants had knowledge of, and exercised dominion and control over, the cocaine." *Id.* at 372. Thus, "a reasonable officer could conclude

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that there was probable cause to believe Pringle [the front seat passenger] committed the crime of possession of cocaine, either solely or jointly." *Id.*

Probable cause to arrest is the same as that to bind over. *See Clark*, 2001 UT 9, ¶¶ 10, 16 (equating the two probable cause standards). Just as the ability of others to access the contraband did not negate probable cause to arrest Pringle, the possibility that others might have had access to Ramirez's room does not negate probable cause to bind Ramirez over. Indeed, the totality of the evidence here supports a stronger inference that of the people who might have had access to the room, Ramirez was the person with the strongest factual nexus to the contraband: he lived alone in the room where it was found, R41:12-13, 20-23; he continued to exercise authority and control over the room by asking a friend to go there and by inviting police to search it, R41:6, 12-13, 15; he admitted to having a drug problem, R41:16; he admitted to possessing other paraphernalia—a clean pipe and a syringe—commonly used for ingesting illegal drugs, R41:16; police found the pipe, undisturbed in Ramirez's bed, where he said it would be, R41:13; and the contraband was found discarded in a garbage sack, R41:14, 16-20.

In contrast, Ramirez's and the lower courts' speculation that someone else might have accessed the room and planted the contraband in Ramirez's garbage sack is unreasonable under the totality of the evidence. As explained in the State's

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opening brief, nothing in the evidence suggests a reason why someone other than Ramirez would have taken the trouble to place the contraband in a garbage sack in a room occupied solely by Ramirez. And, presumably, if housekeeping had accessed the room, the garbage sack would have been removed.

Ramirez finally asserts that because he told police that he "injected drugs and did not smoke them," his admissions cannot support "an inference that [he] possessed drugs and paraphernalia designed to be smoked, even when viewed in a light most favorable to the prosecution." Br. Resp. 9. But Ramirez's charges were based on methamphetamine residue in the baggie and on the tube straw, not on the clean pipe. R36-37; R41:38-39. Thus, nothing in the evidence suggests that the methamphetamine was designed to be smoked as opposed to being injected.

More importantly, the evidence must be viewed in the light most favorable to the prosecution in its entirety. As explained in the State's opening brief, in a constructive possession case, the required nexus may be established by means of several different factors, including, where appropriate, "previous drug use." *State v. Workman*, 2005 UT 66, ¶ 32, 122 P.3d 639. Thus, Ramirez's incriminating admissions—including his drug abuse—together with the discovery of the contraband in a garbage sack in his living quarters, gave rise to a reasonable belief that the contraband belonged to him.

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In short, even assuming that Ramirez's and the lower courts' competing inferences were reasonable, the magistrate was obligated to accept the inferences that supported the prosecution's case and allow the case to go to a jury. *See Clark*, 2001 UT 9, ¶ 20.

CONCLUSION

The Court should reverse the court of appeals' decision affirming the magistrate's refusal to bind Ramirez over for trial.

Respectfully submitted March 27th, 2012.

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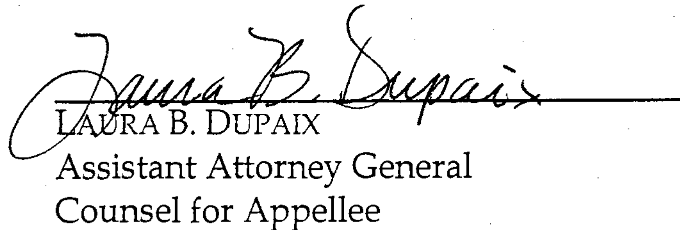
Utah Attorney General



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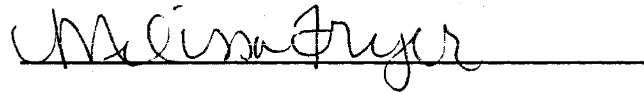

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