

One evening on a college campus, a student handed a classmate cash and the classmate gave the student a packet of heroin. The student looked at the packet and went to place it in his pants pocket. An off-duty police officer who was taking classes at the college witnessed the transaction from only a few feet away. The officer immediately identified herself as a police officer and told the participants that they were under arrest. The student, who had been in the act of placing the packet in his pants pocket, dropped the packet and unsuccessfully attempted to flee.

The student was charged with possession of heroin. At trial, the student offered evidence, which the prosecution did not dispute, that the cash was not transferred in payment for the heroin but instead to repay a loan the classmate had made to the student.

Can the student properly be convicted?

- A. No, because the student did not pay for the heroin.
- B. No, because the student did not place the heroin in his pocket.
- C. Yes, because the student had the opportunity to cease dominion and control over the heroin.
- D. Yes, because the student handled the heroin packet.

Explanation:

A defendant can be convicted of **possession of a controlled substance** (or other prohibited object) if the prosecution establishes that the defendant knowingly possessed the controlled substance. The **possession element** requires proof that the defendant either: **knowingly received** an illegal substance *or*

exercised **dominion and control** over the substance after learning of its illegal character.

Here, the student may not have initially known that the classmate had given the student a packet of heroin. However, the student had time to look at the packet and went to place it in his pants pocket before the police officer intervened. This shows that the student exercised dominion and control over the heroin. As a result, the student can be properly convicted.

(Choice A) This crime does not require proof that the defendant acquired the substance by paying for it. Therefore, the fact that the student gave the classmate cash to repay a loan—not to pay for the heroin—is irrelevant.

(Choice B) The student did not need to secure the heroin in his pocket to be convicted of possessing it because the prosecution need only prove that the student exercised something more than fleeting or momentary control.

(Choice D) Mere handling of a controlled substance is not necessarily sufficient to establish possession. For example, a person who is unexpectedly given a packet containing a controlled substance may handle it to ascertain its contents and then immediately discard it. Under those circumstances, the element of possession is not met.

Educational objective:

Possession offenses require proof that the defendant (1) knowingly received an illegal item or (2) exercised dominion and control over the item after learning of its illegal character.

References

Wayne R. LaFave, 1 Substantive Criminal Law § 6.1(e) (3d ed. 2020)

Possession offenses
(dominion and control requirement)

