

CONNECTICUT APPELLATE COURT ISSUES  
LANDMARK REVERSAL CITING LACK OF EVIDENCE  
IN PROBATION REVOCATION CASE

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*Establishes Parameters for Evidence Required to Prove Drug Possession*

The Connecticut Appellate Court has issued a landmark reversal in a case involving a man whose probation was revoked after he was arrested and charged with drug possession. The ruling in *State of Connecticut v. Hector Fermaint* establishes that a defendant's temporal and spatial proximity to drugs does not amount to criminal possession, even under the lesser preponderance of the evidence standard applicable to probation revocation proceedings.

"The ruling is an important personal victory for Hector Fermaint that is even more significant because it marks the first time that any Connecticut appellate court has reversed on insufficient evidence in a case involving someone who was found to have violated their probation," said Erika Amarante, counsel to Mr. Fermaint and a member of the Appellate Practice Group at Wiggin and Dana LLP (Hartford, Conn.).

In May of 2001, Hector Fermaint was arrested and charged with possession of narcotics. Police had stopped a car after a phone call from a confidential informant indicated that the car's owner was in possession of cocaine. Mr. Fermaint was a passenger in the backseat of the car. The officer at the scene found "crumbs" of crack cocaine on the backseat and the car's owner - who was riding in the front passenger seat - had a bag of crack cocaine stuffed down her pants. Mr. Fermaint had only a personal address book and \$2 cash on him. Although officers testified that they observed "furtive movements" and witnessed Mr. Fermaint make a "bending movement" towards the woman in the front seat, the police report made no mention of those alleged movements and no one testified that they saw Mr. Fermaint hand anything to anyone in the car.

Nevertheless, because proving constructive possession for the purposes of revoking probation requires only a preponderance of the evidence, the trial court ruled Mr. Fermaint was in possession of narcotics. The court then revoked his probation.

As Mr. Fermaint's special public defender, Ms. Amarante appealed the ruling, arguing that there was insufficient evidence for the court to find that he was in possession of narcotics.

"This case really pushed the evidentiary boundaries as there was so little factual evidence tying my client to the possession," said Ms. Amarante. "And the appeals

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court saw that. It said his presence in the car was not enough. The furtive movements were not enough. The state simply hadn't proved its case."

Ms. Amarante is available for interviews. Copies of the opinion and dissent are also available.

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