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## YEAR 2005 CASE SUMMARIES

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By  
**The Honorable Pat Garza**

Associate Judge  
386th District Court  
San Antonio, Texas

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### **Baggie of marijuana and rolling papers found on front passenger floorboard was sufficient to establish affirmative link to driver of vehicle. [In the Matter of N.B.] (05-2-08)**

**On February 3, 2005, the Dallas Court of Appeals held (on stipulated evidence) that the smell of marijuana coming from vehicle, a baggie of marijuana ("later found to be approximately 3.26 grams") and rolling papers on the front passenger floorboard affirmatively linked respondent driver and establishes that the marijuana was a "usable quantity."**

05-2-08. In The Matter of N.B., MEMORANDUM, No. 05-04-00545-CV, 2005 Tex.App.Lexis 901 (Tex.App.– Dallas 2/3/05).

Facts: The police reports showed appellant driving an extended cab pick-up truck with two passengers. They were pulled over by police. Appellant was asked to exit the vehicle at which time one officer detected the odor of burnt marijuana coming from the truck. The front seat passenger was also asked to exit. The officers observed a plastic baggie of marijuana, later found to be approximately 3.26 grams, and rolling papers on the front passenger floorboard. This evidence affirmatively linked appellant to the marijuana in question and established that the marijuana was a "usable quantity." The evidence was sufficient to support the trial court's finding that he engaged in delinquent conduct by unlawfully possessing a usable quantity of marijuana.

Held: Affirmed

Memorandum Opinion: An individual possesses a controlled substance when he (i) exercises care, control, and management over the controlled substance and (ii) knows the matter is contraband. *Frierson v. State*, 839 S.W.2d 841, 848 (Tex. App.-Dallas 1992, pet. ref'd) (citing *Martin v. State*, 753 S.W.2d 384, 387 (Tex. Crim. App. 1988)). When the accused is not in exclusive [\*3] control or possession of the place where the contraband is found, the accused cannot be charged with knowledge and control over the contraband unless there are additional independent facts and circumstances affirmatively linking him to the contraband in such a manner and to such an extent that a reasonable inference may arise that he knew of the contraband's existence and exercised control over it. *Porter v. State*, 873 S.W.2d 729, 732 (Tex. App.-Dallas 1994, pet. ref'd). "Joint possession over a controlled substance in a vehicle may be established if the controlled substance is in open or plain view, there is a noticeable odor in the car, and the substance is conveniently accessible to the driver." *In re K.T.*, 107 S.W.3d 65, 72 (Tex. App.-San Antonio 2003, no pet.); see *Duff v. State*, 546 S.W.2d 283, 287 (Tex. Crim. App. 1977) (holding conflicting statements about trip, odor of marijuana emanating from car, and marijuana seeds on floorboard sufficient evidence to link appellant to contraband).

Although N.B. claims the evidence is legally and factually insufficient to show (i) he exercised care, control, and management over the marijuana [\*4] and (ii) that the amount of marijuana was a "usable quantity," we disagree. During the hearing, the State and N.B. "stipulated to the facts as stated in the police report(s)." The police reports show N.B. was driving an extended cab pick-up truck with Juan Manuel Briones and a third male passenger when they were pulled over by Corporal Stansell. Shortly thereafter, Officer Haak arrived to assist. According to the stipulated evidence, N.B. was asked to exit the vehicle at which time one officer detected the odor of burnt marijuana coming from the truck. Briones, the front seat passenger, was also asked to exit. The officers observed a plastic baggie of marijuana ("later found to be approximately 3.26 grams") and rolling papers on the front passenger floorboard. This evidence affirmatively links N.B. to the marijuana in question and establishes that the marijuana was a "usable quantity." See *In re K.T.*, 107 S.W.3d at 72; *Parson*, 432 S.W.2d at 91; see also *Duff*, 546 S.W.2d at 287. Thus, we conclude the evidence is legally and factually sufficient to support the trial court's finding that he engaged in delinquent conduct by unlawfully [\*5] possessing a usable quantity of marijuana. We overrule N.B.'s first and second issues.

Conclusion: We affirm the trial court's judgment