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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re R.D., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
R.D.,
Defendant and Appellant.

A144855
(Contra Costa County
Super. Ct. No. J14-01187)

Appellant R.D., a minor, appeals from a dispositional order issued after the juvenile court sustained allegations that appellant was a minor in possession of a firearm (Pen. Code, § 29610)¹ and was carrying a concealed firearm in a vehicle (Pen. Code, § 25400, subd. (a)(3))². On appeal, appellant argues the juvenile court’s findings that he

¹ “A minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person.” (Pen. Code, § 29610.)

² “A person is guilty of carrying a concealed firearm when the person . . . [c]auses to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.” (Pen. Code, § 25400, subd. (a)(3).)

had possession and knowledge of the firearm were not supported by substantial evidence. We agree, and reverse.

BACKGROUND

In February 2015, about 9:48 p.m., a police officer stopped a car without working license plate lamps.³ The officer described the location as a “high-crime, high-drug” area with “lots of shootings.” The driver was later identified as minor Eduardo B. Appellant was in the front passenger seat. Two adult males were in the back seat. All of the occupants denied having identification. Appellant gave the officer a false first name, although he provided his actual last name.

The police searched the car. A gun was found “directly under” the front passenger seat where appellant was sitting. The gun was “completely under the seat,” not visible until the police officers bent down to look under the seat. The gun was found with its handle toward the back of the car. A second firearm was found under the driver’s seat, with the handle toward the front of the car. Both guns were unloaded. A loaded magazine was found partially concealed in the fold of the back seat. The magazine matched the gun found under the driver’s seat. Appellant told the police the gun was not his.

At appellant’s request, the juvenile court took judicial notice of his juvenile court file. This file provided that in November 2014, appellant pled no contest to a charge of filing a false police report in connection with an incident involving Eduardo B. and another minor. In December 2014, appellant was placed on probation with conditions directing him to stay away from Eduardo B. and imposing a 7:00 p.m. curfew.

The contested jurisdiction hearings for appellant and Eduardo B. were heard together. The trial court sustained firearm possession allegations as to Eduardo B., finding them supported by the circumstantial evidence that he “was coming out of a high-crime area, there were two firearms in the vehicle, he is the driver, the placement of the

³ An untranscribed video of the stop recorded on a body camera worn by one of the police officers was introduced into evidence.

gun as testified to would circumstantially be that it would be by the grip, and it's underneath his seat." The court also sustained the allegations as to appellant, noting "[t]he evidence included that -- that [appellant] was basically sitting on the -- on the gun, and that it was directly underneath him. In looking at the exhibits, it appears that the gun was not near the back of the seat but more towards the middle -- in the middle area of the seat."

DISCUSSION

Where the sufficiency of the evidence is challenged on appeal, our review "is limited to determining whether substantial evidence supports the verdict. Substantial evidence is defined as evidence that is reasonable, credible, and of solid value. [Citation.] A reviewing court must accept logical inferences the jury might have drawn from the circumstantial evidence. [Citation.] "A reasonable inference, however, 'may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work. [¶] . . . A finding of fact must be an inference drawn from evidence rather than . . . a mere speculation as to probabilities without evidence.' " " (*People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1416-1417 (*Sifuentes*).) The same standard applies in juvenile proceedings. (*In re Roderick P.* (1972) 7 Cal.3d 801, 808-809.)

Appellant argues there was insufficient evidence that he had possession or knowledge of the gun found under his seat. "To establish constructive possession, the prosecution must prove a defendant knowingly exercised a right to control the prohibited item, either directly or through another person. [Citations.] Possession may be shared with others. [Citation.] But mere proximity to the weapon, standing alone, is not sufficient evidence of possession." (*Sifuentes, supra*, 195 Cal.App.4th at p. 1417.) " "With respect to the element[] of possession . . . , it has been held that knowledge is an element of the offense. [Citations.]' [Citation.] Knowledge of the presence of the weapon is therefore required." (*People v. Mills* (1992) 6 Cal.App.4th 1278, 1290, fn. 7; see also *People v. Jeffers* (1996) 41 Cal.App.4th 917, 922 ["[W]hether possession is actual or constructive, it must be intentional."].)

The parties primarily discuss four cases. Appellant relies on *In re Elisabeth H.* (1971) 20 Cal.App.3d 323 (*Elisabeth H.*), in which the defendant and four others were in a car that smelled of marijuana and marijuana was found in a jacket pocket on the car's front seat. (*Id.* at p. 326.) The Court of Appeal found insufficient evidence that the defendant possessed the marijuana: "There was no marijuana found in the actual possession of appellant, nor was there any marijuana debris found in her possession, nor was there any evidence that she had been using marijuana. The only marijuana found in the car was in a package in a boy's jacket lying on the front seat. The record is barren as to where the appellant was seated in the car." (*Id.* at pp. 330–331.) Appellant also points to *Sifuentes, supra*, in which the police found the defendant lying on a bed in a motel room. (*Sifuentes, supra*, 195 Cal.App.4th at pp. 1413–1414.) A gun was found under the mattress of a second bed, next to where another occupant was kneeling. (*Id.* at p. 1414.) The Court of Appeal found no substantial evidence that the defendant had the right to control the gun, noting "mere proximity to the weapon, standing alone, is not sufficient evidence of possession." (*Id.* at p. 1417.)

The People rely on *People v. Nieto* (1966) 247 Cal.App.2d 364 (*Nieto*), in which "guns were found under the front seat of [the] appellant's car at a time when he was driving the vehicle." (*Id.* at p. 368.) The court held, "[a]t the very least, this is circumstantial evidence supportive of a finding of joint or constructive possession, custody or control of the guns by appellant, and sufficient to sustain his conviction" for possessing the guns. (*Ibid.*) In *People v. Williams* (1971) 5 Cal.3d 211 (*Williams*), also cited by the People, the Court of Appeal held "sufficient circumstantial evidence existed from which the court could infer that defendant had dominion and control over, and knowledge of the presence of, the single tablet found in plain sight on the floor in front of the seat where he was sitting." (*Id.* at p. 215.) However, this evidence was not sufficient to support a finding that the defendant knew the tablet was a controlled substance. (*Ibid.*)

As the trial court noted, the gun was found directly under appellant's seat.⁴ However, "mere proximity to the weapon, standing alone, is not sufficient evidence of possession." (*Sifuentes, supra*, 195 Cal.App.4th at p. 1417.) In *Williams*, the contraband was in plain sight on the floor by the defendant's feet. (*Williams, supra*, 5 Cal.3d at p. 215.) In contrast, here the gun was not readily visible to a person sitting in the seat above it. There is no evidence appellant looked under the seat, reached under the seat, or made any gestures at all in that direction. This case is also unlike *Nieto*, in which the defendant was the owner and driver of the car. (*Nieto, supra*, 247 Cal.App.2d at p. 368.) Eduardo B. was the driver and apparently had the right to control the car, as he told the police he had the registration and insurance. There is no evidence connecting appellant to the car other than his presence, and no evidence as to how long he had been in the car. "The possibility [appellant] might have had the right to exercise control over the gun does not by itself provide a basis to infer he had the right to control it." (*Sifuentes, supra*, 195 Cal.App.4th at p. 1419.)

The People argue appellant and Eduardo B. were "known criminal associates who had committed prior crimes together," and contend the court can reasonably infer from this "that the two boys knew about the guns under their seats." The People overstate the record, which discloses solely that appellant admitted to filing a false police report in an incident involving Eduardo B. There is no evidence that this incident involved guns or other weapons. The probation report for that offense indicates appellant told the police that he knew Eduardo B. from school "but only hung out with [him] occasionally." This

⁴ In sustaining the allegations with respect to Eduardo B., the trial court relied on the fact that the gun found under Eduardo B.'s seat had the handle closer to the front of the car. We agree with the trial court that this position suggests the person who placed the gun had been sitting in the driver's seat. In contrast, the gun found under appellant's seat was facing the opposite direction, with the handle closer to the back of the car. Although we do not find this positioning compels the inference that appellant did not place the gun found under his seat, we note that the inference relied on by the trial court in Eduardo B.'s case is not available in appellant's case.

evidence is not sufficient to give rise to a reasonable inference that appellant knew about the gun in Eduardo B.'s car, much less that he constructively possessed it.

Finally, the People point to appellant's provision of a false first name to the police. In the video recording of the stop, after appellant's arrest an officer asks why he previously provided a false name, and appellant responds that he did so because he was on probation. It is undisputed that, when the police stopped Eduardo B.'s car, appellant was violating his probation by being out after 7 p.m. and associating with Eduardo B. "While it is said that a false [statement] tends to establish a consciousness of guilt [citation], the logical force of this deduction is weakened when there is some plausibility to the defendant's subsequent explanation of the reason for the falsehood." (*People v. Blakeslee* (1969) 2 Cal.App.3d 831, 839.)

"Substantial evidence is defined as evidence that is reasonable, credible, and of solid value." (*Sifuentes, supra*, 195 Cal.App.4th at p. 1416.) Appellant's mere proximity to the gun is not sufficient. (*Id.* at p. 1417.) The additional evidence that appellant admitted to filing a false police report in an incident involving Eduardo B. and provided a false first name to the police—which he later explained was because he was on probation at the time of the vehicle stop—is still not sufficient to constitute substantial evidence that appellant knew the gun was present in the car and constructively possessed it.

DISPOSITION

The judgment is reversed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

(A144855)