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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK RAY RIVERA, JR.,

Defendant and Appellant.

2d Crim. No. B249912
(Super. Ct. No. 2012007269)
(Ventura County)

Frank Ray Rivera, Jr., appeals from the judgment entered after his conviction by a jury of possession for sale of methamphetamine (Health & Saf. Code, § 11378); possession for sale of alprazolam, the generic form of Xanax (*Health & Saf. Code*, § 11375, subd. (b)(1)); two counts of possession of a firearm by a convicted felon (Pen. Code, § 29800, subd. (a)(1));¹ and two counts of possession of ammunition by a person prohibited from possessing a firearm. (§ 3035, subd. (a)(1).) The jury found true an allegation that, during the commission of one of the drug offenses, appellant had been personally armed with a firearm. (§ 12022, subd. (c).) The jury also found true allegations that, at the time of the commission of three of the offenses, appellant had been released from custody on bail. (§ 12022.1, subd. (b).) Appellant was sentenced to prison for 11 years, 4 months. In another case, his probation was revoked and he was sentenced

¹ Unless otherwise stated, all statutory references are to the Penal Code.

to prison for a consecutive term of 8 months. Thus, his total prison sentence on both cases was 12 years.

Appellant contends that the evidence is insufficient to show that he knowingly possessed the drugs, firearms, and ammunition that he was convicted of possessing. We affirm.

Offenses Committed in February 2012

On February 25, 2012, appellant committed the offenses of possession for sale of methamphetamine, possession of a firearm by a convicted felon, and possession of ammunition by a person prohibited from possessing a firearm. On that date at about 2:00 p.m., Officer Moses Martinez arrested a man named Correa pursuant to an arrest warrant. Correa was walking a dog, so Martinez and two other police officers took the dog back to Correa's residence in Oxnard. Martinez knocked on the door; a man named Koen opened it. Martinez recognized Koen as "the other individual [he] wanted to arrest on the warrant." Koen looked at Martinez, closed the door, and locked it. Martinez heard people "running around inside" and "doors opening and closing." After about 10 to 15 seconds, the officers forced entry.

The officers conducted "a quick protective sweep" of the residence. Appellant and a female, Bridget Escamilla, walked out of the master bedroom. Another female walked out of a different bedroom. Inside the closet of the master bedroom, the officers found a loaded magazine for a pistol. Under the bed, they found crystal methamphetamine.

After a search warrant was issued, the officers conducted an extensive search of the master bedroom. Inside the drawers of a nightstand, they found letters addressed to appellant at the Oxnard residence and a wallet containing his driver's license. Between the bed and a bookshelf, they found paperwork in appellant's name. Next to the methamphetamine under the bed, they found a prescription for penicillin in his name. Also under the bed were several boxes of shotgun ammunition and a Time Warner Cable box addressed to appellant. The master bedroom closet contained an unloaded handgun, three loaded magazines, a small baggie of methamphetamine, and boxes for men's shoes. There was no female clothing in the master bedroom. Officer Martinez testified that he

found nothing "to indicate that anyone besides [appellant] lived . . . in [the] . . . master bedroom." There was no paperwork in any other person's name.

A silver Chevrolet Impala was parked in the driveway of the residence. The day before appellant's arrest, Officer Martinez made a traffic stop of the vehicle. Appellant was the driver.

Offenses Committed in April 2012

On April 13, 2012, appellant committed the offenses of possession for sale of alprazolam (Xanax), possession of a firearm by a convicted felon, and possession of ammunition by a person prohibited from possessing a firearm. The day before, Deputy Eduardo Malagon was conducting surveillance on a residence in Port Hueneme. The same silver Chevrolet Impala that had been parked outside appellant's Oxnard residence was parked in the driveway of the Port Hueneme residence. Appellant walked out of the Port Hueneme residence, used a key to open the Impala's trunk, put a "backpack" inside the trunk, and closed it. He then walked back toward the front door of the residence until he was out of Malagon's view.

The following day, Deputy Malagon and other deputies returned to the Port Hueneme residence with a search warrant. After entering the residence, they searched appellant's person. In his pocket they found the keys to the Impala. Other persons were inside the residence. Malagon did not "find any other set of keys [for the Impala] in the house or in anyone[] [else's] possession."

The Impala was still parked in the driveway. The deputies unlocked the vehicle and searched it. They found a "duffle bag" in the back seat. It contained male clothing and 149 alprazolam pills. A revolver was underneath the driver's seat. It contained "six live rounds of ammunition."

In the center console of the Impala, Deputy Malagon found a "Metro PCS request form" addressed to appellant and "two Ventura County Superior Court minute orders with [appellant's] name on it." The vehicle did not contain paperwork bearing the name of any other person. Deputy Malagon testified that, during his search of the Impala and

Port Hueneme residence, he had found nothing "that indicated either anyone in the house or anyone else other than [appellant] had any belongings in the vehicle."

Standard of Review

"The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] . . . A reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support' " the jury's verdict. [Citation.]' [Citation.]" (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

"We "must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]" [Citation.] "Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.]" [Citation.] Where the circumstances reasonably justify the trier of fact's findings, a reviewing court's conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment's reversal. [Citation.]" [Citation.]" (*People v. Manibusan, supra*, 58 Cal.4th at p. 87.) "We do not reweigh evidence or reevaluate a witness's credibility. [Citation.]" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, disapproved on another ground in *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

Discussion

One may become criminally liable for possession of a weapon or controlled substance based upon either actual or constructive possession. (*People v. Thomas* (2012) 53 Cal.4th 1276, 1284.) "A defendant has actual possession when the weapon [or controlled substance] is in his immediate possession or control. He has constructive

possession when the weapon [or controlled substance], while not in his actual possession, is nonetheless under his dominion and control, either directly or through others. [Citations.]" (*People v. Pena* (1999) 74 Cal.App.4th 1078, 1083-1084.) The defendant must "knowingly exercise[] control or the right to control the object. [Citation.]" (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831.) "Possession may be shared with others. [Citation.]" (*People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1417.) "[P]ossession may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another. [Citation.]" (*People v. Williams* (1971) 5 Cal.3d 211, 215.)

Substantial evidence supports the jury's finding that appellant knowingly exercised dominion and control over the firearm, ammunition, and methamphetamine in the master bedroom of the Oxnard residence. In his reply brief, appellant concedes that "it can be deduced from the evidence that [he] resided in the master bedroom." It is reasonable to infer that the female who walked out of that bedroom was a visitor and that appellant was the bedroom's sole occupant. There was no female clothing in the master bedroom. Letters, a driver's license, a prescription, and other paperwork bore appellant's name. Nothing found in the master bedroom suggests that anyone else was living there. A reasonable trier of fact could infer that Koen lived in the separate bedroom where the police found paperwork in his name.

Substantial evidence also supports the jury's finding that appellant knowingly exercised dominion and control over the firearm, ammunition, and alprazolam pills in the Impala parked outside the Port Hueneme residence. Two months earlier, appellant had been driving the same vehicle when Officer Martinez stopped it for a traffic violation. Before searching the Impala, deputies found the keys in appellant's pocket. The vehicle's center console contained paperwork bearing appellant's name. There was no paperwork bearing the name of any other person. The day before the police searched the vehicle, Deputy Malagon saw appellant open the Impala's trunk and put a backpack inside.

Appellant contends that the other persons in the Port Hueneme residence "had the opportunity of equal access" to the Impala. But appellant does not cite any evidence in the record supporting this contention. Deputy Malagon testified that he had found nothing "that indicated either anyone in the house or any else other than [appellant] had any belongings in the vehicle." Malagon did not "find any other set of keys [for the Impala] in the house or in anyone[] [else's] possession."

Disposition

The judgment is affirmed.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Patricia M. Murphy , Judge
Superior Court County of Ventura

William Paul Melcher, under appointment by the Court of Appeal, for
Defendant and Appellant.

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