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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

THE PEOPLE, Plaintiff and Respondent, v. JERROLD JAY HOWE, Defendant and Appellant.	C086341 (Super. Ct. No. P13CRF0320)

A jury convicted defendant Jerrold Jay Howe of (1) possession of materials or substances with the intent to make an explosive or destructive device, (2) unlawful possession of an explosive, and (3) resisting, obstructing, or delaying a peace officer. The trial court sentenced defendant to a term of three years, with two years six months suspended; it ordered him to serve six months in county jail with mandatory community supervision for the remainder of his sentence.

Defendant now contends his possession convictions must be reversed because there is insufficient evidence that he lacked permits for the explosive materials and

devices found at his home. Because substantial evidence supports the convictions, we will affirm the judgment.

BACKGROUND

In June 2013, El Dorado County Sheriff's deputies responded to a report of possible domestic violence at defendant's home between his daughter and her fiancé. While investigating the domestic dispute, defendant's former wife alerted a deputy to something in the garage. In the home's attached and detached garages, deputies found numerous chemicals and compounds, including potassium nitrate, black powder, and sulfur, which could be used to make explosives. The garages also contained a ball mill to break down substances into finer powders, exploding targets, and fuses. When asked about the chemicals in the garage, defendant said he made "rocket motors, [] pyrotechnics, fireworks, and had made his own gunpowder."

The deputies evacuated the residents, but defendant ran upstairs and was uncooperative. He was eventually tasered and handcuffed. After being read his *Miranda*[1] rights, defendant told Deputy Jordan Thomson that he made exploding targets using potassium perchlorate, sulfur, and aluminum. When Deputy Thomson asked defendant whether he needed a permit or whether he went to school to make such devices, defendant responded, "No, nobody's ever said anything about it. [¶] . . . [¶] But, maybe it might require it, I've never ever even inquired about it, okay?"

While being transported to the hospital to remove the taser darts, defendant overheard officers discussing the chemicals found in the garage. He began explaining the purpose of the chemicals. He said one container with yellow powder contained pure sulfur, and another contained black powder; he made his own black powder "to set off

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[1] *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

cannons." Deputy Jared Melton estimated that defendant could have made three pounds of black powder in addition to the two pounds found the garage.

At trial, Deputy Melton testified that a permit is required to possess more than one pound of black powder given its highly volatile nature. Although Deputy Melton searched the garage where the chemicals were located, he did not see a permit. Defendant did not present any evidence.

The jury convicted defendant of possession of materials or substances with the intent to make an explosive or destructive device (Pen. Code, § 18720 -- count one),[2] unlawful possession of an explosive (Health & Saf. Code, § 12305 -- count two), and resisting, obstructing, or delaying a peace officer (§ 148, subd. (a)(1) -- count three). The trial court sentenced him to the midterm of three years on count one, a concurrent term of two years on count two, and 120 days in county jail on count three to be served consecutively to count one. The trial court suspended two years six months of the sentence pursuant to section 1170, subdivision (h), and ordered defendant to serve six months in county jail plus mandatory community supervision for the remainder of his sentence.

DISCUSSION

Defendant contends insufficient evidence supports his convictions for the possession offenses charged in counts one and two. He argues the prosecutor failed to prove that he did not have a valid permit, which he contends was an element of each offense. The People counter that although the trial court instructed the jury that the People had the burden to prove the lack of permits, the existence of a permit is an affirmative defense which defendant failed to prove at trial. But regardless of who bore

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[2] Undesignated statutory references are to the Penal Code.

the burden of proof in the trial court, substantial evidence supports the possession convictions.

When considering a sufficiency of the evidence challenge, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Rangel* (2016) 62 Cal.4th 1192, 1212.) We determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Ibid.*; *People v. Small* (1988) 205 Cal.App.3d 319, 324-325.) In so doing, we presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*Rangel*, at p. 1213.) " 'We may conclude that there is no substantial evidence in support of conviction only if it can be said that on the evidence presented no reasonable fact finder could find the defendant guilty on the theory presented. [Citation.]' " (*People v. Campbell* (1994) 25 Cal.App.4th 402, 408.)

Section 18720 provides in relevant part: "Every person who possesses any substance, material, or any combination of substances or materials, with the intent to make any destructive device or any explosive without first obtaining a valid permit to make that destructive device or explosive, is guilty of a felony."

Health and Safety Code section 12305 provides: "Every person not in the lawful possession of an explosive who knowingly has any explosive in his possession is guilty of a felony." " 'Lawful possession of an explosive,' " in turn, means "possessing explosives in accordance with the stated purpose and conditions of a valid permit obtained pursuant to the provisions of this part, unless such person is specifically excepted from the permit requirements by the provisions of this part." (Health & Saf. Code, § 12303.)

Here, there is substantial evidence indicating defendant did not have the required permits. Deputy Melton testified that he did not see a permit during his investigation.

And defendant told the officers nobody had ever told him about the need for permits and he had never inquired about them. Although defendant views the evidence in the light most favorable to himself, we must view it in the light most favorable to the judgment. (*People v. Rangel*, *supra*, 62 Cal.4th at p. 1212.) Viewed in that light, sufficient evidence supports his convictions.

DISPOSITION

The judgment is affirmed.

/S/
MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
HULL, J.