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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re I.A., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

I.A.,

Defendant and Appellant.

E056765

(Super.Ct.No. J237486)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Affirmed.

Maureen M. Bodo, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,
Barry Carlton and Jennifer B. Truong, Deputy Attorneys General, for Plaintiff and
Respondent.

A juvenile wardship petition was filed alleging that defendant and appellant I.A. (minor) committed misdemeanor vandalism (Pen. Code, § 594, subd. (b)(2)(A), count 1)¹, and second degree commercial burglary (§ 459, count 2). Minor admitted the allegation in count 1, and the juvenile court dismissed count 2 upon the People's motion. The court declared minor a ward and placed him on probation in his parents' custody under the terms recommended by the probation department. Subsequently, minor admitted to violating his probation on two different occasions. The court continued minor on probation in his parents' custody.

The district attorney filed a subsequent juvenile wardship petition, alleging that minor committed first degree residential burglary. (§ 459.) Minor admitted the allegation. The court continued minor on probation with additional terms, in the custody of his parents. A probation violation petition was thereafter filed, alleging that minor associated with a known probationer and was in possession of a shotgun, ammunition, and a manufactured weapon. Minor denied the allegations, and a hearing was held. The court found the allegations true and found that minor had violated his probation. The court continued minor as a ward and ordered placement in a foster care facility.

On appeal, minor contends that: (1) there was insufficient evidence to support the finding that he willfully violated his probation by possessing weapons; (2) there was insufficient evidence that he willfully violated his probation by associating with other

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

probationers; and (3) the court abused its discretion in failing to make an individualized determination that he violated his probation. We affirm.

FACTUAL BACKGROUND

Minor and another individual, D.G., were both on probation. Officer Ronald Goble knew both of them and had spoken with them several times. He specifically told them they could not hang out together since they were both on probation.

Officer Goble was familiar with minor's residence (the residence) because he had been there approximately 10 to 15 times. On June 6, 2012, he went to the residence at 11:20 a.m. As he approached it, he could hear several people talking in the patio area, including D.G. He looked through a crack in the wood fence and saw D.G. and six other juveniles. D.G. was holding a shotgun, and he told the group he was going to hide the shotgun behind a piece of wood that he was standing near. Officer Goble entered the patio within six or seven seconds of seeing D.G. with the shotgun. Upon entering the patio, Officer Goble immediately noticed a "pellet rifle" behind the piece of wood where D.G. said he was going to hide the shotgun. Minor was standing about eight feet away from D.G., and eight to nine feet away from the pellet rifle and shotgun.

The shotgun that D.G. was holding had shells affixed to the top of it. Officer Goble also discovered a tree trimmer attached to a golf club handle in the storage closet on the patio. The storage closet was open.

Officer Goble spoke with D.G., and D.G. told him that he came to the residence at approximately 10:00 a.m. because he was going to go to school with minor's brother. D.G. said that the weapons were not his, and that he was just looking at them.

ANALYSIS

I. The Juvenile Court Properly Found That Minor Violated His Probation

Minor argues there was insufficient evidence to support the court's finding that he violated his probation by possessing weapons and associating with a known probationer.

We disagree.

A. *Standard of Review*

In juvenile court, probation violations need only be proved by a preponderance of the evidence. (Welf. & Inst. Code, § 777, subd. (c); *People v. Rodriguez* (1990) 51 Cal.3d 437, 446 (*Rodriguez*)). Courts "are granted great discretion in determining whether to revoke probation." (*Rodriguez*, at p. 445.)

Moreover, where a defendant challenges the sufficiency of the evidence supporting a court's finding that a defendant has violated probation, and "where the trial court was required to resolve conflicting evidence, review on appeal is based on the substantial evidence test. Under that standard, our review is limited to the determination of whether, upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court's decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision." (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849 (*Kurey*), fns. omitted.)

B. There Was Sufficient Evidence to Support the Court's Finding That Minor Was in Possession of Weapons

One of minor's probation conditions stated that he was "[n]ot [to] possess any dangerous or deadly weapons, including but not limited to any knife, gun, or any part thereof, ammunition, . . . dagger or any weapon or explosive substance or device" (Term No. 24.)

Minor contends that there was no evidence presented to prove where the shotgun and pellet rifle came from or how long they had been there. He further argues that there was no evidence he knew where the weapons were on the patio, or that he possessed any of the weapons. We disagree.

"Possession may be actual or constructive. Actual possession means the object is in the defendant's immediate possession or control. A defendant has actual possession when he himself has the weapon. Constructive possession means the object is not in the defendant's physical possession, but the defendant knowingly exercises control or the right to control the object. [Citation.]" (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831 (*Daniel G.*)). "It is necessary to a finding of either actual or constructive possession that the accused had the right to exercise dominion and control over the contraband or at least that he had the right to exercise dominion and control over the place where it was found. [Citations.]" (*People v. Valerio* (1970) 13 Cal.App.3d 912, 921 (*Valerio*)). "The fact of possession may be established by circumstantial evidence and any reasonable inferences drawn therefrom. It is also well settled that exclusive possession or control is not necessary. [Citation.]" (*People v. Rice* (1976) 59 Cal.App.3d 998, 1003 (*Rice*)).

Here, the weapons were found at minor's residence. It was reasonable for the court to infer that minor had the right to exercise dominion and control over the premises where the weapons were found. (*Valerio, supra*, 13 Cal.App.3d at p. 921; see also *People v. Rushing* (1989) 209 Cal.App.3d 618, 622.) Moreover, minor was in the patio area of the residence when D.G. was holding the shotgun and saying that he was going to hide it behind a piece of wood on the ground. Minor was standing only about eight feet away from D.G., and eight to nine feet away from the shotgun and the pellet rifle that was under the piece of wood. Given his close proximity to D.G., it was reasonable to infer that minor at least knew where the shotgun was. We note that it is of no consequence where the shotgun and pellet rifle came from or how long they had been there, since "possession for even a limited time and purpose may be sufficient. [Citation.]" (*Daniel G., supra*, 120 Cal.App.4th at p. 831.)

In light of the evidence, the court could reasonably conclude by a preponderance of the evidence that minor was in constructive possession of the weapons. (*Rice, supra*, 59 Cal.App.3d at p. 1003.) We conclude that the court properly found that minor violated probation term No. 24.

C. There Was Sufficient Evidence to Support the Court's Finding That Minor Associated With a Known Probationer

Even if the evidence was not sufficient to find that minor violated term No. 24, the court still properly found minor in violation of his probation. Term No. 30 stated that he was "[n]ot [to] associate with any person he/she personally knows to be a probationer, parolee, or gang member."

Minor claims there was no evidence that he willfully associated with D.G., a known probationer. He argues that since D.G. went to his house to go to school with his brother, there was no evidence that minor knew D.G. was coming over, that he knew of D.G.'s presence at his home, or that D.G. was there to associate with him.

The evidence showed that D.G. was at minor's house when Officer Goble arrived at 11:20 a.m. D.G. had been there since 10:00 a.m. Thus, D.G. was at minor's house for almost one and one-half hours that morning. Minor and D.G. were standing only eight feet apart when Officer Goble observed them on the patio. Officer Goble testified that he had told them on many occasions that they could not hang out with each other since they were both on probation. The evidence thus indicates that minor and D.G. were friends, or at least used to hang out with each other. In light of the evidence of their relationship, how long D.G. was at minor's house that morning, and their close proximity on the patio, it was reasonable for the court to infer that they were associating with each other that morning.

Furthermore, we reject minor's sufficiency claim, since it amounts to no more than a request that we reweigh the evidence and substitute our judgment for that of the trier of fact. That is not the function of a reviewing court. (*People v. Xiong* (2013) 215 Cal.App.4th 1259, 1268.) The juvenile court heard the evidence that D.G. went to the residence to go to school with minor's brother. It apparently did not believe D.G.'s reason for being there, or did not believe that such reason precluded a finding that minor associated with D.G. that morning. We must give great deference to the trial court. (*Kurey, supra*, 88 Cal.App.4th at p. 848.) Moreover, D.G.'s explanation that he was just

there to see minor's brother, at best, merely conflicted with the evidence that D.G. also associated with minor. We must resolve this conflict in favor of the court's decision.

(Ibid.)

We conclude there was sufficient evidence that minor violated the probation conditions that he not possess any dangerous or deadly weapons, and that he not associate with a known probationer.

II. The Juvenile Court Properly Exercised Its Discretion in Ordering Placement

Minor next claims that the court failed to make an "individualized determination" with respect to the probation violation findings and the dispositional order. He asserts that the court failed to consider the facts and circumstances of his case "as distinguished from those of D.G.'s case" and, thus, abused its discretion in revoking his probation and ordering him to placement. We see no abuse of discretion.

A. *Background*

The hearing on July 12, 2012, was a probation violation hearing for minor and a jurisdictional hearing for D.G. Both minor and D.G. waived their rights to have confidential hearings and agreed to have their hearings held at the same time. Both counsel agreed and joined in the waivers. The prosecutor stated that the same evidence was going to be used against both minors, and the parties proceeded.

After hearing the testimonies of Officer Goble and Ybon Corta, the probation officer of both minor and D.G., the court addressed D.G. and found the allegations true that he was in possession of a shotgun, and in possession of live ammunition. After some discussion with D.G.'s counsel, the court then addressed minor's case, as follows:

“As to [minor], the petition pending before the Court is a probation violation petition. [¶] The Court after hearing the evidence finds it to be true, A1. And A2, the association, I don’t think there’s really any doubt he was associating with another person on probation; along with being around weapons, violation of Term No. 24. So Term No. 24 and Term 30. A1, A2 found to be true. Refer to probation. [¶] I don’t know if I made a similar statement to [minor] before, did I?” [Counsel responded that he did not know.] [¶] People requested placement last time. I think he’s going to be in the same position that he’s—last time he was here I said placement or more time in custody. He ended up with 65 days in jail. So also for him we’re going to need placement terms.”

B. The Court Properly Found That Minor Violated His Probation, and It Properly Ordered Placement

Minor asserts that “all minors coming before the juvenile court are entitled to individualized consideration, based on the specific facts of his or her case.” He proceeds to argue that the court here “failed to consider the facts and circumstances of [his] case as distinguished from those of D.G.’s case.”

At the outset, we point out that minor specifically waived his right to have a confidential hearing and agreed to have his hearing held at the same time as D.G.’s, knowing that the same evidence was going to be used against both minors.

As minor admits, he has “not found any case saying that a determination of whether a minor has violated the terms of his probation must be individualized” In other words, he has not cited any authority establishing that the court was precluded from relying on the same facts to determine the delinquent conduct of both him and D.G. To

the contrary, the same facts can implicate two juveniles when the facts of their cases involve each other, and a court may rely on the same facts when determining the juveniles' violations. (See *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1474-1476 (*Jose M.*) [the court held a joint trial for two juveniles and considered the same facts in determining whether the allegations against them were true].)

Here, the court found true the allegations that minor violated his probation by possessing weapons and associating with a known probationer. The evidence showed that D.G. was seen holding a shotgun at minor's residence, and D.G. was the known probationer with whom minor was associating. The facts establishing minor's probation violations necessarily involved D.G. and overlapped with the facts establishing the allegations against D.G. The court properly relied on the same facts in finding that minor violated his probation. (*Jose M., supra*, 21 Cal.App.4th at pp. 1474-1476.) Moreover, there was sufficient evidence establishing the probation violations. (See *ante*, § I.) Therefore, the court properly found minor in violation of his probation.

Minor also asserts that his probation conditions did not prohibit him from "being around weapons," as the court stated in its finding that he violated term No. 24. The court here simply appeared to misstate the probation condition, as minor suggests. In any event, the evidence supported the finding that minor was in possession of weapons. (See *ante*, § I.) Thus, any error in the court misstating the probation condition did not prejudice minor.

Additionally, minor argues that the court abused its discretion with regard to its disposition order. He asserts that, without distinguishing between his conduct and that of D.G., the court simply “made the same dispositional order for [minor] that it had just made for D.G.” Minor’s claim is meritless. The court recalled that the last time minor was before the court, the People requested placement and the court had said he would receive “placement or more time in custody.” The court indicated that minor “ended up with 65 days in jail” last time, so this time it ordered placement. Moreover, the court reviewed the probation officer’s report and recommendation to place minor in a foster care facility. The report stated that minor had previously been placed in the custody of his parents, and that proved to be ineffective. Minor already had two other probation violations and had served 65 days in custody, yet his behavior kept “spiraling downward.” After being released from serving the 65 days in custody, minor was arrested just five days later on the current violation. The probation officer noted that minor had been given several chances, and that probation had “exhausted all options” in trying to deter him from further delinquent activity. Considering these circumstances, the court properly exercised its discretion in revoking probation and placing minor in foster care.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.