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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DELIA AGUAYO,

Defendant and Appellant.

E062423

(Super.Ct.No. FVI1303259)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Marilyn George and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Delia Aguayo appeals her conviction for possession of a firearm and possession of ammunition by a felon. (Pen. Code, §§ 29800, subd. (a), 30305, subd. (a)(1).)¹ She contends that there is insufficient evidence that she exercised dominion and control over the items. We disagree, and we will affirm the judgment.

PROCEDURAL HISTORY

Defendant was charged with one count of violation of section 29800, subdivision (a)—possession of a firearm by a felon—and one count of violation of section 30305, subdivision (a)(1)—possession of ammunition by a person barred from owning or possessing a firearm. The information also alleged that defendant had served two prior prison terms within the meaning of section 667.5, subdivision (b). A jury convicted her on both counts, and the trial court separately found the prison prior allegations true. The court sentenced defendant to a term of five years eight months. Defendant filed a timely notice of appeal.

FACTS

In October 2013, defendant lived in a detached garage, about five feet by 10 feet in area, on McKinley Way in Victorville. The owner of the premises was a friend of defendant's. Raul Magdalena apparently lived there as well, although the evidence does not specifically address that question. On October 6, 2013, sheriff's deputies went to that address to conduct a probation check on someone named Herrera. They received information that Magdalena might be dealing drugs. Accordingly, they went to the

¹ All statutory citations refer to the Penal Code.

garage to speak to him. As they approached the garage, defendant came out of the side door of the garage. Upon entering the garage, deputies noticed a shotgun and a box of shotgun shells adjacent to the television in the small living area. Two .357-caliber rounds and one .223-caliber round were also found in the garage, as were cash, drugs and a scale. Magdalena appeared to be trying to hide the drugs when the deputies entered. Magdalena escaped before he could be placed under arrest. Defendant was arrested on suspicion of drug trafficking, but was ultimately charged only with possession of the shotgun and the ammunition.

At trial, the parties stipulated that defendant had a prior felony conviction.

LEGAL ANALYSIS

SUBSTANTIAL EVIDENCE SUPPORTS THE VERDICTS

Section 29800 provides, in pertinent part, “Any person who has been convicted of a felony . . . and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.” (§ 29800, subd. (a)(1).) Section 30305 provides, in pertinent part, “No person prohibited from owning or possessing a firearm . . . shall own, possess, or have under custody or control, any ammunition or reloaded ammunition.” (§ 30305, subd. (a)(1).)

Defendant contends that the evidence is insufficient to prove beyond a reasonable doubt that she possessed or had either the shotgun or any of the ammunition under her custody and control. “Our review of this issue 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.’” [Citations.]” (*People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1416-1417 (*Sifuentes*).

Possession may be actual or constructive. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831.) A defendant has actual possession when he himself has the prohibited item. (*Ibid.*) Here, the prosecution relied exclusively on constructive possession. 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.” (*Ibid.*) Constructive possession may also be found where the defendant had the right, exclusively or nonexclusively, to exercise dominion and control over the place where the item was found (*People v. Rushing* (1989) 209 Cal.App.3d 618, 622), or where the item is “immediately accessible to [multiple persons] in a place under their control” (*People v. Austin* (1994) 23 Cal.App.4th 1596, 1609, disapproved on another point in *People v. Palmer* (2001) 24 Cal.4th 856, 861, 867).

Here, defendant occupied a five-by-10-foot garage where the shotgun and the shotgun shells were in plain view and immediately accessible to anyone in the garage. (It is less clear where the other ammunition was located.) Defendant had either exclusive control over the area where the items were found, or had shared control with Magdalena. This evidence reasonably supports the inference that defendant had constructive

possession of both items. (*People v. Rushing, supra*, 209 Cal.App.3d at p. 622; *People v. Austin, supra*, 23 Cal.App.4th at p. 1609.)

Citing *Sifuentes, supra*, 195 Cal.App.4th 1410, at page 1417, defendant contends that “mere proximity” to a gun is insufficient to prove that the defendant had constructive possession. In that case, Sifuentes, a known gang member and convicted felon, was charged with illegal possession of a firearm. Sifuentes was in a motel room with a fellow gang member named Lopez and two women. When police entered the room, Sifuentes was lying on one bed; Lopez was kneeling on the floor on the far side of the other bed. The gun was found under the mattress of Lopez’s bed. There was evidence that gang members often share guns, known as “gang guns,” but there was no evidence that this particular gun was a communal gang gun, as opposed to Lopez’s personal property, nor was there any evidence concerning Sifuentes’ right to control that gun. (*Id.* at pp. 1418-1419.) In the absence of evidence that Sifuentes had the right to exercise control over the gun, the court held, his proximity to the gun was insufficient to prove that he constructively possessed the gun. (*Id.* at p. 1419.) In this case, however, there is more than mere proximity: The gun was in an area of defendant’s residence that was under her control and the gun was readily accessible. In *Sifuentes*, in contrast, although the gun was in a room over which Sifuentes generally had equal dominion and control, the gun itself was in an area controlled exclusively by Lopez—under the mattress of Lopez’s bed.

Defendant argues that the evidence supports the conclusion that Magdalena had sole possession of the shotgun and ammunition because a deputy testified that a person engaged in drug sales might have a weapon for protection. Defendant contends that there was no evidence that she participated in the drug sales or that she in any way exercised dominion and control over the drugs or had the right to do so. She contends that this evidence supports the conclusion that the shotgun and ammunition were Magdalena's and that she was not even constructively in possession of those items. That is certainly an inference that could be drawn from the evidence. However, the evidence also supports the inference that defendant *was* involved in the drug sales—Magdalena was apparently preparing the drugs for sale in defendant's tiny residence, with her knowledge and in an area under her control. In the absence of any evidence to the contrary, reasonable jurors could conclude that she was involved in Magdalena's activities. Accordingly, the evidence also supports the inference that defendant constructively possessed the shotgun and the ammunition on that basis as well. Where the evidence reasonably supports more than one inference, any reasonable inference drawn by the trier of fact must prevail.

(Escobar v. Flores (2010) 183 Cal.App.4th 737, 752.)

DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.