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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD JAMES ODELL,

Defendant and Appellant.

F062979

(Super. Ct. No. BF134685A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. John S. Somers, Judge.

Sylvia Koryn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Alice Su, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Kane, J. and Peña, J.

## **INTRODUCTION**

Appellant Ronald James Odell challenges his convictions for transportation of methamphetamine, possession of methamphetamine, and possession of marijuana on the grounds the evidence was insufficient to establish he had knowledge of and exercised dominion and control over the controlled substances. He also contends the trial court erred when it failed to instruct sua sponte that mere proximity to controlled substances is not sufficient to constitute constructive possession. Finally, he claims his conviction for driving on a suspended license should be reversed because the trial court erred when it refused to instruct on the defense of necessity. We reject Odell's contentions and will affirm the judgment.

## **FACTUAL AND PROCEDURAL SUMMARY**

The evening of November 26, 2010, California Highway Patrol Officers Eric Martinez and Mark McGary were on patrol in Kern County. Martinez saw a gray Toyota Corolla make a right turn and then stop beyond the limit line at a red light. Martinez activated his vehicle's front red lights to effectuate a traffic stop; the Toyota accelerated onto an onramp. After the Toyota accelerated, Martinez activated his siren. The Toyota eventually stopped and Martinez pulled up behind it.

When Martinez walked up to the Toyota, Odell was in the driver's seat. There were no other occupants in the Toyota. Odell was leaning back in the seat, his eyes were partially closed, and his hand was up at his chest area. Odell told Martinez he was having a medical issue and the officers radioed for an ambulance. Odell was transported to the hospital around 11 p.m.

After the ambulance arrived and Odell had been placed on the gurney for transport, the officers conducted an inventory search of the Toyota. Odell was not the registered owner of the Toyota and nothing with his name was found in the vehicle.

When the vehicle was searched, a cigarette package was on the center console between the driver and passenger seats. Inside the package were a baggie of

methamphetamine and a baggie of marijuana. The package was within inches of where Odell had been sitting in the Toyota. The weight of the marijuana was determined to be .7 grams; the weight of the methamphetamine was determined to be 2.08 grams, a usable amount.

After searching the Toyota, Martinez and McGary went to the hospital. It was determined that Odell was not suffering from any medical issues. Martinez and McGary transported Odell from the hospital to the jail, where he was booked.

Odell was charged with transportation of methamphetamine (count 1), possession of methamphetamine (count 2), possession of marijuana (count 4), and driving on a suspended license (count 3). It also was alleged as to count 1 that Odell had suffered three prior controlled substance related convictions within the meaning of Health and Safety Code section 11370.2, subdivision (a).

Odell asked to bifurcate the trial; his request was granted. The parties stipulated that Odell knew methamphetamine was a controlled substance.

At trial, Catherine Stoy testified she and Odell previously were in a romantic relationship and had remained friends. Stoy was Odell's primary source of transportation. The evening of November 26, 2010, Stoy had taken Odell to someone's house, where she saw the Toyota parked at that house. Someone at the house was going to give Odell a ride home. Stoy testified she had seen a woman she knew as Nicole drive the Toyota on at least six occasions and also had seen Odell drive the Toyota one time.

A jury convicted Odell of all charges. The trial court found the three enhancements true. At sentencing, the trial court granted Odell's motion to strike one of his prior convictions. A sentence of nine years in state prison was imposed.

### **DISCUSSION**

Odell challenges his convictions for transportation of methamphetamine, possession of methamphetamine, and possession of marijuana on the grounds the evidence was insufficient to establish he had knowledge of and exercised dominion and

control over the controlled substances. He also contends the trial court erred when it failed to instruct sua sponte that mere proximity to controlled substances is not sufficient to constitute constructive possession and that his counsel was ineffective for failing to request such an instruction. Finally, he claims his conviction for driving on a suspended license should be reversed because the trial court erred when it refused to instruct on the defense of necessity.

### **I. Knowledge and Dominion and Control**

Odell contends the evidence was insufficient to demonstrate that he knew the cigarette package contained methamphetamine and marijuana and that he exercised dominion and control over the package. We disagree.

#### ***Standard of Review***

In reviewing the sufficiency of the evidence supporting a criminal conviction, the critical inquiry is whether the record evidence reasonably could support a finding of guilty beyond a reasonable doubt. The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In determining whether a reasonable trier of fact could have made such a finding, this court views the evidence in the light most favorable to the People and presume in support of the judgment the existence of every fact the trier of fact reasonably could deduce from the evidence. (*People v. Staten* (2000) 24 Cal.4th 434, 460.)

#### ***Analysis***

The essential elements of unlawful possession of a controlled substance are “dominion and control of the substance in a quantity usable for consumption or sale, with knowledge of its presence and of its restricted dangerous drug character. Each of these elements may be established circumstantially. [Citation.]” (*People v. Camp* (1980) 104 Cal.App.3d 244, 247-248; see *People v. Palaschak* (1995) 9 Cal.4th 1236, 1241-1242 (*Palaschak*)). Transportation of a controlled substance is established by proof that the

defendant (1) transported the controlled substance (2) with knowledge of its presence and illegal character. (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1746.)

“[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.) “Constructive possession occurs when the accused maintains control or a right to control the contraband.” (*Ibid.*) “The elements of unlawful possession may be established by circumstantial evidence and any reasonable inferences drawn from such evidence.” (*Ibid.*) However, “proof of opportunity of access to a place where narcotics are found, without more, will not support a finding of unlawful possession.” (*People v. Redrick* (1961) 55 Cal.2d 282, 285.)

“Knowledge of the presence of contraband and of its narcotic content may be inferred from the accused’s conduct or statements at or near the time of his arrest. [Citations.]” (*People v. Solo* (1970) 8 Cal.App.3d 201, 206, disapproved on other grounds in *People v. Rogers* (1971) 5 Cal.3d 129, 134, fn. 4.)

Here, Odell challenges the sufficiency of the evidence on the grounds he did not have exclusive access or dominion and control over the Toyota, and, further, there was no evidence to indicate he knew of the presence of controlled substances in the Toyota or exercised dominion and control because he did not do any act indicating a consciousness of guilt. Odell’s arguments fail because (1) exclusive dominion and control over the location where controlled substances are found is not a prerequisite to possession, and (2) he did act with a consciousness of guilt.

Odell’s argument that he did not own the Toyota and that others had exercised dominion and control over the vehicle, thus indicating he merely had an opportunity for access to the controlled substances but did not possess them, is unpersuasive. Equally unpersuasive is his claim he had no knowledge of the presence of the controlled substances.

The evidence established that Odell drove the Toyota on at least one previous occasion before November 26, 2010. Odell was the only occupant and the driver of the Toyota at the time he was stopped by Martinez and McGary. The fact that others had access to the Toyota on other occasions does not negate a finding that Odell exercised dominion and control, particularly on this occasion; exclusive possession is not required. (*People v. Rushing* (1989) 209 Cal.App.3d 618, 622.)

The cigarette package was found a few inches from where Odell had been sitting in the car. Physical possession on Odell's person of the controlled substance is not required. (*People v. Kortopates* (1968) 264 Cal.App.2d 176, 179.) The location of the contraband in close proximity to Odell while in the driver's seat and while he was the sole occupant of the vehicle is further evidence supporting constructive possession. (*People v. Morante* (1999) 20 Cal.4th 403, 417.)

Contrary to Odell's claim, he did evidence a consciousness of guilt. When Martinez initially attempted to effect a traffic stop, Odell accelerated and drove away onto an onramp; Martinez had to give pursuit. When stopped, Odell falsely claimed to be suffering a medical emergency. Odell's actions in accelerating away from the officers when they attempted to effect a traffic stop and in claiming to have a nonexistent medical emergency are acts from which a reasonable jury could infer consciousness of guilt—guilty knowledge of the presence of controlled substances in the cigarette package. (*People v. Tripp* (2007) 151 Cal.App.4th 951, 956.)

In sum, the evidence established that Odell acted with a consciousness of guilt and the controlled substances were found in a location over which Odell had immediate, and at that time exclusive, dominion and control. Each of the elements of knowledge and possession may be established by circumstantial evidence. (*Palaschak, supra*, 9 Cal.4th at pp. 1241-1242.) The reasonable inferences to be drawn from the evidence in this case establish more than a mere presence or mere opportunity. We accept all logical

inferences that may be drawn from the circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396.)

We conclude substantial evidence exists from which a reasonable jury could, and did, conclude that Odell had knowledge of, and exercised dominion and control over, the controlled substances in the cigarette package found in the Toyota. (*People v. Jenkins* (1979) 91 Cal.App.3d 579, 584.)

## **II. Mere Proximity Instruction**

Odell contends the trial court should have sua sponte instructed the jury that mere proximity to narcotics does not constitute constructive possession and failure to do so was prejudicial error. Alternatively, Odell contends that if the trial court had no sua sponte duty, defense counsel was ineffective for failing to request such an instruction. We reject Odell's contentions because considering the instructions as a whole, the jury was instructed that mere proximity was insufficient for a guilty verdict.

A trial court is obligated to instruct on all elements of a charged offense. (*People v. Cummings* (1993) 4 Cal.4th 1233, 1311.) In reviewing a challenge to jury instructions, we must consider instructions as a whole; we assume the jurors are capable of understanding and correlating all the instructions given to them. (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088 (*Ramos*); *People v. Fitzpatrick* (1992) 2 Cal.App.4th 1285, 1294.) "Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation. [Citations.]" (*People v. Laskiewicz* (1986) 176 Cal.App.3d 1254, 1258.)

The jury was instructed with CALCRIM No. 2300, transportation of a controlled substance, CALCRIM No. 2304, possession of a controlled substance, and special instruction No. 1, possession of a controlled substance while driving a motor vehicle. Each of these three instructions informed the jury that in order to return guilty verdicts, it must find that Odell (1) "knew of the presence of the substance" and (2) "knew of the substance's nature or character as a controlled substance." In addition, the jury was

instructed that in order to find Odell guilty of the charges, it must find he intentionally committed the prohibited acts with the specific mental state set forth in the instruction for each crime. The jury also was instructed that the People must prove each element beyond a reasonable doubt.

In *People v. Montero* (2007) 155 Cal.App.4th 1170 (*Montero*), the appellate court rejected a claim similar to that raised by Odell here and upheld the giving of CALCRIM No. 2302, possession for sale of a controlled substance. The appellate court acknowledged that “[m]any courts have long stated” that the possession element of offenses prohibiting possession of a controlled substance require a showing of “dominion and control over the controlled substance. [Citations.]” (*Montero*, at p. 1176; see, e.g., *Palaschak, supra*, 9 Cal.4th at p. 1242 [“essential elements of possession of a controlled substance are ‘dominion and control of the substance in a quantity usable for consumption or sale, with knowledge of its presence and of its restricted dangerous drug character’”]; *People v. Parra* (1999) 70 Cal.App.4th 222, 225-226 [“prosecution must prove beyond a reasonable doubt that ... the defendant exercised dominion and control over the controlled substance”].)

This factor notwithstanding, the appellate court in *Montero* rejected the defendant’s claim that the trial court erred in not using the phrase “dominion and control” in defining the possession element and held that CALCRIM No. 2302 correctly states the possession requirement. (*Montero, supra*, 155 Cal.App.4th at p. 1176.) CALCRIM No. 2302 instructs the jury on the knowledge and possession elements of a controlled substance offense using language identical to that used in CALCRIM Nos. 2300 and 2304 and in special instruction No. 1.

Considering the instructions as a whole, the jury would not have understood that mere proximity to the controlled substances alone was sufficient for a guilty verdict. (*Ramos, supra*, 163 Cal.App.4th at p. 1088.) The instructions clearly informed the jury that Odell had to have knowledge of the controlled substances and their nature as

controlled substances, and he had to have possessed the controlled substances by exercising dominion and control. (*Montero, supra*, 155 Cal.App.4th at p. 1176.) Therefore, the trial court did not err in failing to sua sponte issue a special instruction on mere proximity.

Because the instructions given properly and fully instructed the jury on the knowledge and possession requirements for controlled substance offenses, defense counsel was not ineffective for failing to request a special instruction on mere proximity. Defense counsel is not required to request additional instructions when pattern instructions fully and adequately instruct on the elements of the offense or to otherwise engage in idle acts in order to appear competent. (*People v. Torrez* (1995) 31 Cal.App.4th 1084, 1091-1092.)

### **III. Necessity Instruction**

Odell's last contention is that the trial court committed reversible error when it refused to instruct the jury on the defense of necessity for the count 3 offense of driving on a suspended license. Defense counsel did request that the jury be instructed with CALCRIM No. 3403, but the trial court rejected the request and refused to issue the instruction.

Again, we reject Odell's claim of error for two reasons. First, there is no indication that his claim of a medical emergency had any basis in fact. It appears to have been nothing more than a ruse, since the hospital found no medical issues. Second, assuming *arguendo* there was a medical emergency, Odell failed to establish the elements of a necessity defense.

The necessity defense traditionally has covered the situation where physical forces beyond the actor's control have rendered illegal conduct the lesser of two evils. (*People v. McKinney* (1986) 187 Cal.App.3d 583, 586.) Thus, the defendant must be presented with a situation of an emergency nature that threatens physical harm and cannot be resolved through an alternative legal course of action. (*People v. Heath* (1989) 207

Cal.App.3d 892, 901.) The necessity defense represents a public policy decision not to punish an individual who opts to commit an offense in order to avoid a greater harm or evil. (*Ibid.*)

Although necessity is not recognized in California by statute, it was judicially sanctioned as a defense to a charge of nonviolent escape in *People v. Lovercamp* (1974) 43 Cal.App.3d 823. However, this “extremely limited” defense is available only if certain conditions are met. (*Id.* at p. 831.) For example, the defendant’s belief that his or her criminal act was the only viable and reasonable choice available must have been objectively reasonable under the circumstances. (*People v. Condley* (1977) 69 Cal.App.3d 999, 1010.) Further, the threat, i.e., the greater harm or evil, must have been “a specific threat of death, forcible sexual attack or substantial bodily injury in the immediate future.” (*Lovercamp*, at p. 831 .) Moreover, since the defense is founded on justification distinct from the elements of the particular crime, the burden is on the defendant to prove all of the elements by a preponderance of the evidence. (*Condley*, at p. 1013.)

Here, Odell cannot establish the basic elements of the defense, specifically, that driving on a suspended license was the only viable and reasonable choice under the circumstances. Obviously, if Odell had been suffering a medical emergency, he had other legal options available to him: (1) calling 911 for an ambulance, (2) calling Stoy to transport him, or (3) requesting someone at the residence where he picked up the Toyota to transport him for medical treatment.

The evidence was insufficient to warrant an instruction on the defense of necessity because Odell failed to establish there was an imminent danger; and if a danger existed, there were other legal alternatives available to Odell. (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1165.)

## **DISPOSITION**

The judgment is affirmed.