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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Y.L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

Y.L.,

Defendant and Appellant.

G046536

(Super. Ct. No. DL035835)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Nick A. Dourbetas, Judge. Affirmed.

Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Michael P. Pulos, Deputy Attorneys General, for Plaintiff and Respondent.

Y.L. appeals from the order continuing him as a ward of the juvenile court under Welfare and Institutions Code section 602. The court found true allegations Y.L. was a minor in possession of a firearm and did so for the benefit of a criminal street gang, and he was an active participant in a criminal street gang. Y.L. contends there is insufficient evidence he constructively possessed the gun. We find no error and affirm the order.

FACTS AND PROCEDURE

Prosecution Case

Y.L. was originally declared a ward of the Juvenile Court in November 2009, Case No. DL035835-001, and was on probation. In the late afternoon on January 17, 2012, Santa Ana Police Department Gang Suppression Unit officers and Orange County probation officers served a search warrant at Y.L.'s three-bedroom home in Anaheim. When officers entered the house, Y.L.'s mother was in the living room, Y.L. and his brother Henry came out of the southeast bedroom, and Y.L.'s brother Cesar came out of the northeast bedroom. Y.L.'s father was outside with some other men working on a car in the driveway.

In the ensuing search, officers found an unloaded .22 caliber handgun in the lower driver-side panel of an unlocked van parked inside the house's open garage. In the southwest bedroom, officers found two boxes of ammunition—one containing 94 rounds of .22 caliber ammunition and the other containing a variety of other types of ammunition. More ammunition was found in a kitchen cabinet. Officers also found evidence of Lopers gang affiliation in the northeast bedroom and the hall closet including letters and notebooks covered with Lopers gang graffiti, and a large piece of paper with the words "[Y.L.'s last name] Lopers 12 C5R."

Y.L. was taken to the police station, given his *Miranda*¹ warnings, and interviewed by Santa Ana Police Detectives Armando Chacon and Pedro Duran. Chacon testified Y.L. told the officers he was from the 5th Street Lopers gang and had been “kicking back” with them for a year. Y.L. said his brothers Henry and Cesar were also Lopers gang members. Y.L. said Lopers’ colors were black, white, and gray, and he was currently “wearing [a] black sweater because he was down for the Lopers.” Y.L. said he normally hung out with other Lopers gang members nicknamed Temper, Casper, and Stranger, and he went by the moniker “Pelon” because he was bald.²

Chacon testified Y.L. said he knew about the gun found in the van. Y.L. told the officers the gun was registered to his father, “but that they had it for protection . . . against whoever was shooting at them.” Y.L. said his father would move the handgun around, but would tell “them” the handgun’s new location and Y.L. “would use it if he was being shot at.”

Duran testified both as a percipient witness (he was part of the team executing the search warrant and present at Y.L.’s stationhouse interview) and as an expert on gang culture—Lopers in particular. Duran confirmed that during the interview Y.L. told the officers he was a member of the 5th Street Lopers; Lopers colors were black, white, and gray; he hung out with Casper and Stranger; and he was known by the nickname “Pelon.” Duran testified Y.L. told the officers he knew there was a gun at his residence, and it was moved around from day to day, but Y.L. would know where it was located and could use it if someone was assaulting or using a firearm against them.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436

² The reporter’s transcript indicates Chacon testified Y.L. said his nickname was “Berone because of his bald head[,]” but appellate counsel quotes the testimony as being “Pelon” not “Berone.” The Attorney General states there is a transcription error; the name used by the officer was “Pelon.” The word “pelón” means “bald” or “hairless” in Spanish. (New World Spanish/English Dict. (2d ed. 1996) p. 353 col. 2), and the reporter’s transcript thereafter consistently refers to Y.L.’s nickname as being “Pelon.”

Following the interview, Duran contacted the Fullerton Police Department and the California State University, Fullerton Police Department and obtained field interview cards documenting earlier police interviews with Y.L. and his brother Henry. The interview cards indicated Y.L. also told those officers he went by the name “Pelon,” and he and his brother were from the Lopers gang.

Based on the contents of the field interview cards, Y.L. identifying himself as a Lopers gang member, the fact Y.L. had a moniker, the Lopers gang indicia seized from Y.L.’s house, and Y.L.’s admissions with regard to the gun found at the residence, Duran opined Y.L. was an active participant in the Lopers criminal street gang.³ Following a hypothetical tracking the evidence presented, Duran opined a hypothetical person with Y.L.’s characteristics, and under the circumstances of this case, possessed the gun for the benefit of, and in association with, a criminal street gang. Possession of a gun benefits the gang because the gun protects the gang and instills fear in the gang’s rivals; it is in association with the gang because the hypothetical person had two brothers who were also members of the gang and who lived at the house where the gun was kept. Duran opined this hypothetical person possessed the gun in order to further and assist the Lopers criminal street gang in its criminal conduct.

Defense Case

Y.L. testified regarding his police interview. He testified the officers did not tell him a gun had been found, rather they asked if he knew his father had a gun. Y.L. told the officers he knew his father had a gun for protection, but he did not know where it was kept and had not seen the gun since his probation officer told Y.L.’s father he must get a lock for the gun. Y.L. denied telling officers he always knew where the gun was; he denied knowing the gun was in the house; and he denied having permission to use the gun.

³ The parties stipulated Lopers was a “criminal street gang” within the meaning of Penal Code section 186.22, subdivision (f).

Y.L. denied telling the police he associated with gangs, and more specifically, the Lopers. He denied using the nickname “Pelon,” although he admitted he was caught tagging that name on a wall. Y.L. did not believe his brothers were members of Lopers, and he denied telling officers he and his brother Henry were Lopers. Y.L. denied knowing anyone named Temper, Casper, or Stranger. He had seen a page from one of the notebooks with gang indicia found in his house but did not know who the notebook belonged to. Y.L. denied knowing about there being any gangs in the area of Anaheim where he lived, but he testified that when his brother Henry was shot in front of their house in October 2011, it was “probably” gang-related because “they [the shooters] were bald.” Y.L. testified there were 11 people total living in the three-bedroom house including Y.L., his parents, five brothers, and three sisters.

Y.L.’s father testified he owned the gun police found in the van, it was registered to him, he had owned it for 18 years, and kept it for protection. Y.L.’s father testified Y.L. did not have access to the gun and he did not tell Y.L. where he put the gun. Y.L.’s father said he kept the gun locked up either in the van or in the house. When the gun was in the house, Y.L.’s father kept it in a locked bedroom that no one used or slept in. Y.L.’s father denied Y.L. or his brothers were involved in gangs.

Procedure

A subsequent petition (No. DL035835-008) alleged Y.L. violated the law by possessing a firearm as a minor (Pen. Code, § 29610)⁴ (count 1), and by actively participating in a criminal street gang (§ 186.22, subd. (a)) (count 2), and alleged count 1 was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)). The probation department filed a notice of hearing on juvenile probation violation (No DL035835-009) that was later dismissed on the People’s motion. The court found all allegations of the petition true beyond a reasonable doubt and ordered Y.L. a

⁴ All further statutory references are to the Penal Code.

continued ward of the juvenile court. The court ordered Y.L. to serve 270 days in a juvenile facility, and to be released to his parents on termination of his commitment on probation on various terms.

DISCUSSION

Y.L. contends there is insufficient evidence to support the true finding on the minor in possession of a firearm count, and if that count falls then so must the substantive gang participation count and the gang benefit enhancement allegation. We reject his contentions.

“When reviewing a claim of insufficient evidence, we examine the entire record in the light most favorable to the prosecution to determine whether it contains reasonable, credible and solid evidence from which the jury could find the defendant guilty beyond a reasonable doubt. If the circumstances reasonably justify the verdict, we will not reverse simply because the evidence might reasonably support a contrary finding.” (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830 (*Daniel G.*)). Moreover, “[t]he testimony of just one witness is enough to sustain a conviction, so long as that testimony is not inherently incredible. [Citation.] The trier of fact determines the credibility of witnesses, weighs the evidence, and resolves factual conflicts. We cannot reject the testimony of a witness that the trier of fact chooses to believe unless the testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions. As part of its task, the trier of fact may believe and accept as true only part of a witness’s testimony and disregard the rest. On appeal, we must accept that part of the testimony which supports the judgment. [Citation.]” (*Ibid.*)

The juvenile court found true the allegation Y.L. illegally possessed a firearm. (§ 29610 [“minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person”].) Y.L. challenges the possession element of the offense.

“Possession may be either actual or constructive as long [as] it is intentional.” (*People v. Spirlin* (2000) 81 Cal.App.4th 119, 130.) “Actual possession occurs when the defendant exercises direct physical dominion and control over the item, however briefly (e.g., in the hand, clothing, purse, bag, *etc.*). [Citation.] Constructive possession does not require direct physical control over the item ‘but does require that a person knowingly exercise control or *right to control a thing, either directly or through another person or persons.*’ [Citation.]” (*People v. Austin* (1994) 23 Cal.App.4th 1596, 1608-1609, italics added, disapproved on another ground in *People v. Palmer* (2001) 24 Cal.4th 856, 867; see also *Daniel G.*, *supra*, 120 Cal.App.4th at p. 831.)

Substantial evidence supports the juvenile court’s finding Y.L. constructively possessed the gun. It was found in an unlocked van parked in the open garage of Y.L.’s residence. Y.L. told police he knew about the gun. The gun was owned by Y.L.’s father, but his father would tell Y.L. where the gun was located. Y.L. told police his father allowed him to use the gun for protection, and he would use the gun if someone shot at him.

Y.L. argues the evidence was not sufficient because there was no evidence he specifically knew where the gun was on the day it was found by police—Chacon testified he told Y.L. a gun had been found in the garage and Y.L. indicated to Chacon that he knew the gun existed. Furthermore, Y.L. argues, his admissions to police (i.e., that he knew about the gun, would be told by his father where it had been moved to, had his father’s permission to use the gun, and would use the gun for protection), was nothing more than “youthful showboating” and “self-aggrandizing.” Y.L. testified at trial he knew his father owned a gun but did not know where it was kept and did not have permission to use it. Y.L.’s father testified he did not keep Y.L. informed as to where the gun was located and Y.L. did not have access to it. Y.L. urges that without his unreliable admission to police, his constructive possession was based on nothing more than speculation stemming from the gang indicia located in his house and assumptions

concerning gang affiliation and behavior. Y.L. argues that if he really did have access to the gun, and his father's permission to use it, he surely would have done so the day his brother was shot at. The fact he did not undermines the suggestion he constructively possessed the gun.

Y.L. relies upon *People v. Sifuentes* (2011) 195 Cal.App.4th 1410 (*Sifuentes*), an opinion by a different panel of this court reversing a gun possession conviction because there was insufficient evidence defendant had a right to control the firearm. (*Id.* at p. 1413.) In *Sifuentes*, officers entered a motel room to serve an arrest warrant on defendant who was on a bed near the door. Defendant's companion was kneeling on the floor next to a second bed. The companion initially would only raise his left hand, keeping his right arm bent at the elbow. After the companion raised his right hand, an officer found a loaded handgun under the mattress next to him. (*Id.* at pp. 1413-1414.) Defendant and his companion were each charged with and convicted of possession of a firearm by a felon with a gang enhancement. (*Id.* at p. 1413.) A gang expert testified at trial that both defendant and his companion were active participants in a criminal street gang. (*Id.* at p. 1414.) The expert testified gang members often use a “‘gang gun,’” —that is a gun that is passed freely among the gang members—and, “‘aside from ‘certain restrictions,’ . . . is ‘accessible’ to all gang members ‘[a]t most times.’” (*Id.* at p. 1415.)

On appeal, this court reversed defendant's conviction, reasoning that under the doctrine of constructive possession the prosecution was required to prove defendant “‘knowingly exercised a right to control the prohibited item, either directly or through another person.’” (*Sifuentes, supra*, 195 Cal.App.4th at p. 1417.) There was no evidence the gun found in the motel room had been used in the manner described by the gang expert that would make it a communal “‘gang gun.’” (*Ibid.*) Even if it were a gang gun, “‘no evidence showed [defendant] had the right to control the weapon. The gang expert did not testify all gang members always have the right to control a gang gun, whether

kept in a safe place or held by another gang member. Rather, the expert testified a gang gun was ‘accessible’ to gang members ‘at most times,’ but did not elaborate.” (*Ibid.*) And even if defendant was aware the gun was in the room, “The possibility [defendant] might have had the right to exercise control over the gun does not by itself provide a basis to infer he had the right to control it. [Citation.]” (*Id.* at p. 1419.)

But unlike *Sifuentes*, this case is not premised solely on the presence of a gun and gang expert testimony about the role of a gang gun. In the present case, there is direct evidence of Y.L.’s right to access and control the gun—his own admission to officers Chacon and Duran that his father told him where he kept the gun was kept and gave him permission to use it if necessary for his protection. The juvenile court accepted the testimony of the officers and rejected the contrary testimony received from Y.L. and his father. Viewing the evidence in a light favorable to the judgment, as we must, we cannot reweigh the court’s credibility determinations. (*In re Jorge M.* (2000) 23 Cal.4th 866, 888 [minor’s admission to police the bed next to which assault weapon found was his was sufficient to support possession finding despite trial testimony from minor and his family the bed was minor’s brother’s].) The testimony of a witness who was apparently believed by the trier of fact may be rejected on appeal only if that testimony was physically impossible of belief or inherently improbable without resort to inferences or deductions. (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 578.)

We do not consider the officers’ testimony concerning Y.L.’s admissions to be so inherently improbable or lacking in credibility as to be unworthy of consideration on appeal—at most, the record reveals discrepancies in the testimony of the witnesses. Moreover, we agree with the Attorney General’s observations about the inherent lack of credibility in both Y.L.’s and his father’s testimony. Y.L.’s father testified the gun was always kept under lock and key in either the van or in a bedroom that was always locked and not used by anyone in the household. Yet the gun was found in an unlocked van in an open garage, and it is highly improbable that in a three-bedroom house in which at

least 11 people live, one of the bedrooms is not used. Y.L. and his father denied Y.L. or any of his brothers had any involvement with gangs, yet numerous items were found in the house bearing gang graffiti and logos, and during prior police contacts Y.L. identified himself and his brothers as Lopers gang members. The juvenile court could reasonably reject Y.L.'s and his father's testimony contradicting the officers' testimony regarding Y.L.'s admissions. Substantial evidence supports the true finding on the minor in possession of a firearm count. And in view of this conclusion, we need not address Y.L.'s argument the substantive gang participation count and the gang benefit enhancement allegation must fall with the firearm possession count.

DISPOSITION

The order is affirmed.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.