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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/1/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0666
)
Appellee,) DEPARTMENT A (AUGUST)
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STACEY MORAN,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-159856-001

The Honorable Carolyn K. Passamonte, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
by Joseph T. Maziarz, Chief Counsel,
Criminal Appeals Section
and Adele Ponce, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

S W A N N, Judge

¶1 Stacey Moran appeals from her conviction and probation term for misconduct involving weapons. Moran contends that the state did not present sufficient evidence to prove that she

constructively possessed a firearm. We find sufficient evidence, and therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Moran was indicted for misconduct involving weapons and for aggravated assault. She pled not guilty and the matter proceeded to jury trial. The state voluntarily dismissed the aggravated assault charge before the jury was empaneled.

¶3 At trial, the state presented evidence of the following facts. In October 2011, Moran was placed on 15 months of probation for attempted criminal damage, a domestic violence offense. As a condition of her probation, Moran was required to "not possess or control any stun guns, tasers, firearms, ammunition, deadly or prohibited weapons as defined in A.R.S. § 13-3101." Moran's probation officer reiterated that condition when she met with Moran for the first time in early November 2011. Moran then showed the probation officer a gun and asked whether she could keep it for protection. The probation officer said that she could not, and instructed Moran to remove the gun from her home within 24 hours.

¶4 Several weeks later, on November 25, 2011, police responded to a 911 call that Moran had placed. The first-responding officer encountered Moran standing next to a car parked on the roadway across from a residence. Moran told the officer that she had traveled to the residence to retrieve her

gun from a former friend, she had argued with the friend inside of the residence, and the friend had broken the gun by throwing it onto the ground. Moran further stated that the gun was now in her car, and then opened the front passenger-side door of the nearby car and pointed to the seat. On the seat, the officer saw a disassembled 9-millimeter pistol. The officer reassembled the pistol, dry-fired it, and found that it functioned as he would expect. Moran then handed the officer a gun case and gun lock, and removed the key for the gun lock from her key ring. The officer took custody of the pistol and the associated items.

¶15 At the close of the state's case-in-chief, Moran moved for a judgment of acquittal under Ariz. R. Crim. P. 20. She conceded that she was a prohibited possessor but argued, *inter alia*, that the state had failed to prove that she exercised dominion and control over the pistol. The court denied Moran's motion and the defense rested.

¶16 After considering the evidence, the jury found Moran guilty. The court entered judgment on the verdict, suspended the imposition of sentence, and placed Moran on probation for a three-year term, to run concurrently with her previous probation term. Moran timely appeals. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

DISCUSSION

¶7 Moran contends that the evidence presented at trial was insufficient to support her conviction for misconduct involving weapons. We review the sufficiency of the evidence de novo. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). We view the evidence in the light most favorable to upholding the verdicts and resolve all conflicts in the evidence against Moran. See *State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983). We do not reweigh the evidence or determine the credibility of witnesses. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004).

¶8 We will not reverse unless "there is a complete absence of probative facts to support the conviction." *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). Sufficient evidence may be either direct or circumstantial, and may support differing reasonable inferences. *State v. Anaya*, 165 Ariz. 535, 543, 799 P.2d 876, 884 (App. 1990).

¶9 Here, the evidence was sufficient to support Moran's conviction. A person commits the crime of misconduct involving

weapons when she knowingly possesses a deadly weapon while classified as a prohibited possessor. A.R.S. § 13-3102(A)(4). Moran does not dispute that the evidence supported findings that she was a prohibited possessor and that the gun taken by the police was a deadly weapon. In fact, the state presented evidence that Moran was on probation for a domestic violence offense, which made her a prohibited possessor under A.R.S. § 13-3101(A)(7)(d); and the state presented evidence that the item seized was an operable pistol, a deadly weapon under A.R.S. § 13-3101(A)(1) and (4). Moran's sole argument on appeal is that the evidence could not support a reasonable finding that she possessed the pistol. We disagree.

¶10 To "possess" is "knowingly to have physical possession or otherwise to exercise dominion or control over property." A.R.S. § 13-105(34). Under this definition, possession may be actual or constructive. *State v. Gonsalves*, 231 Ariz. 521, 523, ¶ 9, 297 P.3d 927, 929 (App. 2013). A person "who exercises dominion or control over property has constructive possession of it even if it is not in his physical possession." *Id.* (citation omitted). Constructive possession may be shown by circumstantial evidence, but a person's mere presence at the item's location is, by itself, insufficient proof -- "[r]ather, the state must show by 'specific facts or circumstances that the defendant exercised dominion or control' over the object." *Id.*

at ¶ 10 (citation omitted). We have no difficulty concluding that the state met this burden here. The state presented evidence that Moran told a police officer that her gun was in her car, and showed the gun to him by opening the door of the car she stood beside. From this evidence, the jury could reasonably conclude that Moran knowingly exercised dominion and control over the gun by having it in her vehicle. The evidence was sufficient to support her conviction for misconduct involving weapons.

CONCLUSION

¶11 We affirm Moran's conviction and the order imposing probation.

/s/

PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

KENT E. CATTANI, Judge

/s/

JOHN C. GEMMILL, Judge