

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

MIGUEL SALINAS, *Appellant*.

No. 1 CA-CR 15-0581  
FILED 7-19-2016

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Appeal from the Superior Court in Maricopa County  
No. CR 2013-100874-001  
The Honorable Bruce R. Cohen, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Joseph T. Maziarz, Craig W. Soland  
*Counsel for Appellee*

Law Office of Brent E. Graham, PLLC, Glendale  
By Brent E. Graham  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Donn Kessler delivered the decision of the Court, in which Presiding  
Judge Diane M. Johnsen and Judge Patricia A. Orozco joined.

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STATE v. SALINAS  
Decision of the Court

**K E S S L E R**, Judge:

¶1 Miguel Salinas (“Salinas”) appeals his convictions for one count of possession of dangerous drugs, a class 4 felony, and two counts of possession of drug paraphernalia, each a class 6 felony. He also appeals the revocation of his probation based on those convictions. For the reasons below, we affirm.

**FACTUAL AND PROCEDURAL HISTORY<sup>1</sup>**

¶2 Phoenix Police Officer L was conducting visual surveillance of Salinas. After Officer L saw Salinas drive away from his apartment, he followed, and at Officer L’s request, another patrol unit stopped Salinas less than a mile away from the apartment. The officers detained Salinas in a patrol car and returned to his apartment to conduct a search.

¶3 The officers offered conflicting accounts of the length of time between Salinas’ leaving the apartment and officers’ returning to search the apartment, as well as whether there were officers conducting surveillance of the apartment during this time.<sup>2</sup> Construing the evidence most favorably to affirming the judgment, *supra* n.1, the search occurred within about thirty minutes from when the police stopped Salinas, and the apartment was under visual surveillance during that time.

¶4 Officer R led the search.<sup>3</sup> He testified that he knocked loudly several times and announced it was the police without receiving a response. Officer R’s attempts to enter the apartment lasted for five to fifteen minutes, according to Officer L’s estimate. Officer R’s impression was that the four people inside the apartment likely heard his knocking, but because they did

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<sup>1</sup> “We construe the evidence in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant.” *State v. Greene*, 192 Ariz. 431, 436, ¶ 12 (1998), *abrogated on other grounds as recognized by McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015).

<sup>2</sup> Officer L testified that he “d[id]n’t believe” there were any officers monitoring the front door during the 30 minutes to an hour of the traffic stop. Officer V testified that this period was 30 to 45 minutes, and that he was stationed in back of the apartment for containment as part of the surveillance with radio communication.

<sup>3</sup> Salinas does not argue the search was unlawful.

STATE v. SALINAS  
Decision of the Court

not respond, he had to enter with a key provided by the apartment manager.

¶5 Officer R testified that when he entered the apartment he saw a man coming from the hallway of the west bedroom, which was identified as Salinas', and found a woman sleeping in that bedroom. He testified that two other men came from the second bedroom. Officer R testified that he entered Salinas' bedroom, knelt down and lifted the bed skirt to find a box. He testified that he did not need to go into a prone position to reach the box, which contained three plastic bags containing 11 grams, 1.8 grams, and 900 milligrams of methamphetamine, smaller snap-and-seal plastic bags, and Swisher Sweets cigarettes. Officer R testified that he found packaging for Swisher Sweets cigarettes on the night stand, but no other drugs, scales, or paraphernalia in that bedroom.

¶6 In the kitchen, Officer R testified that he found two digital scales, a tobacco grinder, 920 milligrams of marijuana inside a plastic wrapper, and a plate with white material on it near a piece of paper. Officer R testified that this white powder was consistent with a substance used as a cutting agent or additive for methamphetamine.

¶7 Officer V, a controlled substance officer, entered the apartment after the search. He testified that there was a cable television bill or statement on top of one of the scales on the kitchen counter that showed Salinas as the account holder at that address. Officer V did not attempt to lift fingerprints from any of the collected evidence, nor did he call a fingerprint technician to do so.

¶8 Salinas was indicted for (1) possession of dangerous drugs for sale (methamphetamine), (2) possession or use of marijuana, (3) possession of drug paraphernalia for the box, plastic bags, and digital scales, (4) possession of drug paraphernalia for the Swisher Sweet cigarettes for use in marijuana ingestion, and (5) possession of drug paraphernalia for the tobacco grinder.

¶9 At the close of the State's case, Salinas moved for acquittal pursuant to Rule 20, Ariz. R. Crim. P., arguing that the State had not proven physical or constructive possession of the drugs with knowledge. The court denied the motion. The jury convicted Salinas of the lesser-included offense under count 1: possession of dangerous drugs, and counts 3 and 5 for possession of drug paraphernalia. *See* Ariz. Rev. Stat. ("A.R.S.") §§ 13-3407

STATE v. SALINAS  
Decision of the Court

(Supp. 2015), -3415 (2010).<sup>4</sup> At sentencing, the court revoked Salinas' probation on two earlier offenses.

¶10 Salinas timely filed a delayed notice of appeal. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21 (2003), 13-4031 (2010), and -4033(A)(1) (2010).

DISCUSSION

¶11 Salinas argues on appeal that the evidence was insufficient to support the State's theory of constructive possession with knowledge as the basis for his convictions and consequent probation revocations. We disagree.

¶12 Sufficiency of evidence is a question of law subject to de novo review on appeal. *State v. West*, 226 Ariz. 559, 562, ¶ 15 (2011). Viewing the evidence in a light most favorable to upholding the verdicts, we review a denial of a motion for acquittal de novo and limit our review to "whether substantial evidence exists to support the verdicts." *State v. Fischer*, 219 Ariz. 408, 418, ¶ 39 (App. 2008). Substantial evidence is "more than a mere scintilla" and is sufficient for reasonable persons to accept as support for a finding of guilt beyond a reasonable doubt. *State v. Mathers*, 165 Ariz. 64, 67, ¶ 5 (1990). "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. Arrendondo*, 155 Ariz. 314, 316, ¶ 1 (1987).

¶13 Possession is an element of each of Salinas' convictions. See A.R.S. §§ 13-3407, -3415. Possession of narcotics must be physical or constructive with actual knowledge of the presence of the narcotic substance. *Carroll v. State*, 90 Ariz. 411, 412 (1962). Constructive possession is typically applied when the drug is not found on the defendant or in his presence, "but is found in a place under his dominion and control and under circumstances from which it can be reasonably inferred" that he had actual knowledge of its presence there. *State v. Villavicencio*, 108 Ariz. 518, 521 (1972). Dominion and control retain their ordinary meanings: "dominion" means "absolute ownership" and "control" means "have power over." *State v. Tyler*, 149 Ariz. 312, 316 (App. 1986) (citing *Webster's Third New International Dictionary (Unabridged)* 496, 672 (1981)). "Constructive possession . . . may be proved by circumstantial evidence" and does not

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<sup>4</sup> We cite the current version of applicable statutes unless revisions material to this decision have occurred since the events in question.

STATE v. SALINAS  
Decision of the Court

require exclusive control over the place where the narcotics are found. *Villavicencio*, 108 Ariz. at 520.

¶14 In *State v. Miramon*, 27 Ariz. App. 451, 452–53 (1976), we held that a defendant’s “mere presence” in a car where narcotics were found was insufficient to establish dominion and control, and knowledge of the contraband. However, in *Villavicencio*, our supreme court found sufficient evidence to show that a defendant constructively possessed narcotics that were found in a box under clothing, located inches away from his back door on a shared patio that was “completely open and accessible to anybody.” *Villavicencio*, 108 Ariz. at 519–520. The location of the narcotics on the patio was under the joint dominion and control of Villavicencio, from which the jury could infer that he had knowledge of its presence there. *Id.* at 520.

¶15 Relying on *Miramon*, Salinas argues that because he had left the apartment before the search the evidence only showed his mere presence at an apartment where narcotics and paraphernalia were found. Salinas contends the “most likely scenario” supported by the evidence is that the four occupants hid paraphernalia in the kitchen and the methamphetamine under his bed once the police arrived.

¶16 We disagree. Under *Villavicencio*, joint control over a common area is a sufficient basis from which to infer dominion, control, and knowledge under circumstances similar to these. The inference of dominion, control, and knowledge is even stronger when the defendant is a tenant of the apartment. Not only did Salinas have joint control over the kitchen where paraphernalia was found, but he was a tenant, and all of the methamphetamine was found under his bed. He had joint control of the kitchen as a common area, which was sufficient for the jury to infer dominion, control, and knowledge. Even more so, the jury could have reasonably inferred dominion, control, and knowledge from the location of the paraphernalia and narcotics under his bed. The evidence was more than sufficient to support the jury’s verdict.

¶17 Salinas’ reliance on *Miramon* is misplaced. *Miramon* was neither the driver nor owner of the car where narcotics were found, thus his mere presence was an insufficient basis to establish dominion and control for possession. The present case is distinguishable. Salinas is a tenant with joint control over the locations where the narcotics and paraphernalia were found. *Miramon* might apply if Salinas had been a visitor to the apartment in a wrong-time-and-place scenario. However, the mere presence rule is limited to where there is “no circumstantial or direct evidence that the defendant had physical control of the narcotics or placed them” in that

STATE v. SALINAS  
Decision of the Court

location. *State v. Mosley*, 119 Ariz. 393, 402 (1978). Thus, *Villavicencio* limits *Miramón*, for under these circumstances joint control over a common area alone is a sufficient basis from which to infer dominion, control, and knowledge.<sup>5</sup>

¶18 Salinas next argues that the jury “rejected” the State’s theory of Swisher Sweets cigarettes as paraphernalia when they acquitted Salinas of count 4, and so the Swisher Sweets cigarettes found both on his nightstand and in the box under his bed cannot function as an evidentiary link between him and the contraband in the box for purposes of the conviction on count 3. However, the charge in count 3 was possession of drug paraphernalia for the box, plastic bags, and digital scales, not the cigarettes. Notwithstanding the sufficiency of the evidence discussed above, “we make no assumptions as to what ‘the jury really meant’ by its acquittal when determining the sufficiency of evidence supporting another charge.” *State v. Williams*, 233 Ariz. 271, 274, ¶ 10 (App. 2013). Salinas’ analogy to *State v. Ottar*, 232 Ariz. 97, 102, ¶ 20 (2013), where our supreme court held that it was not legally impossible for defendants to possess narcotics during a reverse sting operation, is inapposite. The law stated in *Villavicencio*, and the similar facts there, are dispositive here.

CONCLUSION

¶19 For the foregoing reasons, we affirm Salinas’ convictions, sentences, and resulting probation revocations.



Ruth A. Willingham · Clerk of the Court  
FILED : AA

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<sup>5</sup> See *State v. Weisner*, No. 2 CA-CR 2015-0055, 2015 WL 6460037, at 3\*-4\*, ¶¶ 14-16 (Ariz. Ct. App. Oct. 26, 2015) (mem. decision) (holding that our Supreme Court’s decision in *Villavicencio* is controlling on the issue that constructive possession may be found even when there is non-exclusive control of the place in which the narcotics are found).