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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: 02/01/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0951
)
 Appellee,) DEPARTMENT A
)
 v.) **MEMORANDUM DECISION**
)
 JUAN FUENTES-LOZANO,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)
)

Appeal from the Superior Court in Mohave County

Cause No. CR2008-0768

The Honorable Steven F. Conn, Judge

AFFIRMED

Thomas Horne, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
And
Jeffrey L. Sparks, Assistant Attorney General
Attorneys for Appellee

Jill L. Evan, Mohave County Public Defender Kingman
Attorney for Appellant

H A L L, Judge

¶1 Defendant Juan Fuentes-Lozano appeals from his convictions for one count of unlawful taking of a carcass, a class five felony, and two counts of misconduct involving weapons, class four felonies, and the sentences imposed. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On July 17, 2008, defendant was charged by felony indictment with one count of unlawful killing of livestock, a class five felony, one count of unlawful taking of a carcass, a class five felony, and two counts of misconduct involving weapons (one based on his status as a prohibited possessor and the other based on one of the firearms - a sawed-off shotgun - being a prohibited weapon), class four felonies. The following evidence was presented at trial.¹

¶3 On June 14, 2008, Deputy K.A. of the Mohave County Sherriff's Office received a report of an animal "hide" found in the desert. The next day, the deputy went to the area to investigate the report and found a cow hide. While examining the area surrounding the hide, Deputy K.A. observed some tire tracks that were traced to defendant's residence. Deputy K.A.

¹ We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against defendant. *State v. Vandever*, 211 Ariz. 206, 207 n.2, 119 P.3d 473, 474 n.2 (App. 2005).

then approached defendant's residence, observed blood in the back of defendant's pick-up truck, and took a swab sample.

¶14 On June 17, 2008, J.S., a livestock officer for the Arizona Department of Agriculture, spoke with defendant at his residence regarding some of defendant's horses that were not sufficiently contained. After speaking with defendant about the horses, Officer J.S. then asked defendant if he had "butchered a beef lately." Defendant responded in the affirmative and pointed to a shed on his property where he kept the meat. Officer J.S. asked whether he could see it and defendant consented. Once inside, the officer "observed the carcass of a beef inside the freezer."

¶15 Officer J.S. testified that the Arizona Department of Agriculture must be notified before an animal may be slaughtered outside of a licensed meat-packing facility, and defendant had failed to provide the requisite notice. Officer J.S. further testified that a bullet was retrieved from the head of the cow and there was no evidence that the animal had been hit by a vehicle or injured in any other way.

¶16 Based on his observations, Officer J.S. placed defendant under arrest for the unlawful killing of livestock. Officer J.S. also seized samples of the meat and had them compared with a sample from the hide.

¶17 After testing confirmed a DNA match between the samples, Officer J.S. prepared and executed a search warrant on defendant's property. With the assistance of other officers from the agriculture department and local law enforcement, Officer J.S. searched defendant's entire ten-acre parcel. During their search, officers found several firearms under a mattress in an unoccupied travel trailer and another firearm and a holster carved with defendant's initials from defendant's tack shed. They also found multiple firearms in defendant's mother's trailer, including a "sawed-off" shotgun with a barrel of an illegal length. As the officers removed the weapons from her trailer, defendant's mother said "Juan's" and pointed at the firearms.

¶18 When Officer J.S. questioned defendant about the weapons and his status as a prohibited possessor,² defendant denied ownership of the weapons. Specifically, he claimed that he had given some of the weapons to his mother and that the others never belonged to him.

¶19 When Officer J.S. informed defendant that the meat samples he retrieved from defendant's property matched the samples of the hide dumped in the desert, defendant responded "of course I knew that." Nonetheless, he maintained that he did

² It was undisputed at trial that defendant was on probation and therefore prohibited from possessing firearms.

not kill the animal and that his friends had brought the animal to his residence and that he was simply "hold[ing] the meat for them." When asked whether he knew the meat was stolen, defendant admitted that he did and that he had "made a mistake." Officer J.S. then placed defendant under arrest for misconduct involving weapons.

¶10 At trial, the State also presented evidence that defendant had participated in a music video while on probation and had brandished weapons very similar in appearance to those discovered on his property. Following the State's presentation of evidence, defendant moved for directed verdicts pursuant to Arizona Rule of Criminal Procedure 20, which the trial court denied.

¶11 Defendant then testified on his own behalf. He acknowledged that he was on probation at the time the search warrant was executed and the firearms were removed from his property. He claimed, however, that he had given many of the weapons to his mother for safekeeping and asserted that they were inaccessible to him in her trailer. He acknowledged, however, that he owned the travel trailer where many of the other firearms were located and acknowledged that he had complete access to those weapons. Defendant also admitted that he brandished some of the weapons while participating in the filming of a music video and, although he initially claimed that

he did not know the sawed-off shotgun was illegal, he later admitted that he knew it was illegal for anyone to possess that weapon.³

¶12 After a three-day trial, the jury convicted defendant of one count of unlawful taking of a carcass and both counts of misconduct involving weapons. The jury also found two aggravating factors, the age of the victim and defendant's previous criminal convictions. The trial court sentenced defendant to a term of 2.75 years imprisonment on the count of unlawful taking of a carcass and to terms of 4.75 years imprisonment on each count of misconduct involving weapons.

¶13 Defendant appealed. This court has jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003), 13-4031 and -4033 (2010).

DISCUSSION

¶14 As his sole issue on appeal, defendant contends that the trial court erred in denying his motions for directed verdict as to the counts of misconduct involving weapons. Specifically, he contends that there was insufficient evidence presented at trial to support a finding that he exercised dominion and control over the weapons.

³ During cross-examination, defendant also admitted having two prior felony convictions.

¶15 We review a trial court's denial of a motion for directed verdict for an abuse of discretion and will only reverse if there is not substantial evidence to support the conviction. *State v. Henry*, 205 Ariz. 229, 232, ¶ 11, 68 P.3d 455, 458 (App. 2003). Substantial evidence may be direct or circumstantial and is evidence that a reasonable jury may accept as sufficient to find guilt beyond a reasonable doubt. *Id.* A trial court must submit a case to the jury if reasonable minds could differ on the inferences to be drawn from the evidence. *Id.* We view the evidence in the light most favorable to sustaining the trial court's ruling, *State v. Sullivan*, 205 Ariz. 285, 287, ¶ 6, 69 P.3d 1006, 1008 (App. 2003), and if conflicts in the evidence exist, we resolve them in favor of sustaining the verdict. *State v. Salman*, 182 Ariz. 359, 361, 897 P.2d 661, 663 (App. 1994).

¶16 To secure a conviction on either count of misconduct involving weapons, the State needed to prove that defendant either physically or constructively possessed the weapons. See A.R.S. §§ 13-105(33) (2010), -3102(A)(3), (A)(4) (Supp. 2010). Constructive possession exists when the defendant has dominion or control over the place where the contraband is found, and the circumstances are such that it can reasonably be inferred that he has actual knowledge of the contraband's presence. *State v. Petrak*, 198 Ariz. 260, 266, ¶¶ 18-19, 8 P.3d 1174, 1180 (App.

2000). The State need not establish, however, that the defendant had exclusive dominion and control over the area to prove constructive possession. *State v. Carroll*, 111 Ariz. 216, 218, 526 P.2d 1238, 1240 (1974).

¶17 In this case, the evidence reflects, by defendant's own admission, that defendant knew that some of the firearms were in his travel trailer and he had complete access to them. The evidence also reflects, by defendant's own admission, that defendant brandished some of the weapons while participating in the filming of a music video. Additionally, the evidence reflects that defendant knew about and had access to the firearm retrieved from his tack shed. Moreover, the evidence reflects that defendant knew of the firearms in his mother's trailer, including the prohibited sawed-off shotgun. Although defendant contends that he did not have access to those weapons, the evidence reasonably supports the inference that he exercised dominion and control over them. Defendant owned the property on which his mother's trailer was located and defendant's mother pointed to the weapons and identified them as defendant's property at the time they were seized. Thus, there is sufficient evidence to sustain defendant's convictions for misconduct involving weapons and the trial court did not abuse its discretion by denying defendant's motions for directed verdict.

CONCLUSION

¶18 For the foregoing reasons, we affirm defendant's convictions and sentences.

_/s/ PHILIP HALL, Presiding Judge

CONCURRING:

_/s/ JON W. THOMPSON, Judge

_/s/ LAWRENCE F. WINTHROP, Judge