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1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3           Plaintiff-Appellee,

4 v.

**No. 34,312**

5 **RONDY McDONALD,**

6           Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY**

8 **Drew D. Tatum, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 J.K. Theodosia Johnson, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16   **MEMORANDUM OPINION**

17 **BUSTAMANTE, Judge.**

1 {1} Defendant appeals his conviction for misdemeanor possession of a controlled  
2 substance. [RP 157] Our notice proposed to affirm, and Defendant filed a  
3 memorandum in opposition (MIO). We remain unpersuaded by Defendant’s  
4 arguments and thus affirm.

5 {2} In issue (1), Defendant continues to challenge the second element of the  
6 submitted uniform jury instruction for possession of a controlled substance, which  
7 required the jury to find that Defendant “knew it was Alpha-PVP or believed it to be  
8 some drug or other substance the possession of which is regulated or prohibited by  
9 law.” [RP 101; DS 4; MIO 2] Defendant asserts that the instruction “misinstructed on  
10 the mens rea required to possess a controlled substance” because it did not require the  
11 jury to find that Defendant knew he possessed the controlled substance he was found  
12 with – Alpha-PVP. [MIO 3] As we pointed out in our notice, however, the first  
13 element of the submitted jury instruction specifically required the jury to find that  
14 Defendant had Alpha-PVP in his possession [RP 101] and, as provided in the  
15 committee commentary to UJI 14-3102, “accurate knowledge of the identity of the  
16 controlled substance is [nonetheless] not controlling; the crime is complete if the  
17 defendant believed he possessed *some* controlled substance.” Because the jury found  
18 both that Defendant had Alpha-PVP in his possession and knew or believed it to be

1 Alpha-PVP, or a drug that was prohibited, we conclude that the submitted UJI was  
2 proper.

3 {3} In issue (2), Defendant continues to argue that he was prevented from  
4 presenting a defense when the district court refused to allow him to call a rebuttal  
5 witness. [DS 5; MIO 3] Defendant's docketing statement provided no facts and  
6 articulated no basis for this issue. In response to our notice Defendant has provided  
7 additional information. Specifically, Defendant asserts that "his paramour would often  
8 spend the night and had some of her possessions" at his house [MIO 1] and that the  
9 paramour "was likely the true owner of the Crown Royal bag." [MIO 5] Defendant  
10 further provides that his [now ex] paramour or girlfriend refused to cooperate with  
11 him on the defense [MIO 2] and that "[w]hen [the probation officer] testified that he  
12 lived there alone, he was gobsmacked" because he thought his probation officer was  
13 aware that the girlfriend spent the night at his house and left her possessions there.  
14 [MIO 3] As a consequence, Defendant argues, he "should have been allowed to call  
15 his neighbor/acquaintance [as a rebuttal witness] to testify that he had a steady  
16 girlfriend who spent the night and left various personal items at his house." [MIO 3-4]  
17 While this additional information is helpful in that it clarifies the basis of Defendant's  
18 argument, as pointed out in the notice, Defendant nevertheless did not disclose the  
19 rebuttal witness until the day of trial. [RP 138] On this basis we conclude that it was

1 within the district court’s discretion to deny his request to call the neighbor as a  
2 rebuttal witness. *See State v. Guerra*, 2012-NMSC-014, ¶ 32, 278 P.3d 1031 (“A  
3 defendant’s right to present evidence on [her] own behalf is subject to [her]  
4 compliance with established rules of procedure and evidence designed to assure both  
5 fairness and reliability in the ascertainment of guilt and innocence.” (internal  
6 quotation marks and citation omitted)).

7 {4} In issue (3), Defendant continues to argue that the evidence was insufficient to  
8 show that he possessed Alpha-PVP because “the State failed to prove exclusive  
9 control of the room where the illegal substance was located.” [DS 5; MIO 6-7; RP  
10 130, 136-37, 142] As support for this argument, Defendant argues in his MIO that he  
11 did not have exclusive control over the premises because his girlfriend used to spend  
12 a lot of time at his house and that the Crown Royal bag actually belonged to her. [MIO  
13 2, 7] Contrary to this view of the evidence, however, and as emphasized in our notice,  
14 the probation officer testified that the residence belonged to Defendant [RP 129, 136,  
15 139] and the Crown Royal bag was found on a dresser in a bedroom which Defendant  
16 identified as being his bedroom [RP 129, 137, 139], with no indication that anyone  
17 else was in the house. [RP 139] *See State v. Brietag*, 1989-NMCA-019, ¶ 14, 108  
18 N.M. 368, 772 P.2d 898 (stating that “evidence indicating sole occupancy of a  
19 bedroom supports a logical inference of control and knowledge of the room’s contents

1 by the usual occupier” (internal quotation marks and citation omitted)). Despite  
2 Defendant’s view otherwise, we hold that the jury could have relied on this evidence  
3 to infer that Defendant possessed the Crown Royal bag and its contents. *See, e.g., See*  
4 *State v. Becerra*, 1991-NMCA-090, ¶ 13, 112 N.M. 604, 817 P.2d 1246 (providing  
5 that a defendant’s conduct and actions, as well as circumstantial evidence, may  
6 sufficiently prove constructive possession).

7 {5} Lastly, in issue (4), Defendant continues to challenge the sufficiency of the  
8 evidence to show that he possessed Alpha-PVP. *See generally State v. Sutphin*, 1988-  
9 NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (setting forth the standard of review).

10 Defendant specifically challenges the finding that he knowingly possessed this  
11 substance [DS 5; MIO 6], pointing out that the substance in the Crown Royal bag was  
12 “professionally packaged and labeled as ‘Bullet Premium Glass Cleaner.’” [MIO 6]  
13 While Defendant professed to have never seen the Crown Royal bag and its contents  
14 [DS 3] and asserts that he “could have believed that this girlfriend brought him a  
15 better glass cleaner” [MIO 6], the jury was free to disbelieve Defendant’s version of  
16 the events. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482  
17 (recognizing that it is for the fact-finder to resolve any conflict in the testimony of the  
18 witnesses and to determine where the weight and credibility lay). In doing so, the jury  
19 could have reasonably considered the probation officer’s testimony that Crown Royal

1 bags are commonly used to hide illegal drugs [DS 3] to find that Defendant knew that  
2 the substance inside the bag on his bedroom dresser was an illegal substance, Alpha-  
3 PVP. *See State v. Doe*, 1984-NMCA-114, ¶ 22, 103 N.M. 178, 704 P.2d 432  
4 (recognizing that “knowledge that an object is a narcotic drug can be proven  
5 circumstantially”) [MIO 6]; *see also State v. Sparks*, 1985-NMCA-004, ¶¶ 6-7, 102  
6 N.M. 317, 694 P.2d 1382 (defining substantial evidence as evidence that a reasonable  
7 person would consider adequate to support a defendant’s conviction).

8 {6} For the reasons discussed above and in our notice, we affirm.

9 {7} **IT IS SO ORDERED.**

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**MICHAEL D. BUSTAMANTE, Judge**

12 **WE CONCUR:**

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**M. MONICA ZAMORA, Judge**

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**J. MILES HANISEE, Judge**