

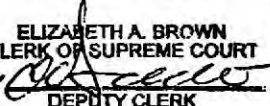
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAYMOND GEAN PADILLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81241-COA

FILED

APR 28 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Raymond Gean Padilla appeals from a judgment of conviction, pursuant to a jury verdict, of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

An officer with the Las Vegas Metropolitan Police Department (LVMPD) observed an orange Chevrolet Avalanche commit multiple traffic violations. Officers stopped the Chevy. Padilla was in the driver's seat, his fiancé Mayra Tarango was in the back seat, and his brother-in-law was in the front passenger seat. Tarango claimed ownership of the Chevy. The officers ordered the occupants out of the vehicle. One officer noticed a firearm in plain view between the center console and Padilla's seat. The officer obtained a search warrant and recovered a loaded Springfield .45 caliber handgun and two gun-cleaning kits. Subsequent testing revealed two of Padilla's fingerprints on the ammunition clip of the gun but no other fingerprints were identified on the gun. At trial, Tarango testified she purchased the firearm the same day she was pulled over with Padilla. She admitted that she gave Padilla the firearm and pleaded guilty to

transferring a firearm to a prohibited person. The jury found Padilla guilty of ownership or possession of a firearm by a prohibited person.¹

On appeal, Padilla argues that there was insufficient evidence to convict him of being a prohibited person in possession of a firearm because the State did not provide any evidence that Padilla knew the firearm was in the vehicle or that he was in actual possession of it. Padilla also argues that “the State presented evidence that Mr. Padilla’s fingerprints were found on the magazine,” which “is not a prohibited item under NRS 202.360.” We conclude there is sufficient evidence to affirm the judgment of conviction.

When reviewing a sufficiency-of-the-evidence challenge, we decide “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). It is for the jury, not this court, to “determine the credibility of witnesses.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

NRS 202.360(1) makes it a felony for a prohibited person, such as a convicted felon, to “own or have in his or her possession or under his or her custody or control any firearm.” “Firearm’ means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.” NRS 202.253(2). There are two types of possession: actual and constructive. *Palmer v. State*, 112 Nev. 763, 768, 920 P.2d 112, 115 (1996) (citing *Black’s*

¹At trial, the parties stipulated to the admission of Padilla’s prior felony judgment of conviction for robbery with the use of a deadly weapon.

Law Dictionary (6th ed. 1990)). Actual possession means knowingly exercising direct physical control over a firearm. *Id.* Constructive possession is knowingly having the power and intention to exercise dominion or control over a firearm, “either directly or through another.” *Id.* (internal quotation marks omitted). Two people may exercise joint constructive possession of a firearm together when they “jointly and knowingly” share “dominion and control” over the firearm. *Maskaly v. State*, 85 Nev. 111, 114, 450 P.2d 790, 792 (1969). Circumstantial evidence—and “reasonably drawn inferences” from that evidence—may support a conviction of being a prohibited person in possession of a firearm. *Sheriff of Washoe Cty. v. Shade*, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993).


Here, the evidence supports the jury’s decision to find Padilla guilty of actually or directly possessing the firearm or constructively or jointly possessing it. The gun was inches from Padilla in plain sight in the car he was driving. Therefore, the jury could conclude he controlled the firearm. Additionally, the clip was found in the car with Padilla’s fingerprints alone on it, which was circumstantial evidence that he possessed the clip and by extension the firearm at some point during the day, which Tarango confirmed. Finally, Padilla was charged with possessing a firearm, not a magazine or clip, and the jury was instructed accordingly. Padilla makes no cogent argument that he was convicted of possessing a magazine, not a firearm, under NRS 202.360. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority).

From this evidence, a rational trier of fact could have found that Padilla illegally possessed the firearm. Therefore, we conclude that

sufficient evidence supports Padilla's conviction of ownership or possession of a firearm by a prohibited person. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Department 5, Eighth Judicial District Court
Law Office of Benjamin Nadig, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk