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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. TYJUAN LATRIAL CHRISTIAN, Defendant and Appellant.	E044502 (Super.Ct.Nos. SWF016210 & SWF006890) OPINION

APPEAL from the Superior Court of Riverside County. Albert J. Wojcik, Judge. Affirmed.

Valerie G. Wass, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez, Andrew Mestman and Lynn McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

1. Introduction[1]

Defendant has a history of gang membership and drug convictions. He was arrested in the company of gang members at a location where the police recovered a large amount of cocaine base and cash. Defendant maintains he was an innocent bystander.

A jury convicted defendant of one count of possession of cocaine base for sale (Health & Saf. Code, § 11351.5, subd. (a).) The jury also found true the special allegations supporting a street gang enhancement and a prior conviction. (§ 186.22, subd. (b); Health & Saf. Code, § 11370.2, subd. (c).) The court sentenced defendant to a 10-year prison term: the middle term of four years for count 1; three years for the prior conviction; and three years for the gang enhancement.

Defendant challenges the sufficiency of the evidence to support his conviction for possession. He also argues that, if his conviction is reversed, his admission that he violated probation must also be set aside. Based on the sufficiency of the evidence, we affirm the judgment.

2. Facts

We recite a summary of the pertinent facts in a style favorable to the judgment. (*People v. Kipp* (2001) 26 Cal.4th 1100, 1128.)

In April 2006, some Riverside County sheriff's deputies were conducting surveillance of a mobile home on Lee Road in Perris where they observed drug-related activity occurring between the resident, Kenyata Williams, and visitors. In particular, on

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[1] All statutory references are to the Penal Code unless stated otherwise.

April 17, Deputy Theodore Peterson saw Williams store a bag in a Buick parked on the property, an action Peterson interpreted as a drug dealer hiding his "stash." The Buick appeared to be non-operable with one flat tire and weeds and cobwebs around the tires.

Two days later, on April 19, the deputies' task force arrived to execute a search warrant. As they approached, defendant poked his head around the corner of the mobile home and then disappeared from view. Deputy Peterson recognized defendant as a member of the Mead Valley Gangster Crips ("MVGC") street gang. But he had not seen defendant at the Lee Road residence on any previous occasion. Deputy Peterson recognized three other people—Dion Frederick, Rodrick Broadnax, and Williams's live-in girlfriend, Nakirsha Hames[2]—who were also present.

The deputies searched the Buick, which was registered to Williams, and found a purple Crown Royal Bag containing about 186 grams of cocaine base. The deputies also found two digital scales, one displaying cocaine residue. The deputies also searched a Toyota Camry, belonging to Hames, and discovered a paper bag containing about 21 grams of cocaine base. Deputy Peterson testified it was the largest amount of cocaine he had ever found at one location.

In a Dodge Charger parked on the premises, the officers found two $1,000 cash bundles. A neighbor had rented the Charger for Williams to use.

No money or drugs were found during a search of defendant's car.

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[2] In the reporter's transcript, Hames is variously identified as Nakirsha Lynnette Hames, Merkeesha Hanes, and Lakisha Hanes.

On the porch near the carport, the police recovered glass vials, used for holding crack cocaine; a razor, commonly used to cut cocaine; and plastic baggies, commonly used to package cocaine.

Inside the mobile home were gang clothing and photographs of people in gang attire and of Williams and Fredrick making gang signs.

Deputy Peterson searched defendant and found about $930, including denominations of five $100 bills, seventeen $20 bills, nine $10 bills, and some $5 bills.[3] Broadnax had $133 in cash, two cell phones, and an "MV" tattoo on his torso. Frederick had one cell phone and $300 in $10 bills. The amount of money in possession of the individuals and found in the Charger was consistent with drug sales.

Detective Damon Devine had previously arrested defendant and other MVGC gang members in 2002 for selling drugs. Peterson believed defendant and the other three suspects—Williams, Frederick, and Broadnax—were active MVGC gang members.

A sheriff's investigator, Marc Bender, testified about distribution and sale of drugs between South America, Mexico, and the United States. Street gangs are midlevel drug dealers. A "stash" house or "call-up" house is used to store drugs for distribution. Both types of houses have minimal traffic to avoid drawing the attention of law enforcement. Only trusted persons are allowed access to a stash house or call-up house.

An ounce of cocaine sells for about $1,000. The amount of cocaine was the largest Bender had ever encountered. Bender thought the house had recently been

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[3] There is some confusion in the testimony about the exact sum.

"reupped," or replenished, with more drugs. Based on the location of the house, the amount of drugs and cash, the rental car, the gang ties and the travel records of the suspects, and defendant's prior drug convictions, Bender believed defendant possessed cocaine for sale.

Another investigator, Alfredo Medina, testified that the MVGC gang had combined with the Perris Locs gang to form a single gang of 100 members. Medina identified several gang members and described their various drug-related crimes. Medina explained the gang's primary activity was distributing and selling drugs and that it qualified as a criminal street gang.

Medina identified defendant as an MVGC gang member who had been arrested in Oklahoma in 2001 for possessing a one-half pound of marijuana. In 2002, defendant had also been arrested for selling cocaine base at another Perris house. In 2005, Broadnax, Williams, and defendant had traveled to Alabama and Florida in an effort to expand the gang's drug trade.

Medina identified Williams, Frederick, and Broadnax as active MVGC gang members and expressed his opinion that defendant was still an MVGC gang member involved in drug dealing at the Lee Road location.

In 2001 and 2004, defendant pleaded guilty to three separate drug offenses. In April 2003, defendant identified himself to the police as a "Mead Valley gangster."

Defendant's wife testified that defendant quit his gang associations after their son was born in November 2004.

Another defense witness, Frederick's girlfriend, Tami Lewis, testified she was present at Lee Road during the police raid. Defendant had only been on the scene for about five or 10 minutes before the police arrived.

Samuel Acevedo testified he had paid defendant on the day he was arrested $800 cash in partial payment for construction work performed. Defendant told a deputy sheriff that he had cashed a Moneygram for $800 received for performing a landscaping appraisal.

3. Sufficiency of Evidence

"To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Kipp, supra,* 26 Cal.4th at p. 1128; *People v. Story* (2009) 45 Cal.4th 1282, ___.)

Possession of a controlled substance for sale requires "proof the defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character." (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746.) Constructive possession may be shown by circumstantial evidence: "Constructive possession does not require direct physical control over the item 'but does require that a person knowingly exercise control or right to control a thing, either directly or through another person or persons.' CALJIC No. 12.01)" (*People v. Austin* (1994) 23 Cal.App.4th 1596, 1609; *People v. Consuegra* (1994) 26 Cal.App.4th 1726, 1734.) An

expert opinion may supply circumstantial evidence. (*People v. Harvey* (1991) 233 Cal.App.3d 1206, 1220.)

Defendant contends substantial evidence is not shown by his presence at a known drug house, in the company of fellow gang members, and possessing a significant amount of cash, combined with his history of gang affiliation and drug convictions. We, however, conclude there was substantial evidence to allow a jury to decide defendant was guilty of constructive possession of cocaine base for sale because defendant knew about and could exercise dominion and control over the drugs in the cars.

The testimony by three law enforcement experts—Devine, Bender, and Medina—established that defendant was an MVGC gang member actively engaged in drug trafficking. The facts are not disputed that defendant was associating with other gang members at a location where the police found a large quantity of cocaine base, a large sum of cash, and drug paraphernalia in plain view. Defendant himself was holding nearly $1,000, the price of an ounce of cocaine. The other people would not have permitted defendant to be present at Lee Road unless he was involved in the gang's drug operations.

Defendant relies on several federal cases and one state case involving constructive possession of narcotics. (*United States v. Ramirez* (9th. Cir. 1989) 880 F.2d 236; *Delgado v. United States* (9th. Cir. 1964) 327 F.2d 641; *United States v. Kelso* (9th. Cir. 1991) 942 F.2d 680; *People v. Glass* (1975) 44 Cal.App.3d 772.) The federal cases are not binding on this court. (*People v. Superior Court (Moore)* 50 Cal.App.4th 1202, 1211.) Furthermore, none of the cases cited by defendant involve constructive possession

in the context of a sophisticated drug trafficking operation conducted by a criminal street gang.

Defendant emphasizes the absence of evidence in the record suggesting his actual possession or control of the cocaine base. But it is error to focus on "evidence that did not exist rather than on evidence that did exist." (*People v. Story, supra,* 45 Cal.4th at p. ____, citing *People v. Rodriguez* (1999) 20 Cal.4th 1, 12.)

In the present case, expert testimony demonstrates that the way the MVGC gang operates its drug business is to divide the various tasks and responsibilities among its members as a tactical measure to avoid liability. Defendant was consorting with fellow gang members at a known drug house where there was a large quantity of drugs and cash. Defendant himself was holding a significant amount of cash. As observed in *People v. Redrick* (1961) 55 Cal.2d 282, 287, "As might be expected, no sharp line can be drawn to distinguish the congeries of facts which will and that which will not constitute sufficient evidence of a defendant's knowledge of the presence of a narcotic in a place to which he had access, but not exclusive access, and over which he had some control, but not exclusive control." But we find here sufficient persuasive circumstantial evidence from which a reasonable trier of fact could conclude appellant had constructive possession for sale of the cocaine base found at the Lee Road residence.

4. Disposition

We affirm the judgment.

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s/Gaut
J.

We concur:

s/Richli
Acting P. J.

s/King
J.