

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID GABRIEL ACEVEDO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81306-COA

**FILED**

**JUL 21 2021**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

David Gabriel Acevedo appeals from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance, establishing or possessing a financial forgery laboratory, and two counts of possession of a forged instrument or bill. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Police were surveilling an apartment complex where they suspected Omar Zamora, who had recently eluded officers in a high-speed car and foot chase, might be located. At some point, police observed Zamora enter one of the apartments with a Louis Vuitton bag. Police obtained a search warrant for the apartment. Upon entering the apartment, police immediately observed items indicating illicit activity, such as numerous credit cards in different names and drug paraphernalia. After a thorough search, police found methamphetamine on the kitchen counter and multiple items indicative of fraudulent activity, such as counterfeit money, credit cards and loan applications belonging to other people, and money printers dispersed throughout the apartment. Additionally, police found a large amount of an apparent controlled substance in the Lois Vuitton bag. Three men were in the apartment at the time, including Zamora, appellant David Acevedo, and another unnamed man.

Police took Acevedo into custody and read him his *Miranda* rights.<sup>1</sup> While in custody at the apartment, Acevedo admitted to police that the apartment was his and that his mother rented it for him. Additionally, he told police that he was aware of the methamphetamine on the counter and that he was addicted to methamphetamine. The State charged Acevedo with possession of a controlled substance, establishing or possessing a financial forgery laboratory, and possession of forged instruments or bills, to which he pleaded not guilty.

At trial, one juror improperly approached a detective-witness and inquired as to how to become a court marshal. After a hearing on the matter, the juror was immediately dismissed and the court admonished the jury not to speak to witnesses. At the conclusion of the trial, Acevedo was convicted of all three counts. This appeal followed.

Acevedo makes two arguments on appeal: (1) that there was insufficient evidence for the jury to convict him of constructive possession of the methamphetamine on the counter and forgery and counterfeiting items, and (2) the district court erred in declining to grant a mistrial when a juror was caught speaking with one of the State's law enforcement witnesses during trial. We are unpersuaded by Acevedo's arguments and therefore affirm the judgment of conviction.

First, we conclude that there was sufficient evidence presented at trial to support the jury's finding that Acevedo had constructive possession of the methamphetamine and forgery and counterfeiting items.

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<sup>1</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

In reviewing the evidence supporting a jury's verdict, the question "is not whether this court is convinced of the defendant's guilt beyond a reasonable doubt, but whether the jury, acting reasonably, could be convinced to that certitude by evidence it had a right to accept." *Edwards v. State*, 90 Nev. 255, 258-59, 524 P.2d 328, 331 (1974); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is the jury's role, not the reviewing court's, "to assess the weight of the evidence and determine the credibility of witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Further, "circumstantial evidence alone may support a conviction." *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002). Thus, "a verdict supported by substantial evidence will not be disturbed by a reviewing court." *McNair*, 108 Nev. at 56, 825 P.2d at 573.

To find a defendant guilty of possession of a controlled substance, NRS 453.336(1), establishing or possessing a financial forgery laboratory, NRS 205.46513(1), and possession of forged instruments or bills, NRS 205.160, the State must prove, among other things, that the defendant had *possession*.<sup>2</sup> "Possession may be actual or constructive." *Glispey v. Sheriff*, 89 Nev. 221, 223, 510 P.2d 623, 624 (1973). "A person has constructive possession of a controlled substance only if the person maintains control or a right to control the contraband." *Sheriff v. Shade*, 109 Nev. 826, 829-30, 858 P.2d 840, 842 (1993).

Further, "[p]ossession may be imputed when the contraband is found in a location which is immediately and exclusively accessible to the accused and subject to [his] [or her] dominion and control." *Id.* (second alteration in original) (internal quotation marks omitted). Dominion and

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<sup>2</sup>Acevedo contests only possession on appeal. Therefore, we do not address the other elements of the crimes charged.

control may be shown “by circumstantial evidence and reasonably drawn inferences.” *Fairman v. Warden*, 83 Nev. 332, 336, 431 P.2d 660, 663 (1967). “The accused is also deemed to have the same possession as any person actually possessing the narcotic pursuant to [his or] her direction or permission where [he or] she retains the right to exercise dominion or control over the property.” *Glispey*, 89 Nev. at 224, 510 P.2d at 624; *see also* 28A C.J.S. *Drugs and Narcotics* § 281 (2019) (“Constructive possession may be established by the fact that the accused has dominion and control of the premises on which the controlled substance is located, or owns or controls such premises, or occupies and controls such premises with no equal right of access and occupancy in others.” (footnotes omitted)).

Here, the record reflects that Acevedo was not merely present at the apartment, but rather the primary occupant. Acevedo informed police that the apartment where the drugs were found was his, and that his mother was renting it for him.<sup>3</sup> Police found many documents dispersed throughout the apartment indicating that Acevedo was the primary resident of the apartment, such as his driver’s license, documents addressed to him, a work identification card, and pay stub. In fact, there is no evidence in the record indicating that there were other tenants living in the two-bedroom apartment aside from Acevedo and he does not contend that there

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<sup>3</sup>Acevedo contends that his admissions should not be considered in the sufficiency of the evidence analysis because police testimony was inconsistent. This contention is without merit. *See Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975) (holding that it is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness).

were.<sup>4</sup> Further, Acevedo admitted to the police that he was a methamphetamine user, and that he was aware there was methamphetamine on the counter. Given the above facts, there was sufficient evidence in the record for the jury to conclude that Acevedo had a right of dominion and control over the methamphetamine on the counter as he was the primary resident, admitted to being a methamphetamine user, was aware of the methamphetamine on the counter, and knew what kind of controlled substance it was.

As for the forgery and counterfeiting items, police found fraudulent \$50 and \$100 bills scattered around the residence, two printers, one of which contained the same type of paper that the fraudulent bills were printed on, and numerous credit cards not belonging to Acevedo. Further, police found a black box containing financial items, an embosser, an MSR reader/writer, and a credit card scanner in one of the back rooms. Acevedo admitted to police that he rented the apartment and police found only his identifying documents scattered about the apartment. Zamora entered Acevedo's apartment with a Louis Vuitton bag, and just his identification documents were found inside the Louis Vuitton bag. Thus, there was sufficient evidence for the jury to find that Acevedo had constructive possession of the forgery and counterfeiting items because the items were found in his apartment, which is immediately and exclusively accessible to Acevedo and subject to his dominion and control, as the record shows he is the lessee and primary resident of the apartment. *See People v. Rushing*, 257 Cal. Rptr. 286, 289 (Ct. App. 1989) (holding that there was sufficient

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<sup>4</sup>Acevedo's codefendant's wallet was found inside the Louis Vuitton bag; however, the codefendant brought the Luis Vuitton bag inside the apartment just prior to the search, so it is not an indicator that he was living there.

evidence for the jury to find that defendant had the right to exercise dominion and control over the apartment where the drugs were found because he had access to private areas of the apartment and he kept his important documentation in the same general location the drugs were found).

Second, we conclude that the district court did not abuse its discretion by denying Acevedo's motion for a mistrial due to a juror having a short conversation with a detective-witness about how to become a court marshal.

"The trial court has discretion to determine whether a mistrial is warranted, and its judgment will not be overturned absent an abuse of discretion." *Rudin v. State*, 120 Nev. 121, 142, 86 P.3d 572, 586 (2004). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). "A defendant's request for a mistrial may be granted . . . where some prejudice occurs that prevents the defendant from receiving a fair trial." *Rudin*, 120 Nev. at 144, 86 P.3d at 587; see *Leonard*, 114 Nev. at 1207, 969 P.2d at 295 (concluding that the district court's denial of a motion for a mistrial was not an abuse of discretion where the court replaced two jurors with alternates because a witness spoke to the two jurors about the case); cf. *Roever v. State*, 111 Nev. 1052, 1055, 901 P.2d 145, 146 147 (1995) (holding that "[n]ot every incidence of contact between jurors and witnesses requires the granting of a motion for a new trial").


After it was brought to the district court's attention that a juror spoke to the detective witness, the parties agreed that the juror should be dismissed and Acevedo moved for a mistrial. The district court held a hearing outside the presence of the jurors to determine what the juror and

the detective discussed. The district court confirmed with the juror that his conversation was limited to becoming a court marshal and subsequently dismissed the juror and admonished him not to speak to any witnesses or jurors. The detective witness also testified at this hearing, confirming the limited nature of the conversation and testifying that he did not see the juror approach any of the other jurors after the conversation. The district court concluded the issues were cured by removing the juror from the jury.

Acevedo cites no authority and makes no cogent argument as to how the district court abused its discretion, nor does he show any evidence that prejudice resulted from the juror misconduct. *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). Thus, Acevedo fails to demonstrate that the district court abused its discretion in denying the motion for a mistrial. Therefore, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Tierra Danielle Jones, District Judge  
Matsuda & Associates, Ltd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk