

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OMAR ZAMORA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81365-COA

FILED

SEP 22 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Omar Zamora appeals from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance; establishing or possessing a financial forgery laboratory; two counts of possession of forged instrument or bill; stop required on signal of police officer; child abuse, neglect, or endangerment; performance of act or neglect of duty in willful or wanton disregard of safety of persons or property; and two counts of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

After receiving information about suspicious activity in the area involving a silver Lexus, a Las Vegas Metropolitan Police Department (LVMPD) detective conducted covert surveillance and located the Lexus in a 7-Eleven parking lot.<sup>1</sup> The detective watched an individual, who he later identified as Zamora, exit the 7-Eleven, get into the Lexus's driver's seat, and leave the parking lot. The detective followed the Lexus in his unmarked vehicle before radioing the LVMPD air unit for assistance. Immediately after the air unit spotlighted the Lexus, Zamora fled in the vehicle, driving erratically and evasively and a chase ensued. About 10 minutes after the

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

chase began, Zamora crashed the Lexus into a natural gas pipe and eluded the police on foot.

While fleeing on foot, an officer in the air unit observed Zamora discard what detectives later determined was a bag containing Zamora's cellphone. The contents of the cellphone included photographs and videos of Zamora present while unidentified individuals dug a black storage box containing forgery and counterfeiting equipment and counterfeit U.S. currency out of the ground; photographs and videos of Zamora "racking" through fraudulent money; photographs and videos of Zamora pointing and waving a Glock handgun with a red magazine at the camera; a video of a baby lying in a bassinette that pans to "selfie mode" and shows Zamora; and a picture of a small infant lying in a hospital bassinette next to a Glock handgun loaded with a red magazine. In addition, a brown Louis Vuitton backpack is visible in multiple pictures and videos. The detective recognized Zamora from the photographs and videos as the individual who got into the driver's seat of the Lexus at the 7-Eleven.

Three days after the car chase, a police officer surveilling an apartment observed Zamora pull up to the apartment, exit the vehicle, and enter the apartment carrying a dark-colored bag or backpack with a red zippered pouch sticking out of it. Police officers subsequently searched the apartment pursuant to a search warrant and found controlled substances and drug paraphernalia on the kitchen counter, a bag of methamphetamine alongside Zamora's wallet and identification in a brown Louis Vuitton backpack on the floor, and the black storage box from the cellphone video, which contained forgery equipment.<sup>2</sup> Additional counterfeiting equipment

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<sup>2</sup>When police executed the search warrant, three men were inside the apartment, including Zamora and his codefendant. The third man

was scattered throughout the apartment. Police found an ABC brand AR-15 rifle inside the red zippered pouch that detectives observed Zamora bring into the apartment along with the backpack. Additionally, police found Zamora's black t-shirt inside the apartment, which the detective observed him wearing three days earlier when he exited the 7-Eleven and got into the Lexus, and Zamora's DMV temporary identification and apparently other DMV documents belonging to Zamora were on the kitchen counter.

A detective testified at trial that he obtained a statement from Zamora's codefendant with whom Zamora was jointly tried. The codefendant admitted that he was a methamphetamine user and that the drugs on the kitchen counter were his. When the detective asked the codefendant about the larger quantity of methamphetamine police found in the Louis Vuitton backpack, he stated that he did not know the methamphetamine was there. Zamora did not object but moved for a mistrial at the next break, arguing that the detective's testimony concerning what his codefendant said about the larger quantity of methamphetamine created a *Bruton* issue.<sup>3</sup> The district court denied the motion, finding that the detective's testimony did not create a *Bruton* problem. The district court noted that the State promptly cut the detective off, that no names were mentioned, and that there had been mention of a third person who was in the apartment with Zamora and his codefendant, but who was not present in court. Zamora did not request a limiting instruction.

Zamora makes two arguments on appeal: (1) that the district court erred in denying his motion for a mistrial on the trafficking in a

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was not charged with the items found inside the apartment because police did not find evidence linking him to the apartment.

<sup>3</sup>*Bruton v. United States*, 391 U.S. 123 (1968).

controlled substance charge pursuant to *Bruton v. United States*, and (2) that there was insufficient evidence to support his convictions. We are unpersuaded by Zamora's arguments and therefore affirm the judgment of conviction.

*The district court did not abuse its discretion in denying Zamora's motion for a mistrial on the trafficking in a controlled substance charge*

Zamora argues that the district court erred in denying his motion for a mistrial because the detective's testimony that Zamora's codefendant did not know about the larger quantity of methamphetamine rang the bell for the jury that Zamora was the only other logical owner of the drugs. "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). A mistrial may be granted only where "prejudice occurs that prevents the defendant from receiving a fair trial." *Id.* at 144, 86 P.3d at 587. We conclude that the district court did not abuse its discretion in denying Zamora's motion for a mistrial on the trafficking in a controlled substance charge pursuant to *Bruton*.

In *Bruton*, the Supreme Court held that evidence of an incriminating statement by one defendant that expressly refers to the other defendant violates the Confrontation Clause of the Sixth Amendment and must be excluded. 391 U.S. at 126. To fall within *Bruton's* protective rule, a statement by a codefendant must facially or expressly implicate the defendant. *Id.* at 127-28; *Ducksworth v. State*, 114 Nev. 951, 953, 966 P.2d 165, 166 (1998). Statements that merely refer to the defendant's existence but do not reference the defendant by name, and are incriminating only when linked with other evidence presented at trial, may be admitted. *Lisle v. State*, 113 Nev. 679, 693, 941 P.2d 459, 468 (1997) (citing *Richardson v. Marsh*, 481 U.S. 200, 211 (1987)) (finding no *Bruton* violation where codefendant's

statement referred to the defendant as “the other guy”), *limited on other grounds by Middleton v. State*, 114 Nev. 1089, 968 P.2d 296 (1998).

Here, the detective’s testimony concerning the codefendant’s statement neither facially nor expressly implicated Zamora as the owner of the larger bag methamphetamine. Rather, the detective’s testimony relayed the codefendant’s assertion that he was unaware of the contents of the larger bag containing the methamphetamine. Zamora was not referenced by name, and the statement can be construed only as incriminating against Zamora when it is linked with other evidence presented at trial, such as evidence that the larger bag of methamphetamine was found inside the same Louis Vuitton backpack as Zamora’s wallet and identification. Thus, the detective’s testimony did not directly implicate *Bruton*, and the district court did not abuse its discretion in denying Zamora’s motion for a mistrial as to the trafficking in a controlled substance charge.

Even if we assume that the district court abused its discretion by denying Zamora’s motion for a mistrial, any error that may have resulted was harmless. We review the erroneous denial of a motion for a mistrial for harmless error. *See Parker v. State*, 109 Nev. 383, 388-89, 849 P.2d 1062, 1066 (1993) (holding that the erroneous denial of a motion for a mistrial is harmless where the prejudicial effect is low and there is otherwise strong evidence of the defendant’s guilt). When evaluating the harmlessness of a constitutional error, we apply “the stricter *Chapman v. California* standard” and ask “whether it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.” *Tavares v. State*, 117 Nev. 725, 732 & n.14, 30 P.3d 1128, 1132 & n.14 (2001) (footnote and internal quotation marks omitted) (citing *Chapman v. California*, 386 U.S. 18 (1967)), *modified in part on other grounds by Mclellan v. State*, 124 Nev. 263, 182 P.3d 106 (2008).

The jury in this case heard testimony that a detective observed Zamora enter the apartment carrying a dark-colored bag or backpack and that once inside the apartment, the detective located a brown Louis Vuitton backpack on the floor. Police found the methamphetamine and Zamora's wallet and identification inside the Louis Vuitton backpack. Another detective testified that the Louis Vuitton backpack was the backpack he had seen in numerous videos and photographs of Zamora found on Zamora's phone. Thus, even if the district court abused its discretion in denying Zamora's motion for a mistrial, given the evidence produced at trial, the prejudicial effect was low, and it is clear beyond a reasonable doubt that a rational jury would have found Zamora guilty of trafficking in a controlled substance even without the reference to the bag.

*Sufficient evidence supports the judgment of conviction*

In reviewing a challenge to the sufficiency of evidence supporting a criminal conviction, this court considers "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." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (emphasis and internal quotation marks omitted). The jury weighs the evidence and determines the credibility of witnesses, and it decides whether these are sufficient to meet the elements of the crime. *Id.* Further, "circumstantial evidence alone may support a conviction." *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002). This court will not disturb a verdict that is supported by substantial evidence. *McNair*, 108 Nev. at 56, 825 P.2d at 573. We conclude that sufficient evidence was presented at trial to support the jury's finding of guilt on all charges.

*Zamora's challenge to possession*

Zamora challenges possession as to the charges of trafficking in a controlled substance, establishing or possessing a financial forgery laboratory, possession of forged instrument or bill (two counts), and ownership or possession of a firearm by a prohibited person relating to the ABC brand AR-15 rifle. Zamora argues that the only evidence the State presented tying him to the apartment was his wallet and identification that police found inside a Louis Vuitton bag in the apartment and that this, without more, is insufficient to prove that Zamora possessed the contraband found within the apartment. Because Zamora contests only possession on appeal, we do not address the other elements of the crimes charged.

“Possession [can] be actual or constructive.” *Glispey v. Sheriff*, 89 Nev. 221, 223, 510 P.2d 623, 624 (1973). Actual possession means the person is knowingly in direct physical control of the item. *Palmer v. State*, 112 Nev. 763, 768, 920 P.2d 112, 115 (1996). Constructive possession exists if the person “maintains control or a right to control the contraband.” *Glispey*, 89 Nev. at 223, 510 P.2d at 624. “[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.* at 223-24, 510 P.2d at 624. Dominion and control may be shown by circumstantial evidence and reasonably drawn inferences. *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Additionally, two people together may exercise joint constructive possession when they “jointly and knowingly” share “dominion and control.” *Maskaly v. State*, 85 Nev. 111, 114, 450 P.2d 790, 792 (1969). “[M]ere presence in the area where contraband is discovered or mere association with the person who does control the contraband is insufficient to support a finding of possession.” *Lathrop v. State*, 110 Nev. 1135, 1136, 881 P.2d 666, 667 (1994).

Here, sufficient evidence supports the jury's decision to find that Zamora possessed the methamphetamine, the ABC brand AR-15 rifle, the counterfeiting equipment, and the fraudulent U.S. currency (two counts).

As to the trafficking and ownership or possession of a firearm charges, a detective testified at trial that he observed Zamora carrying a dark-colored backpack into the apartment with a red pouch sticking out of it. Once inside the apartment, detectives located a brown Louis Vuitton backpack on the floor, which one detective recognized as the same backpack that he had seen in several photographs and videos on Zamora's cellphone. Inside this Louis Vuitton backpack, detectives found a large bag of methamphetamine and Zamora's wallet and identification. Additionally, police found an ABC brand AR-15 rifle inside the red pouch that police observed sticking out of the Louis Vuitton backpack. From this evidence, a rational trier of fact could have found that the methamphetamine and ABC brand AR-15 rifle were in Zamora's actual or constructive dominion and control.

As to the establishing or possessing a financial forgery laboratory and two possession of forged instrument or bill charges, police officers and detectives testified that they found various items belonging to Zamora in the apartment where they found the forgery equipment and fraudulent bills, indicating that Zamora was not merely present in the apartment. For example, police officers found the black t-shirt that a detective saw Zamora wearing three days prior, and officers found Zamora's DMV temporary identification inside the apartment and apparently other DMV documents belonging to Zamora. Detectives testified that the counterfeiting items were openly strewn about the apartment in which Zamora was arrested. The State also played the jury several videos found on Zamora's phone that show Zamora present when unidentified individuals dug up the black box and



show the forgery equipment inside the black box. Zamora's cellphone also contained various videos and photographs of Zamora holding counterfeit money. From this evidence, a rational trier of fact could have found Zamora had actual, constructive or joint possession of the financial forgery laboratory and the forged bills.

Therefore, we conclude that sufficient evidence supports Zamora's convictions of trafficking in a controlled substance, establishing or possessing a financial forgery laboratory, possession of forged instrument or bill (two counts), and ownership or possession of a firearm by a prohibited person relating to the ABC brand AR-15 rifle.

*Zamora's challenge to identity*

Zamora challenges identity as to the charges of stop required on signal of police officer and performance of act or neglect of duty in willful or wanton disregard of safety of persons or property, arguing that the State failed to present sufficient evidence that he was the driver of the silver Lexus because only one detective testified that Zamora was the driver. Because Zamora contests only identity on appeal, we do not address the other elements of the crimes charged.

Here, the evidence supports the jury's decision to find Zamora guilty on these two charges. At trial, a detective testified that he watched an individual, who he later identified as Zamora, exit the 7-Eleven, get into the driver's seat of a silver Lexus, and drive away. The detective followed the Lexus and ultimately radioed the LVMPD air unit for assistance. The air unit followed the Lexus for the entirety of the car chase, until the Lexus crashed and the driver fled, discarding something in the process. The detective arrived at the scene of the crash and identified the crashed Lexus as the same Lexus that he witnessed Zamora get into and drive away in at the 7-Eleven. Additionally, the detective went to the location where an officer

in the air unit observed the driver discard something and found a black bag containing Zamora's cellphone.

Independent of the lack of video and based only on the officer's testimony, a rational trier of fact could have found that Zamora was the driver of the Lexus. Zamora cites no authority to support that a video is required for identification, and we decline to consider his argument. 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). Therefore, we conclude that sufficient evidence supports Zamora's convictions of stop required on signal of police officer and performance of act or neglect of duty in willful or wanton disregard of safety of persons or property.

*Zamora's challenge to the gun's authenticity*

Zamora challenges his convictions of child abuse, neglect, or endangerment and ownership or possession of a firearm by a prohibited person relating to the Glock on the grounds that the State failed to prove that the Glock was real. Because Zamora only contests on appeal that the firearm was not real, we do not address the other elements of the crimes charged.<sup>4</sup>

Here, the evidence is sufficient to affirm the jury's decision to find Zamora guilty of these two charges. While the State did not introduce the Glock handgun into evidence, two witnesses testified that the Glock looked real. A detective testified that he knew that the firearm was a Glock because he carried a Glock as his service weapon for 14 years. Additionally,

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<sup>4</sup>To the extent that Zamora argues that the State failed to recover the firearm, the State does not need to produce a firearm at trial. *Penner v. State*, Docket No. 55349 (Order of Affirmance, Nov. 8, 2010) (“[T]he State need not produce the firearm used to commit a crime if there is sufficient evidence to establish the existence of the firearm.”).


he testified that he believed it was a firearm. Zamora's girlfriend also testified that while she was unsure whether the Glock was real or a replica, it looked like a real gun.

Because the jury weighs the evidence and determines the credibility of witnesses, and because circumstantial evidence may support a conviction, viewing the evidence in the light most favorable to the State, a reasonable juror could find that the handgun with the red magazine was real. Therefore, we conclude that sufficient evidence supports Zamora's convictions.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Tierra Danielle Jones, District Judge  
Law Office of Benjamin Nadig, Chtd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk