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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re B.G., a Person Coming  
Under the Juvenile Court Law.

B275251

(Los Angeles County  
Super. Ct. No. NJ28765)

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THE PEOPLE,

Plaintiff and Respondent,

v.

B.G.,

Defendant and Appellant.

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APPEAL from a judgment of the Superior Court of  
Los Angeles County, Gibson W. Lee, Judge. Affirmed.

Gerald Peters, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,  
Chief Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Steven D. Matthews and Analee J. Brodie,  
Deputy Attorneys General, for Plaintiff and Respondent.

Minor appellant B.G. appeals from an order adjudicating him a ward of the juvenile court under Welfare and Institutions Code section 602. Appellant contends insufficient evidence supported the juvenile court's findings that he unlawfully possessed a firearm (Pen. Code, § 29610<sup>1</sup>) and live ammunition (§ 29650). We disagree and affirm.

### **PROCEDURAL HISTORY**

The Los Angeles County District Attorney filed a petition pursuant to Welfare and Institutions Code section 602 alleging that appellant possessed a firearm (§ 29610) and live ammunition (§ 29650). Appellant, who was on probation after admitting to second degree robbery (§ 211) a few weeks earlier, denied the allegations. He proceeded to a joint contested adjudication hearing with another minor, T.J., who faced identical allegations stemming from the same April 16, 2016 incident.

The juvenile court sustained the petition against both minors. The court placed appellant in Camp Community Placement for five to seven months, with a maximum confinement period of five years, 10 months. Appellant received 34 days of predisposition custody credit. He timely appealed.

### **FACTUAL BACKGROUND**

At the adjudication hearing, Los Angeles Police Department Officer Ricardo Cepeda testified that he conducted a traffic stop of a vehicle with five occupants on April 16, 2016. Two individuals were seated in the front and three were seated in the back.

As Cepeda approached the car on foot from the rear passenger side, a "silver object" "to the left of the center console

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

on the floorboard” of the back seat caught his attention. Cepeda “poked [his] head” into the vehicle and realized the object was a revolver. The gun, which was “standing up vertical,” was wedged between the middle passenger’s left leg and the center console. Cepeda identified the middle passenger as minor T.J.; appellant was seated to T.J.’s left, directly behind the driver and on the side on which the gun was located.

Cepeda’s partner, Officer Manuel Sanchez, testified that he recovered the revolver from the car without incident. He testified that there were six live rounds of ammunition in the cylinder.

Sanchez also testified that he spoke with the car’s front seat passenger, minor D.G., during the stop. According to Sanchez, D.G. told Sanchez that T.J. and the third back seat passenger, J.H., had been passing the gun back and forth. Sanchez further stated that D.G. showed Sanchez five photographs on his cell phone, which he later emailed to Sanchez. One of the photos depicted appellant “with a revolver on his lap seated in a car,” and another showed him holding a silver revolver. Two others depicted J.H. holding a gun. All of the photos were admitted into evidence.

During his testimony, D.G. claimed that he had never seen the photographs before, did not know who took them or when or where they were taken, and did not email them to Officer Sanchez. He further testified that T.J. “didn’t touch the gun.” Aside from identifying appellant in the photographs, D.G. did not say anything regarding appellant’s involvement with the gun. D.G. described appellant and T.J. as his friends and stated that they were hanging out together on April 16, 2016.

T.J. took the stand in his defense. He testified that the revolver belonged to J.H., who “tossed” the gun such that it

landed between T.J.'s leg and the center console. T.J. further stated that he saw the gun for the first time during the traffic stop.

Appellant did not testify or otherwise present any evidence in his defense.

### **DISCUSSION**

Appellant contends there was no evidence that he was in actual or constructive possession of the revolver or live ammunition. "The same standard governs review of the sufficiency of the evidence in adult criminal cases and juvenile cases: we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable fact finder could find guilt beyond a reasonable doubt." (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540; see also *In re Roderick P.* (1972) 7 Cal.3d 801, 808–809.) "Substantial evidence is evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the appellant guilty beyond a reasonable doubt. [Citation.] The test is not whether guilt is established beyond a reasonable doubt, but whether any 'rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.]" (*In re Chase C.* (2015) 243 Cal.App.4th 107, 113.)

Appellant was found to have violated section 29610, which prohibits minors from possessing "a pistol, revolver, or other firearm capable of being concealed upon the person," and section 29650, which prohibits minors from possessing "live ammunition." Live ammunition is "any material (i.e., projectiles, shells, or bullets) in the present state of being capable of being

fired or detonated from a pistol, revolver, or any firearm.” (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1134.)

Possession of contraband may be actual or constructive. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831.) “Actual possession means the object is in the defendant’s immediate possession or control,” such as when the defendant is holding a weapon. (*Ibid.*) “Constructive possession means the object is not in the defendant’s physical possession, but the defendant knowingly exercises control or the right to control the object. [Citation.] Possession of a weapon may be proven circumstantially, and possession for even a limited time and purpose may be sufficient.” (*Ibid.*) Mere proximity to a weapon or other prohibited item is not sufficient to establish possession; the prosecution must prove that the defendant knowingly exercised a right to control the item, either directly or through another person. (*People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1417; see also *In re Elisabeth H.* (1971) 20 Cal.App.3d 323, 330.) Possession need not be exclusive to the defendant; multiple people may possess the same item simultaneously. (See *People v. Sifuentes, supra*, 195 Cal.App.4th at p. 1417.)

The evidence in this case supported the court’s finding that appellant possessed the revolver and live ammunition. The loaded revolver was recovered from the floorboard of a car occupied by a group of friends, near appellant’s feet. The trier of fact reasonably could infer that the revolver was visible and accessible to appellant; Officer Cepeda testified that he could see the gun from outside the car, and D.G. testified that T.J. and J.H. passed the gun back and forth. The court likewise could infer from the photographs of appellant holding a silver revolver that

appellant had knowledge of the gun and the right to control it and the ammunition it contained.

Appellant calls into question the provenance of the photographs and asserts that there is no evidence that they depict a real gun. However, he does not challenge the admission of the photographs. Nor does he provide a basis from which we could conclude the inference that the revolver depicted in the photographs was the same loaded weapon recovered from the car was an unreasonable one. The record in this case supports the juvenile court's findings.

#### **DISPOSITION**

The judgment is affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.