

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-5012

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**
Sep 18, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
 ON APPEAL FROM THE UNITED
MARQUETTE WALKER,)
 STATES DISTRICT COURT FOR
)
Defendant-Appellant.)
)
)

ORDER

Before: NORRIS, SILER, and SUTTON, Circuit Judges.

Marquette Walker, a federal prisoner proceeding through counsel, appeals his judgment of conviction and sentence for being a felon in possession of ammunition. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2013 or 2014, Walker moved in with his girlfriend, Doris Murrell, in a residence located at 3040 Shannon Avenue in Memphis, Tennessee. On September 29, 2016, law enforcement officers executed a search warrant at the residence in connection with their investigation of a string of burglaries of local businesses. Upon entering the residence, officers announced their presence. At that point, Walker, who was the only person present in the residence, came walking down the hallway, where he was detained by the officers. The officers then searched the residence and found a .40 caliber Taurus handgun in a drawer in the master bedroom. It was later determined that the handgun belonged to Murrell. Additionally, in the kitchen, officers found three bags of marijuana and a gallon-sized Ziploc bag that contained two

smaller Ziploc bags; one smaller bag contained a box with twenty rounds of .38 caliber ammunition and a box with eight rounds of .38 caliber ammunition, and the other smaller bag contained fourteen rounds of .40 caliber ammunition. After completing their search of the residence, the officers arrested Walker and took him into custody.

Walker was then charged with being a felon in possession of a firearm, possession with intent to distribute less than fifty kilograms of marijuana, possession with intent to distribute hydrocodone, and being a felon in possession of ammunition. Prior to trial, the district court dismissed the hydrocodone charge upon the government's motion.

During trial, Walker moved twice for a judgment of acquittal; once after the government presented its proof and again after presentation of all proof. The district court denied each motion. A jury found Walker guilty of being a felon in possession of ammunition, found him not guilty of possession with intent to distribute less than fifty kilograms of marijuana, and could not reach a verdict on the felon-in-possession-of-a-firearm charge. After trial, the district court granted the government's motion to dismiss the latter charge. Walker was sentenced to seventy-eight months in prison.

In this timely appeal, Walker argues that there was insufficient evidence to convict him of being a felon in possession of ammunition because the evidence did not show that he actually or constructively possessed the ammunition.

Because Walker twice moved for a judgment of acquittal in the district court, we review his insufficiency-of-the-evidence claim de novo. *United States v. Algee*, 599 F.3d 506, 512 (6th Cir. 2010). In reviewing a challenge to the sufficiency of the evidence, “the relevant question is 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). “[W]e may not reweigh the evidence, re-evaluate the credibility of witnesses, or substitute our judgment for that of the jury.” *United States v. Bazazpour*, 690 F.3d 796, 802 (6th Cir. 2012).

To obtain a conviction for being a felon in possession of ammunition under 18 U.S.C. § 922(g)(1), the government was required to prove that: (1) Walker was convicted of a felony

punishable by imprisonment for more than one year; (2) Walker knowingly possessed the ammunition; and (3) the ammunition traveled in or affected interstate commerce. *See United States v. Moreno*, 933 F.2d 362, 372 n.1 (6th Cir. 1991). Walker challenges only the sufficiency of the evidence presented in support of the second element.

To prove the second element, the government must show the defendant had “either actual or constructive possession” of ammunition. *United States v. Grubbs*, 506 F.3d 434, 439 (6th Cir. 2007). A defendant has actual possession of ammunition if he has “immediate possession or control” of the ammunition. *Id.* (quoting *United States v. Craven*, 478 F.2d 1329, 1333 (6th Cir. 1973)). To prove constructive possession, the government must present evidence “establishing a nexus” between the defendant and the ammunition “by showing that [he] had knowledge of, access to, and an intent to exercise control over” the ammunition. *United States v. Bailey*, 553 F.3d 940, 946 (6th Cir. 2009). The government can also prove constructive possession by showing that the defendant had “dominion over the premises where the [ammunition] is located.” *United States v. Gardner*, 488 F.3d 700, 713 (6th Cir. 2007) (quoting *United States v. Kincaide*, 145 F.3d 771, 782 (6th Cir. 1998)). Both actual and constructive possession may be proved by circumstantial evidence. *United States v. Daniel*, 134 F.3d 1259, 1263 (6th Cir. 1998).

Walker argues that the evidence was insufficient to show that he possessed the ammunition because he did not have exclusive possession of the residence and did not have knowledge that the ammunition was present at the residence. Walker’s argument is defied by the record and foreclosed by our precedent. For instance, in *United States v. Crumpton*, we explained that, “although ‘nonexclusive possession of the premises cannot establish constructive possession over items found within the premises,’ such an inference is appropriate when ‘there are other incriminating statements or circumstances tending to buttress such an inference.’” 824 F.3d 593, 609 (6th Cir. 2016) (quoting *Bailey*, 553 F.3d at 944 n.3). In that case, we reversed the district court’s grant of the defendant’s motion for judgment of acquittal on his § 922(g)(1) charge because, although the defendant merely had nonexclusive control over the front area of the residence where the ammunition was found, the defendant told law enforcement officers that he knew that the ammunition was present: in particular, he explained that another person

brought the bullets to the residence and asked whether the defendant needed them; the defendant replied: “leave ‘em here, I probably know somebody that do.” *Id.* Thus, it was the defendant’s “affiliation with and control over the front area of the . . . [r]esidence, when combined with his statement regarding his involvement in placing the ammunition in the house and holding it for someone else” that was “sufficient to support a jury finding of constructive possession.” *Id.*

This case is similar to *Crumpton*. Although Walker had only nonexclusive possession over the residence (including the kitchen) that he shared with Murrell, there are “incriminating statements or circumstances” to support the jury’s finding that Walker constructively possessed the ammunition. *Id.* Such circumstances include a defendant’s “connection with [the ammunition], proof of motive, a gesture implying control, evasive conduct, or a statement indicating involvement in an enterprise.” *United States v. Campbell*, 549 F.3d 364, 374 (6th Cir. 2008) (quoting *United States v. Newsom*, 452 F.3d 593, 610 (6th Cir. 2006)). Here, the evidence is sufficient to support an inference that Walker was at least aware of the ammunition (or, at most, that the ammunition belonged to him) and thus is sufficient to show Walker’s “connection with [the ammunition].” *Id.* (quoting *Newsom*, 452 F.3d at 610).

In particular, the evidence shows that (1) the ammunition was in plain view on the kitchen table, (2) household items regularly used by Walker (e.g., a paper towel dispenser and hand sanitizer) were found on the kitchen table, and (3) Walker’s personal belongings (e.g., his clothing and his tool cabinet) were found next to the kitchen table. On these facts, a jury could infer that Walker knew about the ammunition. *See United States v. Shores*, 93 F. App’x 868, 872 (6th Cir. 2004) (“The weapons and ammunition at issue were undeniably found openly displayed and unsecured in [the defendant’s] bedroom, a room in a house over which he had dominion and control. Thus, the evidence was sufficient to establish beyond a reasonable doubt that [he] knowingly had constructive possession of the firearms, whether joint or exclusive.”). In addition, Murrell testified that she did not own and had no knowledge of the .40 caliber bullets, which could lead a jury to infer that those bullets belonged to Walker. *See United States v. Hadley*, 431 F.3d 484, 507-08 (6th Cir. 2005) (finding that evidence was sufficient to sustain the defendant’s § 922(g)(1) conviction under a theory of constructive possession because, although

the defendant had only nonexclusive, joint possession over the bedroom that he shared with his wife where the gun was found, “the evidence . . . permitted the inference” that the defendant was aware of the presence of the gun in his bedroom).

Accordingly, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk