

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

Submitted February 15, 2024

Decided March 18, 2024

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2181

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LEONARD WILLIAMSON, JR.,
Defendant-Appellant.

Appeal from the
United States District Court for the
Southern District of Indiana,
Indianapolis Division.

No. 1:21-CR-00132

James P. Hanlon,
Judge.

ORDER

A jury found Leonard Williamson, Jr., guilty of possessing cocaine with intent to distribute in violation of 21 U.S.C. § 841(a)(1). The same jury acquitted him of carrying a firearm in relation to a drug-trafficking crime in violation of 18 U.S.C. § 924(c) and possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). Despite the acquittal on the firearm counts, the judge considered the same conduct at sentencing—over Williamson’s objection—and found by a preponderance of the evidence that he possessed a firearm in connection with a drug crime. Based on that finding, the judge applied a two-level enhancement to Williamson’s total offense level under the Sentencing Guidelines. *See* U.S.S.G. § 2D1.1(b)(1).

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The enhancement boosted Williamson's offense level from 12 to 14, yielding an advisory imprisonment range of 33 to 41 months. (Without the enhancement, the range would have been 27 to 33 months.) After weighing the sentencing factors under 18 U.S.C. § 3553(a), the judge imposed an above-Guidelines sentence of 57 months in prison.

Williamson's appeal raises a single issue: he argues that the judge's reliance on acquitted conduct to calculate the Guidelines range violated his rights to due process and trial by jury under the Fifth and Sixth Amendments. This argument is foreclosed by *United States v. Watts*, 519 U.S. 148, 157 (1997), as we have repeatedly held, *see, e.g., United States v. Robinson*, 62 F.4th 318, 320–21 (7th Cir. 2023) (collecting cases). Williamson acknowledges as much and explains that he raises the issue here to preserve it for Supreme Court review. He has properly done so. *Robinson*, 62 F.4th at 321 (rejecting the same argument based on *Watts* and noting that the defendant properly preserved the issue for further review).

AFFIRMED

1 reasonable doubt, and we believe that the evidence does prove
2 by a preponderance that a firearm was possessed and that the
3 two-level enhancement is appropriate.

4 THE COURT: Okay. All right. Thank you.

5 So the enhancement we're talking about is at
6 paragraph 24, which adds two levels as a specific offense
7 characteristic, reading as follows: A firearm was possessed.
8 Pursuant to United States Sentencing Guidelines
9 Section 2D1.1(b(1), two levels are added.

10 The text of that provision of the guidelines does, in
11 fact, provide for an increase of two levels if a dangerous
12 weapon, including a firearm, was possessed. Application Note
13 11(a) does read: The enhancement should be applied if the
14 weapon was present unless it is clearly improbable that the
15 weapon was connected to the offense.

16 I think we do have a common understanding as to the
17 applicable law in terms of the Court's ability to rely on
18 acquitted conduct and I think Mr. Minch has set forth an
19 accurate understanding of that law and of course that is --
20 most recently was set forth by the Seventh Circuit, United
21 States versus McClinton, C-L-I-N-T-O-N, 23 F.4th 732-735,
22 Seventh Circuit 2022 where the Seventh Circuit did re-affirm
23 the principle that a jury's verdict of acquitted does not
24 prevent the sentencing court from considering conduct
25 underlying the charge so long as that conduct has been proved

1 by a preponderance of the evidence.

2 Here I certainly appreciate the argument made by the
3 defense. Ultimately, however, we don't know exactly why the
4 jury acquitted Mr. Williamson on the two gun counts, Counts 2
5 and 3, and so the not guilty verdict means only that the jury
6 found that the Government had not proven the essential elements
7 of the offenses charged in Counts 2 and 3 beyond a reasonable
8 doubt.

9 And as the parties, I think, have alluded to and
10 agree upon, I consider the evidence from the trial in
11 evaluating this issue. I hone in on several pieces of
12 important evidence that I think do support the conclusion that
13 the enhancement does apply and that the firearm was possessed
14 applying the preponderance of the evidence standard. Several
15 pieces of evidence. First, we have the Government's DNA expert
16 who testified that the DNA sample recovered from the top round
17 of the bullet in the magazine fit Mr. Williamson's DNA, so that
18 evidence is set forth in greater detail in the trial
19 transcript. That in and of itself is strong evidence of
20 possession.

21 But secondly, we also have the fact that we know that
22 the firearm was in the vehicle that Mr. Williamson was driving
23 and that's based on the facts introduced at the trial, that the
24 gun fell out of the passenger's side as the passenger exited
25 the vehicle and the passenger, of course, yelled at the time

1 that the gun was Mr. Williamson's.

2 Next, there was also evidence introduced at the trial
3 in the form of text messages showing that Mr. Williamson was
4 attempting to get a gun just days before his arrest. There is
5 nothing in those messages that specifically identifies the
6 specific firearm that was recovered here, that is true, but
7 they still show that Mr. Williamson had the intent and purpose
8 to possess a gun around that time.

9 And I last would note that of course the facts at the
10 trial established Mr. Williamson had on his person at the time
11 of his arrest digital scales and approximately \$5,000 of United
12 States currency. Guns are known as tools of the trade of drug
13 trafficking and the jury did find Mr. Williamson guilty of
14 possession with intent to distribute and I think it's
15 reasonable to infer from all of the facts and circumstances
16 that he did possess the firearm. Again, I do acknowledge the
17 reasons for the objections. I would note that even if the
18 passenger's statement is hearsay, that it is reliable in the
19 context in which the statement was made here, as shown in the
20 trial transcript, as the passenger made the statement
21 immediately after being removed from the vehicle and that does
22 indicate and connect Mr. Williamson to the gun.

23 And of course the DNA evidence and the text messages
24 also support the inference that Mr. Williamson did in fact
25 possess the gun. I do recognize that the argument, which was

1 made very well by Mr. Minch, that the magazine did not lock
2 perfectly into the firearm and that the magazine fell out later
3 when the examiner took the gun out of the evidence envelope,
4 but the magazine was in the firearm and it did fit, even if it
5 didn't lock in properly, and there is also no other plausible
6 explanation for why the magazine was there if not for the
7 recovered handgun. I also don't find the theory of the DNA
8 being transferred from somebody else to be a plausible theory
9 based on these facts.

10 So when I combine all of the facts and all of the
11 circumstances, I do find by a preponderance of the evidence
12 that the firearm was possessed by Mr. Williamson here and it is
13 not clearly improbable that it was connected to the offense, so
14 the objection is overruled. The enhancement applies.

15 I adopt the findings of the PSR as -- I adopt as my
16 own findings the facts that are set forth in the presentence
17 report, and I accept the report for the record under seal. In
18 the event of any appeal, counsel on appeal will have access to
19 the sealed report but not the recommendation portion, which
20 shall remain confidential.

21 The next step here is for me to determine what the
22 advisory guideline range is. We are using the 2021 version of
23 the guidelines. And the offense level calculation is set forth
24 in the report beginning at paragraph 22 on page 6. The base
25 offense level is 12, and that is based on the converted drug