

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 16-4729

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED Nov 27, 2017 DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
CORDELL A. MINOR,	)	THE NORTHERN DISTRICT OF
	)	OHIO
Defendant-Appellant.	)	
	)	
	)	

O R D E R

Before: SILER, GRIFFIN, and STRANCH, Circuit Judges.

Cordell A. Minor, a federal prisoner proceeding with counsel, appeals his conviction for being a felon in possession of a firearm or ammunition in violation of 18 U.S.C. § 922(g)(1). The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Acting on a state arrest warrant, law enforcement officers arrested Minor at a residence leased by his girlfriend in Canton, Ohio. During a consensual search of the residence, officers uncovered two firearms, a number of ammunition magazines, and assorted ammunition. In particular, the officers found Minor's wallet under a couch and beside a shotgun and ammunition magazines. The officers also found a safe containing two more firearms.

The government charged Minor with being a felon in possession of a firearm or ammunition in violation of § 922(g)(1). At the close of the government's case, Minor expressed

No. 16-4729

- 2 -

his intent to testify. But the next day, counsel explained to the district court that Minor would not testify. The jury found Minor guilty of the charged offense, and Minor now appeals.

Minor first argues that he did not knowingly and voluntarily waive his right to testify and that the district court should have conducted a more searching inquiry into whether he knowingly and voluntarily waived that right. The court's failure, he contends, deprived him of his Fifth Amendment right to testify. We review de novo whether the district court violated this right. *United States v. Webber*, 208 F.3d 545, 550 (6th Cir. 2000).

A criminal defendant has the right to testify in his or her defense, "subject only to a knowing and voluntary waiver" of that right. *Id.* Although a defendant must make the decision to waive that right, a district court may presume the defendant's assent "when a tactical decision is made not to have the defendant testify." *Id.* at 551. A court may infer that the defendant waives that right unless the defendant expresses that he or she "desires to testify or that there is a disagreement with defense counsel regarding whether he [or she] should take the stand." *Id.* Further, a district court "is neither required to sua sponte address a silent defendant and inquire whether the defendant knowingly and intentionally waived the right to testify, nor ensure that the defendant has waived the right on the record." *Id.*

Minor's counsel represented that Minor would not testify in his defense, and Minor did not thereafter disagree. As a result, the district court could infer that Minor waived his right to testify upon the advice of counsel, and was not required to inquire any further. Minor argues that further inquiry was nevertheless necessary because he had expressed his intent to testify the previous day. We disagree. Regardless of his prior statement, it was incumbent upon Minor to express his disagreement with counsel when counsel informed the court that Minor had decided not to testify. *See, e.g., United States v. Campbell*, 86 F. App'x 149, 154 (6th Cir. 2004).

Minor also claims that the government did not present evidence sufficient to secure a conviction. We review de novo whether the evidence was sufficient to support his conviction. *United States v. Robinson*, 813 F.3d 251, 255 (6th Cir. 2016). Minor bears a heavy burden, and to undermine his conviction, he must show that, "after viewing the evidence in the light most favorable to the prosecution, [no] reasonable trier of fact could have found the essential elements

No. 16-4729

- 3 -

of the crime beyond a reasonable doubt.” *Id.* at 258 (alteration in original) (quoting *United States v. Sease*, 659 F.3d 519, 523 (6th Cir. 2011)).

To obtain a conviction for being a felon in possession of firearms or ammunition in violation of § 922(g)(1), the government must prove three elements: (1) the defendant had a previous felony conviction; (2) the defendant knowingly possessed at least one of the firearms or ammunitions specified in the indictment; and (3) the firearm or ammunition traveled in or affected interstate commerce. *United States v. Grubbs*, 506 F.3d 434, 439 (6th Cir. 2007); *see also United States v. DeJohn*, 368 F.3d 533, 541-42 (6th Cir. 2004).

Minor challenges only the sufficiency of the evidence presented in support of the second element (i.e., possession). To prove the second element, the government must show that the defendant had “either actual or constructive possession of a firearm.” *Grubbs*, 506 F.3d at 439. A defendant has actual possession of a firearm if he or she has “‘immediate possession or control’ of the firearm.” *Id.* (quoting *United States v. Craven*, 478 F.2d 1329, 1333 (6th Cir. 1973)). A defendant has constructive possession if he or she “knowingly has the power and the intention at a given time to exercise dominion and control” over the firearm. *Id.* (quoting *Craven*, 478 F.2d at 1333).

The government supplied sufficient evidence for the jury to conclude that Minor constructively possessed firearms and ammunition. The government elicited testimony that law enforcement officers observed Minor at the Canton home—where they found the firearms and ammunition magazines—on multiple occasions and that they believed that Minor resided at the Canton home. The government offered further testimony that Minor generally possessed the keys to a safe that contained firearms and that officers found Minor’s wallet under a couch with a shotgun and ammunition magazines. The evidence was therefore sufficient to establish beyond a reasonable doubt that Minor knowingly had constructive possession of the firearms and ammunition.

No. 16-4729

- 4 -

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written over a horizontal line.

Deborah S. Hunt, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: November 27, 2017

Mr. David Lawrence Doughten
Law Office
4403 St. Clair Avenue
Cleveland, OH 44103

Ms. Laura McMullen Ford
Office of the U.S. Attorney
801 W. Superior Avenue
Suite 400
Cleveland, OH 44113

Cordell A. Minor
U.S.P. Leavenworth
P.O. Box 1000
Leavenworth, KS 66048

Re: Case No. 16-4729, *USA v. Cordell Minor*
Originating Case No. : 5:15-cr-00412-1

Dear Mr. Minor and Counsel,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Michelle M. Davis
Case Manager
Direct Dial No. 513-564-7025

cc: Ms. Sandy Opacich

Enclosure

Mandate to issue