

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-5857

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
MARCUS DOTSON,	)	THE WESTERN DISTRICT OF
	)	TENNESSEE
Defendant-Appellant.	)	
	)	
	)	

ORDER

Before: GUY, DAUGHTREY, and SUTTON, Circuit Judges.

Marcus Dotson, a federal prisoner, appeals the district court's judgment of conviction. 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 2016, Dotson was indicted on one count of being a felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). The indictment arose from Dotson's discharge of a firearm inside of a community center gymnasium before a youth basketball game. Dotson pleaded not guilty to the sole count contained within the indictment, and the matter proceeded to a jury trial. Dotson made a motion for judgment of acquittal following the government's case-in-chief, which the district court denied. Dotson presented no evidence at trial, but nonetheless made a renewed motion for judgment of acquittal at the close of all evidence. The jury deliberated and convicted Dotson of the offense. The district court sentenced Dotson to a 78-month term of imprisonment, and Dotson timely appealed.

On appeal, Dotson argues that his conviction under § 922(g)(1) is unsupported by sufficient evidence to support the element of possession.

“We review de novo a challenge to the sufficiency of the evidence supporting a criminal conviction.” *United States v. Howard*, 621 F.3d 433, 459 (6th Cir. 2010) (internal quotation mark and citation omitted). A defendant claiming insufficiency of the evidence bears a “heavy burden.” *United States v. Maliszewski*, 161 F.3d 992, 1005 (6th Cir. 1998). The question before this court “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). “We draw all available inferences and resolve all issues of credibility in favor of the jury’s verdict, and it is not necessary for [the court] to exclude every reasonable hypothesis but guilt.” *United States v. Avery*, 128 F.3d 966, 971 (6th Cir. 1997). “In undertaking this analysis, this court neither independently weighs the evidence, nor judges the credibility of witnesses who testified at trial.” *United States v. Talley*, 164 F.3d 989, 996 (6th Cir. 1999).

In order to obtain a conviction for being a convicted felon in possession of ammunition under § 922(g)(1), the United States was required to prove that: (1) Dotson was convicted of a felony punishable by imprisonment for more than one year; (2) Dotson 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). Dotson stipulated to elements one and three, and thus the only issue on appeal concerns Dotson’s possession of the ammunition.

Under § 922(g), “knowing possession” of ammunition may be either actual or constructive. *United States v. Smith*, 320 F.3d 647, 655 (6th Cir. 2003). The evidence offered to prove possession may be direct or circumstantial, or both. *United States v. Beverly*, 750 F.2d 34, 36-37 (6th Cir. 1984). A person has actual possession when he “knowingly has direct physical control over a thing at a given time.” *United States v. Prujansky*, 415 F.2d 1045, 1049 (6th Cir. 1969). “Constructive possession exists when a person does not have actual possession but instead knowingly has the power and the intention at a given time to exercise dominion and control over an object, either directly or through others.” *Moreno*, 933 F.2d at 373 (citation

omitted); *Beverly*, 750 F.2d at 37. The duration of the possession is immaterial. *United States v. Sanders*, 462 F.2d 122, 124 (6th Cir. 1972).

The evidence presented at trial was sufficient to support Dotson's conviction under § 922(g)(1). The testimony of two eyewitnesses and a surveillance video provided more than sufficient evidence to support Dotson's conviction for being a felon in possession of ammunition. Specifically, William Slaughter, the recreation leader at Riverview Community Center, testified at trial that on the evening of February 5, 2016, he was standing at the entrance of the community center's gymnasium when he observed two men enter the gymnasium. Slaughter testified that, after the two men entered the gymnasium, he observed them walk to the far end of the gymnasium and get into a "verbal altercation" with several patrons who were seated in the bleachers waiting for a youth basketball game to begin. Slaughter stated that the younger of the two men produced a semiautomatic firearm from under his hoodie and handed it to the older man. Once the older man received the firearm, he "turned around and started just waving the gun over the entire gym floor and towards the bleachers and back and was mouthing words to the patrons." Slaughter also stated that as the two men approached the gymnasium doors, the man possessing the firearm "rose and shot a shot into the ceiling and then ran out of the community center." Slaughter explained that he later identified Dotson as the shooter during a photo lineup at the police department. Slaughter also identified Dotson in court as the man who possessed and fired the firearm on the evening in question. He further confirmed that the man captured on the community center's surveillance video running from the gymnasium with a firearm in his hand was Dotson. Additionally, K.F., a 17-year-old male who was at the gymnasium on the evening in question, corroborated Slaughter's testimony and also identified Dotson as the man who fired a shot into the ceiling.

Dotson argues that Slaughter and K.F.'s testimony was unreliable because neither witness knew him before the date in question. Thus, Dotson asserts that their identification of him as the shooter did not bear sufficient indicia of reliability. However, Dotson's argument on this point goes to the weight, not the sufficiency, of the evidence. Witness credibility is "the province of the jury as the sole finder of fact in a jury trial." *United States v. Bearden*, 274 F.3d 1031, 1039

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(6th Cir. 2001) (citation omitted). A court reviewing for sufficient evidence “does not reweigh the evidence or redetermine the credibility of the witnesses.” *Matthews v. Abramajtys*, 319 F.3d 780, 788 (6th Cir. 2003); *Talley*, 164 F.3d at 996.

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

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

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Clerk's Office.**