

APPENDIX

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 9 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TOMMIE SLACK,

Defendant - Appellant.

No. 24-2404

D.C. No.

4:22-cr-06003-MKD-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Mary K. Dimke, District Judge, Presiding

Submitted June 5, 2025**
Seattle, Washington

Before: HAWKINS, GOULD, and BUMATAY, Circuit Judges.

Tommie Slack (“Appellant”) appeals his 108-month sentence following his guilty plea to possession with intent to distribute fentanyl under 21 U.S.C. § 841(a)(1) and (b)(1)(B)(vi). Appellant disputes the imposition of a two-level

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

enhancement under U.S.S.G. § 2D1.1(b)(1) for possession of a firearm during commission of the offense. Reviewing the district court’s interpretation of the sentencing guidelines *de novo* and the application of those guidelines to the facts for abuse of discretion, *United States v. Parlor*, 2 F.4th 807, 811 (9th Cir. 2021), we have jurisdiction under 28 U.S.C. § 1291. We affirm.

There was no error in the application of the firearm enhancement. Under U.S.S.G. § 2D1.1(b)(1), “the government simply bears the burden of proving that the weapon was possessed at the time of the offense.” *United States v. Alaniz*, 69 F.4th 1124, 1126–27 (9th Cir. 2023). The Government demonstrated constructive possession by bringing forward evidence tying Appellant to the vehicle where the firearm was found, including: a repair receipt for the vehicle in Appellant’s name, Appellant’s reference to the vehicle as “his Benz,” his fiancé taking control of the vehicle after his arrest, Appellant’s phone call with Agent Mitchell to challenge the removal of his personal items from the vehicle, and Appellant’s awareness of the vehicle’s change in performance after his arrest.

Nor was there “clear error” in determining the cooperating defendant, who further tied Appellant to the vehicle and the firearm, was credible. *See United States v. Baker*, 58 F.4th 1109, 1126 (9th Cir. 2023). Together, these facts demonstrate “a sufficient connection between the defendant and the item to support the inference that the defendant exercised dominion and control over the item.” *United States v.*

Baldon, 956 F.3d 1115, 1127 (9th Cir. 2020) (internal quotations omitted) (cleaned up).

Nothing in the record suggests that there was improper reliance on U.S.S.G. § 1B1.3(a)(1)(b) as an alternative reason for applying the two-level firearm enhancement based on Appellant's personal possession of the firearm under U.S.S.G. § 2D1.1(b)(1).

AFFIRMED.

UNITED STATES COURT OF APPEALS
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Defendant - Appellant.

No. 24-2404

D.C. No.

4:22-cr-06003-MKD-1

Eastern District of Washington,
Richland

ORDER

Before: HAWKINS, GOULD, and BUMATAY, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing.

Judges Gould and Bumatay have voted to deny the petition for rehearing en banc, and Judge Hawkins so recommends. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for panel rehearing and petition for rehearing en banc are denied.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,) Case No. 4:22-cr-6003-MKD
)
Plaintiff,) April 11, 2024
)
v.) Richland, Washington
)
TOMMIE SLACK,) Sentencing Hearing
)
Defendant.) Pages 1 to 82

BEFORE THE HONORABLE MARY K. DIMKE
UNITED STATES DISTRICT COURT JUDGE

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USA v. Slack/4:22-cr-6003-MKD
Sentencing Hearing/April 11, 2024
Argument re: Objections to PSIR

27

1 THE COURT: Well, that's actually the way the guidelines
2 are written. If a gun is present with firearms [sic],
3 essentially the presumption is that it is applicable, and it's
4 the defense's burden to establish by -- to establish that it's
01:16:46 5 clearly improbable, I believe is the language --

6 MR. SMITH: Yes.

7 THE COURT: -- that it's not connected. So what she's
8 saying is essentially the way the guidelines work. So it sounds
9 as though you're disagreeing with the way the guidelines work,
01:16:57 10 because if there is a firearm that is present with drugs, the
11 burden shifts, and it's a very high standard to prove that the
12 firearm is not connected to the drugs.

13 MR. SMITH: Thank you, Your Honor.

14 THE COURT: All right. Thank you, Mr. Smith.

01:17:07 15 All right. With respect to -- there's two interrelated
16 issues here. One is Mr. Smith is seeking to excise from the PSR
17 statements made by the cooperating -- the cooperating defendant
18 in this case, one of which relates to the prior presence of a
19 firearm; and, two, Mr. Smith is objecting to the two-level
01:17:28 20 enhancement for the presence of a firearm.

21 Starting with the statements by the cooperating
22 defendant, in terms of the cooperating defendant, I find that
23 there is sufficient corroborating evidence under the case law
24 for these statements to be included in the PSR. Here, when
01:17:49 25 arrested or -- detained and/or arrested on the underlying issue,

1 the cooperating defendant gave a series of statements that
2 included the following that were later corroborated: That
3 Mr. Slack, Tommy Slack was someone who had delivered fentanyl
4 pills to her before; he was doing it on behalf of his son, who
01:18:10 5 was on federal supervision, and so he was doing the deliveries
6 to give some distance for his son, who otherwise would have
7 exposure while on court supervision; that Mr. Slack regularly
8 drove two specific cars; that Mr. Slack regularly delivered
9 pills in the approximate 10,000 quantities; that he had
01:18:32 10 previously had a firearm that had been displayed in a way that
11 she saw it; and so -- and that she, you know, regularly
12 communicated with him.

13 The things that were corroborated was: She had a phone
14 number for him in her phone; she contacted him; he is the one
01:18:47 15 who responded to the communication; she discussed with him
16 bringing pills; he agreed to bring pills, which corroborates the
17 fact he had previously provided drugs to her before; he agrees
18 to come from the area -- she had said he was in the Seattle
19 area; he agrees to come from, and does come from, and the time
01:19:05 20 frame is consistent with coming from the Seattle area; he
21 arrives in a car that had been described by her as one of the
22 cars that he had driven previously that she had seen him in
23 during drug transactions; when he arrives, he has pills in his
24 possession in the car, and they're consistent with the quantity
01:19:21 25 that had been previously been delivered. There was also a

1 firearm present, which she had said she had seen during prior
2 transactions, a firearm, not necessarily this firearm, a
3 firearm.

01:19:31 4 So from the Court's perspective -- and there's numerous
5 phone calls during the course of the travel from the Seattle
6 area to the Tri-Cities to deliver the drugs that are consistent
7 with, you know, this is going to be a drug transaction.

01:19:46 8 So from the Court's perspective, there is sufficient
9 corroborating evidence that the statements made by the
10 cooperating defendant are reliable to be included in the PSR.
11 That includes her statement that she had previously seen him in
12 the possession of a firearm.

01:20:02 13 The second issue is Mr. Smith challenges, you know, the
14 reliability of that because it wasn't in the officers' reports.
15 The reality is there were two affidavits that were submitted to
16 the Court in furtherance of, one, the search warrant to the car;
17 and then, two, the complaint to arrest Mr. Slack, where agents
18 detailed out the information. They were contemporaneous with --
19 as these events are taking place, within 24 hours of all of
01:20:18 20 these events taking place, and they list the information about
21 what the cooperating defendant said about the firearm.

01:20:34 22 The fact that it did not make it into subsequently
23 issued and finalized reports, I don't find that undermines the
24 sworn statements by the officers in support of the search
25 warrants. So it's appropriate for the information to be

1 included in the PSR.

2 The next question is are the information in the PSR and
3 the facts that have been provided to the Court sufficient to
4 warrant the two-level enhancement?

01:20:46 5 Here, a firearm was found in the car in the -- there is
6 a console, and my understanding is it's sort of like one, large,
7 long console in the car. The firearm was found in the same
8 console, although at a different location, but in the same
9 console of the car with at least 6,000 fentanyl pills, or
01:21:06 10 approximately 6,000 fentanyl pills.

11 The fact that the firearm is in the car with the drugs,
12 the Government has met its burden of showing by a preponderance
13 of the evidence that a firearm was present in the course of the
14 transaction. It shifts to the defendant's burden to establish
01:21:22 15 it's clearly improbable that the firearm was connected to the
16 drug transaction.

17 I find that burden has not been met.

18 Mr. Smith further challenges whether this should be
19 attributed to Mr. Slack. All of the information in the record
01:21:35 20 indicates that Mr. Slack, of the three individuals in this car,
21 was the one associated with this car. The CI said that this is
22 one of the cars he had previously delivered drugs in. There is
23 a receipt in there for repair-related work, I think getting a
24 quote for a paint job, in Mr. Slack's name, again, indicating
01:21:56 25 his, you know, control and use of the car. He references it; in

USA v. Slack/4:22-cr-6003-MKD
Sentencing Hearing/April 11, 2024
Argument re: Objections to PSIR

31

1 the recorded calls, it's his Benz. When -- after the -- after
2 he is arrested, the car has been searched, and it's been
3 returned to his fiancée -- so, again, a person connected to
4 Mr. Slack -- Mr. Slack contacts and is challenging the officer
01:22:22 5 about the removal of other personal property of Mr. Slack's from
6 the trunk, gifts that he purchased for his family and some other
7 things, and he was also challenging the way it drives. Again,
8 this is indicating that Mr. Slack is the person who had been in
9 control of his car. He was using it to go out and purchase
01:22:38 10 property, purchase gifts, he was using it to store gifts; and he
11 also was the one who had been regularly driving it to have some
12 familiarity with the way he believed it had been driving before
13 and what's been described as the way it was driving after the
14 incident.

01:22:51 15 There is sufficient indicia here that is appropriate to
16 associate the car and the firearm to Mr. Slack to warrant the
17 two-level enhancement in this case. So I find that that
18 two-level enhancement is appropriate.

19 Mr. Smith, are there other objections to the presentence
01:23:12 20 investigation report that you'd like me to take up today?

21 MR. SMITH: The -- yes, Your Honor. Do you want me
22 to --

23 THE COURT: Okay. Come to the podium, please.

24 MR. SMITH: Our first objection was to the inclusion of
01:23:55 25 aliases and associated information referring to him as also