

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12817

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES GRIM RUDOLPH,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:24-cr-80002-KAM-1

Before ABUDU, KIDD, and MARCUS, Circuit Judges.

PER CURIAM:

Charles Grim Rudolph appeals his conviction for knowingly possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). He argues that the district court erred in denying his motion for a

judgment of acquittal because the evidence was insufficient for a reasonable jury to convict him. After thorough review, we affirm.

We review a challenge to the sufficiency of the evidence and the denial of a Rule 29 motion for a judgment of acquittal *de novo*. *United States v. Beach*, 80 F.4th 1245, 1258 (11th Cir. 2023). When reviewing the denial of a motion for judgment of acquittal, we view all facts and inferences in the light most favorable to the government. *Id.* at 1255. The evidence need not exclude every reasonable hypothesis of innocence for a reasonable jury to find guilt beyond a reasonable doubt, and the jury is free to choose among alternative, reasonable interpretations of the evidence. *Id.* at 1255–56. We will not overturn a jury’s verdict if there is any reasonable construction of the evidence that would have allowed the jury to find the defendant guilty beyond a reasonable doubt. *Id.* at 1255.

The test for sufficiency of evidence is the same regardless of whether the evidence is direct or circumstantial, with no distinction in the weight given to each. *United States v. Guevara*, 894 F.3d 1301, 1307 (11th Cir. 2018). But where the government relies on circumstantial evidence, ““reasonable inferences, not mere speculation, must support the conviction.”” *United States v. Estepa*, 998 F.3d 898, 908 (11th Cir. 2021).

It is unlawful for any person convicted of a crime -- punishable by more than one year of imprisonment -- to possess, in or affecting commerce, any firearm or ammunition. 18 U.S.C. § 922(g)(1). The elements of possession of a firearm by a felon are: (1) the defendant was a felon; (2) the defendant knew he was barred

from possessing a firearm; (3) the defendant knowingly possessed a firearm; and (4) the firearm affected or was in interstate commerce. *Rehaif v. United States*, 588 U.S. 225, 237 (2019); *United States v. Seabrooks*, 839 F.3d 1326, 1336 (11th Cir. 2016).

Possession can be actual or constructive. *United States v. Ochoa*, 941 F.3d 1074, 1104 (11th Cir. 2019). Actual possession exists if the defendant had physical possession or personal dominion over the object at issue. *Id.* Constructive possession may be exclusive or shared with others, and it exists where the defendant exercises ownership, dominion, or control over the firearm, or has the power and intention to exercise dominion or control. *United States v. Flanders*, 752 F.3d 1317, 1332 (11th Cir. 2014); *United States v. Gunn*, 369 F.3d 1229, 1235 (11th Cir. 2004). A defendant has constructive possession of ammunition or a firearm if he “(1) was aware or knew of the firearm’s presence and (2) had the ability and intent to later exercise dominion and control over that firearm.” *United States v. Perez*, 661 F.3d 568, 576 (11th Cir. 2011).

“A defendant’s mere presence in the area of an object or awareness of its location is not sufficient to establish possession.” *United States v. Green*, 873 F.3d 846, 852–53 (11th Cir. 2017) (citation modified). So, we’ve held that the evidence that the defendant was walking with another person who carried a suitcase containing a firearm with no forensic evidence tying the defendant to the firearm was insufficient to show possession, since it merely proved that the defendant was near the firearm. *United States v. Pedro*, 999 F.2d 497, 501–02 (11th Cir. 1993). On the other hand, the presence

of a firearm under the driver's seat of a car, in which the defendant was a passenger, shows that the defendant had sufficient access to the firearm to establish possession. *United States v. Gates*, 967 F.2d 497, 499 (11th Cir. 1992). We've also held that a firearm found in the glove compartment of the defendant's car along with a copy of the defendant's tag receipt showing his ownership of the car, combined with the fact that the defendant was in the driver's seat before the search and had a prior conviction for possession of a firearm was "sufficient to establish constructive possession." *United States v. Howard*, 742 F.3d 1334, 1341 (11th Cir. 2014).

Here, Rudolph argues that the district court erred in denying his motion for judgment of acquittal on his claim that the evidence was insufficient for a jury to convict him of possessing a firearm. The record reflects that Rudolph was driving the car in which the firearm was discovered when a law enforcement officer initiated a traffic stop. The firearm was in the purse of the passenger, Laticia Bradley, and the purse was located next to the center console. Rudolph says that the firearm's proximity to him was insufficient to prove the knowing possession element of his conviction, *see Pedro*, 999 F.2d at 501–02, the only element he challenges on appeal.

Viewing the evidence in the light most favorable to the government, we cannot say that the evidence was insufficient for a jury to convict him of knowingly possessing a firearm. Most significantly, La’Nisha Gittens, a forensic scientist from the police forensic biology unit, gave testimony that tied Rudolph to the firearm. She reported that there was “very strong support” that Rudolph’s

DNA was on the firearm's trigger -- where Rudolph's DNA contributed 84% of the trigger swab -- and on the grip -- where Rudolph's DNA contributed 94% of the grip swab. On cross-examination, Gittens admitted the possibility that DNA could transfer from item to item within a purse, but on redirect, she testified that a DNA sample that was the result of multiple transfers typically is of lower quality than what she received and less likely to generate a full DNA summary -- testimony the jury was free to focus on. *See Beach*, 80 F.4th at 1255; *Estepa*, 998 F.3d at 908. On this evidence, it was reasonable for the jury to infer that Rudolph knowingly had the requisite control and dominion to constructively possess the firearm or had actually possessed the firearm before it was placed into the purse. This is especially true since Rudolph's DNA was found on the trigger and the grip of the discovered firearm, areas consistent with possession, not an accidental touching or transfer.

Moreover, circumstantial evidence established Rudolph's knowing possession of the gun. At trial, West Palm Beach Police Officer Michael Borgen testified that on the evening in question, he had initiated a traffic stop when he saw illegally dark tinted windows on a Mazda CX-5. Borgen pulled his police vehicle behind the Mazda and turned on his lights. Rather than stopping, the Mazda sped up. Borgen activated his siren and sped up to catch it. After about 17 seconds, the Mazda finally pulled over.

Once the Mazda stopped, Officer Borgen used his spotlights to illuminate its interior. As Borgen approached the passenger side of the car, the driver moved his right arm and shoulder toward the

center console area and then quickly back to his original position. When Borgen arrived at the passenger side, he saw narcotics and an open purse around the center console. Borgen asked if Rudolph, the driver, had his driver's license, and Rudolph presented a driver's license that had been suspended. Borgen asked Rudolph to step out of the Mazda, and while talking to police outside the car, Rudolph told officers that he had recently recovered from being shot. Borgen asked if there was anything illegal in the car, and Rudolph said there was some "party stuff," presumably referring to the narcotics. Borgen said that Rudolph was visibly nervous, shifting from one foot to the other, leading Borgen to ask if Rudolph was planning to "take off." When Borgen searched the car, he opened the purse and saw the firearm. It was fully loaded with 6 rounds of ammunition.

Officer's Borgen testimony -- that during his initial approach, Rudolph moved his arm toward the center console, where the purse with the firearm was located -- demonstrated at the very least that Rudolph had easy access to the firearm. *See Gates*, 967 F.2d at 499; *Howard*, 742 F.3d at 1341; *Gunn*, 369 F.3d at 1234. Further, the evidence of Rudolph's suspicious driving, furtive movements and anxiety concerning the search allowed the jury to infer Rudolph's knowing possession of the gun. *See United States v. Stanley*, 24 F.3d 1314, 1320 & n.50 (11th Cir. 1994). The jury also had before it state-of-mind evidence from Rudolph's prior conviction for possession of a firearm or ammunition by a felon. *See United States v. Ochoa*, 941 F.3d 1074, 1106 (11th Cir. 2019); *Howard*, 742 F.3d at 1341.

In short, a reasonable construction of the testimony offered at trial and the presence of Rudolph's DNA on the trigger and grip of the firearm allowed the jury to find him guilty of possession of a firearm as a convicted felon beyond a reasonable doubt. *Beach*, 80 F.4th at 1255–56. Accordingly, we affirm.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA

v.

CHARLES GRIM RUDOLPH**JUDGMENT IN A CRIMINAL CASE**

§

§

§

§ Case Number: **9:24-CR-80002-KAM(1)**§ USM Number: **96618-510**

§

§ Counsel for Defendant: **Khurrum B. Wahid**§ Counsel for United States: **Emily Walters****THE DEFENDANT:**

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	Count One of the Superseding Indictment on March 21, 2024

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18:922(g)(1) - Unlawful Transport Of Firearms	07/26/23	1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 20, 2024

Date of Imposition of Judgment



Signature of Judge

KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

August 20, 2024

Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

114 months as to Count 1s.

- The court makes the following recommendations to the Bureau of Prisons:
 - The defendant be designated to an institution in South Florida and that he enters the Bureau of Prisons Residential Drug Abuse Program.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at a.m. p.m. on
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Two (2) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$.00	\$.00		

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$0.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$100.00 due immediately.

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1s, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall forfeit the defendant's interest in the following property to the United States:

FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

In the
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For the Eleventh Circuit

No. 24-12817

UNITED STATES OF AMERICA,

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CHARLES GRIM RUDOLPH,

Defendant-Appellant.

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D.C. Docket No. 9:24-cr-80002-KAM-1

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued
on this date in this appeal is entered as the judgment of this Court.

Entered: September 30, 2025

For the Court: DAVID J. SMITH, Clerk of Court