

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1903  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FREDDY B. BUCKINGHAM, JR.

Defendant-Appellant.

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Appeal from the United States District Court for the  
Northern District of Texas  
(2:92-CR-31)

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March 22, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Freddy B. Buckingham was convicted by a jury of possession of a firearm by a convicted felon and was sentenced to a term of imprisonment of 30 months to be followed by a term of three years supervised release.

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Buckingham first argues that the government failed to present sufficient evidence that he was in possession of a firearm because it relied solely on his extrajudicial confession to prove that element of the offense. Buckingham argues that there was no independent evidence presented at trial to corroborate his confession because his mother recanted her statement that the gun belonged to Buckingham.

In reviewing a challenge to the sufficiency of the evidence, the Court views the evidence in the light most favorable to the verdict and affirms if any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. U.S. v. Wiley, 979 F.2d 365, 368 (5th Cir. 1992). In order to prove a violation of § 922(g), the government must show that the defendant was convicted of a felony; that he knowingly received, possessed, or transported a firearm; and that his receipt or possession of the firearm was in or affecting commerce. U.S. v. Dancy, 861 F.2d 77, 81 (5th Cir. 1988). Buckingham concedes that his possession of the weapon is the only element in dispute.

"[A] defendant cannot be convicted solely on the basis of his own admissions." U.S. v. Duggan, 936 F.2d 181, 184 (5th Cir.) (citation omitted), cert. denied, 112 S.Ct. 404 (1991). "The essential elements of the offense must be established by independent evidence or corroborated admissions." Id. (citation omitted).

The record reflects that a Colt Goldcup .45 automatic pistol was stolen during a burglary on Sunday, May 17, 1992. The owner of the pistol reported the burglary to the police and notified Twinks, a gun shop, about the theft of the gun. The gun's clip or magazine was not stolen and remained in the possession of the owner.

The manager of Twinks received a call from a young man on the morning of May 19, 1992, inquiring if the caller could purchase a magazine for a Colt .45 automatic. Buckingham and his mother came into Twinks later that day, and Buckingham told the clerk that he had called earlier about purchasing the magazine. The woman removed the gun from her purse, and she explained that it was not loaded because she had placed the gun and magazine in a closet "some time back" and had lost the magazine. The store personnel determined that the gun's serial number matched the number of the stolen pistol and called the police.

The police arrested Buckingham for possession of a stolen firearm. Buckingham told the arresting officer, "I didn't steal the gun, I bought it from a Mexican man." Buckingham also told the officer that his mother had nothing to do with the gun.

Buckingham gave a statement to the authorities the following day. Buckingham reported that on Monday night, May 18th, a Mexican male came to his door and sold Buckingham the gun for \$50. Buckingham stated that he purchased the gun to acquire protection for himself and his mother. Buckingham admitted that he called Twinks the next morning to inquire about the availability of a clip

and advised the clerk that he would come in later that afternoon. Buckingham related that his mother carried the gun in her purse so that it would not be visible when they entered the store. Buckingham acknowledged that the gun belonged to him and that his mother did not know anything about the gun.

After the federal indictment for possession of a gun as felon, Buckingham's story was in dire need of major modification. Thus, at trial, Buckingham testified that his mother purchased the gun and that he lied to police to protect his mother.

Buckingham's mother, Vera Davis, however, had given a statement to police on May 27, 1992, in which she had stated that her son brought the gun to her home on the morning of May 19 and told her that he had purchased it from a guy the night before for \$50. Davis further acknowledged in the statement that she lied earlier in telling the police that she purchased the gun, but contended that she did so to protect her son.

However, at trial Davis realized that some further switching around was called for. Thus, she reverted to her earlier story and testified that she purchased the gun for \$25 from a man who came to her door on Sunday or Monday night. Davis admitted that she has problems with her eyesight and that she knows nothing about guns, but stated that she bought the gun out of sympathy for the seller. Despite her alleged lack of knowledge, Davis testified that she determined that a clip was needed for the gun. Davis stated that she gave a false statement to the police on May 27 because she was

sick and wanted to go home. Davis denied that she told the gun store clerk that the gun had been in her closet for a year.

In reviewing the sufficiency of the evidence, this Court must accept as established all reasonable inferences that tend to support the jury verdict, and any conflicts in the evidence must be resolved in favor of the verdict. U.S. v. Duncan, 919 F.2d 981, 990 (5th Cir.), cert. denied, 111 S.Ct. 2036 (1990). We think that there was sufficient evidence to corroborate Buckingham's confession and thus the evidence will support the conviction. The jury reasonably could have inferred that Buckingham possessed the gun because he called the gun shop to inquire about a clip for the gun. Furthermore, the statement given by Buckingham's mother to the police on May 27, which fully corroborates Buckingham's possession of the gun, was consistent with the statement given by Buckingham following his arrest. Consequently, the jury reasonably could have found it more credible than her trial testimony that she purchased the gun for her own use, especially in the light of her poor eyesight and inexperience with weapons.

Viewing the evidence in the light most favorable to the government, we think that there was evidence presented to corroborate the statement given by Buckingham to the police and sufficient evidence to support the jury verdict.

## II

Buckingham next argues that the district court erred in instructing the jury on joint and constructive possession because there was no evidence presented to support those instructions.

In determining whether a jury charge was improperly given by the district court, the standard of review is "whether the court's charge, as a whole, is a correct statement of the law and whether it clearly instructs jurors as to the principles of law applicable to the factual issues confronting them." U.S. v. Lara-Velasquez, 919 F.2d 946, 950 (5th Cir. 1990) (internal quotations and citation omitted). The district court "may not instruct the jury on a charge that is not supported by the evidence." Id. (internal quotations and citation omitted). "In assessing whether the evidence sufficiently supports the district court's charge, this Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Government." Id. (citations omitted).

As the district court instructed the jury, one who is not in actual physical possession of a thing has "constructive possession" of it if he knowingly has the power and intention to exercise dominion and control over the thing, either directly or through another person. U.S. v. McKnight, 953 F.2d 898, 903 (5th Cir.), cert. denied, 112 S.Ct. 2975 (1992). Two or more persons have joint possession of a thing if they share actual or constructive possession of it. Id. at 903-04.

Buckingham averred in his statement that he purchased the gun and that his mother carried the gun into the store to avoid a public display of the weapon. He also contended that the gun was purchased for his protection as well for the protection of his mother, further indicating joint possession of the gun. Viewing the evidence in the light most favorable to the government, there was sufficient evidence presented to support the charges on constructive and joint possession of the gun.

### III

Buckingham contends that the district court erred in refusing to give his requested instruction on "possession." Buckingham argues that his defense was impaired because the charge given did not properly define "possession" and he was unable to focus the jury's attention on the government's burden to show that he knowingly possessed the weapon.

A district court's refusal to give a requested charge is grounds for reversal only if the refused instruction was substantially correct, was not substantially covered in the charge delivered to the jury, and concerned an important issue so that the failure to give it seriously impaired the defendant's ability to present a given defense. McKnight, 953 F.2d at 903.

Buckingham requested the district court to give an instruction defining the term "possess" as meaning "to exercise, authority, dominion or control over." The district court instructed the jury that a person has actual control over a thing if he "knowingly has

direct physical control over a thing at a given time." The court also defined constructive possession as previously discussed. The charge given has been approved by this Court. McKnight, 953 F.2d at 903. "Possession" was properly defined in the charge, and the failure of the district court to give the precise wording requested by Buckingham did not impair his ability to prove his defense that he was not in possession of the gun.

IV

For the reasons we have set out in this opinion, the conviction of Freddy B. Buckingham is

A F F I R M E D.