IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3377
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LENZIE RAY DILLON,

Defendant-Appellant.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-91-406 "E" 5

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March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Lenzie Ray Dillon was convicted of being a felon in possession of a firearm. He contends the district court erred by not granting his motion for acquittal after the first trial and by applying 18 U.S.C. § 922(g)(1) to his case. He is incorrect.

The district court is obligated to grant a defendant's motion for acquittal if "the evidence is insufficient to sustain a conviction" for the offense charged. Fed. R. Crim. P. 29(a). "It is not necessary that the evidence exclude every reasonable

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, provided a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt." United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982) (en banc), aff'd, 462 U.S. 356 (1983). The only issue at trial was whether Dillon had possession of the firearms.

Possession of firearms may be either actual or constructive. United States v. McKnight, 953 F.2d 898, 901 (5th Cir.), cert. denied, 112 S.Ct. 2975 (1992). In general, a person has constructive possession if he knowingly has ownership, dominion, or control over the firearms or over the premises in which the firearms are located. Id. Constructive possession need not be exclusive; it may be joint with others, and it may be proved with circumstantial evidence. Id. More evidence than mere physical proximity of the defendant to the firearms is required. Id.

This Court has not adopted a general, fixed rule of law regarding presence in a residence in which firearms are found as a basis for permitting, or not permitting, a finding of constructive possession. Id. at 902. This Court prefers a fact-specific approach to the constructive possession problem. Id.; United States v. Smith, 930 F.2d 1081, 1086 (5th Cir. 1991). Previous cases dealing with constructive possession serve as illustration only. McKnight, 953 F.2d at 902.

In Smith the following illustrative factors indicated constructive possession: 1) the defendant resided at the premises where the firearms were found; 2) the defendant had convenient access to the firearms; 3) officers found telephone

bills for the residence in the defendant's name; and, 4) the defendant himself was found hiding in a closet from which contraband was seized during an earlier search of the premises. Smith, 930 F.2d at 1085-86.

At the first trial, the Government presented the following evidence: 1) Dillon slept in the bedroom where the firearms were seized; 2) letters with Dillon's name and the 321 Ambassador Drive address were found in the bedroom where the guns had been stored; and, 3) statements by Dillon that he had locked the firearms away to protect his family and that he would not be surprised if his fingerprints were found on the weapons.

In the illuminating light of other decisions relevant to the "constructive possession" problem, there was sufficient evidence for the district court to resist granting the motion for acquittal after the first trial. See McKnight, 953 F.2d at 902.

Dillon also argues that the district court improperly applied 18 U.S.C. § 922(g)(1) to his case. He is incorrect.

Dillon argues that the harm he avoided by locking up the guns from his family rises to the level of an affirmative defense to being a felon in possession of a firearm. See United States v. Panter, 688 F.2d 268, 272 (5th Cir. 1982) (Self-defense or necessity recognized as a defense to a possession of firearms charge under 18 U.S.C. § 1202(a)(1) (repealed)). To exercise that defense, however, Dillon is required to show: 1) that he was under an unlawful and present, imminent, and impending threat which induced a well-grounded apprehension of death or serious bodily injury; 2) that he did not recklessly put himself in the

dangerous situation which forced him to handle the firearm; 3) that he had no reasonable, legal alternative to violating the law; and, 4) that there existed a causal relationship between the threatened harm and the criminal action taken to avoid the harm. United States v. Harper, 802 F.2d 115, 117 (5th Cir. 1986).

Dillon's assertion that he handled the firearms to avoid harm between feuding family members does not meet the requirements for relief outlined in Harper, nor does it rise to the level of the compelling circumstances in Panter. See Panter, 688 F.2d at 269 (defendant was stabbed in the abdomen and wrestling with his assailant when he reached for the weapon). Dillon's conviction is AFFIRMED.