

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8520
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH RAY DUVALL,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-92-CR-61-A11
- - - - -

October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges
PER CURIAM:*

Kenneth Ray Duvall challenges the sufficiency of the evidence produced by the Government to convict him of one count of being a felon in possession of a firearm. He contends that the Government did not adduce sufficient evidence to prove that he actually or constructive possessed the firearm. A person has constructive possession if he knowingly has ownership, control, or dominion over the item itself or over the premises where the item is located. Constructive possession may be established with

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

circumstantial evidence. United States v. McKnight, 953 F.2d 898, 901 (5th Cir.), cert. denied, 112 S.Ct. 2975 (1992).

The Government provided the following evidence linking Duvall to the house and, in particular, to the bedroom where the gun was found: two police officers and Duvall's state parole officer testified that Duvall gave the 4306-A Shallow Brook Trail address where the gun was found as his home address. Several letters addressed to Duvall were found in the same bedroom as the gun, and several pictures of Duvall were found in a bag in the same closet as the shotgun. The Government also offered the testimony of Adrian Washington, who lived at the house with Duvall's brother. She testified that the second bedroom, where the shotgun was found, was Duvall's room. She also testified that she had seen Duvall holding and carrying the shotgun and that he had actually pointed it at her on one occasion.

In light of the deference accorded to the credibility determinations of the jury, see United States v. Greenwood, 974 F.2d 1449, 1458 (5th Cir. 1992), cert. denied, 113 S.Ct. 2354 (1993) (citation omitted), and the favorable inferences granted to the verdict, see United States v. Bell, 678 F.2d 547, 549 (5th Cir. Unit B 1982) (en banc), aff'd, 462 U.S. 356 (1983), the evidence was sufficient to convict Duvall.

Duvall contends that the district court erred by not granting him a two-level downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1. The Guidelines note that

the adjustment is not "intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt." § 3E1.1, comment. (n.2). Even after his conviction Duvall continued to deny the factual elements of guilt. Therefore, he has not shown that this Court should not accord deference to the district court's denial of the two-level reduction.

AFFIRMED.