

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7336
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN BALDOMERO MORENO,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Texas
(M-91-CR-153-02)

(March 12, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Juan Baldomero Moreno appeals from his conviction for possession of firearms by a convicted felon. We **AFFIRM**.

I.

Moreno, a convicted felon, was charged with possessing three firearms, in violation of 18 U.S.C. § 922(g)(1). The jury found him guilty, and he was sentenced to 210 months imprisonment, a five-year term of supervised release, and a special assessment of \$50.

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

II.

Moreno's sole contention on appeal is that the evidence on one of the requisite elements for conviction on the charged offense is insufficient to sustain his conviction. In reviewing such a challenge, we view the evidence in the light most favorable to the jury verdict, and affirm if a rational trier of fact could have found that the government proved the essential elements of the crime charged beyond a reasonable doubt. ***United States v. Webster***, 960 F.2d 1301, 1307-08 (5th Cir.), *cert. denied*, ___ U.S. ___, 113 S. Ct. 355 (1992).

To convict Moreno of violating 18 U.S.C. § 922(g)(1), the government was required to prove, beyond a reasonable doubt, that he was a convicted felon who knowingly possessed a firearm that had traveled in interstate commerce. ***United States v. Dancy***, 861 F.2d 77, 80-81 (5th Cir. 1988). Moreno contests the sufficiency of the evidence only with respect to the element of possession.² "Possession may be either actual or constructive." ***United States v. Smith***, 930 F.2d 1081, 1085 (5th Cir. 1991). "Constructive possession has been defined as ownership, dominion, or control over the contraband itself, or dominion or control over the premises in which the contraband is concealed." ***Id.*** (internal quotations and citations omitted; emphasis in original).

² As noted, Moreno does not challenge the other requisite elements for conviction. In any event, the government introduced evidence that all three of the weapons were manufactured outside the State of Texas, as well as prison records establishing that Moreno had been previously convicted of three felonies.

The Government presented the following evidence. At approximately 11:00 p.m. on the evening of April 25, 1991, Deputy Cuellar of the Hidalgo County Sheriff's Department was given certain license plate numbers and assigned to patrol a specified area to look for suspicious vehicles. He noticed a van parked next to a vehicle bearing one of the license plates in question. Deputy Cuellar walked to the passenger's side of the van, and a man in the front passenger seat identified himself as Moreno. Cuellar returned to his patrol car, called the dispatcher for a check on the van's Illinois plate, and drove away. When the dispatcher reported that the plate had been issued for another vehicle, Cuellar returned to the van to investigate. But, as he approached, the van was driven away, so he followed and pulled it over. The driver was Gracie Moreno, Moreno's wife, who provided inconsistent information about the ownership of the van. In addition to Moreno, who was in the front passenger seat, three children were asleep in the back.

After Cuellar questioned Mrs. Moreno, Moreno got out of the van and approached them. Cuellar stated that Moreno was "very nervous". When asked about the ownership of the van, Moreno also gave inconsistent answers. Cuellar then spoke to Mrs. Moreno again about the ownership of the van; he noticed that Moreno was "very nervous and he kept trying to get back into the van". Cuellar looked through the open door of the van and observed an open, unzipped purse on the floorboard between the front seats. (As noted, Moreno had been in one of them.) After Cuellar saw a

"magazine pistol" sticking out of the purse, he requested, and received, Moreno's permission to search the van. A large amount of currency and two nine-millimeter semi-automatic weapons, fully loaded with rounds in the chambers, were found in the purse. Moreno was placed in the patrol car; and Cuellar instructed Mrs. Moreno to drive the van to the sheriff's office, escorted by Cuellar and another deputy.

A further search of the van was conducted at the sheriff's office. On the back seat, underneath a jacket, the deputies found another purse, which contained more currency; a fully loaded Beretta .25 caliber pistol, with a round in the chamber; and an identification card for Mrs. Moreno. The total amount of currency seized from the van was approximately \$17,400.

Viewing the evidence in the light most favorable to the verdict, we hold that a rational juror was entitled to find that Moreno, together with his wife, exercised dominion and control over the van and its contents and, thus, was in constructive possession of the weapons.

III.

Accordingly, the judgment of the district court is

AFFIRMED.