FILED
United States Court of Appeals
Tenth Circuit

October 20, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES RAMON, III, a/k/a Charles Roger Ramon,

Defendant - Appellant.

No. 22-1249
(D.C. No. 1:20-CR-00327-PAB-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **BRISCOE**, and **MORITZ**, Circuit Judges.

Charles Ramon's supervised release conditions authorized parole officers to search his residence when reasonable suspicion existed that Mr. Ramon violated a condition of his supervision and that the areas to be searched might contain evidence of this violation. After a series of violations of Mr. Ramon's conditions, parole officers searched his residence—a home he shared with his mother. They discovered a loaded handgun in his mother's closet.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Mr. Ramon was convicted of possessing a firearm as a felon under 18 U.S.C. § 922(g)(1). He challenges the search of his residence and the sufficiency of evidence to convict him of possession of a firearm. We affirm. The parole officers had reasonable suspicion to search Mr. Ramon's residence. And at trial, the government presented sufficient evidence to permit a jury to find that Mr. Ramon constructively possessed the firearm that was found in his mother's closet.

I. Background

Following a conviction for possessing a firearm as a felon and identification as an armed career criminal, Mr. Ramon was sentenced to 10 years in prison followed by 3 years of supervised release. The supervised release terms prohibited Mr. Ramon from, among other things: possessing a firearm; possessing or using any controlled substances; possessing any paraphernalia related to any controlled substances; frequenting places where controlled substances are illegally sold, used, distributed, or administered; and associating with any persons engaged in criminal activity.

Mr. Ramon began serving supervised release, under Officer Jordan Buescher's supervision, in August 2016. By September 2016, officers found methamphetamine and black tar heroin in Mr. Ramon's car. Officer Buescher, accordingly, reported this violation to the district court and petitioned the court to modify Mr. Ramon's supervised release terms. The district court agreed, adding the following special conditions:

> [Mr. Ramon] shall submit his person, property, house, residence, papers, computers or office to a search conducted by a United States Probation Officer. Failure to submit to

> search may be grounds for revocation of release. The defendant shall warn any and other occupants that the premises may be subject to searches pursuant to this condition. *An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation*. Any search must be conducted at a reasonable time and in a reasonable manner.

R. Vol. 4 at 67–68 (emphasis added).

Red flags continued. In December 2017, Officer Buescher found plastic baggies in Mr. Ramon's bedroom and suspected that someone used them to distribute drugs. In March 2018, Mr. Ramon reported to the Probation Office to discuss a request to travel out-of-state. A urinalysis tested positive for cocaine. Mr. Ramon initially denied using cocaine, but changed his story and signed an admission acknowledging that he did. Officers from the Denver Police Department also reported seeing Mr. Ramon's car in a known drug trafficking area. So at the end of the month, Officer Buescher again moved—this time unopposed—to modify Mr. Ramon's supervised release terms. The district court approved the modification, adding the following agreed special conditions:

> [Mr. Ramon] must participate in and successfully complete a program of testing and/or treatment for substance abuse, as approved by the probation officer, until such time as [Mr. Ramon is] released from the program by the probation officer. [Mr. Ramon] must abstain from the use of alcohol or other intoxicants during the course of treatment and must pay the cost of treatment as directed by the probation officer.

Order, Docket No. 116, Case No. 1:07-cr-437-REB.[1]

In April 2018, a DEA agent informed Officer Buescher of an open investigation into Mr. Ramon's involvement in a drug distribution conspiracy. The agent believed the drug ring operated out of a local Nik-Mart—a convenience store that Mr. Ramon's family owned and operated and at which he sometimes worked. The DEA also suspected that someone stored firearms inside a safe located in the store. Coincidentally, Officer Buescher had seen a key on Mr. Ramon's keychain that looked like a key to a safe.

By July 2018, a confidential informant claimed that Mr. Ramon often carried guns and characterized him as "extremely dangerous." In November 2018, during a surprise visit to Mr. Ramon's residence, Officer Buescher noticed several cell phones in Mr. Ramon's room and noted that Mr. Ramon was especially nervous when Officer Buescher entered his mother's room.

In January 2019, Mr. Ramon failed his second urinalysis. Given the pattern of noncompliance, Officer Buescher planned a home search. Officer Buescher's

[1] Both parties omitted from the appellate record this specific unopposed request to modify Mr. Ramon's supervised release conditions, as well as Judge Blackburn's subsequent Order regarding that request. "Nonetheless, we have authority to review [them] because we may take judicial notice of public records, including district court filings." *United States v. Walters*, 492 F. App'x 900, 902 (10th Cir. 2012) (citing *United States v. Smalls*, 605 F.3d 765, 768 n. 2 (10th Cir.2010) (taking judicial notice of district court record that was not part of the record on appeal)). We therefore sua sponte supplement the appellate record with these documents, which are in the district court record for Mr. Ramon's original criminal case. *United States v. Charles Ramon III*, No. 1:07-cr-00437-REB.

supervisor, the search coordinator, and the chief probation officer each concluded that Officer Buescher had reasonable suspicion to search Mr. Ramon's home.

On March 13, 2019, Officer Buescher and his supervisor executed the search. During the sweep, Mr. Ramon aggressively exclaimed:

> I want to self-revoke right now. Get the f**k away from [unintelligible]. Mom, you [unintelligible]. Mom [unintelligible] f**k you [unintelligible], you're a f**king punk. I wanna go to jail. I want to self-revoke right now.

R. Vol. 1 at 385.

The officers discovered a loaded Taurus .357 Magnum revolver atop a shoebox, nestled against the wall, high on a shelf in Mr. Ramon's mother's closet. Given its placement and his mother's height, they deduced Mr. Ramon's mother would need a stepladder to access it. Mr. Ramon's height, by contrast, suggested he could easily reach the firearm. And, although Mr. Ramon sometimes used a wheelchair, pre-search video footage depicted him standing upright in his home. A later DNA test of the gun showed traces linked to Mr. Ramon.

II. Discussion

Mr. Ramon makes two arguments on appeal: (1) the officers lacked reasonable suspicion to search the residence; and (2) the jury lacked sufficient evidence to conclude he had constructively possessed the firearm. The district court disagreed, denying both a motion to suppress and a Rule 29 motion at the close of the government's case. We agree with the district court and affirm.

A. Motion to Suppress

Mr. Ramon first contends that the district court erred in denying his motion to suppress, arguing that the officers lacked reasonable suspicion that the house contained evidence related to his violation of the conditions of supervised release.

When reviewing the denial of a motion to suppress, "we view the evidence in the light most favorable to the government, accept the district court's findings of fact unless they are clearly erroneous, and review de novo the ultimate question of reasonableness under the Fourth Amendment." *United States v. Cortez*, 965 F.3d 827, 833 (10th Cir. 2020).

"Reasonable suspicion is a particularized and objective basis for suspecting criminal activity." *Leatherwood v. Welker*, 757 F.3d 1115, 1120 (10th Cir. 2014) (citation omitted). "To determine if reasonable suspicion existed, we consider both the quantity of information possessed by law enforcement and its reliability, viewing both factors under the totality of the circumstances." *Id*. (internal quotation marks omitted).

Before initiating the search of Mr. Ramon's residence, the officers possessed reliable information showing that: (1) Mr. Ramon had failed two drug tests; (2) the DEA had begun to investigate Mr. Ramon's involvement in a drug distribution conspiracy, linking him to firearms possibly stored at the family business; and (3) he previously possessed paraphernalia and multiple cell phones that might be consistent with drug trafficking. Under the totality of the circumstances, the officers had

adequate facts to support an inference that Mr. Ramon violated his supervised release conditions and that his residence might contain evidence related to those violations.

First, the positive urinalyses strongly suggest that Mr. Ramon violated the supervised release condition prohibiting him from using or possessing controlled substances. "Failing a drug test" constitutes an "objective indicatio[n]" that a person serving supervised release has failed to comply with a condition of release, and thus "strongly contribute[s]" to a reasonable suspicion finding. *United States v. Trujillo*, 404 F.3d 1238, 1245 (10th Cir. 2005) (citation omitted). The supervised release agreement—which Mr. Ramon does not challenge—included a condition that prohibited him from "us[ing] . . . any controlled substance[s]." Six weeks before the search, Mr. Ramon tested positive for cocaine—his second failed test. That most recent positive test suggested that Mr. Ramon likely used controlled substances, violating his supervised release agreement.

That the failed drug test occurred six weeks before the search did not render the information stale either. *See Trujillo*, 404 F.3d at 1245 (concluding that failed drug test, although four months old at the time of the search, suggested probationer violated probation agreement). Reasonable suspicion "is not an onerous standard." *Cortez*, 965 F.3d at 834 (citation omitted). Given the supervised release agreement

and the two positive drug tests here, we cannot find it unreasonable for Officer Buescher to suspect that Mr. Ramon violated his supervised release agreement.[2]

Second, the DEA's open investigation into Mr. Ramon's involvement in a drug conspiracy suggested that searching his residence would reveal contraband related to drug possession, drug use, or evidence showing Mr. Ramon's associations with persons engaged in criminal activity. "Because of the unique characteristics of the probation relationship," it is "reasonable to permit information provided by a police officer, whether or not on the basis of firsthand knowledge, to support a probationer search." *Trujillo*, 404 F.3d at 1245 (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 879 (1987)). Here—as the district court found—a DEA agent conveyed to Officer Buescher that the DEA had begun to investigate Mr. Ramon, suspecting his involvement in a large-scale drug operation.[3] Under existing precedent, this

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[2] Indeed, we have concluded that given a probation agreement and positive urinalysis "no further justification of a protective sweep [is] necessary." *United States v. Blake*, 284 F. App'x 530, 533 (10th Cir. 2008).

[3] That a "confidential informant" told the DEA agents the information about Mr. Ramon is not significant here because "probation searches may be premised on less reliable information than that required in other contexts." *Leatherwood*, 757 F.3d at 1121 (citing *Griffin v. Wisconsin*, 483 U.S. 868, 879 (1987)). Plus, confidential informants are not necessarily anonymous. *See United States v. McHugh*, 639 F.3d 1250, 1257–58 (10th Cir. 2011) (distinguishing informants known to officers from anonymous tipsters). Even if the confidential informant here was actually anonymous, the DEA agent who conveyed the information "was known" and "could be held responsible if [the agent's] allegations turned out to be fabricated." *United States v. Tucker*, 305 F.3d 1193, 1201 (10th Cir. 2002). In any event, Mr. Ramon waived the argument regarding the informant's reliability because he never presented it to the district court in his suppression papers and did not argue for plain-error review in his opening brief. *See United States v. Portillo-Uranga*, 28 F.4th 168, 177 (10th Cir. 2022).

information contributes to reasonable suspicion justifying the officers' search of Mr. Ramon's residence. *See Griffin*, 483 U.S. at 879 (finding reasonable suspicion when a police officer conveyed uncorroborated hearsay information from an unidentified third party asserting that the defendant "had or might have" contraband).[4]

Mr. Ramon concedes that this evidence "may justify a finding of reasonable suspicion that he generally violated the terms of his release," but contends that it's insufficient to justify searching his mother's home specifically. Aplt. Br. at 15. True, Officer Buescher testified that the DEA "did not supply [him with] any direct information regarding narcotic distribution outside of [Mr. Ramon's mother's house]," but only to Nik-Mart. Indeed the district court found that there is "no information from the DEA that [Mr. Ramon's mother's house] was being used by [Mr. Ramon] for drug dealing." Mr. Ramon therefore argues that the evidence discussed above "fails to create the necessary factual nexus between [him], a specific violation, and his residence at the time of the search"—his mother's house.

But—as we have held—this argument "fails on its own terms." *Trujillo*, 404 F.3d at 1245. While "[a] probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be reasonable," probation search conditions—almost by definition and design—"considerably diminish the probationer's reasonable expectation of privacy." *Leatherwood*, 757 F.3d at 1120

[4] It is similarly insignificant here that Officer Buescher's information came from an "anonymous" tipster's phone call: Officer Buescher would have had reasonable suspicion to search Mr. Ramon for *drugs* even without the anonymous tipster's phone call about *weapons*.

(cleaned up). Accordingly, "[o]nce there was reason to believe that [Mr. Ramon] violated his [supervised release] agreement, there is, by definition, reasonable suspicion to support a search of his residence to ensure compliance with the conditions of his [supervised release]." *Trujillo*, 404 F.3d at 1245 (quotation marks omitted).

Thus, the information from the DEA agent combined with the positive drug tests and Mr. Ramon's checkered history, provided Officer Buescher with sufficient "articulable facts that criminal activity may be afoot," *Hemry v. Ross*, 62 F.4th 1248, 1254 (10th Cir. 2023) (quotation marks omitted), and that he would discover evidence of that criminal activity at Mr. Ramon's residence.

B. Sufficiency of the Evidence

Mr. Ramon also contends the evidence at trial was insufficient to support a conviction for unlawful possession of a firearm.

To obtain a conviction for unlawful possession of a firearm, the government must prove beyond a reasonable doubt that: (1) Mr. Ramon had a prior felony conviction; (2) Mr. Ramon knowingly possessed a firearm; and (3) the firearm traveled in or affected interstate commerce. *See* 18 U.S.C. § 922(g)(1); *United States v. Samora*, 954 F.3d 1286, 1290 (10th Cir. 2020). Mr. Ramon stipulated to the first and third elements. But he disputes the sufficiency of the evidence about possession.

"We review de novo the sufficiency of the evidence, viewing all evidence and any reasonable inferences drawn therefrom in the light most favorable to the conviction." *United States v. Fernandez*, 24 F.4th 1321, 1326 (10th Cir. 2022).

"Evidence is sufficient to support a conviction so long as after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Cavazos v. Smith*, 565 U.S. 1, 7 (2011) (quotation marks omitted).

"Possession under § 922(g)(1) can be actual or constructive." *Samora*, 954 F.3d at 1290. Because Mr. Ramon did not have "direct physical control over [the] firearm," *id.*, when officers found it, the question is whether the government presented sufficient evidence to permit a jury to find beyond a reasonable doubt that Mr. Ramon constructively possessed the firearm. Viewing the evidence in the light most favorable to the conviction, we conclude that the government satisfied its burden.

"Constructive possession occurs when a person not in actual possession knowingly has the power and intent to exercise dominion and control over a firearm." *Id*. Where—as here—"the defendant jointly occupies the premises" with someone else, the government must prove "a nexus between the defendant and the firearm" by demonstrating that a defendant "knew of," "had access to," and "intended to exercise dominion or control" over the firearm found there. *United States v. Johnson*, 46 F.4th 1183, 1187 (10th Cir. 2022). This "may be proved by circumstantial as well as direct evidence." *Id*.

The evidence fully supports the jury's finding of access, dominion, and control.[5]

1. Access

Regarding access, the DNA evidence provided valid circumstantial evidence to permit a reasonable jury to infer that Mr. Ramon handled the firearm. In a case of joint occupancy of a home—as here—"access may be . . . inferred from circumstantial evidence, so long as the circumstantial evidence includes something other than mere proximity." *Hooks*, 551 F.3d at 1212 (cleaned up). The circumstantial evidence here includes more than mere proximity: the government's DNA expert witness testified that the Taurus firearm bore Mr. Ramon's DNA at several locations, and at one location was "at least 1 trillion times more likely if it originated from Charles Ramon than if it originated from an unrelated unknown individual." R. Vol. 4 at 275. There was no evidence, by contrast, that Mr. Ramon's mother's DNA was on the gun.

[5] Mr. Ramon concedes that during the search, his outbursts like "get out of our house"—when viewed in the light most favorable to the conviction—"would be rationally interpreted as evidence that [he] had knowledge that a gun was on the premises." Aplt. Br. at 36. These declarations show more "than mere proximity," *United States v. Hooks*, 551 F.3d 1205, 1212 (10th Cir. 2009), to the firearm and—when viewed in totality—tend to support a finding that Mr. Ramon "knew of" the firearm, *Johnson*, 46 F.4th at 1187. But since Mr. Ramon concedes as much, we need not address that issue here. *See United States v. Aguayo-Gonzalez*, 472 F.3d 809, 812 n.3 (10th Cir. 2007) (declining to address conceded issue). Our analysis therefore focuses on whether the government presented sufficient evidence to permit a jury to find beyond a reasonable doubt that Mr. Ramon "had access to," and "intended to exercise dominion or control" over the firearm.

The government may demonstrate that a defendant *handled* the firearm at "some point" by establishing that the defendant's DNA matches a major profile located on the "specific firearm at issue." *See Samora*, 954 F.3d at 1294. So the DNA evidence discussed above suffices to establish a reasonable basis to conclude that Mr. Ramon handled the gun. Indeed, Mr. Ramon's DNA expert conceded on cross-examination that the DNA quantities found on the gun were consistent with "direct transfer." So, as the government correctly notes, if Mr. Ramon "handled the gun, logically, he had the power and access to control it." Aple. Br. at 42 (citing *Samora*, 954 F.3d at 1291); *see United States v. Benford*, 875 F.3d 1007, 1020–21 (10th Cir. 2017) (holding that evidence establishing the defendant handled a firearm may provide circumstantial evidence demonstrating the ability to exercise control).

Mr. Ramon challenges the DNA evidence, arguing that the government's DNA expert "never gave her expert opinion on whether the DNA found on the gun got there via touch, or as the result of a transfer or secondary transfer." But this argument does not change our conclusion for two reasons.

First, the jury need not accept Mr. Ramon's theory of the case. "[I]t is solely within the province of the fact-finder to weigh the expert testimony," *United States v. Cope*, 676 F.3d 1219 (10th Cir. 2012) (cleaned up), and "decide how to credit [expert] testimony," *Samora*, 954 F.3d at 1291 n.5. As discussed above, the government presented DNA evidence consistent with Mr. Ramon handling the gun. To be sure—as Mr. Ramon accurately points out—his expert testified on direct examination that the DNA quantities found on the gun were also consistent with

"background DNA." But the fact that the jury did not draw from this testimony the inference Mr. Ramon desired does not invalidate reasonable inferences supporting his conviction. *See United States v. Edmonson*, 962 F.2d 1535, 1547–48 (10th Cir. 1992) (noting that a jury "is free to choose among reasonable constructions of evidence"). True, "DNA does not give us information on when it was deposited," Aplt. Br. at 8, but "evidence that the defendant actually handled a firearm"—*even if* "outside the indictment period"—may circumstantially support a finding of the "ability and intent to exercise control over the firearm necessary to establish constructive possession," *Benford*, 875 F.3d 1020–21. *See also Samora*, 954 F.3d at 1292 ("[H]ow much time must have passed since Defendant handled the firearm . . . is a question of fact for the jury.").

Second, the government introduced testimony that: (1) the doors to the rooms in the house were always open when Officer Buescher visited; (2) the officers did not believe Mr. Ramon's mother's closet had a door; (3) Mr. Ramon's mother, given her height, probably could not reach the gun without help; and (4) Mr. Ramon, by contrast, could reach the firearm while standing. The government also introduced a pre-search video footage depicting Mr. Ramon standing upright despite his use of a wheelchair. This evidence and testimony more than suffices to circumstantially support the finding that the firearm was "readily accessible" to Mr. Ramon. *See Samora*, 954 F.3d at 1291 (distinguishing firearm found under the passenger seat as "not within arm's reach" of driver from firearm found in the center console as "readily accessible" to the driver).

2. Intent

Regarding intent, the loaded firearm strongly suggests that Mr. Ramon intended to control it the day officers found it. A firearm "ready to fire at the press of a trigger" generally compels the conclusion "that *someone* had the intent to exercise control" over it. *United States v. Veng Xiong*, 1 F.4th 848, 860 (10th Cir. 2021); *see Johnson*, 46 F.4th at 1190 (considering fact that "firearm was loaded" as "evidence of intent"); *see also United States v. Shannon*, 809 F. App'x 515, 520 (10th Cir. 2020) (noting that a loaded AR-15 with its safety switched off indicates "an intent to use the weapon if needed").

In addition to the physical evidence, Mr. Ramon's verbal tirade during the search bolsters the finding of intent to exercise dominion or control over the gun. The government argues that Mr. Ramon's tirade "supports an attempt to halt the search so the officers would not find the revolver," thus demonstrating a purposeful resolve to exercise control over the gun. Aple. Br. at 44. Mr. Ramon disagrees, arguing that only if we interpret his statements as "get out of [his mother's] bedroom" or "get out of [his mother's] closet," would his tirade "have at least a rational relationship between the content of the statement and the contents of her bedroom or the contents of her closet." Aplt. Br. at 36. In either case, "[i]t is for the jury, as the fact finder, to resolve conflicting testimony, weigh the evidence, and draw reasonable inferences from the facts presented." *Wells*, 843 F.3d at 1253. "[C]onsidering the collective inferences to be drawn from the evidence as a whole," *United States v. Nguyen*, 413 F.3d 1170, 1175 (10th Cir. 2005) (internal quotations

marks omitted), a reasonable jury could construe Mr. Ramon's behavior on the day of the search as evidence of his intent to obstruct the search.

We therefore conclude that the loaded firearm, the DNA evidence, and Mr. Ramon's behavior on the day of the search logically and circumstantially support a plausible inference that Mr. Ramon exercised dominion and control over the weapon.

* * *

Accordingly, we **AFFIRM** the denial of Mr. Ramon's motion to suppress and **AFFIRM** Mr. Ramon's conviction.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge