

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Argued December 12, 2023

Decided March 6, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1166

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RICKY GREEN,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 20 CR 461

Manish S. Shah,
Judge.

ORDER

A jury convicted Ricky Green of being a felon in possession of a firearm. *See* 18 U.S.C. § 922(g). Green moved twice for a judgment of acquittal, contending that there was insufficient evidence to sustain his conviction that he knowingly possessed a firearm. *See* FED. R. CRIM. P. 29. The judge denied both motions and Green appealed. Because the evidence was sufficient to prove his knowledge and possession of the firearm, we affirm.

Several minutes before midnight on May 31, 2020, Ricky Green and several others attempted to break into a Target in Chicago's Lakeview neighborhood. Security

video captured Green exiting the front passenger seat of a white sedan and walking up and down the alley while his companions struggled to pry open the back door of Target. Green was carrying a red cross-body bag. He unzipped the bag's pockets, looked inside them, and took out what appears to be a white object – possibly a gun. The video then recorded Green and his colleagues leaving the alley, returning, and leaving again to flee from police who had arrived in response to a 911 call about their activity.

The white sedan then fled, turning out of the alley behind Target and southbound onto Lincoln Avenue, where it stopped from a busted tire just before the intersection of Lincoln, Southport, and West Wellington Avenues. An unmarked police car pulled up behind, and Officer Kris Pejoski, sitting in the back passenger seat, saw Green bolt from the sedan and flee on foot toward West Wellington Avenue. As Green ran around the sedan's door to close it shut, he turned towards Officer Pejoski, who saw him carrying a red bag. Pejoski then lost sight of Green.

Officer Gary Mendoza, another officer called to the scene, started walking westward on Wellington to search for possible suspects. As he approached a gangway between 1436 and 1438 West Wellington Avenue, he heard a fence rumbling, looked down the gangway, and saw a figure hopping a fence into the backyard of 1436. Mendoza ran down the gangway, looked over the fence, and found Green hiding under some stairs attached to the garage of 1436. At Mendoza's prompting, Green gestured that he had nothing on him. Officer Pejoski arrived, recognized Green as the person who had run out of the sedan, and informed the other officers who had arrived at the scene that he had seen Green with a red bag. Officers Melissa Nelson and Cassandra Brick searched for the bag, which Nelson found nestled between a dustpan and the side of the house, at the front of the gangway. Nelson picked up the bag, felt what she thought was a gun, and found a gun inside.

At trial, the government introduced five witnesses. First a Target security supervisor testified, admitting that the white object Green held in the video could have appeared white only because of a reflective glare. Then the four police officers principally involved in Green's arrest (Pejoski, Mendoza, Nelson, and Brick) testified to their involvement. The government introduced the Target security video, maps of the sedan's path and the sites where officers arrested Green and found the red bag, as well as video from the body camera of an officer who remained in the alley during Green's

capture. The exhibits and testimony strung a narrative: Green served as an armed lookout for the attempted looting of Target, fled from the police with the red bag and gun in tow, stashed the gun behind the dustpan when he feared capture was imminent, and hid nearby under the stairs to avoid detection.

At the close of the government's case-in-chief, Green moved for a judgment of acquittal, *see* FED. R. CRIM. P. 29, stating simply that there was insufficient evidence to prove he knowingly possessed the gun. The judge quickly denied his motion, reasoning that the evidence, viewed in the light most favorable to the prosecution, was sufficient for the jury to find that he knowingly possessed the firearm.

Green then presented his defense and challenged the government's timeline of events. He played a recording of a 911 call from 1434 West Wellington in which the resident stated that a man (possibly Green) was walking in her backyard. He then played one of the government's videos in which Officer Mendoza could be overheard confronting Green as Green hid beneath the stairs of 1436. The timestamps of both recordings showed that only thirty seconds had passed in between the 911 call and the encounter with Mendoza. Green argued that thirty seconds would not have been enough time for him to run across the backyards of 1434 and 1436, then to the front of the gangway between the homes of 1436 and 1438 (to hide the bag), and then back to the backyard staircase at 1436. Given the timeframe, he contended, the government could not prove that he had hidden the gun.

The jury returned a guilty verdict, and Green promptly moved again for a judgment of acquittal. He characterized the government's evidence as speculative and insufficient to support a guilty verdict. First, he maintained, no direct evidence—video, fingerprints, or statements—linked him to the gun. Second, he insisted that the government's thirty-second timeline was implausible. Third, he argued that the government lacked sufficient evidence to suggest that he knowingly possessed the gun while he was at Target or when it was found close to his hiding spot.

The district court denied the motion. The court concluded that the jury—by crediting Officer Mendoza's testimony that he spotted Green in the gangway—could reject the defense's theory that he did not have enough time before his arrest to hide the bag in the gangway. The court also concluded that the evidence was not too speculative to convict Green. In the court's view, the jury could infer his knowing possession of the firearm from this string of facts: he undisputedly possessed the bag that contained the

gun and perused its contents (so he knew the gun was in there), Officer Pejoski saw him with the bag only a few minutes later, and Officer Nelson found the bag close to him soon after that.

On appeal, Green again challenges the sufficiency of the evidence to convict him. We review a district court's denial of a motion for acquittal *de novo*, construing the facts in the light most favorable to the prosecution. *United States v. Price*, 28 F.4th 739, 752 (7th Cir. 2022). We will affirm a jury's verdict "if any rational trier of fact could have found the offense's elements satisfied beyond a reasonable doubt." *Id.*

First, Green challenges the district court's determination that the jury could infer his knowing possession of the bag and the gun inside it. He points out, for instance, that the bag at times is not visible on Target video, which depicts three people, including himself, entering and exiting a sedan several times. But proving continuous possession is not necessary to satisfy the element of "knowing possession" under 922(g); it is enough that the defendant is seen having "immediate physical possession or control." See *United States v. Bloch*, 718 F.3d 638, 642 (7th Cir. 2013). This is true even if the possession is brief. *United States v. Jackson*, 598 F.3d 340, 349 (7th Cir. 2010). And here the video depicted Green holding the bag and searching its contents—the very same bag (with a gun) that officers found nearby him just minutes later.

Second, and relatedly, Green argues that it was unreasonable for the district court to infer that Green knew that the gun was in the bag just because he searched the bag's contents in the Target video, as the contents of the bag could have changed afterward when Green was out of view. He contends that the object he pulled out in the video was white, and because the gun (which was not white) was the only object Officer Nelson recovered from the bag later, the contents of the bag must have changed. But the jury heard a witness testify that the gun could have appeared white in the video because of a glare. And only a short time passed in between when the Target video captured Green holding the bag and the officers found him hiding in the gangway, bag and gun nearby. The trier of fact can choose among various reasonable constructions of the evidence. *United States v. Tinsley*, 62 F.4th 376, 388 (7th Cir. 2023). And here, the jury was free to reject his arguments that the contents of the bag had changed.

Third, Green challenges the district court's conclusion that he (and not someone else) could have stashed the bag at the front of the gangway during his flight from the police. He maintains that only someone else would have had enough time to hide the

bag there because the 911 call allegedly located him several houses away only thirty seconds earlier. But even if we assumed that the 911 caller had spotted Green, there still was sufficient evidence for the jury to infer that Green had hidden the bag in the gangway. The government introduced a video from a police officer's body camera showing that the properties of 1434, 1436, and 1438 were narrow; the jury could have inferred that Green could race between them. That video showed that he was tall and athletic; the jury could infer that he could jump the six-foot fence in between 1436 and 1438 easily—a fence that a five-foot-four officer testified that she also scaled. And key evidence corroborated Officer Mendoza's testimony that he saw Green in the gangway: Two officers testified that they heard Mendoza communicate through the police radio that he saw Green hop the fence, and the police officer's body camera video showed Mendoza confront Green from that gangway.

Fourth, Green argues that the district court incorrectly inferred that the bag Green held in the Target video was the same one that was recovered. But the Target video depicted him holding a red cross-body bag with two zippers—exactly the same kind of bag he was seen holding while running and that was recovered near him minutes later—and it was more than reasonable for the court (and jury) to infer that the bag was the same.

We have reviewed Green's remaining contentions, and they lack merit.

AFFIRMED