

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11170
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER MARES,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cr-00033-WFJ-TGW-1

Before JILL PRYOR, BRANCH, and DUBINA, Circuit Judges.

PER CURIAM:

Appellant Javier Mares appeals his convictions for possession with intent to distribute 50 grams or more of methamphetamine

and a detectable amount of cocaine, possession of a firearm in furtherance of a drug-trafficking crime, and possession of a firearm and ammunition by a convicted felon. On appeal, Mares first argues that the evidence at his trial was insufficient to support jury findings that he knowingly possessed with intent to distribute methamphetamine and cocaine and possessed a firearm in connection with that offense because there was no direct evidence that he was aware of the narcotics that law enforcement found in his office, and the inferences needed to support his convictions were speculative and unreasonable. Second, Mares argues that the district court erred in failing to declare a mistrial when a federal agent testified that Mares was previously known to law enforcement as a large-scale drug distributor, and he also contends that the district court erred in failing to sua sponte strike the same testimony because the unobjected-to statements constituted improper opinion and hearsay testimony. Third, Mares argues that his convictions should be reversed because the record establishes that his trial counsel provided ineffective assistance of counsel and the record is sufficiently developed for the court to review his ineffective assistance claim. Having reviewed the record and read the parties' briefs, we affirm Mares's convictions.

I.

"We review de novo whether the evidence was sufficient to sustain a criminal conviction." *United States v. Davis*, 854 F.3d 1276, 1292 (11th Cir. 2017). The district court's denial of "a motion[] for a judgment of acquittal will be upheld if a reasonable trier of fact could conclude that the evidence establishes the defendant's guilt

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beyond a reasonable doubt.” *United States v. Rodriguez*, 218 F.3d 1243, 1244 (11th Cir. 2000). We must view the facts, and draw all reasonable inferences therefrom, in the light most favorable to the government. *United States v. Hansen*, 262 F.3d 1217, 1236 (11th Cir. 2001).

The Supreme Court has stated that, for a sufficiency-of-the-evidence analysis, “the relevant question is whether, 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.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). It is not enough for a defendant to put forth a reasonable hypothesis of innocence, as the issue is not whether the district court reasonably could have acquitted, but whether it reasonably could have found the defendant guilty beyond a reasonable doubt. *United States v. Jiminez*, 564 F.3d 1280, 1285 (11th Cir. 2009). Circumstantial evidence can establish a defendant’s guilt. *United States v. Mapson*, 96 F.4th 1323, 1336 (11th Cir. 2024), *cert. denied*, ___ U.S. ___, 145 S. Ct. 334 (2024). When the government relies on circumstantial evidence to prove an element of the offense, reasonable inferences from the evidence, not speculation, must support the conviction. *United States v. Friske*, 640 F.3d 1288, 1291 (11th Cir. 2011).

To convict a defendant “under [21 U.S.C.] § 841(a) for possession with intent to distribute” a controlled substance, “the government [must] ‘prove three elements: (1) knowledge; (2) possession; and (3) intent to distribute.’” *United States v. Cremades*, 160

F.4th 1296, 1302 (11th Cir. 2025) (quoting *United States v. Poole*, 878 F.2d 1389, 1391 (11th Cir. 1989)). “Circumstantial evidence can prove all of those elements,” and “[p]ossession may be established through actual or constructive possession.” *Id.* “Constructive possession exists when a defendant has ‘dominion or control over the premises’ in which the object is kept.” *Id.* (quoting *United States v. Leonard*, 138 F.3d 906, 909 (11th Cir. 1998)). “And ‘[i]ntent to distribute may be inferred from the amount of the drug involved.’” *Id.* (quoting *United States v. Hernandez*, 433 F.3d 1328, 1333 (11th Cir. 2005)) (alteration in original). Intent to distribute may be further inferred from “the presence of items typically utilized ‘to separate large [drug] quantities into smaller quantities for retail purposes[.]’” *United States v. Butler*, 117 F.4th 1309, 1321 (11th Cir. 2024) (quoting *Poole*, 878 F.2d at 1392) (alteration in original).

Section 924(c)(1)(A) of Title 18 of the U.S. Code provides for enhanced criminal penalties for “any person who, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm.” 18 U.S.C. § 924(c)(1)(A). “[A] defendant possesses a firearm in furtherance of” a drug-trafficking crime under § 924(c)(1)(A) “when ‘the firearm helped, furthered, promoted, or advanced the drug trafficking.’” *United States v. Miranda*, 666 F.3d 1280, 1283 (11th Cir. 2012) (quoting *United States v. Timmons*, 283 F.3d 1246, 1252 (11th Cir. 2002)).

However, the mere presence of a gun within the defendant’s possession is not sufficient. *United States v. Timmons*, 283 F.3d 1246,

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1253 (11th Cir. 2002). Instead, “there must be ‘a showing of some nexus between the firearm and the drug selling operation.’” *Id.* (quoting *United States v. Finley*, 245 F.3d 199, 202 (2d Cir. 2001)). “The nexus may be established by the kind of drug activity that is being conducted, accessibility of the firearm, the type of firearm, whether the firearm is stolen, the status of the possession (legitimate or illegal), whether the firearm is loaded, proximity of the firearm to the drugs or drug profits, and the time and circumstances under which the firearm is found.” *United States v. Mercer*, 541 F.3d 1070, 1076-77 (11th Cir. 2008) (finding evidence sufficient when the firearm was readily available in the same room where a jury could infer that drugs were packaged for sale).

We conclude, based on the record, that the district court did not err in denying Mares’s motion for a judgment of acquittal because the evidence at trial was sufficient for a jury to find that he knowingly possessed with intent to distribute over 300 grams of methamphetamine, as well as cocaine, and possessed a firearm in furtherance of that offense. As to the knowing and possession elements, Mares told Agent Cain that he rented the auto shop where the drugs were found, and the search uncovered a small quantity of cocaine and a mixture containing 365.9 grams of pure methamphetamine in a safe under the desk in Mares’s office. Because Mares rented the shop, he had “dominion [and] control over the premises,” in which the drugs were found. *See Cremades*, 160 F.4th at 1302. Moreover, the office where the safe was located contained documents with Mares’s name on them and pictures of Mares’s children, making it reasonable for a jury to conclude that Mares

utilized the office often, that he knew about the methamphetamine hidden within, and that he constructively possessed it. *See, e.g., Cremades*, 160 F.4th at 1302; *Mapson*, 96 F.4th at 1336.

As to intent to distribute, the large quantity of methamphetamine, combined with the presence of scales and plastic bags in the safe, one of which contained Mares's fingerprint, made it reasonable for the jury to conclude that Mares intended to distribute the methamphetamine, especially considering Agent Brothers's testimony that scales and bags were indicative of drug trafficking. *See, e.g., Cremades*, 160 F.4th at 1302; *Butler*, 117 F.4th at 1321

Second, as to Mares's conviction for possession of a firearm in furtherance of that drug-trafficking offense, Mares explicitly concedes that the evidence was sufficient to support his conviction for being a felon in possession of a firearm. Thus, Mares necessarily concedes that the evidence was sufficient for the jury to find that he knowingly possessed a firearm, an element for a conviction under § 922(g)(1). The evidence established that the pistol was loaded, was located within several feet of the drugs, was in an unlocked desk drawer, and Mares's possession of the pistol was illegal, all of which went towards establishing that nexus, especially considering Agent Cain's testimony that drug distributors routinely use weapons to protect themselves. *See Mercer*, 541 F.3d at 1076-77. Accordingly, because a reasonable jury could conclude that Mares possessed over 50 grams of methamphetamine with intent to distribute and possessed a firearm in furtherance of that offense, we affirm his convictions.

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II.

We typically “review a district court’s evidentiary ruling for abuse of discretion.” *United States v. Ahmed*, 73 F.4th 1363, 1380 (11th Cir. 2023). We also “review the district court’s denial of a motion for a mistrial for abuse of discretion.” *United States v. Abraham*, 386 F.3d 1033, 1036 (11th Cir. 2004). However, “when a party raises a claim of evidentiary error for the first time on appeal, we review it for plain error only.” *United States v. Harris*, 886 F.3d 1120, 1127 (11th Cir. 2018) (quotation marks omitted).

Establishing plain error requires that: “(1) an error occurred; (2) the error was plain; (3) it affected his substantial rights; and (4) it seriously affected the fairness of the judicial proceedings.” *United States v. Ramirez-Flores*, 743 F.3d 816, 822 (11th Cir. 2014). To show that an error affected his substantial rights under plain-error review, a defendant must show a reasonable probability that the outcome of the proceeding would have been different had the error not occurred. *Rosales-Mireles v. United States*, 585 U.S. 129, 134-35, 138 S. Ct. 1897, 1905 (2018).

“A defendant is entitled to a mistrial only if he shows substantial prejudice, meaning that it is reasonably probable that, but for the alleged error, the outcome of the trial would have been different.” *United States v. Gallardo*, 977 F.3d 1126, 1138 (11th Cir. 2020). We presume that juries follow curative instructions. *Id.*

Based on the record, we conclude that Mares cannot show that the district court plainly erred in permitting Agent Cain’s testimony that Mares was previously known to law enforcement as a

significant drug dealer and that Mares was the supply source for the drugs that Fabian sold. The district court struck from the record Agent Cain's testimony that law enforcement was previously familiar with Mares as a drug dealer and told the jury to disregard the statement, and it is presumed that the jury followed the instruction. *See Gallardo*, 977 F.3d at 1138. Moreover, even if Agent Cain's statements were improper propensity evidence, hearsay, and opinion testimony, the district court did not plainly err in failing to strike them because the testimony did not affect Mares's substantial rights, as the remaining evidence was sufficient to support a conviction on the charged offenses even without it. *See Rosales-Mireles*, 585 U.S. at 134-35. Thus, Mares cannot show that the outcome probably would have been different but for Agent Cain's statements.

III.

The merits of a claim of ineffective assistance of counsel present a mixed question of law and fact that we ordinarily review *de novo*. *Gomez-Diaz v. United States*, 433 F.3d 788, 790 (11th Cir. 2005). For claims of ineffective assistance of counsel, a convicted defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984).

Our precedent "require[s] the district court to have the opportunity to examine ineffective-assistance claims before" we review them. *United States v. Padgett*, 917 F.3d 1312, 1316-17 (11th

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Cir. 2019). Accordingly, “we will not generally consider claims of ineffective assistance of counsel raised on direct appeal where the district court did not entertain the claim nor develop a factual record.” *United States v. Patterson*, 595 F.3d 1324, 1328 (11th Cir. 2010) (quoting *United States v. Bender*, 290 F.3d 1279, 1284 (11th Cir. 2002)). Rather, the proper venue for a federal defendant presenting an ineffective assistance claim is a collateral attack presented in a 28 U.S.C. § 2255 proceeding where necessary evidence on the performance and prejudice prongs of *Strickland* can be presented. *Patterson*, 595 F.3d at 1328.

We conclude that the record is not developed sufficiently as to Mares’s claim of ineffective assistance of counsel for it to be addressed on direct appeal, and a motion pursuant to § 2255 is the more proper vehicle for such a claim. Thus, we decline to consider Mares’s claim of ineffective assistance of counsel in this direct appeal.

Accordingly, based on the aforementioned reasons, we affirm Mares’s convictions.

AFFIRMED.