

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11295

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DEMARIION DANIELL NELSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:24-cr-00367-ECM-KFP-1

Before LUCK, BRASHER, and WILSON, Circuit Judges.

PER CURIAM:

Demarion Nelson appeals his 37-month sentence, imposed after he pleaded guilty to one count of unlawful possession of a machinegun in violation of 18 U.S.C. § 922(o). He argues that the

district court erred in imposing a four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B)¹ because he did not possess a firearm in connection with another felony offense. The district court's finding that Nelson possessed a gun "in connection with" an armed robbery was not clearly erroneous, so we affirm.

I.

This case relates to three armed robberies in Montgomery, Alabama. The first involved two males robbing victims with a handgun and driving a maroon car. The second involved one male robbing a victim with a handgun and driving a maroon Nissan Altima with a certain license plate. The third happened on the same day as the second and involved two males robbing a victim with pistols and driving a maroon Nissan Altima with the same license plate. Later that day, police attempted to stop a car matching those characteristics. Nelson was driving the car and led them on a high-speed chase. Nelson eventually fled the car on foot, discarded a black AR-style firearm in the street and hid in a nearby shed where police found him. The officers recovered the discarded firearm and identified it as a black American Tactical AR-style rifle with a "drop-in auto-sear" that converted it to a fully automatic machinegun.

Officers interviewed Nelson, and he admitted to being involved in the high-speed chase, running from the vehicle, possessing a Glock firearm, and possessing the AR-style rifle that the

¹ This provision has been recompiled as U.S.S.G. § 2K2.1(b)(7)(B) in the most recent version of the Guidelines.

officers had recovered. Nelson also admitted that he knew the rifle had been converted to a machinegun. He denied any involvement in robbery.

Nelson pleaded guilty to one count of illegal possession of a machinegun in violation of 18 U.S.C. § 922(o). The probation office prepared a presentence investigation report, which calculated a base level of eighteen under the United States Sentencing Guidelines Manual § 2K2.1(a)(5) (Nov. 2024). The report applied a four-level enhancement under section 2K2.1(b)(6)(B) because Nelson had possessed a firearm in connection with another felony offense—the three robberies occurring within one day of his arrest. The report also applied a two-level enhancement for recklessly creating a substantial risk of death or serious bodily injury while fleeing under section 3C1.2. The report applied a three-level reduction under section 3E1.1(a) and (b) because Nelson had accepted responsibility. This resulted in a total offense level of twenty-one. After noting that Nelson had a criminal history category of I, the probation office calculated a guideline term of imprisonment of thirty-seven to forty-six months.

Nelson objected to the section 2K2.1(b)(6)(B) four-level enhancement. Although he did not challenge the facts as presented in the presentence report, he argued that the government could not prove by a preponderance of the evidence that he possessed a firearm in connection with another felony offense. He argued that the victims gave a vague description of the robbery suspects, there was no evidence that he had been in the Nissan Altima during the

robberies, there were several hours between the third robbery and the traffic stop, and the victims did not describe an AR-style rifle as being involved in the robberies.

At sentencing, Nelson maintained his objection, arguing that there was insufficient evidence to connect him to the robberies and no evidence that anyone used an AR-style rifle during the robberies. The district court explained that possession of a firearm can satisfy the “in connection with another felony offense” enhancement under section 2K2.1(b)(6)(B) if it could potentially embolden or facilitate the felony offense. The court then found that there was sufficient evidence that Nelson possessed the AR-style rifle in the car during the third robbery because police recovered the rifle only hours later during the traffic stop. The court concluded that having the AR-style rifle in the car during an armed robbery could have potentially emboldened or facilitated the robbery, so the enhancement was proper. The district court overruled Nelson’s objection and sentenced him to thirty-seven months’ imprisonment. The court added that even if it had not applied the four-level enhancement, it would still have sentenced Nelson to thirty-seven months.

Nelson appealed.

II.

“We review a district court’s interpretation of the [s]entencing [g]uidelines and application of the [g]uidelines to the facts *de novo*, and we review the district court’s findings of fact for clear error.” *United States v. Martinez*, 964 F.3d 1329, 1333 (11th Cir. 2020) (italics added) (quoting *United States v. Dimitrovski*, 782 F.3d 622,

628 (11th Cir. 2015)). To make factual findings necessary to support a sentencing enhancement, a district court considers whether the government has demonstrated that a preponderance of the evidence supports those findings. *United States v. Askew*, 193 F.3d 1181, 1183 (11th Cir. 1999) (first citing *United States v. Lawrence*, 47 F.3d 1559, 1566 (11th Cir. 1995); and then citing *United States v. Shriver*, 967 F.2d 572, 575 (11th Cir. 1992)). “A district court’s determination that a defendant possessed a gun ‘in connection with’ another felony offense is a finding of fact that we review for clear error.” *Martinez*, 964 F.3d at 1333 (quoting *United States v. Bishop*, 940 F.3d 1242, 1250 (11th Cir. 2019)). “A factual finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Id.* (quoting *United States v. Barrington*, 648 F.3d 1178, 1195 (11th Cir. 2011) (in turn quoting *United States v. Ellisor*, 522 F.3d 1255, 1273 n.25 (11th Cir. 2007))).

III.

Nelson contends that the district court erred by applying the four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B) because he did not possess a firearm in connection with another felony offense. Because the district court’s finding that Nelson possessed the AR-style rifle during the commission of the third robbery was not clearly erroneous, we affirm.

Under U.S.S.G. § 2K2.1(b)(6)(B), a four-level enhancement applies to a defendant’s offense level calculation if he “used or possessed any firearm or ammunition in connection with another

felony offense.” We have held that, under certain circumstances, mere possession of a firearm can be enough to justify a section 2K2.1(b)(6)(B) sentencing enhancement. *United States v. Brooks*, 112 F.4th 937, 949 (11th Cir. 2024). We afford “an expansive construction” to the words “in connection with.” *Id.* at 950 (citing *United States v. Matos-Rodriguez*, 188 F.3d 1300, 1308 (11th Cir. 1999) (in turn citing *United States v. Young*, 115 F.3d 834, 836–38 (11th Cir. 1997))). In applying this expansive construction, we have held that possession of a firearm is “in connection with” a felony offense if the firearm “facilitates, or has the potential of facilitating, the other offense.” *Id.* (citing *United States v. Carillo-Ayala*, 713 F.3d 82, 94 (11th Cir. 2013) (in turn citing *Young*, 115 F.3d at 838)). There is a “strong presumption” that a firearm has the potential of facilitating an offense if a defendant is aware of the weapon’s presence. *Id.* (quoting *Carillo-Ayala*, 713 F.3d at 92).

The district court’s finding that Nelson was involved in the third armed robbery on the day of his arrest was not clearly erroneous—Nelson was driving the exact vehicle identified by the robbery victims just hours after the robbery. And when law enforcement tried to pull him over, he immediately fled and led the police on a high-speed chase. Further, the district court’s finding that Nelson possessed the AR-style firearm in the Altima when the robberies were committed was also not clearly erroneous—Nelson discarded the firearm in a street while he was fleeing from the crashed Altima on foot. Our precedent holds that because the AR-style firearm Nelson possessed in the Altima could have facilitated his robbery, he possessed the firearm “in connection with” that

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offense. The district court’s finding that Nelson possessed a gun “in connection with” an armed robbery was not clearly erroneous.

IV.

For these reasons, the district court’s judgment is **AFFIRMED**.