

NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 25-12651  
Non-Argument Calendar

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

DAVID GEROME KENNEDY,

*Defendant-Appellant.*

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Appeal from the United States District Court  
for the Northern District of Florida  
D.C. Docket No. 3:24-cr-00058-TKW-1

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Before WILLIAM PRYOR, Chief Judge, and JORDAN and KIDD, Circuit  
Judges.

PER CURIAM:

David Gerome Kennedy appeals his sentence of 180 months' imprisonment for conspiracy to distribute and possession with intent to distribute more than 500 grams of cocaine, and possession with intent to distribute more than 500 grams of methamphetamine mixture. 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), (b)(1)(B)(ii), (b)(1)(D), 846. He contends that the district court plainly erred in applying sentencing enhancements for possessing a firearm in relation to illegal drug activity, and for maintaining a premises for the purpose of distributing a controlled substance. Because the district court did not plainly err, we affirm.

### I. BACKGROUND

Officers began investigating Kennedy in March 2021, after receiving information from a confidential source that Kennedy was conspiring with others to sell large amounts of drugs. Officers used the source to conduct multiple controlled buys of cocaine from Kennedy at an address in Milton, Florida, between March 2021 and February 2024. In March 2024, officers obtained authority for a wiretap, through which they intercepted communications between Kennedy and the others in the conspiracy and learned that Kennedy used the address in Milton to arrange for the buying and selling of drugs, while sleeping at a residence in Pace, Florida, multiple nights a week.

Officers obtained and executed search warrants at both addresses, and they seized 204 grams of marijuana, 576 grams of co-

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caine, 443.2 grams of methamphetamine “Ice”, 37 grams of psilocybin mushrooms, 5 boxes of THC gummies, THC candy, 3 firearms, and ammunition at the Milton residence.

In July 2024, a grand jury returned a two-count indictment charging Kennedy with conspiracy to distribute and possession with intent to distribute 500 or more grams of cocaine, 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(ii), 846, and possession with intent to distribute 500 or more grams of methamphetamine mixture, *id.* § 841(a)(1), (b)(1)(A)(viii), (b)(1)(B)(ii), (b)(1)(D). Kennedy pleaded guilty to both counts.

Kennedy’s presentence investigation report provided a base offense level of 36, United States Sentencing Guidelines Manual § 2D1.1(a)(5) (Nov. 2024), based on a total drug weight of 45,309.98 kilograms, a two-level enhancement based on the firearms found at the Milton residence, *id.* § 2D1.1(b)(1), and another two-level enhancement because Kennedy maintained the residence for the purpose of manufacturing or distributing a controlled substance while living at the Pace residence, *id.* § 2D1.1(b)(12), for an adjusted offense level of 40. The report stated that Kennedy was a career offender because he had at least two prior felony convictions involving controlled substance offenses, and that his career offender offense level would be 37, *id.* § 4B1.1(b)(1), but that the greater offense level of 40 controlled. The report applied a three-level reduction for acceptance of responsibility, *id.* § 3E1.1(a), (b), for a total offense level of 37. The report calculated a criminal history cate-

gory of VI, because Kennedy was a career offender. With an offense level of 37 and criminal history category of VI, Kennedy's guideline range was 360 months to life imprisonment.

Kennedy filed objections to the drug weight calculation not relevant to the issues raised on appeal, which the district court overruled. The district court adopted the report's guideline calculation with no further objection from the parties. It sentenced Kennedy to 180 months of imprisonment followed by 5 years of supervised release on both counts.

## II. STANDARD OF REVIEW

We review unpreserved sentencing objections for plain error. *United States v. Boone*, 97 F.4th 1331, 1339 (11th Cir. 2024). To succeed on plain error review, a defendant must establish an error that is clear or obvious that affects his substantial rights. *Id.* When a defendant expressly consents to or affirmatively seeks a ruling, he has invited any error. *United States v. Brannan*, 562 F.3d 1300, 1306 (11th Cir. 2009). Where invited error occurs, we are barred from reviewing an argument the defendant disclaimed. *Boone*, 97 F.4th at 1339. Failing to object does not invite error. *United States v. Dortch*, 696 F.3d 1104, 1112 (11th Cir. 2012), *overruled in part on other grounds by Alleyne v. United States*, 570 U.S. 99 (2013).

## III. DISCUSSION

Kennedy argues that the district court plainly erred in applying the firearm and premises sentencing enhancements. He argues that the government failed to prove that he possessed a firearm in relation to illegal drug activity because the presence of the firearm

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alone was not enough to support application of the enhancement and he did not have access to the weapon. He also argues that the government failed to prove that he maintained a premises for the purpose of manufacturing or distributing a controlled substance because, while he used the Milton house to sell drugs, that was not its primary purpose. The government argues that Kennedy invited the alleged errors and alternatively that the district court did not plainly err.

Kennedy did not invite any error by failing to object to the enhancements, *Dortch*, 696 F.3d at 1112, but the district court did not plainly err. Section 2D1.1(b)(1) provides a two-level enhancement if a dangerous weapon, including a firearm, was possessed. U.S.S.G. § 2D1.1(b)(1). The government must prove that a firearm was present at the site of the charged conduct or that the defendant possessed a firearm during conduct associated with the offense of conviction. *United States v. Montenegro*, 1 F.4th 940, 946 (11th Cir. 2021). The government must prove some connection beyond mere possession of the firearm and the drug offense, though it does not need to prove that the weapon was used to facilitate the distribution of drugs. *Id.* Evidence of proximity between the firearm and drugs is sufficient. *United States v. Stallings*, 463 F.3d 1218, 1220 (11th Cir. 2006). If the government meets its initial burden, the burden shifts to the defendant to show that a connection between the weapon and the offense was “clearly improbable.” *Id.* “In effect, the government benefits from a rebuttable presumption that a firearm, if present—just present, not present in proximity to drugs—is connected with the offense.” *United States v. Carillo-Ayala*, 713 F.3d 82,

90 (11th Cir. 2013) (quotation marks omitted). Firearms were found at the Milton residence, from which Kennedy conducted his drug business, in proximity to large quantities of drugs, and that evidence established the rebuttable presumption that the enhancement applied. *Stallings*, 463 F.3d at 1220. Kennedy failed to prove that a connection between the firearm and the offense was clearly improbable.

The district court also did not plainly err in applying the premises enhancement. Section 2D1.1(b)(12) provides a two-level enhancement if the defendant “maintained a premises for the purpose of manufacturing or distributing a controlled substance.” U.S.S.G. § 2D1.1(b)(12). A premises need not be solely used for drug distribution, but it must be one of its “primary or principal uses,” including storage of drugs for the purposes of distribution. *United States v. George*, 872 F.3d 1197, 1205 (11th Cir. 2017) (quoting U.S.S.G. § 2D1.1 comment. (n.17)). It can also include use of a family home if there is evidence that the defendant “engaged in extensive drug activity there,” such as officers finding drugs in the residence and evidence that drug storage and distribution took place there. *United States v. Rodriguez*, 75 F.4th 1231, 1243 (11th Cir. 2023). Although Kennedy argues that drug distribution was not the primary purpose of the Milton house, drug activity does not need to be the only use of a premises for the enhancement to apply, and there was evidence that he “engaged in extensive drug activity there.” *Id.* Because officers found large quantities of drugs during the search of Kennedy’s Milton residence and had evidence of Kennedy selling drugs at the residence multiple times over the course

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of several years, the district court did not plainly err in applying the premises enhancement. *George*, 872 F.3d at 1205.

#### IV. CONCLUSION

We **AFFIRM** Kennedy's sentence.