

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4640

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DECARLOS W. MILLER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CR-02-290)

Submitted: March 22, 2004

Decided: April 2, 2004

Before MICHAEL, GREGORY, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Matthew P. Geary, Richmond, Virginia, for Appellant. Paul J. McNulty, United States Attorney, Stephen W. Miller, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

DeCarlos W. Miller was convicted, after a bench trial, of possession with intent to distribute in excess of fifty grams of cocaine base, in violation of 21 U.S.C. § 841 (2000) and 18 U.S.C. § 2 (2000); possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2; possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (2000) and 18 U.S.C. § 2; and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (2000). On appeal, he alleges the evidence was insufficient to support his conviction.

Upon our review of the record, we find that there is substantial evidence, taking the view most favorable to the Government, to support the verdict. United States v. Glasser, 315 U.S. 60, 80 (1942). Miller asserts that his mere proximity to the drugs and firearms should not establish possession. While mere proximity to contraband is not adequate to establish possession, see United States v. Samad, 754 F.2d 1091, 1096 (4th Cir. 1984), there was ample evidence in addition to proximity supporting the trial court's conclusion that Miller constructively possessed the drugs and firearms at issue. See United States v. Burgos, 94 F.3d 849, 873 (4th Cir. 1996) (en banc); United States v. Rusher, 966 F.2d 868, 878 (4th Cir. 1992). We must assume that the trial court

resolved this issue in the Government's favor. See United States v. Wilson, 115 F.3d 1185, 1190 (4th Cir. 1997). Thus, we affirm.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED