**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 25-4386**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRAN MAURICE MCCLAIN, SR.,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:24-cr-00328-WO-1)

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Submitted: August 20, 2026 Decided: August 24, 2026

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Before AGEE and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** Todd A. Smith, SMITH GILES PLLC, Burlington, North Carolina, for Appellant. Dan Bishop, United States Attorney, Joanna G. McFadden, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derran Maurice McClain, Sr., appeals the 144-month sentence imposed following his guilty plea to possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). On appeal, McClain challenges the district court's application of a base offense level based on McClain's possession of a firearm capable of accepting a large capacity magazine, *see* U.S. Sentencing Guidelines Manual § 2K2.1(a)(1) (2024), and enhancements based on McClain's possession of a stolen firearm, pursuant to USSG § 2K2.1(b)(4)(A), and for possessing three firearms, pursuant to USSG § 2K2.1(b)(1)(A). We affirm.

When considering a Guidelines challenge, "we review the district court's factual findings for clear error," *United States v. Gross*, 90 F.4th 715, 720 (4th Cir. 2024) (internal quotation marks omitted), and "its legal conclusions de novo," *United States v. Hunt*, 123 F.4th 697, 708 (4th Cir. 2024) (internal quotation marks omitted). Under the clear error standard, we will reverse only if we are "left with the definite and firm conviction that a mistake has been committed." *Gross*, 90 F.4th at 722 (internal quotation marks omitted). "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *United States v. Ferebee*, 957 F.3d 406, 417 (4th Cir. 2020) (internal quotation marks omitted).

"The government bears the burden of establishing the applicability of a sentencing enhancement by the preponderance of the evidence." *United States v. Henderson*, 88 F.4th 534, 536 (4th Cir. 2023). "This burden simply requires the trier of fact to believe that the

existence of a fact is more probable than its nonexistence." *United States v. Patterson*, 957 F.3d 426, 435 (4th Cir. 2020) (internal quotation marks omitted). Unlawful possession of a firearm may be actual or constructive and it may be exclusive or joint. *United States v. Lawing*, 703 F.3d 229, 240 (4th Cir. 2012). "A defendant may have constructive possession of contraband even if it is not in his immediate possession or control." *United States v. Shorter*, 328 F.3d 167, 172 (4th Cir. 2003). The government can demonstrate the defendant constructively possessed a firearm where the defendant "had the power and the intention to exercise dominion and control over the firearm," and may establish possession by either direct or circumstantial evidence. *United States v. Al Sabahi*, 719 F.3d 305, 311 (4th Cir. 2013) (internal quotation marks omitted). However, "mere proximity to the contraband, . . . mere presence on the property where the contraband is found, or . . . mere association with the person who does control the contraband" is insufficient to establish dominion and control over the contraband. *United States v. Blue*, 808 F.3d 226, 232 (4th Cir. 2015).

Here, law enforcement officers executing arrests warrants on McClain for unrelated state criminal offenses witnessed McClain exit his apartment, and upon his arrest, found McClain in possession of a firearm. The officers went inside McClain's apartment, where McClain and his son lived, and observed marijuana and digital scales in plain view. After obtaining a search warrant, the officers found a firearm capable of accepting a large capacity magazine in a cereal box on top of the refrigerator and a stolen firearm located in a closet shared by McClain and his son. At sentencing, the district court found that McClain was jointly and constructively in possession of the firearms found in his

apartment. Based on the location of the firearms in common areas of the apartment and statements made by McClain after his arrest, the court concluded that he had knowledge and dominion and control of the firearms.

McClain contends that the evidence was insufficient to support the application of the base offense level and the sentencing enhancements, arguing that he did not have knowledge or dominion and control over the firearms found in his apartment. However, viewing the evidence in light of the standards articulated above, we discern no clear error in the district court's finding that McClain constructively possessed the two firearms underlying the enhancements.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*