

United States Court of Appeals
For the Eighth Circuit

No. 22-2625

United States of America

Plaintiff Appellee

v.

Jovell L. Swopes

Defendant Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: April 20, 2023

Filed: April 25, 2023

[Unpublished]

Before LOKEN, COLLOTON, and BENTON, Circuit Judges.

PER CURIAM.

Following a jury trial, Jovell Swopes appeals his conviction and sentence for possessing a firearm as a felon. He argues that the district court¹ erred in denying his

¹The Honorable Roseann A. Ketchmark, United States District Judge for the Western District of Missouri.

motion for a judgment of acquittal, and in calculating the applicable Guidelines range at sentencing. Upon careful review, we affirm.

While Swopes argues that there was insufficient evidence that he constructively possessed the firearm found in the vehicle that he was driving, he was the sole occupant of the vehicle, he was seen leaning toward the firearm, and a DNA analyst testified that it was very likely that DNA found on the firearm came from him. We conclude that this evidence is sufficient to uphold the conviction. See United States v. McKee, 42 F.4th 910, 913 (8th Cir. 2022); United States v. Griffith, 786 F.3d 1098, 1103 (8th Cir. 2015); United States v. Chatmon, 742 F.3d 350, 352 (8th Cir. 2014). Swopes also argues that the district court erred in calculating the applicable Guidelines range based on a prior Missouri conviction for sale of a controlled substance, but acknowledges that his argument is contrary to United States v. Henderson, 11 F.4th 713, 718 (8th Cir. 2021). We are bound by that decision. See Owsley v. Luebbbers, 281 F.3d 687, 690 (8th Cir. 2002). In any event, the court specifically explained that the sentence would have been the same regardless of the Guidelines calculation. See United States v. Peterson, 887 F.3d 343, 349 (8th Cir. 2018).

Accordingly, we affirm the judgment of the district court.
