

The standard of review for deciding a Rule 29 motion is “whether there is substantial evidence (direct or circumstantial) which, taken in the light most favorable to the prosecution, would warrant a jury finding that the defendant was guilty beyond a reasonable doubt.” *United States v. MacCloskey*, 682 F.2d 468, 473 (4th Cir. 1982). In determining the issue of substantial evidence, I may neither weigh the evidence nor consider the credibility of the witnesses. *See United States v. Arrington*, 719 F.2d 701, 704 (4th Cir. 1983).

II

The first contention of the defendant is that there was insufficient evidence to show that he had been convicted of a felony prior to his possession of the firearms.

The government’s final witness at trial was Darrell Bailey, a West Virginia sheriff’s department detective. Prior to presentation of this witness, counsel for the defendant moved out of the presence of the jury to exclude the introduction through Detective Bailey of certain state court judgments showing the conviction of the defendant of felonies in 1992 and 1993. The ground of the objection was that the judgments erroneously recited the defendant’s middle name as “Martians” instead of “Martinas.” (Tr. at 2-12-13.)

The motion was denied and Detective Bailey identified the state court judgments and testified that he had been involved in arresting the defendant in those cases and that the defendant was in fact the person who was the subject of the judgments. (Tr. at 2-16-17.) Based on Detective Bailey's testimony, the documents were admitted. The government also introduced cards containing fingerprints that Detective Bailey had taken from the defendant in connection with his arrests in those cases. The fingerprint cards correctly spelled the defendant's middle name as "Martinas" and recited the two convictions for grand larceny. (Gov't Ex. 12 and 13.)

The defendant argues that since Detective Bailey never explained before the jury the misnomer of the defendant's name in the two state judgments, the government failed in its burden of proof to show a prior conviction of a felony. I find his argument to be without merit.

There is no prescribed method under § 922(g) of proving that an accused had been convicted of a felony. *See United States v. Grinkiewicz*, 873 F.2d 253, 255 (11th Cir. 1989) (holding that testimony of arresting officer that defendant admitted prior conviction was sufficient). The evidence here was more than adequate for a jury to have determined that the defendant had been convicted of felonies in 1992 and 1993. Any misnomers in the state court judgments were simply matters of their evidentiary weight, in light of Detective Bailey's testimony that the defendant was the subject of

those judgments. Moreover, the fingerprint cards themselves were independent evidence of the defendant's convictions.

III

The defendant next argues that there was insufficient evidence to prove that he knew that the firearms in question were stolen at the time he possessed them.

Section 922(j) provides that it shall be unlawful for any person to possess any stolen firearm "knowing or having reasonable cause to believe that the firearm . . . was stolen." 18 U.S.C.A. § 922(j).

In its case in chief the government showed that the firearms described in the indictment had been stolen from the home of Timothy C. Morgan near Beckley, West Virginia, between November 6 and 11, 1998. The government further proved that the defendant possessed these same firearms on November 15, 1998, when he brought them to the shop of Vernon Blevins, a gunsmith, in Tazewell County, Virginia, for cleaning, appraisal, and possible sale. However, there was no direct evidence showing the defendant's participation in the burglary of Morgan's home, or how the defendant came into possession of the stolen guns.

The government also presented the testimony of John Wayne Thompson of Princeton, West Virginia. Thompson stated that the defendant had come to his home

in the company of Tommy Smith (the same person, nicknamed “Captain,” who had accompanied him to the Blevins shop) and tried to sell him “some guns.” In the course of their conversation, Thompson asked the defendant if the guns were “hot” and the defendant replied, “Well, they might be; they might not.” (Tr. at 2-6.) Thompson testified that the defendant had told him that the guns were in the back of his pickup truck, under some “roofing shingles,” but Thompson never saw the guns. The roofing shingles had “grit” on them, like “real fine rock.” (Tr. at 2-8-9.) Blevins had testified that the guns brought to him by the defendant were filled with sand.

Thompson was unable to recall how long ago this conversation occurred, other than that it had been “quite a while . . . maybe a year.” (Tr. at 2-11.)

It is a “well established rule” that the possession of the fruits of a crime recently after its commission, in the absence of an explanation justifying their possession, warrants an inference that the possessor not only knew that the property was stolen, but that he himself was the thief. *See Battaglia v. United States*, 205 F.2d 824, 826 (4th Cir. 1953).

Viewing the facts in the light most favorable to the government, the evidence established that the defendant was in possession of the firearms in question four days after the break-in at Morgan’s home. This proximity in time warrants the *Battaglia* inference. *See id.* at 825.

The defendant argues that to apply such a rule in this case, where the charge in question is one of possession of stolen property rather than theft, “blurs the distinction” between those two offenses. I find such an argument to be unpersuasive and against the weight of authority. *See United States v. Kind*, 433 F.2d 339, 340 (4th Cir. 1970) (applying *Battaglia* to a charge of possession of stolen goods).

IV

For the reasons set forth in this opinion, it is **ORDERED** that the defendant’s motion for judgment of acquittal (Doc. No. 22) is denied.

ENTER: November 17, 2000

United States District Judge