

**FILED**

September 23, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 04-30221  
Summary Calendar

---

KEVEN EYER,

Plaintiff-Appellee,

versus

PATRICK EVANS; WILLIAM MCDADE;  
CHRISTIAN VARNADO; MICHAEL GLASSER;  
CITY OF NEW ORLEANS,

Defendants-Appellants.

---

Appeal from the United States District Court for  
the Eastern District of Louisiana  
(USDC No. 03-CV-342-A)

---

Before REAVLEY, BARKSDALE and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

As there is a fact issue as to whether Eyer was ever in active or constructive possession of the marijuana, this court does not have jurisdiction. See Kinney v.

---

\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Weaver, 301 F.3d 253, 261-62 (5th Cir. 2002); Lemoine v. New Horizons Ranch and Center, Inc., 174 F.3d 629, 633-34 (5th Cir. 1999). DISMISSED.