

July 18, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40998
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELSWORTH BERTHELOT,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:03-CR-46-RHC-JKG-1

Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Elsworth Berthelot appeals his conviction of being a felon in possession of firearms, in violation of 18 U.S.C. § 922(g)(1). He argues that the district court erred by denying his motion to suppress the firearms that were discovered during a search of his property. He maintains that his wife did not have actual or apparent authority to consent to a search of the property, including a safe located in the home.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Berthelot did not exhibit a subjective expectation of privacy in the property or the safe. United States v. Shelton, 337 F.3d 529, 536-37 (5th Cir. 2003). Therefore, Sheila Berthelot had common authority to consent to the search of the property, including the safe. Id. Accordingly, Berthelot's conviction is AFFIRMED.