

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-11495
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES BARRY SMITH,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:95-CR-168-1
- - - - -

August 15, 1997

Before KING, HIGGINBOTHAM, and DUHÉ, Circuit Judges.

PER CURIAM:*

Charles Barry Smith appeals his jury conviction for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1). Smith argues that the district court's failure to raise an entrapment-by-estoppel defense sua sponte and instruct the jury on the defense constitutes plain error. Because we have not addressed whether a federally licensed firearms dealer is a federal official for purposes of the entrapment by estoppel defense, the district court's failure

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to raise the defense and instruct the jury on the defense sua sponte is not clear or obvious error now or at the time of Smith's trial and does not rise to the level of plain error. See United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994)(en banc).

AFFIRMED.