

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40765
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOSE BAUDELIO PADILLA

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-00-CR-9-1

April 10, 2001

Before KING, Chief Judge, and SMITH and PARKER, Circuit Judge.

PER CURIAM:*

Jose Baudelio Padilla appeals his jury-trial conviction for knowingly making a false statement in connection with the attempted acquisition of a firearm, in violation of 18 U.S.C. §§ 922(a)(6) and 924(a)(2). Padilla contends that, because his case involved an attempt, the Government was required to prove that he intended to purchase a firearm and that he took a substantial step, beyond mere preparation, toward purchasing a firearm. Because Padilla failed to renew his motion for judgment

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of acquittal at the close of all the evidence, we review for plain error. See United States v. McCarty, 36 F.3d 1349, 1358 (5th Cir. 1994).

Padilla's argument that 18 U.S.C. § 922(a)(6) consists of separate offenses, including a separate attempt offense, has been rejected by this court. See United States v. Guerrero, 234 F.3d 259, 262-63 (5th Cir. 2000). Having reviewed the record, we hold that the evidence presented at trial was sufficient to prove that (1) EZ Pawn Shop was a licensed firearms dealer, (2) Padilla made a false statement in connection with the purchase of firearm, (3) Padilla knew the statement was false, and (4) the false statement was intended or likely to deceive EZ Pawn Shop into believing that the firearm could be lawfully sold to Padilla. United States v. Polk, 118 F.3d 286, 294-95 (5th Cir. 1997). Accordingly, there was no manifest miscarriage of justice, and Padilla's conviction is AFFIRMED.