

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-40515

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UNITED STATES OF AMERICA,

Plaintiff - Appellant,

versus

BERNARD J. FURSTONBERG, III,

Defendant - Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(USDC No. 2:01-CR-18-1)

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March 18, 2003

Before REAVLEY, JOLLY, and JONES, Circuit Judges.

PER CURIAM:\*

The United States appeals a district court order suppressing five rounds of ammunition that were seized from the pocket of Defendant Bernard J. Furstonberg, III by Ore City, Texas Police Chief Scott Sartain during a pat-down search for weapons conducted as part of an admittedly lawful investigatory stop. Although Furstonberg argues that the Government has not demonstrated that it has obtained approval for this appeal, as required by 18 U.S.C.

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\*Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

§ 3742(b), it is clear that the Government has demonstrated compliance with § 3742(b)'s approval requirement. United States v. Dadi, 235 F.3d 945, 955 (5th Cir. 2000). Therefore, the United States' appeal will not be dismissed.

In its March 4, 2002 order granting Furstonberg's motion to suppress, the district court determined that Sartain did not immediately recognize the identity of the objects in Furstonberg's pocket when Sartain performed the pat-down search. After careful consideration of the briefs, the oral arguments, and the record in this case, we are unpersuaded that this factual determination was clearly erroneous. United States v. Dortch, 199 F.3d 193, 197 (5th Cir. 1999), op. corrected on denial of reh'g, 203 F.3d 883 (5th Cir. 2000). Consequently, the order of the district court must be affirmed. See Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993).

AFFIRMED.