

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

F I L E D

August 30, 2007

No. 07-50003

Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JONATHAN DAVIS

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:06-CR-63-ALL

Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:^{*}

Defendant-Appellant Jonathan Davis appeals his guilty-plea conviction and sentence for possession of stolen ammunition and possession of a firearm with an obliterated or removed serial number, in violation of 18 U.S.C. § 922(j) and (k). The government has moved for summary affirmance. Alternatively, the Government seeks an extension of time to file a brief.

Davis asserts that the enactment of § 922(j) and (k) exceeded Congress's authority under the Commerce Clause because the subsections did not require

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a significant effect on interstate commerce. He has not shown that these subsections violate the Commerce Clause. See *United States v. Luna*, 165 F.3d 316, 319-22 (5th Cir. 1999). Davis also contends that § 922(j) and (k) are unconstitutional as applied to him because his federal offenses arose from the same factual patterns as state charges for theft and unlawful appropriation. In light of his admission that the firearm and ammunition in question passed through interstate commerce, § 922(j) and(k) were constitutional as applied to him. See *id.* at 322.

Accordingly, the government's motion for summary affirmance is GRANTED, its alternative request for an extension of time is DENIED as unnecessary, and the decision of the district court is AFFIRMED.