

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-4749  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUSTIN CHRISTOPHER JOHNSON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. CR4-92-5  
- - - - -  
March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:\*

Justin Christopher Johnson appeals his conviction for possession of a firearm by a convicted felon under 18 U.S.C. § 922(g). He argues that the evidence was insufficient to prove that he was in possession of the weapon recovered by police and named in the indictment. Because Johnson failed to renew his motion for judgment of acquittal at the close of all the evidence,

this Court's review is . . . . limited to the determination of "whether there was a

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

manifest miscarriage of justice." Such a miscarriage would exist only if the record is "devoid of evidence pointing to guilt," or . . . "because the evidence on a key element of the offense was so tenuous that a conviction would be shocking." In making this determination, the evidence . . . must be considered "in the light most favorable to the government, giving the government the benefit of all reasonable inferences and credibility choices."

United States v. Ruiz, 860 F.2d 615, 617 (5th Cir. 1988)

(citations omitted).

Patrolman Ayers and the food mart owner testified that Johnson pulled a handgun from his pocket, pointed the weapon at Ayers, moved the slide on the weapon, and then fled from the scene. Both men testified that the weapon was a black, short gun. Ayers testified that when he radioed for assistance, he described the weapon as a black, semi-automatic .25 caliber handgun. The weapon found by police was a .380 caliber gun. Ayers, however, testified that a .25 caliber and a .380 caliber gun are "approximately the same size and same appearance." In his testimony, Ayers described what he viewed as Johnson's pattern of flight. The weapon was found in the immediate proximity of that path.

Based upon the evidence presented, no manifest injustice occurred by the jury making the reasonable inference that the weapon found by the police was the weapon that Johnson pointed at Ayers. See United States v. Shaw, 920 F.2d 1225, 1230 (5th Cir.), cert. denied, 111 S.Ct. 2038 (1991).

AFFIRMED.