

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5007
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WARREN JOSEPH EBOW,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
1:92 CR 62 1

June 30, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Appellant Ebow was convicted and sentenced to 24 months imprisonment as a felon illegally in possession of a firearm. On appeal, he challenges only the introduction of the firearm in evidence. We find no error in the district court's denial of Ebow's motion to suppress and therefore affirm.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

A Texas state trooper stopped Ebow's vehicle for speeding and began questioning him. Moore inquired if Ebow was carrying any contraband, and Ebow answered that he was not. Moore asked if he could search the car, and Ebow agreed and signed a form acknowledging his consent. Ebow opened the trunk, and Moore saw 10 or 12 bottles of lard or grease. Ebow stated that he was taking the lard to Louisiana for cooking. Moore removed one jar and examined it because he was suspicious that the jars might contain drugs.

In addition to the jars, there was a long rifle or shotgun case lying across the spare tire. Moore removed the case from the trunk and felt the weapon inside. He unzipped the case and found a rifle and a box of cartridges. Because he was alone, Moore decided to put the rifle in the patrol unit for his personal safety.

Moore questioned Ebow further, and Ebow replied that he had been convicted of a cocaine violation and was aware that he was not supposed to possess a firearm. Unable to get backup support, Moore asked Ebow to accompany him to the DPS office in order to subject the bottles of lard to a "drug alert dog." Ebow initially followed Moore in his own car; but before reaching the DPS office, Ebow exited the highway and fled from Moore.

Prior to trial, Ebow filed a motion to suppress evidence of the firearm. He argued that Moore improperly seized the rifle under the "plain view" doctrine "without any `immediately apparent' indication that the weapon was in any way incriminating" and

without reasons for the seizure. After a hearing, the district court denied Ebow's motion to suppress. He raises similar arguments on appeal.

This Court reviews a trial court's ruling on a motion to suppress based on live testimony under the clearly erroneous standard for findings of fact and de novo on questions of law. United States v. Muniz-Melchor, 894 F.2d 1430, 1433-34 (5th Cir.), cert. denied, 495 U.S. 923 (1990).

In his brief on appeal, Ebow concedes that he consented to the search; however, he argues that the scope of his consent to search the car and the trunk did not include consent to search the closed container, i.e., the gun case.

Moore's actions in opening the gun case did not constitute an unreasonable search for Fourth Amendment purposes. "A search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. If a suspect is found to have no expectation of privacy in an object or place searched, then Fourth Amendment concerns are not implicated." United States v. Sylvester, 848 F.2d 520, 524 (5th Cir. 1988) (internal quotations and citation omitted). A container may be opened if the contents "can be inferred from the container's outward appearance." Id. at 525. Ebow's brief admits that the contents of the gun case could be inferred from its outward appearance. Therefore, there was no reasonable expectation of privacy deserving of the full protection of the Fourth Amendment.

Even if opening the gun case was a protected search, the factual question whether Moore exceeded the scope of Ebow's consent is not properly before this Court because Ebow did not raise the question in the district court. "Issues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990) (internal quotation and citation omitted).

Next, Ebow asserts that Moore's seizure of the rifle was unlawful under the "plain view" doctrine. Ebow argues that, at the time the firearm was seized, Moore was not yet aware that Ebow had been convicted of a felony. Therefore, there was nothing to indicate that a crime had been committed or that the firearm was contraband.

Ebow's claim is not supported by the record. Moore retrieved the weapon based on Ebow's consent to search the trunk, not because it was in plain view. After placing the rifle in the patrol unit, Moore questioned Ebow concerning his prior convictions and learned that Ebow had been convicted of a felony. At that point, Moore had probable cause to believe that a crime had been committed, and seizure of the rifle as evidence was proper. There is no merit to this claim.

Accordingly, the judgment of the district court is AFFIRMED.