

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8209
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS ESCARCEGA RODRIGUEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P91-CR-055-(01)

- - - - -
October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

For the first time on appeal Rodriguez argues that the notebook seized during the search of his house was obtained in violation of the Fourth Amendment. A motion to suppress evidence must be raised prior to trial. Fed. R. Crim. P. 12(b)(3); United States v. Basey, 816 F.2d 980, 993 (5th Cir. 1987). Failure to raise the issue in a pretrial motion constitutes a waiver of the issue. Fed. R. Crim. P. 12(f); Basey, 964 F.2d at 397.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Rodriguez did not file a motion to suppress the notebook and did not object to the introduction of the notebook at trial. Therefore, Rodriguez is entitled to relief only if the admission of the evidence constituted a miscarriage of justice. Basey, 816 F.2d at 993; see United States v. Lopez, 923 F.2d 47, 49-50 (5th Cir.), cert. denied, 111 S.Ct. 2032 (1991) (Issues raised for the first time on appeal are reviewed for plain error which occurs when failure to consider the issue will result in manifest injustice.). "For a fact issue to be properly asserted [as plain error], it must be one arising outside of the district court's power to resolve." Id.

The issue that Rodriguez seeks to raise on appeal, whether the notebook was seized in violation of the Fourth Amendment, could have been determined by the district court in a motion to suppress, or through a contemporaneous objection when the evidence was introduced at trial. See United States v. Vontsteen, 950 F.2d 1086, 1089-90 (5th Cir.), cert. denied, 112 S.Ct. 3039 (1992) (contemporaneous objection rule promotes judicial economy and avoids retrials for issues that could have been resolved in the district court if the issue had been properly raised). An officer testified that the notebook was seized during a consensual search of Rodriguez's house, and there was no miscarriage of justice from the admission of the notebook. See Basey, 816 F.2d at 993 & n.23.

AFFIRMED.