

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8493  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VINCENT ANTHONY MORRISON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-92-CR-47-1

- - - - -  
June 24, 1993

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

PER CURIAM:\*

In order to obtain a conviction for felon in possession of a firearm, the Government must prove that the defendant was a convicted felon; that he thereafter knowingly received or possessed or transported a firearm; and that his receipt, or possession, or transportation of the firearm was in or affecting interstate commerce. See United States v. Dancy, 861 F.2d 77, 81 (5th Cir. 1988).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Morrison challenges only the possession aspect of the crime. He denies that he possessed the gun found in his bag located in an apartment where he was staying. Because Morrison did not move for a judgment of acquittal when the Government rested its case or at the close of all the evidence, his conviction is reviewed for plain error. United States v. Pierre, 958 F.2d 1304, 1310 (5th Cir.) (en banc), cert. denied, 113 S.Ct. 280 (1992); Fed. R. Crim. P. 29. Plain error, or a manifest miscarriage of justice, occurs only if the record contained no evidence suggesting guilt or if evidence on a key element of the offense was so weak that a conviction would be shocking. Id.

Illegal possession of a firearm may be either constructive or actual. United States v. Knezek, 964 F.2d 394, 400 (5th Cir. 1992). "'Constructive possession' has been defined as ownership, dominion, or control over the contraband itself, or dominion or control over the premises in which the contraband is concealed." United States v. Smith, 930 F.2d 1081, 1085 (5th Cir. 1991) (emphasis in the original). The Government may prove that contraband is possessed knowingly with circumstantial evidence. United States v. McKnight, 953 F.2d 898, 901 (5th Cir.), cert. denied, 112 S.Ct. 2975 (1992).

Considering that the gun was in Morrison's nearby open bag, in an apartment where he was staying, with a letter addressed to him and a check made out in his name, it was not plain error for the jury to find that Morrison knowingly possessed the weapon. Although Morrison's girlfriend, who apparently also used the apartment, testified that the gun belonged to her, the jury was

entitled to disregard her testimony as to ownership of the gun and use of the bag. Morrison's conviction is AFFIRMED.