

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-9080
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

THOMAS GILMORE STEWART,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:92-CR-231-P)

(April 8, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Appellant was convicted of a firearms violation and appeals on numerous grounds, none of which have merit. He has also filed several motions in this Court which are likewise without merit. We affirm his conviction and deny his motions.

Appellant complains that the Interstate Agreement on Detainers Act was violated because he was returned to state custody before he was tried on the federal charge. Following his arrest Appellant was in state custody. The IAD was not involved because Appellant's

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

presence in federal court was apparently obtained through a writ of habeas corpus ad prosequendum, and not by means of a detainer.

Appellant argues that the district court erred in denying his motion for a new trial. He did not raise this issue in his opening brief so we decline to consider it. United States v. Hoster, 988 F.2d 1374, 1383 (5th Cir. 1993).

Appellant next contends that the evidence was insufficient to convict him because his mental state prevented him from willfully and consciously possessing the firearm. He did not move for acquittal at the close of all the evidence so we examine only to see if there was a manifest miscarriage of justice. United States v. Shaw, 920 F.2d 1225, 1230 (5th Cir.), cert. denied, 111 S.Ct. 2038 (1991). We have examined the record and we find no miscarriage of justice whatever.

Appellant argues that his counsel successfully moved to keep evidence of his physical and mental state from the jury, but in the same breathe, Appellant accuses the prosecutor of violating Brady v. Maryland, by withholding this same information. The argument is patently without merit.

Next Appellant argues that the Government used perjured testimony of his codefendant Davis. There is absolutely no showing that the testimony was perjured, only that, at worst, it was mistaken.

Claiming that due process was violated, Appellant complains that the testimony of Agent McClennon was incomplete because, while she testified that fingerprints were taken from the weapon, she did

not testify that they matched Appellants. Defense counsel had ample opportunity to question the witness about this so there was no due process violation.

Pointing to certain comments by the prosecutor in closing and rebuttal Appellant argues prosecutorial misconduct. Our review of the comments shows no misconduct.

Appellant also makes arguments based on separation of powers principles and concerning dismissal of the indictment that are totally specious and we reject them without further comment. Likewise, Appellant's motions to supplement the record and for writ of mandamus are denied.

Conviction AFFIRMED, motions DENIED.