UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-1105
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

CYPRIAN IGBINGIE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:92-CR-105-T)

(September 21, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant contests the sufficiency of the evidence to support his conviction for possession of stolen mail and aiding and abetting; and the legality of the district court's restitution order.[2] Appellant also claims for the first time on appeal ineffective assistance of counsel. We do not address that issue. United States v. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987),

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[2] Appellant also filed several motions which we have previously denied.

cert. denied, 484 U.S. 1075 (1988). He also complains that counsel briefed no issue on appeal regarding his sentence of incarceration. He, however, does not identify any appealable issue so there is nothing for this Court to consider. We affirm Appellant's conviction, and vacate the restitution order and remand.

Appellant concedes that, in this case, the sufficiency of the evidence must be reviewed for plain error. Plain error occurs only if the record is devoid of evidence pointing to guilt. United States v. Pruneda-Gonzalez, 953 F.2d 190, 193-94 (5th Cir.) cert. denied, 112 S. Ct. at 2952 (1992). The challenged count charged possession, and aiding and abetting, of a credit card in the name of Dennison, stolen from the mail. To prove the charge, the Government was required to establish beyond a reasonable doubt 1) that the Appellant unlawfully possessed the Dennison credit card; 2) that it was stolen from the mail; 3) that Appellant knew it was stolen; and 4) that Appellant had specific intent to possess it. United States v. Hall, 845 F.2d 1281, 1284 (5th Cir.), cert. denied, 488 U.S. 860 (1988). "Possession may be individual or joint, actual or constructive, and it is not necessary that a defendant individually be in physical possession of an item for him to be charged with possession of it." United States v. Romero, 495 F.2d 1356, 1359 (5th Cir.), cert. denied, 419 U.S. 995 (1974). The offense of aiding and abetting requires proof beyond a reasonable doubt of an act by Appellant which contributes to the execution of the criminal activity, and Appellant's intent to aid in its commission. United States v. Triplett, 922 F.2d 1174, 1178 (5th

Cir.), cert. denied, 111 S. Ct. 2245 (1991).

The evidence showed that the Dennison home was on the route of the mailman Appellant was bribing to identify envelopes for Appellant to steal. It further showed that Appellant used the stolen card to make a purchase at a business on December 2, 1991. An employee of that business testified that, on that date, Appellant attempted to charge merchandise on a different credit card. When the card center refused the charge, Appellant went to his automobile, returned with another person who presented the Dennison card which was then used for Appellant's purchase. Under the plain error standard, this evidence was adequate to show Appellant actively or constructively possessed the card and that he aided and abetted in its possession.

Appellant argues for the first time in his reply brief that the restitution order is illegal for failure to comply with § 3663(f)(2)(B) which requires that the last installment of restitution be paid no later than five years after the end of the term of imprisonment. Normally, issues raised for the first time in a reply brief are not considered by this Court. United States v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 932 (1989). However, plain error occurs when the error is obvious and the failure to notice and correct it would affect the fairness, integrity or public reputation of judicial proceedings. United States v. Lopez, 923 F.2d 47, 50 (5th Cir.); cert. denied, 111 S. Ct. 2032 (1991). Here it is obvious that the restitution plan violates the statute because only $8,500 of the $10,187.81 ordered

paid will be paid at the expiration of five years following the end of the term of imprisonment. The order is plainly erroneous. Accordingly, the order of restitution is vacated and the matter is remanded to the district court for further proceedings on that issue.

AFFIRMED IN PART, VACATED and REMANDED IN PART.