

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2303
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH PETE, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-92-0208
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Joseph Pete, Jr., argues that there was insufficient evidence to support his jury conviction on two counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).

Because Pete's trial counsel did not move for a judgment of acquittal, this Court reviews the evidence to determine only if there was plain error, or whether a "manifest miscarriage of justice" resulted. United States v. Pierre, 958 F.2d 1304, 1310

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(5th Cir.) (en banc), cert. denied, 113 S.Ct. 280 (1992).

"[S]uch a miscarriage would exist only if the record is devoid of evidence pointing to guilt, or ... because the evidence on a key element of the offense was so tenuous that a conviction would be shocking." Id. (citation and internal quotations omitted). Pete acknowledges that this higher burden applies. To convict for a violation of 18 U.S.C. § 922(g), the Government must prove that Pete had been convicted of a felony; that he knowingly received, possessed, or transported a firearm; and that his receipt or possession of the firearm was in or affecting commerce. United States v. Dancy, 861 F.2d 77, 81 (5th Cir. 1988).

Pete concedes that the Government proved that he was a convicted felon and that the firearms were in or affecting commerce. Pete contends that the Government failed to prove possession.

Illegal possession of firearms may be actual or constructive. United States v. Knezek, 964 F.2d 394, 400 (5th Cir. 1992). "Constructive possession is the knowing exercise of, or the power or right to exercise dominion or control over the item at issue...." United States v. Perez, 897 F.2d 751, 754 (5th Cir.), cert. denied, 498 U.S. 865 (1990). Immediate access to a loaded firearm supports constructive possession. See United States v. McKnight, 953 F.2d 898, 902 (5th Cir.), cert. denied, 112 S.Ct. 2975 (1992). Constructive possession may also be inferred from the exercise of dominion or control over a vehicle in which contraband is found. Knezek, 964 F.2d at 400.

On both July 26, 1991, and March 15, 1992, Pete was the registered owner of the vehicle in which loaded guns were found in or near the glove box, he had possession of the keys to the vehicle, and he had been driving or seen driving the vehicle shortly before the guns were found.

The record is not devoid of evidence and the evidence of possession is not so tenuous as to be shocking. It was reasonable for a jury to infer that Pete exercised dominion and constructive possession over the guns in his car. There was no manifest miscarriage of justice.

AFFIRMED.