IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3337

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HAROLD J. DANTIN, RONALD J. SAVOIE and DERRIS GRIFFEN,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CR 91-567 F)

(April 13, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

A magistrate judge found Harold J. Dantin, Roland J. Savoie, and Derris Griffen guilty of violating the Migratory Bird Treaty Act by hunting over a baited field in violation of 16 U.S.C. § 703 and 50 C.F.R. § 20.21(i). A district court affirmed the convictions. Dantin, Savoie, and Griffen appeal.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Dantin, Savoie, and Griffen do not deny that they hunted mourning doves over a baited field. They argue instead that they were unable to walk sufficiently well to inspect the field over which they were hunting.

We have held in the past that a hunter violated the Migratory Bird Treaty Act because he hunted over a field in which bait was "so situated that [its] presence could reasonably have been ascertained by a hunter properly wishing to check the area of his activity." United States v. Delahoussaye, 573 F.2d 910, 912 (5th Cir. 1978). See also United States v. Sylvester, 848 F.2d 520, 522 (5th Cir. 1988).

Dantin, Savoie, and Griffen argue that their inability to perform a standard search should exculpate them. The magistrate found, however, that the men made no attempt to search the field for bait. This complete lack of effort, combined with the fact that the average hunter could have discovered the bait with a reasonable inspection, suffice to support the conviction. As a result, we need not address whether the mens rea requirement under the Act employed in Delahoussaye and Sylvester is good law. See United States v. Garrett, 984 F.2d 1402, 1410 n.17 (5th Cir. 1993) (suggesting that Congress may have overruled mens rea requirement set forth in Delahoussaye and Sylvester).

We AFFIRM.