

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4256  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MOSES SMITH,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Eastern District of Texas  
(6:92CR10(01))

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(September 23, 1993)

Before POLITZ, Chief Judge, GARWOOD and BARKSDALE, Circuit Judges.

POLITZ, Chief Judge:\*

Convicted upon his guilty plea of unlawful firearm possession by a convicted felon under 18 U.S.C. § 922(g), Moses Smith appeals the sentence imposed. Finding no error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

## Background

Smith was arrested by a Tyler, Texas police officer after he pointed a gun at an undercover investigator. Smith waived indictment and pleaded guilty to an information charging possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g). The district court held a hearing to determine the propriety of a sentence enhancement under the Armed Career Criminal Act, 18 U.S.C. § 924(e). The government's first witness, Special Agent Samuel J. Cohen, attested to the authenticity of Government Exhibit One, a card containing Smith's fingerprints. He further testified that he received Government Exhibits Two and Three from the Texas Department of Corrections,<sup>1</sup> including copies of photographs, fingerprint cards, and records reflecting Smith's four previous convictions in Rusk, Van Zandt, Henderson, and Anderson Counties. He opined that the person depicted in the photographs all appeared to be Smith. Fingerprint expert Randy Melton testified that the fingerprint impressions on Government Exhibits One, Two, and Three were identical. S.O. Woods, Jr., Records Clerk of the Texas Department of Corrections, identified Government Exhibits Two and Three as copies of documents on file with the Texas Department of Criminal Justice (TDCJ).<sup>2</sup> The respective district court clerks from the four counties of conviction

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<sup>1</sup> This is currently the Texas Department of Criminal Justice.

<sup>2</sup> The clerk of the convicting court retains the original judgment and sentence and sends a certified copy to TDCJ to be kept as part of the inmate's permanent file. See Tex. Crim. Proc. Code Ann. art. 42.09 § 8 (West Supp. 1993).

identified their records of Smith's convictions.

The district court found Smith liable under section 924(e) and sentenced him to 180 months imprisonment to run concurrently with the sentence imposed for a previous state conviction, five years supervised release, and the mandatory assessment. Smith timely appealed.

### Analysis

Smith asserts as error Woods' authentication of copies of TDCJ records. He contends that because Woods did not obtain the original documents his attestation was false and failed to satisfy Fed.R.Evid. 902(4). Smith argues that only the custodial district court clerk could certify the copies of the records reflecting his previous convictions. We are not persuaded.

Our colleagues in the Ninth Circuit recently addressed this issue in **United States v. Huffhines**.<sup>3</sup> There the government introduced into evidence a copy of a Texas state court judgment certified by the Texas Department of Corrections. The defendant maintained that Texas law precluded the admission of this judgment because it was not certified by the clerk of the convicting court. The Ninth Circuit rejected this argument, finding that the copies were admissible in federal court under Fed.R.Evid. 902(4).<sup>4</sup> We agree and now hold that the copies of the certified copies

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<sup>3</sup> 967 F.2d 314 (9th Cir. 1992).

<sup>4</sup> Id. at 320 (citing **United States v. Darveaux**, 830 F.2d 124, 126 (8th Cir. 1987)).

possessed by TDCJ were properly identified and authenticated during the sentencing hearing. There has been no violation of Fed.R.Evid. 902(4).<sup>5</sup>

Smith further contends that the government failed to identify him as either Moses Smith or Moses Smith, Jr., and failed to establish that the prior convictions in the names of Moses Smith and Moses Smith, Jr. were committed by the same person. This argument is without merit. The fingerprint expert testified that the fingerprints in Exhibits One, Two, and Three were identical. Photographs contained in the pen packets appeared to be the same person as the defendant, Moses Smith. The record contains adequate evidence to establish that "Moses Smith" and "Moses Smith, Jr." are the same person and that person is the defendant herein.

Smith finally claims that the district court, in assessing the section 924(e) enhancement, should not have relied on the Henderson County, Texas conviction, allegedly tainted by an improperly amended indictment.<sup>6</sup> Assuming *arguendo* the impropriety of reliance on this conviction, the record contains evidence of three other felony convictions, fully supporting the Armed Career Criminal enhancement imposed by the district court.

The judgment of the district court is AFFIRMED.

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<sup>5</sup> In addition, Smith asserts that absent proper authentication of Government Exhibits Two and Three no admissible evidence linked him to the previous crimes. This second assigned error is foreclosed by our resolution of the first.

<sup>6</sup> Tex. Code Crim. Proc. Ann. art. 2810 (West 1966) (amended in 1985).